



Doing Business in Delhi

A Study of Initiated and
Uninitiated Regulatory Reforms

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Regulatory Reforms



Friedrich Naumann
STIFTUNG FÜR DIE FREIHEIT

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Introduction to the Compendium

In 2014, Government of India (GoI) made it a policy priority to improve the business environment in the country. This prioritisation derived from India's lacklustre performance on the World Bank's Ease of Doing Business Index that ranks 190 countries on their business regulatory environment. Since 2003, the World Bank has measured the time, cost and regulation of entry, operation and exit for firms, and ranked countries based on these measurements and government reporting.

At the start of his term, the current Prime Minister committed to bringing India to the top half of the Doing Business rankings by 2020. To achieve this goal, the Department of Industrial Policy and Promotion (DIPP) under the Ministry of Commerce and Industry, and NITI Aayog, the government's think tank, together conceptualised the **Business Reform Action Plan (BRAP)**.

Over the next 4 years India jumped 30 places on the index. In 2017 and 2018, the country was placed 100th on the Index. The current government touts this achievement as a significant feather in its cap.

Business Reform Action Plan: Key instrument for improving business climate

The BRAP is a list of action items for state governments to simplify and rationalise rules for market entry and operation, improve economic governance, and strengthen rule of law. Recommendations are aimed at reducing the licence-permit-inspection raj, and cover transparency, government process reengineering, redundancies in regulations, and due process. BRAP 2014 consisted of 98 recommendations, and the list grew to 372 in 2017.

BRAP 2017 outlined recommendations across 12 reform areas: labour regulation enablers; contract enforcement; registering property; inspection reform enablers; single window system; land availability and allotment; construction permit enablers; environmental registration enablers; obtaining utility permits; paying taxes; access to information and transparency enablers; and sector specific reforms spanning the lifecycle of a typical business.

Assessments of the adoption and impact of ease of doing business reforms

Each year DIPP, NITI Aayog and the World Bank together assess the progress made by states against ease of doing business action items set the previous year. The assessment is based on self-declaration by state governments on recommendations they have implemented. This is made available on the **BRAP portal** and is then reviewed and validated by DIPP & the Bank. DIPP's assessment from 2018 will consist of **business-to-government feedback as well**.

Separately, for its Doing Business Report, the Bank surveys lawyers and expert professionals to verify the claims around reforms and assess changes to the business climate in the country. The report surveys respondents familiar with the regulatory environment faced by private limited companies in the two largest business cities in the country (Mumbai and Delhi for India).

In addition, in 2017 the IDFC Institute conducted an enterprise survey of over 3,000 manufacturing firms across India, to assess the business regulatory environment ‘from the viewpoint of manufacturing firms’. It differs from the World Bank’s Doing Business Surveys and DIPP’s state rankings in that it focuses on how organised manufacturing firms, rather than experts or implementing agencies, view the business environment in their respective states.

These reports are improving our understanding of and how the BRAP instrument is getting us a more open and transparent business regulatory environment. However, there are a few limitations to recent analyses of whether the business environment at the state level has been truly improved for all entrepreneurs.

Gaps in our understanding of business environment reforms

First, despite all these surveys and reports, we do not have a deep understanding of the substantive and qualitative changes undertaken by different states. Better performing states such as Andhra Pradesh, Telangana, Gujarat, Maharashtra and Tamil Nadu have provided publicly verifiable information about individual reform claims. However, in the case of most states, we have little to go on except self-reporting.

The World Bank itself **admits** that implementation gaps may exist as sometimes the reforms “on paper do not translate into reforms on the ground” or “reforms in one area are contradicted by actions in other areas” or “regulatory service delivery is good for some but not for others”. Unless the implementation status of reforms is thoroughly investigated at the state level, we will not be able to fix the red flags on performance that the Bank’s report or enterprise surveys will raise.

An example of this is the setting up of specialised courts at the district and high court levels across the country following the Commercial Courts Act 2015. At current implementation status in a few years we will likely find little to no change in judicial efficiency for commercial disputes. We need to understand the extent of specialisation in these courts and the material process changes that have come about to anticipate this stasis and course correct.

Other examples are efforts to constrict inspections authorities under norms of transparency and due process. On paper, many state governments have claimed to regularise the inspections process, whether to enforce environmental regulations or labour laws. Reform claims include incorporating risk-based inspections and application of standard operating procedures. Yet, in the case of most states we do not know the

formula for selecting enterprises for inspections or calculating risk, or the extent to which violations are brought to book.

Second, ubiquitous urban services provided by micro, small and medium enterprises have found short shrift in the reporting on business climate reforms. GoI and state governments have initiated business environment reforms with the goal of drawing in large scale investments in industrial enterprises for the Make in India initiative. Reports and surveys on the ease of doing business in India are studying only certain types of businesses: larger (number of employees or income), likely to have access to expert help for registration and compliance, or engaged in manufacturing activities. But the extent to which operating environment has improved for traditional retail service enterprises is unclear.

For example, eating houses abound in all corners of India, ranging from makeshift dhabas, to sit down restaurants. In the last few years, restaurants in densely populated market areas have been sealed repeatedly for flouting shape-shifting rules. Restaurateurs stepping up to meet the demand for alcohol service face challenges on account of cultural policing masquerading as policy. News of legal stand-offs between restaurateurs and inspectors, excise officers, and police are commonplace.

Similarly, since 2014, the country has been locked in a tough conversation about the production, trade and sale of meat, particularly cattle meat. Oft changing rules, unclear objectives and absent due process, meat entrepreneurs supplying for their livelihood are under existential threat.

Recent studies and reports, do not highlight issues that affect small-scale retail enterprises, particularly those yet to be registered or formalised. While this is an express caveat of all the studies, these issues represent essential and non-trivial corrections that affect a bulk of self-employed entrepreneurs and corner shops. Interestingly, there is no useful sample frame from where to survey such enterprises (even registered ones).

Third, none of the studies give us a sense of the next granular steps in the reform process. We are to yet see granular recommendations on rules and enforcement at the intersection between central, state and municipal level powers and authority. We are also yet to see broader recommendations on emerging industries.

For example, waste management in India is largely run through informal enterprises. In the case of e-waste, this informality is hazardous. The central rules for formal e-waste management have only recently been set up. But ease of entry and operations for e-waste enterprises is unclear. Given the nexus between municipal authorities and informal enterprises in the sector, broad strokes study of ease of doing business will likely not alert us to reform needs in areas like this.

Similarly, in the case of technology aggregators the rules are being made up as we go, since regulatory framework for most enterprises in the country remains product or service specific. Aggregators do not fit the existing definitions of product manufacturers or service

providers. Rules for the services they mediate are currently either overly prescriptive or completely proscriptive, and a higher order discussion on principles-based regulation is missing.

Our Undertaking: Examining the Ease of Doing Business as of June 2018 in Delhi

The Indian government machinery is a complex beast. Variations across states in machinery, process and rules abound. Painting the country in broad strokes gives us a limited if useful picture of the efforts to create an enabling environment for enterprise. We undertook to add to the literature by studying the shape which reforms have taken at the state level. In this effort, we assess the implementation status of BRAP 2017 in the National Capital Territory. The state is the second largest commercial ‘city’ in India, and a metropolitan centre for significant internal job-related migration. Delhi is also one of the worst performing states on BRAP reforms. In 2017, Delhi claimed to have implemented 121 out of 356 (34%) recommendations made by BRAP 2017 and was ranked 23 out of 36 states by DIPP in its annual assessment of progress.

What did we do

We used the vehicle of our annual Research Reality Summer Programme to build a nuanced understanding of business environment reforms in the state. We produced seven distinct papers, each using a different research tool and approach, to highlight business regulatory challenges.

First, for the National Capital Territory, we assessed government reform claims that are hard to verify or score. Here, we studied the implementation of transparency enablers in inspections, including the application of Standard Operating Procedures and Computerised Risk Assessment for labour and environment regulations. To study labour inspections reforms, we used administrative data analysis of inspections records, and in the case of environment regulation inspections we used inspector surveys. We also studied the functioning of the newly set up commercial division at Delhi High Court using a time and motion study. To assess de jure compliance, these reform claims at the very least needed to be benchmarked against the standard proposed by DIPP. Where possible we also benchmarked the implementation in Delhi against best-in-class in India and OECD standards.

Second, we studied the business environment for enterprises not surveyed thus far. We focussed on traditional retail service enterprises run by large numbers of small scale formal and informal entrepreneurs such as eating houses, meat processing and sale, and waste management. We used experience, perception and awareness surveys to understand the perspective of these service sector enterprises. Through mock inspections we highlight the ineffectiveness of the current compliance framework. We also document the often-times overlapping regulatory mandates of different agencies at the central, state and municipal levels, and the de jure and de facto rules applied by authorities to enterprises in these sectors.

Finally, we studied technology-based service enterprises that are at the fault-lines of regulation. The last few year have seen a rise in technology aggregators especially in a few sectors such as hospitality, taxi services, and food supply. These enterprises are redefining the need for government intervention and many argue that the current framework is obsolete.

We study technology aggregators in India, to understand how the regulatory approach could shift to principles-based regulation from product-based or enterprise-based frameworks in force in India.

We Find: In Delhi, ease of doing business is still largely window-dressing

India's Ease of Doing Business Index rankings reflect the heavy regulatory burden businesses continue to face. it continues to fare poorly for indicators examining time taken to acquire permits and is ranked 156 on starting a business.¹ IDFC Institute's Ease of Doing Business: Enterprise Survey calculates an average of 118 days to set up a manufacturing business across the country.

We add to this literature with deep dive into Delhi's regulatory environment for enterprises. Our studies find that problems of licence, permit and inspection raj are still stubbornly entrenched in the case of traditional retail services enterprises. We also find that inspections reforms have only been implemented superficially and that judicial contract enforcement despite reforms is still the same wine in a new bottle. Lastly, we find that the next set of reforms should consider principles-based approaches taking cue from technology aggregators on consumer protection and service standards.

Let us consider the problems of licence and permit raj in Delhi.

The paper *A Seven Course Dilemma* examines the legal and regulatory environment faced by eating houses based on a survey of 101 restaurants in South Delhi. The study finds that the regulatory environment in the food services business is cumbersome, with overlapping regulations, lack of procedural clarity and technical difficulties The paper

1. In order to standardise companies for comparison, [the Doing Business report](#), has made certain assumptions regarding the size of the company, capital, number of founders etc. As a consequence, the ease of starting and running companies with single owners are not reflected in the index.

finds that it takes 120 to 150 days to obtain all licences in the absence of any delay beyond the officially stipulated time. The formal costs varies from Rs 18,300 to Rs 1,852,087.

Our study *Pound of Flesh* finds that all private commercial slaughter for meat in Delhi is pushed to informality. The Municipal Corporation of Delhi both regulates and operates the only slaughterhouse in the state (in Ghazipur) permitted to slaughter buffalo, sheep and goat. This government monopoly alongside Food Safety and Standards Regulations 2011 on private commercial slaughter have rendered all slaughter of pig and chicken in the city effectively illegal. Municipal authorities recognise the egregious violation of the doctrine of separation of powers and the absurdity of effectively banning private slaughter. A ‘keep calm and carry on’ policy is followed by authorities in the city, and 95% of all enterprises in the sector remain either completely or partially unlicensed.

A third paper, *Toxic Efficiency*, finds that out of the 2 million metric tonnes of e-waste generated domestically in India, the informal sector handles almost 95% of e-waste. The paper looks at the Extended Producer Responsibility (EPR) regime under which producers of electronics and electrical equipment are responsible for directing their end-of-life products to authorised recyclers. The study finds that EPR has not taken hold and authorised recyclers continue to hold a miniscule portion of the market. The paper examines costs of entry for enterprises such as the licences required to enter the authorised recycling market, compliance with government regulations, and challenges of secure disposal of hazardous residue.

Let us consider the problem of inspector raj in Delhi.

Many of the reforms under BRAP 2017 were not aimed at reducing the number of licences, they intended to make the existing processes simple, predictable and consistent. At first glance, Delhi only implemented a third of the recommendations directed at transparency, accountability and due process. Delhi claims to have streamlined the inspection processes of various State departments, applying Computerised Risk Assessment in the Delhi Pollution Control Committee (DPCC) and using SOPs in the state Labour Department.

In *Risky Business*, we assess the commercial enterprise pollution monitoring and enforcement framework spearheaded by DPCC. We find that DPCC has only partially implemented the recommendation that requires the use of computerised risk assessment to identify enterprises for inspection. Although it has designed an automated system, it still chooses enterprises manually through an executive committee. This fails to meet the objective of reducing human error and bias in selection. The study also highlights the existence of procedural inconsistencies across inspections. Environmental engineers (inspectors) at DPCC only partially follow the Standard Operating Procedures (SOP) for carrying out inspections.

The state of inspection management under the Department of Labour is in a similar state. In *Inspecting the Inspectors*, we studied the administrative records of nearly 850 labour complaint entries received at the Delhi Labour Department. Through our analysis, we found several discrepancies in the use of SOPs to schedule, manage and conduct inspections in Delhi’s labour inspections set-up. While SOPs have been published on the

Department's website, they are likely not being met with rigor. Indifferent, haphazard and non-standardised record keeping, missing procedural hygiene and lack of fidelity to prescribed timelines are three non-trivial departures from the SOPs. Our investigation into the records highlighted that missing definitions were making the lines between on-site inspections and in-office hearings blurry. We also find that timelines prescribed in the SOPs are not being met. More than a third of the inspections from 2016-2018 were not conducted within 15 days after receipt of complaints as prescribed.

Moreover, we find that there has been no discernible change in the existing inspection regime for the service sector enterprises. Corruption, harassment and subversion of rules continue to be rampant. 28% of restaurateurs we surveyed described the intention of inspectors as deliberately finding faults and 30% felt that inspectors were only concerned with their own interests. While, inspectors from South Delhi Municipal Corporation (SDMC) claim to inspect meat shops once a year, our enterprise surveys indicate a frequency at least 12 times higher. Yet, in our mock-inspections only 2.8% of meat shops were compliant with more than 80% of the rules examined. Instead of achieving any measure of compliance, inspections have emerged as flourishing channels of rent-seeking.

An inspection regime ought to maximise compliance by providing relevant information to enterprises such as easily accessible guidance material and checklists. Out of the twelve departments that regulate the operations of a restaurant in Delhi, only one has published a guidance document. Likewise, inspectors from both the SDMC and Food Safety and Standards Authority of India mentioned that checklists are used during inspections for meat shops. However, about 81% of the respondents were not aware about the parameters used for conducting inspections.

Let us consider the state of judicial contract enforcement in Delhi.

While the measures listed above are the costs on businesses due to government action, there are also problems due to government inaction, particularly when the government's core responsibility of delivering justice is not done quickly or effectively.

Delhi has claimed to have set up a commercial bench at Delhi High Court. In *Caught in the Act*, we investigate the functioning of the commercial bench, asking whether there were any substantial efficiency gains from setting up the bench. The paper finds that more time is spent on non-commercial cases, the time spent on commercial disputes is not proportional to the level of pending commercial cases, and time available with judges is likely not proportionally assigned between commercial and non-commercial cases. Even though the time available per judge per case at High Court of Delhi has increased over the past six years, no specific slots have been dedicated to commercial disputes. Since not much has changed in how the Court functions, substantial judicial efficiency gains may be some distance away.

Where do we go from here

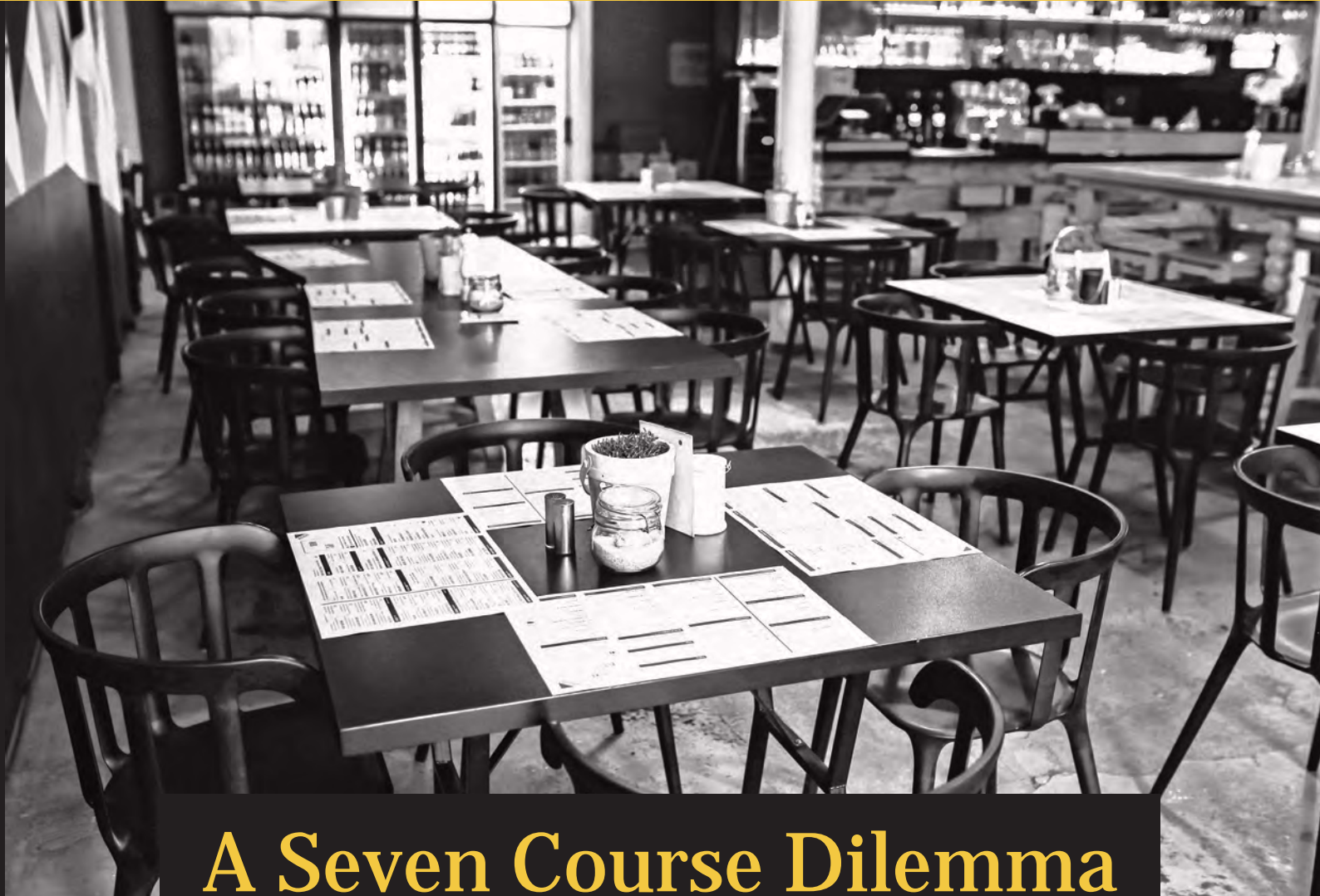
The state in India has from inception taken a paternalistic role. It interferes in all manners of voluntary transactions between consenting adults: extensively prescribing what can

go down, and not shying away proscribing behaviour based on aging cultural norms or value-judgments of actors in power. The fundamental concept that the coercive power of the state must be clearly and heavily circumscribed is nascent. Ease of Doing Business is currently approached as a programmatic area where the government is reluctantly ceding its power over entrepreneurs. In Delhi, the state government is still in an ‘offering concessions’ mode instead of agreeing on basic non-negotiables.

The government needs to think through how principles-based regulation, separation of powers, rule of law, and thoughtful agency design can help facilitate the ease of doing business for enterprises in Delhi, while ensuring consumer protection, minimising negative externalities and correcting market power concentration. There may be some guidance in developing principles-based regulation from the world of technology aggregators.

In our study *Disruption on Demand*, we find that aggregators are forcing us to rethink regulations and nudging us away from specification centric regulations. In this paper, through data mining, we study aggregators’ approach to concerns of consumer protection. We highlight the consumer protection approach taken by aggregators through mechanisms that increase information exchange between consumers and enable a collective governance framework on the platforms. We compare our findings on aggregator service standards with current regulations to see if there are entry points for self-regulation and lessons to for writing principles-based rules of the game. We study regulations in the two services where aggregators have caused considerable disruption: hospitality and taxicabs. In the case of hospitality, we find that the needs of the consumers are often at odds with what regulations deem important. In the case of taxi regulations, we find that conditions put in place by the regulations are difficult to implement and have limited enforceability. In both these service industries, we find that existing prescriptive rules increase the regulatory burden on enterprises but fail to meet the key goal of consumer protection as state capacity is thinly spread.

We hope these analyses will help the Government of National Capital Territory improve their performance on the national Ease of Doing Business rankings, and develop a clear agenda on the next set of reforms to open up the business environment in the state.



A Seven Course Dilemma

EXAMINING THE EASE OF DOING
BUSINESS FOR **RESTAURANTS** IN DELHI

Parth Gupta, Rutvi Vadera, and Retika Vijay

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List of Abbreviations

CTE	Consent to Establish
CTO	Consent to Operate
DFS	Delhi Fire Services
DoT	Department of Tourism
DPCC	Delhi Pollution Control Committee
FBO	Food Business Operator
FSC	Fire Safety Certificate
FSSAI	Food Safety and Standards Authority of India
FSSR	Food Safety and Standards Regulations
GST	Goods and Services Tax
HTL	Health Trade Licence
MCD	Municipal Corporation of Delhi
NBC	National Building Code
NDMC	New Delhi Municipal Corporation
NOC	No Objection Certificate
NRAI	National Restaurant Association of India

Executive Summary

The Indian Food Services market, comprising restaurants, cafes, bars and street kiosks stalls, is estimated to reach Rs. 498 thousand crores and contribute 2.1% to the Gross Domestic Product of the country by 2021 (Maheshwari et al. 2016, p. 4). Despite the growth outlook, 66% of the industry remains unorganised (*ibid.*, p. 3).¹ We study the legal and regulatory framework in Delhi that governs the food services business and captures the experience of owners and managers operating under the framework.

Any eating house in Delhi faces cumbersome and often overlapping regulations. An alcohol-serving restaurant needs to acquire 11 licences (or 13 if they play recorded music and choose to install a lift) and submit 57 documents before they open shop legally (Appendix 1). The process is daunting in the absence of procedural clarity, dysfunctional communication channels between the government and enterprises and technical difficulties.

Through a structured survey of restaurant owners, interviews with government officials and an analysis of secondary information, we find that it takes 120 to 150 days to obtain all licences, if there is no delay beyond the officially stipulated time, and the formal cost varies from Rs. 18,300 to Rs. 1,852,087 (Tables 1 and 2).² More than half of all respondents in our survey found the overall licensing procedure to be difficult or very difficult to follow. An Excise Licence, rated the most arduous of all by the respondents, costs restaurants anything between Rs. 7.64 lakhs and Rs. 18.52 lakhs annually.

Even if restaurateurs manage to fulfil all the licensing requirements to open, they are plagued by an extortionary inspections regime and arbitrary changes in rules. An inspection system ought to maximise compliance by providing relevant information to enterprises, including easily accessible guidance material, checklists and toolkits. Out of the 12 departments that regulate the operations of a restaurant in Delhi, only one has published a guidance document, leaving restaurateurs without any information about the inspection procedure followed by other departments. In fact, a major complaint of the interviewed restaurateurs was the lack of a single point to access clear guidelines to be followed while operating a restaurant.

Besides this, restaurants face frequent and arbitrary government orders that directly impact the operations of a restaurant, often adversely. For example, in May 2018, the Department of Excise in Delhi banned liquor-serving restaurants from playing recorded music on the grounds of ‘nuisance caused by high volumes’.³ In another instance, the New Delhi Municipal Corporation (NDMC) banned the use of rooftops by restaurants and bars following a mishap in Connaught Place in December 2017 (The Times of India 2017). A restaurateur at Hauz Khas estimated a 60% loss in business within 2 days of

1. Unorganised eating houses do not conform with the following parameters: (i) accounting transparency; (ii) organised operations with quality control and sourcing norms; and (iii) outlet penetration (Dabas and Lunawat 2017, p. 9).

2. Excluding the cost of Signage licence and Consent to Establish/Operate, which are calculated based on the surface area of advertising board and capital investment respectively.

3. Order No. 2(72)/Ex/Restt/Misc./2016-17/1567 (2018) from the Office of Excise Commissioner, Delhi (dated 9 May 2018).

the ban, as his was one of the few restaurants providing rooftop dining—the primary attraction for his customers (D. Kaushik 2015).

Devising reactionary rules without a robust debate does not make us safer or better protected. Such changes undermine confidence in any market, increase short-term costs for businesses and create distrust in government actions. To encourage growth in the sector, it is imperative to declutter the current regulatory framework while protecting customers and the general public from health hazards and nuisance.

The paper explores the current regulatory framework with the intention to initiate a discussion on the regulatory hygiene required for food service enterprises to thrive. The paper is organised as follows: the introduction sets the context of the research. This is followed by an enumeration of all the licences required to open a restaurant, and the official cost and the stipulated time taken to obtain them. Here we also present the experience of restaurateurs in obtaining these licences and the procedural ambiguities in obtaining each licence. Next, we discuss the perception of restaurateurs on the inspections regime. Finally, we highlight the pressing pain points that business owners encounter while running a restaurant, followed by a conclusion.

1 Introduction

Public interest theory of regulation postulates that regulation reduces market failures and ensures that those who enter the market bring in a high quality of goods and services (Hertog 2010, p. 3). Registration gives new companies a type of official approval that they are reputable enough to engage in transactions with the general public and other businesses (SRI 1999, p. 14). Contrastingly, public choice theory argues that in practice, regulations work in favour of existing firms by limiting the entry of new firms and ‘give officials the power to deny them and to collect bribes in return for providing the permits’ (Stigler 1971, p. 3; Shleifer and Vishny 1993, p. 601).

Other researchers (Bardhan 1997, p. 1322) have argued that ways to circumvent regulations, such as payment of bribes, can sometimes be effective, in principle, if it aids the release of entrepreneurs from regulation, or reduces the delay in issuing of licences. However this works out, the additional burden imposed on businesses is distortionary (Djankov et al. 2002) or subjects the entrepreneur to ‘some of the worst treatment imaginable... and presenting the investor with insurmountable delays or repeated obstacles unless he makes a large payoff’ (Emery et al. 2000, p. 10).

These arguments partially explain why more than two-thirds of the Rs. 309100 crore food services industry that employs an estimated 5.8 million people (Maheshwari et al. 2016, p. 4) remains unlicensed (*ibid.*, p. 5). The process of registration for formal eating houses has also been described ‘as a maze where an entrepreneur can easily lose his way’ (P. D. Kaushik 2013, p. 30).

To improve the ease of doing business, the central and state governments have introduced legislative and regulatory changes, such as the introduction of the Goods and Services Tax (GST). However, when it comes to reforms, there is an insufficient focus on the services sector and especially on what ‘remains one of the biggest challenges’ for the food services sector, that is, starting an enterprise (*ibid.*, p. 18). High barriers to entry leave entrepreneurs in the food service industry with three choices: change their occupation; succumb to the extra-legal space and operate informally; or give in to the demands for ‘facilitation payments’.

As our main contribution to the research on the ease of doing business in Delhi, we have described the existing licensing regime for eating houses in the state. We provide a list of all licences required to set up a restaurant in Delhi supplemented with the perception of the restaurateurs of the ease of obtaining each licence. Through the responses of restaurant owners and managers, we have also highlighted the challenges they face such as document requirements, information accessibility, uncertain regulatory environment and procedural timelines.

The findings are based on a survey of 101 food services enterprises in South Delhi (See Appendix 2). Respondents include owners, managers and sometimes chefs of full-service restaurants, quick service restaurants and cafe and bars.⁴ Our interest in Delhi was due to two reasons: first, it is one of the two cities studied by the World Bank to create rankings

4. Street kiosks stalls were not included in the survey.

for the Ease of Doing Business in India; and second, Delhi is one of the tourist hotspots of India, ranked 4th in India for attracting foreign tourists and 15th for attracting domestic tourists, as of 2016 (*India Tourism Statistics 2017*).

The paper is organised into four sections: licences required to start a restaurant in Delhi, the perception of restaurateurs of the multi-agency inspections regime, the challenges that the restaurateurs face in running their business and a conclusion.

2 Regulatory Framework for Restaurants in Delhi

In this section, we describe the procedure for obtaining mandatory and service-specific licences, as well as the time and cost of following these procedures for eating houses in Delhi.⁵ We list the licences that need to be acquired before a restaurant can officially open its doors, the official cost of obtaining these licences and the minimum time it takes to meet them, assuming no delays. Wherever necessary, we highlight the ambiguities and contradictions that exist in the licensing procedure. We also document the experience of restaurants based on a survey asking enterprises to rate their experience of obtaining each licence from options ranging from very difficult to very easy.

2.1 Mandatory Licences: Convoluted and Ambiguous

Any entrepreneur looking to set up an eating house in Delhi requires a minimum of eight licences enlisted in Table 1. The officially stipulated fee ranges from Rs. 18,300 to Rs. 38,500, depending on the revenue and seating capacity.⁶ In the absence of a single-window clearance system, the process of acquiring licences takes around 120 to 150 days (Maheshwari et al. 2016, p. 23). All except one licence can be applied online.

In contrast, it takes four licences in China and two in Turkey (Philip 2015). In Hong Kong (*Starting A Restaurant In Hong Kong 2018*), the Food Business Operator (FBO) only has to acquire the General Restaurant Licence issued by the Hong Kong Food and Environmental Hygiene Department before commencing operations.

Table 1: Mandatory Licences for an FBO in Delhi

Days to Obtain	Official Cost (<i>In Rs.</i>)	Validity (<i>Years</i>)	Application	Issuer
Food Safety Licence				

5. According to Delhi Police Act 1978 (Chapter 1), ‘eating house’ means any place to which the public are admitted and where any kind of food or drink is supplied for consumption on the premises by any person owning, or having any interest in or managing such place and includes a refreshment room, boarding, coffee house, a shop where any kind of food or drink is supplied for consumption in or near such shop but does not include a place of public entertainment.

6. Excluding the cost of Signage licence and Consent to Establish/Operate, which are calculated based on the surface area of advertising board and capital investment respectively.

Days to Obtain	Official Cost (In Rs.)	Validity Years	Application	Issuer
60	7,500/year: Centre 2,000/year: State	1 to 5 (as chosen by the FBO)	Online	Centre/ State
Health Trade Licence				
Immediately ⁷	16,000: 20 seats 19,000: 20-50 seats 31,000: 50+ seats	1	Online	Local
Fire Safety Certificate				
15	No charge	3	Online for new building	State
Consent to Establish/Operate				
120 ⁸	Varies ⁹	1	Online	State
Shops and Establishment Licence				
Immediately	No charge	24	Online	State
Eating House Licence				
55	300: Application 200: Renewal	Contingent on other licences	Offline ¹⁰	State
GST registration				
3	No charge		Online	Central/ State
Signage Licence				
30	<4ft.: No charge >4ft.: Rs. 100/sq.ft ¹¹	Up to 5	Offline	Local

7. Verification of documents within 60 days

8. Deemed clear if delayed beyond 120 days

9. <http://bit.ly/2qP5npL>

10. Application form for an Eating House Licence has to be filled online, however, the form, along with documents required, have to be submitted physically at the office of the Licensing Unit of Delhi Police.

11. Subject to the deposit of monthly fee of 2 months upfront and then subsequent monthly payments of Rs. 100 per sq.ft.

2.1.1 Food Licence

A food licence, issued by the Food Safety and Standards Authority of India (FSSAI), is mandatory for any food-related business and is the primary requirement to set up a restaurant in Delhi. Depending on the turnover, over a third of our survey respondents termed the process of obtaining this licence as ‘difficult’ or ‘very difficult’ to navigate through (Figure 1). The food licence can be obtained only online through the department website.

An eating house can apply for three types of FSSAI Licences: Central Licence, State Licence and Registration Certificate. The licences are issued at two levels of the government. The Central Licence is issued by the FSSAI department at the Centre. The State Licence and Registration Certificate are issued by the Department of Food Safety under the Government of Delhi.

The type of licence an eating house must obtain depends on whether it plans to operate in more than one state and their turnover. However, discrepancies exist in the application criteria specified in the Food Safety and Standards Regulations (FSSR) 2011 and the website of FSSAI. The FSSR 2011 requires that FBOs ‘operating in two or more states’ obtain a Central FSSAI Licence, whereas the website of FSSAI website states that FBOs with turnover more than 20 crores are required to obtain a Central FSSAI Licence.^{12 13}

It is unclear what a restaurant with a proposed turnover of over Rs. 20 crores but operating only in one state should do.

Table 2: Conflicting Information Provided by the FSSR 2011 and the Website of FSSAI

Turnover	Information Source	Type of Licence	
		<i>Single-state Operations</i>	<i>Multi-state Operations</i>
< Rs. 20 crores	FSSR 2011	State Licence	Central Licence
	Website of FSSAI	State Licence	Central Licence
> Rs. 20 crores	FSSR 2011	State Licence	Central Licence
	Website of FSSAI	Central Licence	Central Licence

2.1.2 Health Trade Licence

Among the 13 licences we sought feedback on, the Health Trade Licence (HTL) was the second most difficult to obtain. Fifty-one out of 93 (55%) respondents termed it as either ‘difficult’ or ‘very difficult’ to obtain (Figure 1). The Municipal Corporation of Delhi (MCD) issues an HTL under Section 421 of The Delhi Municipal Corporation Act, 1957, to validate the safety and hygiene of a restaurant.

12. According to the FSSR 2011, Schedule I, Point 9, FBOs operating in two or more states have to apply for a Central FSSAI Licence.

13. Central FSSAI Eligibility Criteria (Accessed 31 June 2018).

The HTL is seen as difficult to obtain due to several reasons. For instance, a manager of a cafe lamented that even if the process of obtaining the licence was online, he had to visit the office to get the verification done faster. Another restaurateur said that his application was stalled deliberately on various occasions on the pretext of ‘insufficient documents’ without any further clarification until he visited the office. Bribery was cited as a common practice. An interviewee stated, ‘bribery or commission payments is the traditional way of doing business. You can’t do a thing without paying up in this business’.

According to the online application portal of Municipal Corporations, the validity of the HTL is 1 year.¹⁴ However, that is in conflict with what the Municipal Corporations claim: the validity is ‘one financial year’, that is the licence is valid up to 31 March of each year, irrespective of the date of issue/date of generation of licence. As per the Twelfth Schedule of The Delhi Municipal Corporation Act 1957, a fine of Rs. 100 can be levied in case of a non-renewal of the HTL.

2.1.3 Fire Safety Certificate

The restaurants we surveyed had a seating capacity ranging from 5 to over 100; however, 17 of 101 restaurants had a seating capacity of exactly 48. The criterion for eligibility for a Fire Safety Certificate (FSC) partially explains this clustering. The certificate, issued by the Delhi Fire Services (DFS) under the Delhi Fire Service Act 2007 (Delhi Act 2 of 2009) and the Delhi Fire Service Rules 2010, is required only if the number of seats in the restaurant is 50 or above. Since obtaining an FSC from the DFS necessitates the installation of fire safety equipment, many restaurants limited themselves to 48 seats.

Not all eating houses have to apply to obtain an FSC. Only ‘Assembly buildings’ need to apply for an FSC. The DFS has revised the criteria based on the guidelines mandated by the National Building Code (NBC), 2005, for identifying an ‘Assembly building’. Earlier, all buildings with a seating capacity of 50 or more were categorised as ‘Assembly buildings’ (Delhi Fire Services Act, 2007). Now, a revised formula based on floor area is used to determine if the venue is an ‘Assembly building’ and will require an FSC.¹⁵

When a restaurateur applies for an HTL, it is the responsibility of the local municipal corporation to which they are applying to verify if the eating house falls under the category of ‘Assembly building’ and to direct the applicant to the DFS to apply for an FSC.¹⁶ The local municipal corporation is the primary source for a restaurateur to find out if his/her eating house is an ‘Assembly building’, as people are not otherwise aware of the rules stipulated by the DFS.

Slightly over a third of the establishments surveyed found the process of obtaining a fire safety certificate ‘difficult’ or ‘very difficult’ (Figure 1).

14. Validity Chart of the HTL for SDMC (Accessed 16 June 2018).

15. Floor area/1.5 sq. metres.

16. The NCT of Delhi is governed by three Municipal Corporations: NDMC, the Delhi Cantonment Board, and the MCD. In 2012, the MCD was trifurcated into three smaller bodies: North Delhi Municipal Corporation, South Delhi Municipal Corporation and East Delhi Municipal Corporation.

When the Khan Market Welfare Association fought the NDMC on the issue of sealing restaurants that did not have the FSC, the Delhi High Court observed that the NDMC had granted licences without ‘satisfying itself of the said criteria (of the NBC 2005)’ (*Khan Market Welfare Association v New Delhi Municipal Council & Ors.* 2016), para 22), referring to the revised formula for identifying an ‘Assembly building’. Had the NDMC executed its responsibility and provided licence applicants with the proper guidance, those eating houses qualifying as ‘Assembly buildings’ under the new formula would have applied and potentially secured an FSC.

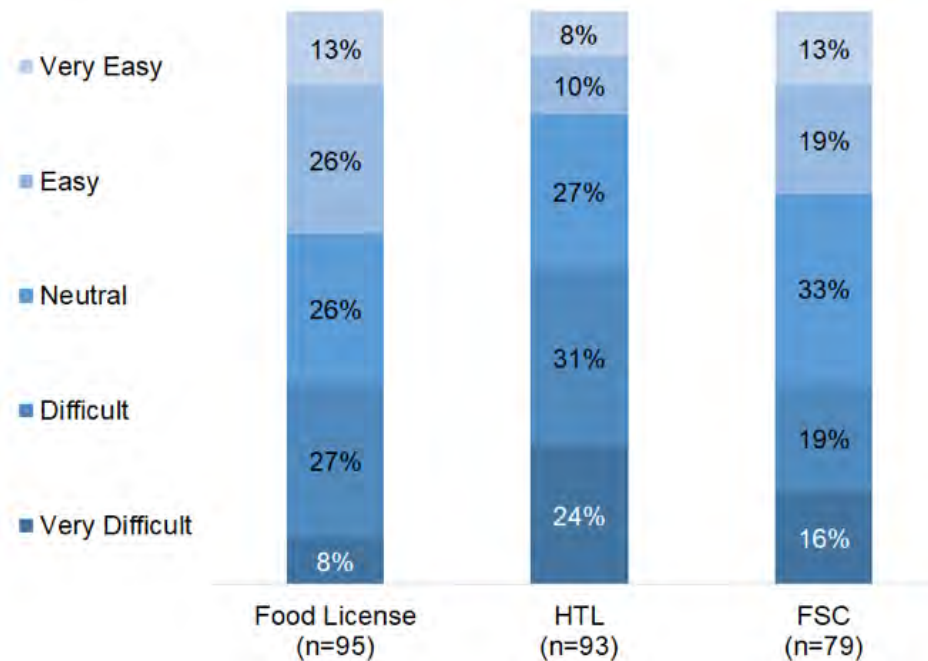


Figure 1: Ease of Obtaining a Licence from the Food Safety and Standards Authority of India, South Delhi Municipal Corporation and Delhi Fire Services

2.1.4 Consent to Establish/Consent to Operate

In September 2017, 21 restaurants were sealed in Hauz Khas Village, an urban village in South Delhi, for not having the necessary environment clearances—Consent to Establish (CTE) or Consent to Operate (CTO)—issued by the Delhi Pollution Control Committee (DPCC) (*Hindustan Times* 2017). Although the magistrate argued that the establishments were served ‘closure notices about 4 months ago’, the owners denied being served the notices (*ibid.*). On the contrary, one of the restaurant owners claimed that he had applied for the DPCC certificate, but his application was put ‘on hold unnecessarily’ (*ibid.*).¹⁷ Some restaurateurs claimed that the recent introduction of the digitisation

17. The confusion about the status of obtaining licences and closure notices, and the consequent sealing, affected not only restaurant owners but also the employees of the establishments. ‘Sealing these eateries has not only led to big losses for the owners but has affected the livelihood of 700 employees as well’ (*Javaid* 2017).

process had created confusion among them about the renewal of licences, which delayed their usual procedure for getting their clearances renewed.

Businesses such as eating houses that discharge sewage or effluents are required to obtain a CTE/CTO under Section 21 of the Air (Prevention and Control of Pollution) Act of 1981 and Section 25 of the Water (Prevention and Control of Pollution) Act of 1974.^{18 19}

Forty-two percent of survey respondents found the process for applying for the CTE/CTO either ‘difficult’ or ‘very difficult’. As against that, 23% of respondents found it ‘easy’ or ‘very easy’ (Figure 2).

2.1.5 Shops and Establishment Certificate

The Shops and Establishment Certificate (SEC) appears to be the easiest to obtain among all the others, with only 15% (10 out of 65) respondents experiencing the process as ‘difficult’. It is issued by the Shops and Establishment Inspectorate within the Office of the Labour of Delhi under the Delhi Shops and Establishment Act 1954. The Act guarantees basic rights for employees, namely, working conditions, number of working hours in a week, holidays that the workers are entitled to, rights of women workers, intervals for rest and meals among other important rights.

2.1.6 Eating House Licence

The Eating House Licence is one of the more challenging ones to obtain; 49% of 85 respondents found the procedure for obtaining the licence either ‘difficult’ or ‘very difficult’ (Figure 2). The licence is issued by the Office of the Additional Commissioner (licensing unit of the Delhi Police), as mandated by Section 28 (subsection za) of the Delhi Police Act, 1978. This licence serves to verify all the aforementioned licences issued.

If the licence only requires the submission of other licences, why is it so difficult to obtain? One of the respondents said that the practice of bribery had come to be widely regarded as a legitimate way of acquiring this licence. Although the process has been made online, long queues wind in front of the Eating House desk of the Licensing Unit of Delhi Police. Another respondent said, ‘The licence is delivered at your doorstep if you know the right price to pay’.

In a glaring instance of unreasoned regulation, the Delhi Police Act 1978 does not specify the purpose of this licence. When questioned, the Inspector Executive of Licensing Branch of Delhi Police explained: ‘Delhi Police is a law-abiding authority and needs to know what is happening inside an establishment. Delhi Police issues Eating House Licence after confirming that the establishment has all the other licences’.

Other metropolitan cities like Mumbai and Ahmedabad have done away with the Eating

18. The Air (Prevention and Control of Pollution) Act, 1981 (Accessed 31 June 2018).

19. The Water (Prevention and Control of Pollution) Act, 1974 (Accessed 3 July 2018).

House Licence to facilitate ease of doing business (The Times of India 2018).^{20 21}

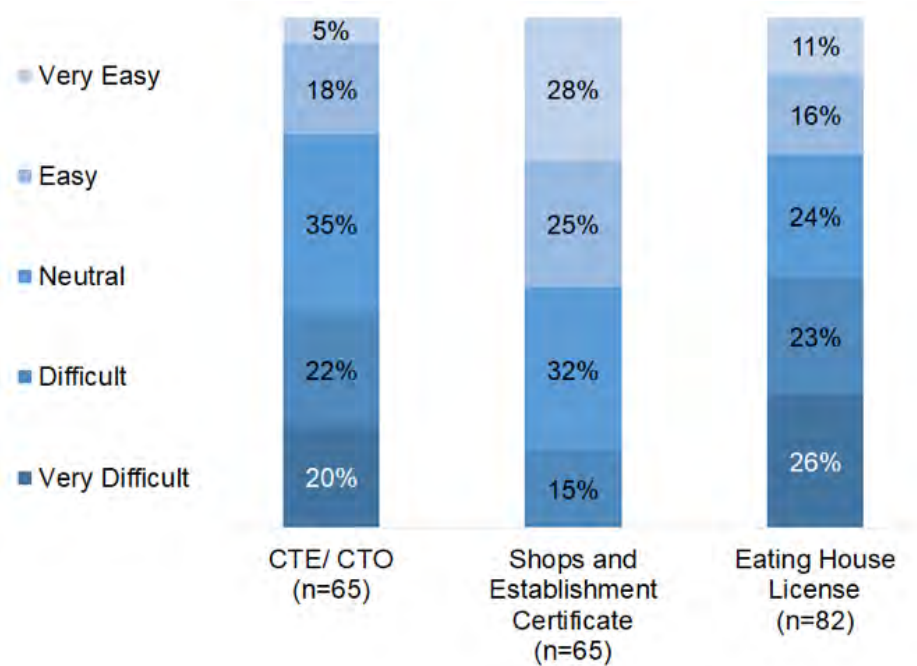


Figure 2: Ease of Obtaining Licences from DPCC, Labour Department and Delhi Police

2.1.7 Goods and Services Tax Registration

The latest addition to the list, registration for the GST became mandatory since 1 July 2017, when the GST Act came into force. Most respondents (78% of 84) found the process of GST registration ‘easy’ or ‘very easy’ (Figure 3).

2.1.8 Signage Licence²²

Local Municipal Corporations issue the Signage Licence according to the Outdoor Advertising Policy 2017 of the Environment Pollution (Prevention and Control) Authority. A Signage Licence is required for the self-advertising boards that restaurants put up in front of their shops. A Signage Licence is needed to ensure that there are no instances of traffic hazards, obstacles to pedestrians, visual pollution or negative advertisements.²³

20. Circular No. BDD/384 issued by the Municipal Corporation of Greater Mumbai (dated 7 November 2016).

21. On 26 March 2018, the Gujarat State Assembly passed the Gujarat Police (Amendment) Act, 2018, which exempted restaurants and eateries from obtaining a licence from the police to start their unit.

22. Placed under ‘Mandatory Licences’ because it is assumed that every restaurant and bar opts for a signage board.

23. Delhi Outdoor Advertisement Policy 2008.

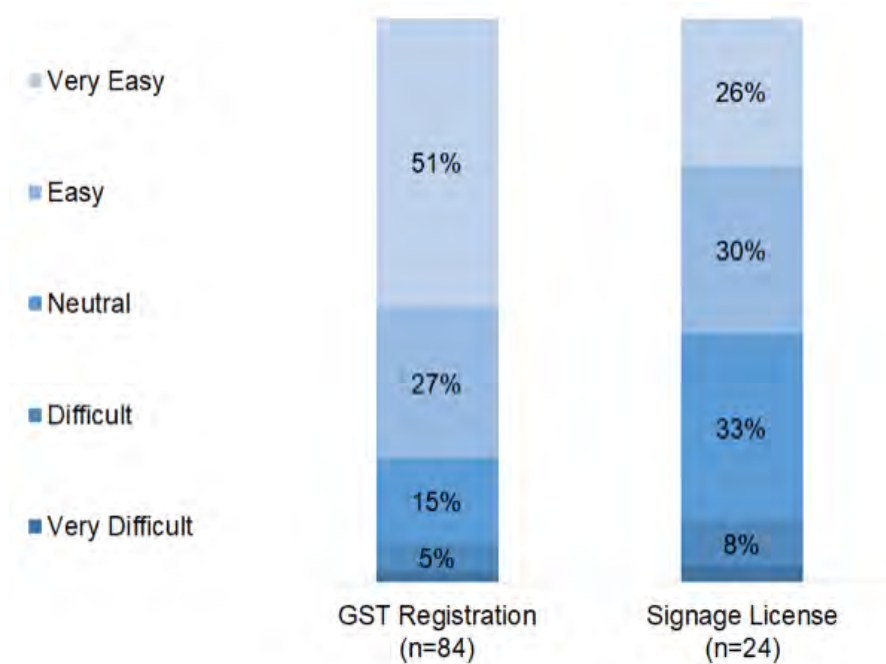


Figure 3: Ease of Obtaining the GST Registration and Signage Licence from the South Delhi Municipal Corporation

2.2 Service-specific Licences: Difficulties in Providing Value Addition

A restaurant may obtain five licences depending on its offering. These are required if a restaurant chooses to serve alcohol, play live music or install a lift in the establishment. The most expensive of these is an Excise Licence (required for serving liquor) with a mandatory increase of 10% in the licence fee each year.²⁴

Table 3: Service-Specific Licences for an FBO in Delhi

Licence	Time (days)	Official Cost (In Rs.)	Validity (Years)	Application	Issuer
Serving Alcohol					
Department of Tourism Approval	21	10,000: <100 seats 5,000: >100 seats	5	Online	State
Excise Licence	28	7,64,993: 50 seats 10,87,095: 50-100 seats 14,49,459: 100-200 seats 18,52,087: 200+ seats	1	Online	State

24. Notification No. F.12(4)/Fin(Rev-1)/15-16.dsVI/587 from the Office of Commissioner of Excise (dated 29 July 2015).

Licence	Time (<i>days</i>)	Official Cost (<i>In Rs.</i>)	Validity (<i>Years</i>)	Application	Issuer
Weights & Measures Licence	30	100	2	Partially online	State
Installing Lift					
Lift Clearance	7	520: speed upto 1m/s 770: speed upto 1.5 m/s 1,020: speed >1.5 m/s	1	Online	State
Playing Music					
Music Licence	Varies	3,500: Up to 30 seats 7,500: 30-50 seats 10,000: 50+ seats	1-3	Offline	Private

2.2.1 Approval from the Department of Tourism

An approval from the Department of Tourism (DoT) is a prerequisite to obtaining a licence from the Department of Excise to sell liquor.

As mentioned on the website of DoT, this approval is given only to restaurants with a minimum seating capacity of 30.²⁵ Since approval from the DoT is necessary to obtain an Excise Licence, the procedure to obtain the latter for restaurants with less than 30 seats is unclear.

2.2.2 Excise Licence

The Excise Licence was rated as the most difficult to obtain among the 13 licences we sought feedback on. Of the 41 respondents, 59% rated it ‘difficult’ or ‘very difficult’ (Figure 4). Restaurants that serve liquor need to obtain the L-17/L-17F/L-18/L-18F licences, issued under Section 20 of the Delhi Excise Act, 2009, by the Department of Excise, Government of Delhi.²⁶

In October 2016, the Government of Delhi directed the Department of Excise to not grant any new liquor licences to restaurants or retail vendors, as it believed that ‘the existing number of liquor vendors is enough to meet the demand of the city’ (Pandit 2016). There was a strong backlash against the move. The National Restaurant Association of India (NRAI) raised two concerns:

1. Some restaurateurs had already invested in setting up their bars and paid the stipulated fee for acquiring the licence. The stalling resulted in a loss of business for these bar owners.

25. Terms and Conditions for Restaurants as listed on the website of DoT.

26. L-17 is required to serve Indian liquor; L-17F is required to serve foreign liquor; L-18 is required to serve Indian wine, beer and alcopop; L-18F is required to serve foreign wine, beer and alcopop.

2. Not granting licences to restaurants that provide ‘safe and licensed premises for liquor service’ would aggravate the law and order situation, as more people would drink at retail vends, in cars or on the roads (Pandit 2016).

The ban lasted for 7 months. It was revoked in June 2017 because the government was convinced that ‘barring restaurants from serving liquor would serve no purpose, as people would drink at other places and cause problems’ (Kaushika 2017).

The Excise Licence is the most expensive of all licences with a mandatory increase of 10% in the licence fee each year.²⁷

2.2.3 Weights and Measures Licence

The Controller of Weights and Measures issues this licence according to the Legal Metrology Act 2009. Every manufacturer, /dealer or /repairer of weights and measures is required to obtain this licence to carry out his/her trade. The purpose of the licence is to ensure that the customer is being served the right quantity of food or drink that he/she has ordered without being defrauded in any manner, either in quantity served or in price charged.

Of 45 respondents, 61% labelled it either ‘very easy’ or ‘easy’ to obtain (Figure 4).

Restaurateurs allege that inspecting officials extort money by wrongfully accusing the restaurant of serving an inadequate quantity of liquor. Officials are said to ask for a peg of whiskey, for instance, and pour it in a different beaker with etched measurements. The inspector then alleges fraud over the slight difference in measurement observed (owing to the residual drops naturally left in the first container). This compels restaurateurs to cough up bribes to keep their certificates or licence.

²⁷ Notification No. F.12(4)/Fin(Rev-1)/15-16.dsVI/587 from the Office of Commissioner of Excise (dated 29 July 2015).

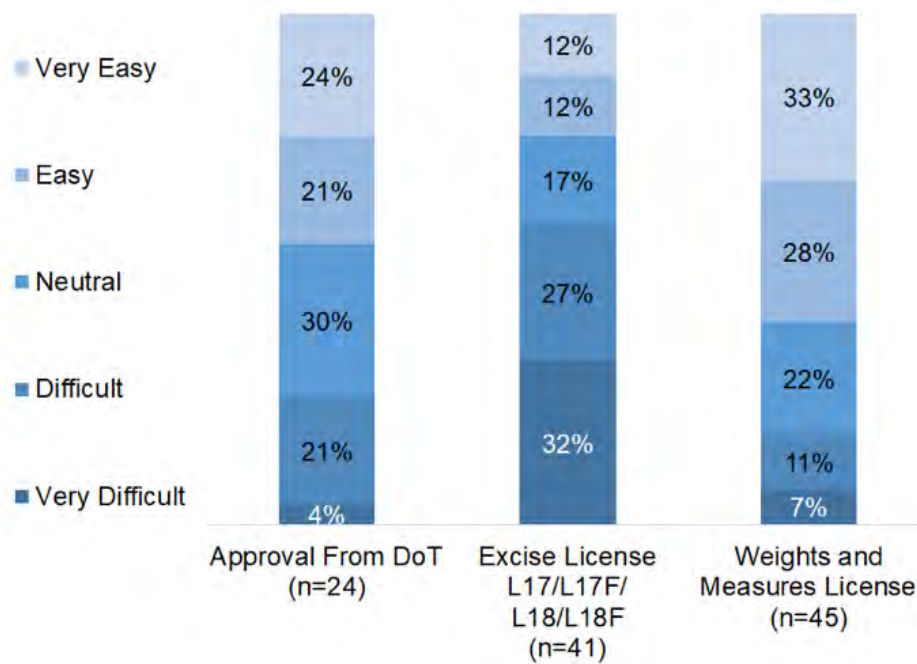


Figure 4: Ease of Obtaining Approvals to Sell and Serve Alcohol

2.2.4 Lift Clearance

The Lift Inspectorate of the Office of the Labour Commissioner of Delhi is responsible for issuing the lift clearance. The Delhi Lift Rules of 1942 specify the standards for the installation of lifts, inspection of standards and the penalty to be paid in case of damage done to any user. The clearance is issued only after inspections have been conducted by officials of the Lift Inspectorate to ensure the safety of the installed lift. The lift has to satisfy standards set by the Bureau of Indian Standards.

Forty percent of 30 respondents labelled it as either ‘very easy’ or ‘easy’ to obtain while only 7% thought it was ‘difficult’ to obtain.

2.2.5 Phonographic Performance Licence

A music licence is necessary to play recorded music to protect the copyright of a music label or an artist. Phonographic Performance Limited, a non-governmental organisation, issues the music licence on behalf of the government, according to the Copyright Act of 1957. Of the 41 respondents, 46% labelled the process as ‘easy’ or ‘very easy’ to obtain, whereas only 10% thought it was ‘difficult’ or ‘very difficult’.

In May 2018, the Department of Excise, Delhi, dispatched a circular to restobars that ‘only live singing/playing of instruments by professionals’ was allowed and that recorded music was banned.²⁸ The blanket ban was to address the ‘nuisance caused by high

²⁸. Order No. 2(72)/Ex/ Restt/Misc./2016-17/1567 (2018) from the Office of Excise Commissioner, Delhi (dated 9 May 2018).

volumes’, as most of the restobars are congregated near residential areas such as Hauz Khas Village and Khan Market (Jain 2018).

The restaurateurs demanded a revision of the order, citing several reasons, such as recorded music is an essential part of the cultural experience of a restobar; the industry is heavily dependent on recorded music, as live music is expensive and cannot be played all day long; disallowing restobars from playing recorded music may not help reduce the ‘nuisance caused by high volumes’, as live music can be equally loud, if not louder; restaurants that don’t serve liquor do not come under the purview of excise rules but can be a cause of nuisance; and the problem could be better addressed by proper regulations such as volume control, which would suit everyone’s interests (*ibid.*).

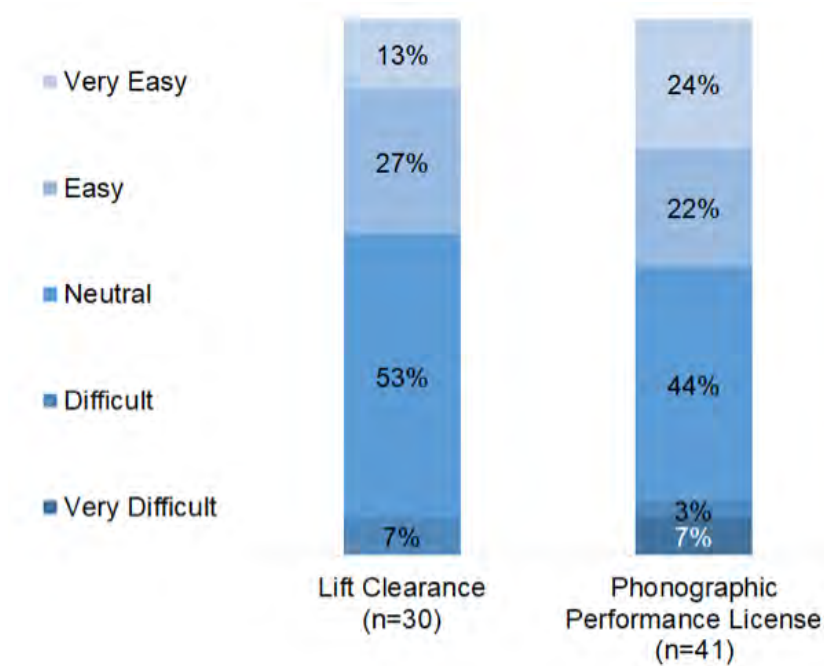


Figure 5: Ease of Obtaining Lift Clearance from the Department of Labour and Phonographic Performance Licence from PPL

2.3 Overall Ease of the Licensing Procedure and Costs Involved

Fifty-six percent (51 out of 91) of the respondents found the overall licensing procedure difficult or very difficult to follow. Only 12% (11 of 91) perceived the licensing procedure to be ‘easy’ or ‘very easy’, and the rest chose neutral. Out of 51 respondents who found the process difficult, 49 respondents revealed how they obtained the licences, 46.9% applied for the licences by themselves, 22.4% respondents applied through a third party and 10.2% respondents had a specialised licensing team. It suggests that those who apply by themselves are more likely to find the process difficult.

Fifty-three out of 93 respondents (57%) paid a bribe to acquire licences. The number is an underestimate, as it is likely that many respondents felt uncomfortable while answering

the question. For instance, some respondents verbally admitted to having paid a bribe but marked 'No' in the questionnaire.

Interestingly, some restaurateurs did not fault the system and claimed that they paid bribes of their own volition to obtain the licence sooner. Others felt cornered into paying bribes. When officials raise repeated objections to the documents submitted, many feel that paying a bribe is the only option to obtain a licence in time.

3 Enforcement of the Regulatory Framework

Inspection is the primary mechanism to monitor compliance. For the Indian Food Services sector, inspections aim at ensuring food safety, fire safety, health and hygiene compliance and environment safety. In lieu of a single regulatory authority monitoring compliance across functions, multiple departments have their own brigade of inspectors. Thus, inspections are carried out independently and have different policies governing their nature, scope and due process.

The restaurant industry of Delhi has been a constant target of compliance crackdown, resulting in frequent sealing drives in upscale areas such as Hauz Khas, Khan Market, Defence Colony and Connaught Place. In February 2017, the NDMC shut down 21 rooftop restobars in Connaught Place in response to a partial collapse of a building in the market, citing the 'misuse of premises beyond sanction' under Sections 250 and 252 of the NDMC Act, 1994 (The Times of India 2017). These restaurants were operational for decades, without permission, until the event of the collapse. It triggered a knee-jerk response from other regulatory bodies, resulting in large-scale closures.

In another instance of compliance crackdown, a recent round of sealings of restaurants have been conducted in the aftermath of the Kamala Mills tragedy in Khan Market for flouting fire safety rules and illegal constructions (Firstpost 2018). This inconsistency in monitoring compliance creates uncertainty among businesses.

3.1 Restaurateur's Perception of the Inspections Regime

Using an objective digitised survey, we tried to capture the restaurateurs' perception of the way inspections are conducted. We asked the restaurateurs nine questions to understand the inspection regime and have discussed the three most pertinent and significant questions below, that is, what are they expected to do when faults are found, the intent of the inspectors and their perception of the inspectors.

3.1.1 What Are You Expected To Do When Faults Are Found?

Fifty-three respondents, almost half of the total, said that they had to fix the issue before the next inspection. Fifteen of the 53 respondents said that along with fixing the issue, they also had to pay a challan. Twenty-three of the 53 (43%) respondents marked the

options of fixing the issue and paying a bribe together. It appears as if the restaurateurs are required to comply with the legal and extra-legal demands of the inspectors. The restaurateurs appear to have to fulfil multiple expectations of fixing the issue, paying a formal challan and a bribe, simultaneously.

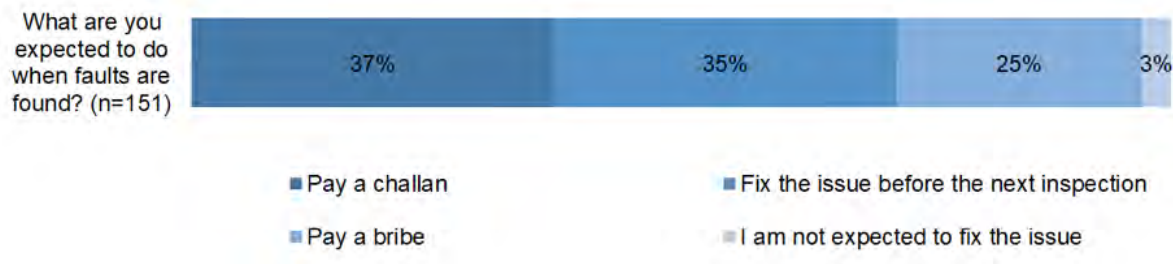


Figure 6: Responses of Restaurateurs on What They Are Expected To Do When Faults Are Found by Inspecting Officials in Their Restaurants

3.1.2 What Do You Think Is the Intent of the Inspectors?

When asked to describe the intentions of the inspectors, most respondents marked a combination of ‘To deliberately look for faults’ and ‘To further their personal benefit’. Twenty eight percent of the respondents thought that the inspectors visited with the intent of deliberately looking for faults. Thirty percent of the respondents felt that the intent of the inspectors when visiting restaurants is to further their own benefits.

The choice for restaurateurs is often between paying a hefty challan and paying a lower amount as a bribe to the inspector in question. The existence of this system of bribery is borne out by the fact that 56% of 100 respondents claimed to have paid a bribe in the course of inspections. Bribes are also collected in kind. Officers on duty often eat food in the restaurant they are inspecting and leave without paying the bill. Moreover, according to the responses of the restaurateurs we surveyed, officials bring their families to eat in the restaurant while off-duty and leave without paying the bill.

Only a very small percentage of the people believed that the inspectors intended to either facilitate the ease of doing business for the restaurants or ensure the welfare of the customers.

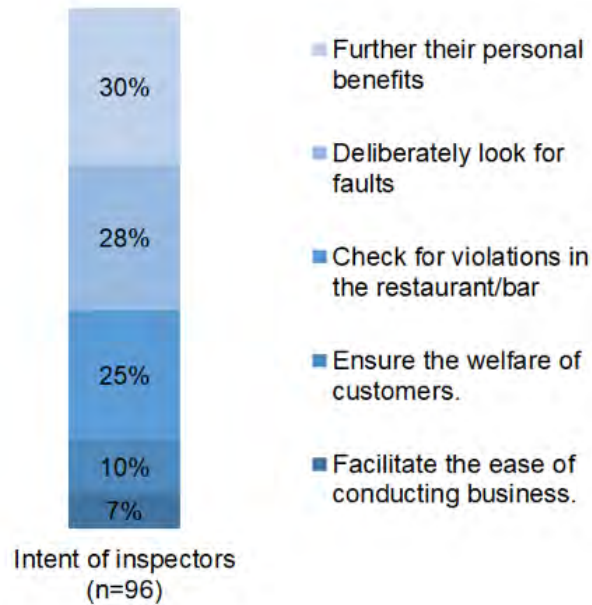


Figure 7: Perception of Restaurateurs on the Intention of the Inspectors

3.1.3 What Is Your Opinion of the Inspectors?

Inspections should be conducted in a transparent manner and in adherence to an ethical code of conduct (CIGIE 2012, p. 19). Inspectors ought to strive for a transparent communication system with the establishments to ensure compliance as far as possible. The inspectorates ought to perform the functions of information dissemination by drafting the regulations in a user-friendly manner and ensuring that establishments understand them (Jacobs, Cordova, et al. 2005).

Survey respondents were asked to mark their level of agreement with four statements about inspectors. It is noteworthy that the two statements with which the majority of the respondents agree or strongly agree with are: ‘Inspectors treat you respectfully’ and ‘Inspectors are professional’. A caveat added by those who agreed with these statements was that the inspectors had to be respectful to them, as they had to ask for a bribe from them. It is also telling that the restaurateurs mostly admitted to paying a bribe at various stages of obtaining licences and inspections and still considered the conduct of the officials professional.

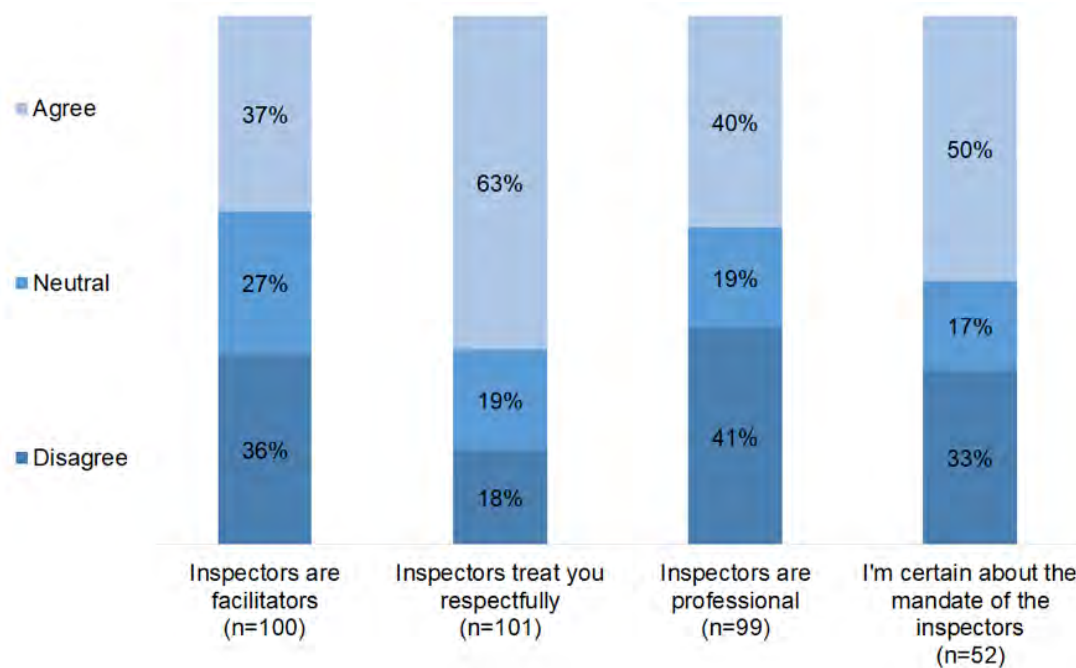


Figure 8: Opinion of Restaurateurs About Inspectors

4 Oft-Repeated Regulatory Pain Points

In this section, we highlight and analyse some of the key pain points that eating houses repeatedly claimed to encounter while setting up and running a restaurant.

4.1 Efficiency of Web Portals

The Government of India is increasingly tapping into e-governance initiatives to enable the effective and efficient delivery of public services. The success or failure of e-governance initiatives hinges on the comfort with which customers can use the interface. Kinks in the website increase customer dissatisfaction with the portal and reduce the probability of their returning to it or recommending it to others (Anthopoulos, Siozos, and Tsoukalas 2007, p.10).

In our interaction with the restaurateurs, several respondents raised concerns about government websites, calling for a regular evaluation of their usability and credibility. For instance, during the course of our field research (June to July 2018), the website for registration under the Shops and Establishment Act applicable to all establishments within Delhi, including eating houses, was not functional.²⁹ Since the application for the Shops and Establishment licence can only be made online, in the absence of any alternatives, the inoperability of the website may have deprived the businesses set up during this period from the facility to apply for the licence. Besides this, two respondents also pointed out

²⁹. Registration form for Shops and Establishments (Accessed 19 July 2018).

that the websites of the Department of Excise and the MCD were temporarily inoperative in the past. When government websites that facilitate functions such as licence application are non-functional without any intimation to businesses, it impedes the uptake of e-governance.

Some of the application procedures are entirely online, some offline and for others, they are a combination. This leads to two problems: first, it increases the uncertainty faced by applicants, and second, procedures that are online only may not be accessible for the digitally illiterate. Digital literacy is almost non-existent for over 90% of the population.³⁰ Ambiguity around procedures creates scope for corruption and increases the cost of doing business. Partially online systems, such as with the Eating House Licence, require the restaurateurs to visit department offices to submit documents, collect them and make a payment, defeating the purpose of introducing a system meant to reduce the scope of human contact.

4.2 Pressure to Pay Bribes

Corruption, that is, an ‘an illegal payment to a public agent to obtain a benefit for a private individual or firm’, (Rose-Ackerman 2008, p. 373) is commonly accepted as a component of the application and inspection procedure. It is also difficult to measure, as the people involved are unlikely to accept complicity. Respondents pointed out that bribes are never asked for directly. According to one restaurateur, ‘The inspectors levy an exorbitant fine for a violation and then offer an *easier way* out by asking for personal payment of a lower amount and waiving the fine’ (emphasis added). This arrangement benefits both the restaurant and official.

Although the government has attempted several measures, such as shifting the application process online, the absence of clear information and continuing discretionary powers continue to fuel the practice of grease payments. Restaurants complained, for example, that the Delhi Police Inspectors visit the restaurants intentionally at peak hours, creating anxiety and panic among the customers. Restaurateurs offer illegal payments just to ensure that the inspectors leave the establishment as soon as possible. This appears to be another systematised manner of seeking bribes.

Formal channels of communication and grievance redressal are often not functional. A respondent pointed out that the helpline for the Department of Excise is never answered. In such cases, one has to engage with the officials directly or find contacts within the department to ask a query or get any work done. This often involves commission, increasing the costs for businesses.

4.3 Lack of Procedural Clarity

In 2017, unlicensed restaurants accounted for 66% of the market share of the restaurant industry in India (Dabas and Lunawat 2017). Various reasons why firms choose to stay

30. Digital Empowerment Foundation

unregistered include for some, a want of access to finance, and for others, an avoidance of paying taxes. Some others do not register due to procedural difficulties. Although our respondents were only registered restaurants, 13 out of 43 respondents highlighted the lack of clear guidelines as a pain point. Restaurants seek a single point of reference for all necessary information necessary to be compliant. They are not informed of the new guidelines or directions in a structured manner. Even to compile details on the process of registration, we had to visit several websites and government offices.

A defined way of intimating enterprises about new information or changes in regulations is not available. For example, the blanket ban on playing recorded music in restobars, imposed by the Department of Excise in May 2018, created much confusion for the restaurateurs. The order was allegedly passed following complaints from residents in the neighbourhood. Following protests from restaurateurs, the Deputy Chief Minister of Delhi, Manish Sisodia (The Hindu 2018) made a statement proposing to strike down the ban. However, the revised order published subsequently by the Department of Excise simply reiterated its previous order by stating ‘However in the case of L-17 licensee only live singing/playing of instruments by professionals shall be allowed’.³¹ While the public concurrence of the Department with the Deputy Chief Minister leads one to believe that there is no such ban, a closer reading of the revised circular simply reveals that the rules remain unchanged. The lack of a clear stand publicly and in writing creates confusion in the minds of the restaurateurs.

Another example of arbitrary policy changes and rule revisions is the decision to temporarily halt the issue of new Excise Licences in 2016 (Pandit 2016). One of our respondents lamented that he had invested in setting up a restobar and complied with all requirements but given the sudden policy change, had instead borne substantial losses. The lack of precise information is also why restaurateurs seek third-party ‘consultants’, increasing the cost that restaurateurs incur to set up their businesses. These consultants are generally either law firms that charge an exorbitant fee for their legal services or *Dalals* who stand in front of government offices.³² Both these entities provide their services in return for a fee that serves as their income. A portion of that fee is also used to grease the hands of the relevant officials. Thus, bribery continues but is more targeted and precise.

The erratic sealing drives on a variety of issues such as the use of terraces, the serving of hookah, the use of basements, etc. increase the uncertainty that restaurant businesses face. While many respondents understood that specific measures had to be taken for the safety of the customers, what they could not understand was why their restaurants had been permitted to function for so long and why closure was the proposed solution instead of grandfathered remediation, liability insurance and damage payments.

31. Order No. 2(72)/Ex/Restt/Misc./2016-17/1615 (2018) from the Office of Excise Commissioner, Delhi (dated 22 May 2018).

32. Dalals refer to the agents or facilitators stationed outside government offices and buildings, who help expedite paperwork in return for a fee.

Conclusion

The restaurant industry within the hospitality sector is a significant economic force. While the industry faces several obstacles to its growth, one of the pressing challenges restaurants face is the inconsistent and ever-changing regulatory framework. The NRAI, in 2016, commenting on the small proportion of licensed restaurants, said, ‘This is largely due to over-regulation of our industry, the complex maze of approvals and licences required and high tax brackets. It is about time that the socio-economic impact of our industry is recognised by the government, and it initiates immediate steps to unlock the true potential of this behemoth’ (NRAI 2016a).

In this paper, we have systematically documented facts and perceptions around the regulatory framework governing eating houses in Delhi.

A restaurant owner in Delhi requires a minimum of 8 and a maximum of 13 licences from 3 levels of government before he or she can open doors. This excludes the multiple NOCs required such as from the Delhi Jal Board, the Delhi Metro Rail Corporation and the Archaeological Survey of India among others. Besides these, the application requires to furnish over 50 documents, some of which are submitted more than once due to the involvement of multiple departments and a lack of inter-departmental coordination (Appendix 1). The time taken to obtain the licences and the addition to costs due to bribes probably explain why 56% of the respondents in our study found the licensing procedure to be difficult or very difficult.

Respondents frequently raised concerns over the digitisation of the licensing procedure, as the websites are either poorly designed or often non-functional. Unfortunately, partially online processes continue to provide scope for corruption, as it does not eliminate human contact or the associated discretionary powers. Although the government has moved some of the processes entirely online, it excludes a sizeable digitally illiterate population from obtaining the necessary licences.

Respondents also raised concerns about arbitrary and capricious rule changes, such as the ‘blanket ban on playing recorded music’ or the temporary ban on issuing new Excise Licences. Such changes, in the absence of reasoned orders that account for the impact on enterprises, increase the regulatory uncertainty faced by enterprises.

We have not examined solutions to current regulatory challenges in this paper. However, a commonly proposed solution is to introduce a single-window system or a systematic reduction in the number of licences, to bring regulatory hygiene. Mumbai, for instance, implemented a single-window system for restaurants in 2017 with an upper limit of 27 days for completing the entire permit procedure. It intends to remove the overlap between licences and weed out irrelevant licences. In the case of Mumbai, ‘the number of general, special conditions and NOC required for such businesses’ have come down ‘from 72 to 51’ (NRAI 2016b).

One of the licences done away with, in both Mumbai and Ahmedabad, is the Eating House Licence which is currently still issued by the Delhi Police. Since this licence is only a check on whether a restaurateur possesses all the other, essential licences, it cannot be

said to be performing an important regulatory function.

Another licence whose purpose needs to be reconsidered is the approval from the DoT. It appears to be an unnecessary prerequisite to apply for the Excise Licence. Indeed, it proves to be cumbersome for restaurateurs, considering the difference in the eligibility criterion of seating capacity, between the DoT and the Department of Excise.

Another way to reduce the number of licences needed to open a restaurant is by potentially combining the functions of the DFS and the Lift Inspectorate, as both departments conduct a thorough investigation of the building plan before issuing the respective licences.

We can reduce the regulatory burden on the restaurant industry without compromising on the quality of safety that is ensured for the customers using the various avenues and methods available.

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Appendix 1: Documents Required for Licences³³

DOCUMENTS REQUIRED	FSSAI	HEALTH TRADE LICENSE	GUIDELINES FROM DELHI FIRE SERVICES (PRIOR CONSUTRCTION)	FIRE SAFETY CERTIFICATE	CONSENT TO ESTABLISH	CONSENT TO OPERATE	LABOUR DEPARTMENT	EATING HOUSE LICENSE	DEPARTMENT OF TOURISM	EXCISE LICENSE
Form-B signed by the Proprietor/Partner	✓									
List of Directors/Partners/Proprietors with full address and contact details	✓							✓		
Photo ID and address proof issued by Government Authority	✓	✓						✓	✓	
Source of water supply and water testing report from authorized lab	✓	✓ (for North DMC)								
Proof of possession of premises (Sales deed/Rent agreement/Electricity Bill/Water Bill etc.)	✓	✓			✓			✓	✓	✓
Partnership Deed/ Declaration of Proprietorship/ MoA towards constitution of the Firm	✓	✓ (for North DMC)						✓	✓	✓
NOC from partners in-favour of applicant	✓	✓ (for North DMC)								
MoA, list of Directors and resolution of BoD in favour of applicant		✓ (for North DMC)						✓		
Self-attested NOC of the owner to run Eating House								✓		
Names of Directors and Current Form 32 showing appointment/cessation of directors										✓
Certificate of Incorporation of proprietorship, LLP, Partnership, Limited, Private Ltd, Public Ltd., Company								✓		
Board Resolution for conducting business								✓		✓
Copy of Certificate obtained under Coop Act (1861)/ Multi State Coop Act (2002)	✓									
Food safety management system plan or certificate	✓									
NOCs from Municipal or local bodies	✓									
Supporting documentary proof of turnover	✓									
NOC/PA document issued by FSSAI	✓									
Form IX: Nomination of Person by a Company along-with the Board Resolution	✓									
Declaration Form (given on website)	✓									
PAN Card					✓	✓			✓	✓
Copy of VAT, PIN/TIN number		✓								✓
Undertaking/Declaration with special attention on Fire Safety Certificate (with seating capacity of more than 50)		✓								

33. Excluding the GST, Signage, Weights and Measures, Lift Clearance and Phonographic Performance Limited.

DOCUMENTS REQUIRED	FSSAI	HEALTH TRADE LICENSE	GUIDELINES FROM DELHI FIRE SERVICES (PRIOR CONSUTRCTION)	FIRE SAFETY CERTIFICATE	CONSENT TO ESTABLISH	CONSENT TO OPERATE	LABOUR DEPARTMENT	EATING HOUSE LICENSE	DEPARTMENT OF TOURISM	EXCISE LICENSE
Indemnity Bond on non-judicial stamp paper worth Rs. 100/- as per format		✓ (for North DMC)								
Manufacturing Process in detail with flow charts					✓	✓				
ETP/STO effluent analysis report from empanelled laboratory of DPCC										
Site Plan showing inside details of premises prepared/signed by registered architect	✓	✓								
Key Plan Blueprint/Layout Plan showing location of premises prepared/signed by registered architect		✓ (for North DMC)	✓	✓	✓					
Structural stability certificate signed by structural engineer		✓ (for North DMC)								
Building Sanction Plan, Completion plan and Completion Certificate										
Reference letter from the local authority			✓							
Drawings of section and elevation			✓							
Drawings of automatic sprinkler system (as per IS 15105)			✓							
Drawings of smoke management, lift/staircase pressurization (as per NBC 2005)			✓							
Proof of notification of notified commercial/mixed use as per MPD 2021		✓ (for North DMC)								
Proof of payment of conversion, parking and registration charges		✓ (for North DMC)								
Certified questionnaire with information regarding name, address, height of building, information about basement, fire safety norms, fire alarms, lifts etc.				✓						
Layout plan of kitchen with photographs									✓	
Site Plan including Fire Safety Measures mentioned on the map								✓		
Proof of conformity with the provision of MPD 2021						✓				
Proof of drainage connection to Public/Municipal/DJB Sewer from the concerned authority						✓				
Site/Seating Plan including store room, bar counter and area for service of liquor signed by registered architect										✓
Water paid bill		✓ (for North DMC)				✓				

DOCUMENTS REQUIRED	FSSAI	HEALTH TRADE LICENSE	GUIDELINES FROM DELHI FIRE SERVICES (PRIOR CONSTRUCTION)	FIRE SAFETY CERTIFICATE	CONSENT TO ESTABLISH	CONSENT TO OPERATE	LABOUR DEPARTMENT	EATING HOUSE LICENSE	DEPARTMENT OF TOURISM	EXCISE LICENSE
Electricity paid bill		✓ (for North DMC)				✓				
Copy of Delhi Jal Board (DLB)/ Central Ground Water Authority (CGWA)DC registration						✓				
Medical fitness certificate of workers and typhoid vaccination certificate of workers		✓ (for North DMC)								
Police Clearance Certificate (PCC) of all employees								✓		
Health Trade License								✓	✓	
GST Registration								✓		
Registration Certificate by Labour Department								✓		
FSSAI Certificate						✓		✓		
DPCC Consent Letter								✓		
Affidavit regarding Fire Safety Measure (if less than 50 seats)/ Fire Safety Certificate (for more than 50 seats)								✓	✓	✓
Copy of Excise License in case of operational bar								✓		
Eating House License									✓	✓
Approval from Department of Tourism										✓
Photographs of the earmarked space for Eating House								✓		
Proof of Annual Maintenance Contract (AMC) of CCTV with 30 day recording								✓		
Proof of installation of Fire Safety Measures (Invoice, photographs, etc.)								✓		
Affidavit for proof of space earmarked for smoking as per COPTA Act 2003 (for seating capacity above 30 seats)								✓		
Request for activities such as Live Band, DJ, Discotheque								✓		
Affidavit of no disqualification under Section 13 of Delhi Excise Act, 2009										✓
Declaration of Authorized Representative/Excise Nominee by Proprietor/Partner/ Director										✓
Copy of insurance against Fire and Natural Hazards										✓

Appendix 2: Methodology

To understand the licensing and inspection procedure for restaurants and bars in Delhi, we relied on a survey of restaurateurs supported by semi-structured interviews with government officials. We also examined digitally available Acts, circulars, rules and procedures and orders as part of our exploratory research.

Restaurant Survey

Sample: We surveyed 101 food service enterprises in the central and south zones of South Delhi Municipal Corporation (SDMC), as the area features many markets and restaurant clusters. The survey was primarily administered to the owners. In case they were not available, we interviewed managers or members of the licensing department.

Table 4: Areas Covered Under SDMC

Area	Zone	Responses	Area	Zone	Responses
Adchini	South	3	RK Puram	South	3
Chhattarpur	South	5	Safdarjung Enclave	South	3
Greater Kailash 1	South	5	Saket	South	3
Green Park	South	5	Satya Niketan	South	11
Hauz Khas Market	South	6	SDA Market	South	6
Hauz Khas Village	South	7	Amar Colony	Central	3
Humayunpur	South	4	Defence Colony	Central	3
Kailash Colony	South	5	Greater Kailash 2	Central	7
Katwaria Sarai	South	2	Lajpat Nagar 2	Central	2
Malviya Nagar	South	7	New Friends Colony	Central	7
Mehrauli	South	4			

We sought to survey restaurants along four parameters:

1. Does the restaurant serve non-vegetarian food?
2. Does the restaurant sell liquor?
3. Is the restaurant located in an urban village?³⁴
4. Is the restaurant part of a chain?³⁵

34. From time to time, rural settlements are shifted into the urban ambit and are declared as ‘urban villages’. A notification is issued under Clause (a) of Section 507 of The Delhi Municipal Corporation Act, 1957. At present, there are 135 urban villages in Delhi. Norms for these villages are laid down in the Master Plan Delhi 2021, however, these villages remain exempted from sealing.

35. According to Federation of Indian Chambers of Commerce and Industry, restaurants with three or more outlets are a part of chains.

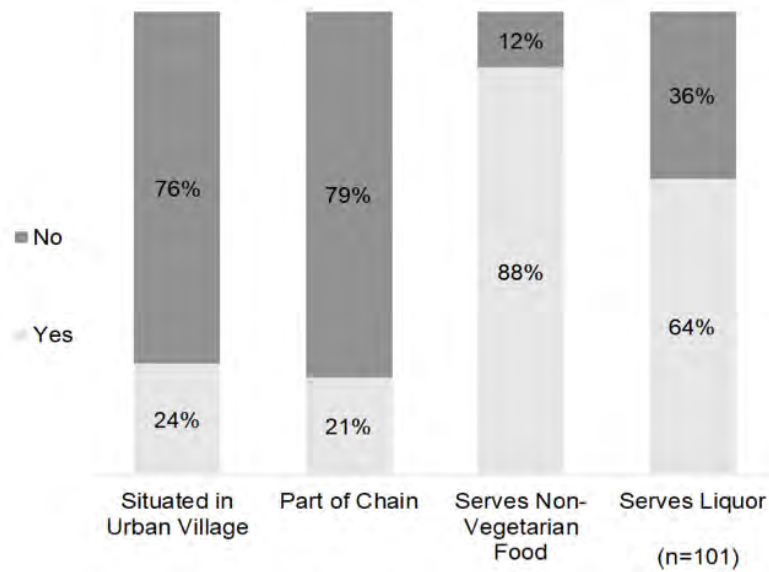


Figure 9: Parameters for the Sample

Survey Questionnaire: The questionnaire (Appendix 3) consisted of five sections. First, we collected basic information on the respondent and the eating house. Second, we focused on the ease or difficulty in the process of obtaining licences and approvals.³⁶ The third section had questions on experience with the licence renewal process. Fourth, we captured the experience of owners, managers and staff with inspections. The last section consists of questions to capture the perception restaurateurs held of the inspecting officials.

Semi-Structured Interviews with Government Officials

We interviewed officers, inspectors and executives of various government departments to understand the purpose, procedure and motivation behind the different practices and licences. We interviewed officials of various departments about the purpose, application process, fee, eligibility, validity, renewal process and renewal fee of the licences and approvals under their ambit. We also asked them questions pertaining to the inspection procedure: frequency of inspections, number of inspectors, mandate of inspectors, inspection checklists, inspection reports and if there was a grievance redressal system in case the restaurateur feels dissatisfied with the inspection process.

Specific questions for certain departments included the following:

Department of Excise

1. How long does it take you to approve one purchase order?
2. What is the rationale behind banning recorded music in these restaurants?

³⁶. Questions on ease of obtaining approval from the DoT were added mid-way during our survey, as we only found out the need for these two during the course of administering the survey to restaurateurs.

3. Restaurants are live streaming music. How does it solve the problem the order hoped to resolve?

Department of Labour

1. Why is the website not working?
2. Can the workers approach the department in case of any problems faced?
3. What is your relationship with the labour unions?

Delhi Fire Services

1. What is the average time within which the licence is received?
2. Restaurants in Khan Market were asked to obtain their licences in 15 days. Was that feasible for the department?

Appendix 3: Questionnaire for Restaurateurs

Section 1

1. Please state your name. (Optional)
2. Please state your designation. (Owner, Manager, Other)
3. What is your restaurant/bar name? (Optional)
4. Does your restaurant serve liquor? (Y/N)
5. Does your restaurant serve non-vegetarian food? (Y/N)
6. Is your restaurant part of a chain or not? (Y/N)
7. What is the seating capacity of your restaurant?
8. Is your restaurant part of any association? If yes, which one?
9. State the location, market area or landmark of your restaurant or bar.

Section 2

1. How easy is it to obtain licences from the following department?
Very Easy, Easy, Neutral, Difficult, Very Difficult
 - (a) Food Safety and Standards Authority of India (FSSAI)
 - (b) Municipal Corporation (Health Trade Licence)
 - (c) Delhi Fire Services (Fire NOC/Fire Safety Certificate)
 - (d) Delhi Pollution Control Committee (CTO/CTE)
 - (e) Department of Excise (L17/L17F Licence)
 - (f) Department of Tourism
 - (g) Delhi Police (Eating House Licence)
 - (h) GST Registration
 - (i) Department of Labour (Shops and Establishment Licence)
 - (j) Employees State Insurance Provident Fund
 - (k) Department of Weights and Measures
 - (l) Department of Labour (Lift Clearance)
 - (m) Phonographic Performance Limited (Music Licence)
 - (n) Signage Licence
 - (o) Value-Added Tax Registration (For Liquor)
 - (p) Overall Licensing Procedure
2. How long did it take you to obtain all the licences? (In Months)
3. After the sanctioning of building plans, were you asked to make any structural changes over the course of inspections? (Y/N)
4. When you were applying for licences, did you pay a bribe? (Y/N)
5. What amount did you pay as a bribe? (Optional)
6. How did you apply for the licences?
Self, Consultants, Both, Licensing Team

Section 3

1. Are you aware of the online application process? Has it made the process easier?
Yes, I find the process easy; Yes, I find the process difficult; No, I am not aware
2. How simple do you find the online renewal process?
Very Easy, Easy, Neutral, Difficult, Very Difficult

3. How simple do you find the frequent renewal of licences?

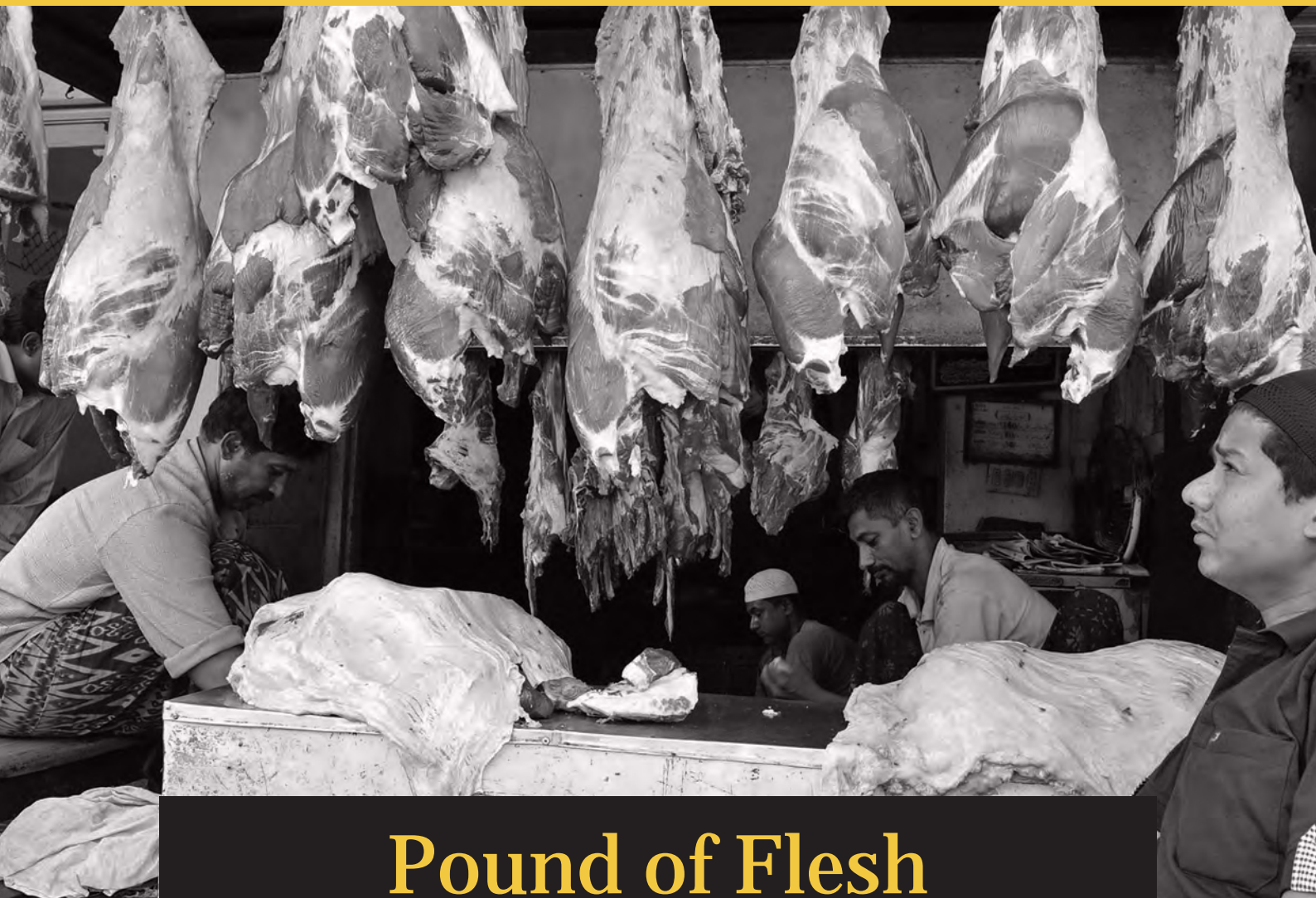
Very Easy, Easy, Neutral, Difficult, Very Difficult

Section 4

1. What is the duration between two inspections?
2. Which four authorities/departments come for inspections most frequently?
3. Can you challenge the way any inspections are conducted or their findings? (Y/N)

Section 5

1. What is your opinion about the inspectors? (Agree, Neutral, Disagree)
 - (a) Inspectors are facilitators
 - (b) Inspectors treat you respectfully
 - (c) Inspectors are professional
 - (d) I'm certain about the mandate of the inspectors
2. What do you think is the intent of the inspectors? (You can select more than one.)
 - (a) To facilitate the ease of conducting your business
 - (b) To check for violations in the restaurant or bar
 - (c) To ensure the welfare of your customers
 - (d) To deliberately look for faults
 - (e) To further their personal benefits
3. Are you aware of what is expected of you before inspections are carried out?(Y/N)
4. My establishment faces overlapping regulations. (Agree, Neutral, Disagree)
5. What are you expected to do when faults are found during inspections?
Fix issue before next inspection; Pay challan; Pay bribe; Not expected to fix issue
6. Did you pay bribes during inspections post opening restaurant? (Y/N)
7. Does the same inspector come for back-to-back inspections? (Y/N)
8. What are the pain points you encountered in starting and running a restaurant?
9. What reforms would you like to see being implemented with regard to regulatory compliances in the industry?



Pound of Flesh

EXAMINING THE EASE OF DOING
BUSINESS FOR **SLAUGHTERHOUSES AND
MEAT SHOPS IN DELHI**

Shruti Gupta, Sanjari Kalantri, and Shivank Singh

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List of Abbreviations

APEDA	Agricultural & Processed Food Products Export Development Authority
AWBI	Animal Welfare Board of India
CMIE	Centre for Monitoring Indian Economy
CPCB	Central Pollution Control Board
DMC	Delhi Municipal Corporation
DWM	Department of Weights and Measures
FBO	Food Business Operator
FSO	Food Safety Officers
FSSAI	Food Safety and Standards Authority of India
FSSR	Food Safety & Standards (Licensing and Registration of Food Businesses) Regulations
GDP	Gross Domestic Product
MCD	Municipal Corporation of Delhi
MT	Million Tonnes
NCT	National Capital Territory
NOC	No Objection Certificate
OECD	Organisation for Economic Co-operation and Development
PCA	Prevention of Cruelty to Animals
SDMC	South Delhi Municipal Corporation

Executive Summary

The livestock sector contributes 4.1% to the total Gross Domestic Product (GDP) of India (Ministry of Finance 2018). Over the last few years, the sector has been at the centre of numerous legislative controversies. Given the broader interest of the government in improving ease of doing business in the country, we study the regulatory framework governing the production and retail sale of meat in Delhi state. We study the framework as it applies to slaughterhouses and meat shops, observing in particular its impact on small entrepreneurs and traders who form a bulk of the operating enterprises in the sector.

The first section of the paper describes the restrictions on the slaughter of animals and birds in Delhi. These restrictions have constricted the supply of meat through a licensed channel and have led to the slaughter of animals outside the ambit of regulations. We find that there is only one authorised slaughterhouse in Delhi, and it is owned, operated and regulated by the Municipal Corporation of Delhi (MCD) in Ghazipur, in a violation of the time-tested principle of separation of powers.

The Ghazipur slaughterhouse is equipped to slaughter only buffalo, sheep and goat. This limitation, coupled with the prohibition imposed by the MCD and Food Safety and Standards Authority of India (FSSAI) on slaughter outside municipal slaughterhouses, renders an impasse for processing chicken and pork in Delhi. To get around this impasse, the MCD follows an ‘informal policy’ overriding its own rules by allowing meat shops to slaughter chicken. However, ‘informal policies’ are still opportunities for rent seeking, and FSSAI regulations still render these shops illegal.

The second section of the paper describes the licensing and inspection procedures that apply to retail meat shops. Through a survey of meat shop owners, we document the difficulty in first obtaining licences and then adhering to all the regulatory requirements. Further, 94.2% of the respondents in our survey, for example, did not have all of the requisite licences, choosing to remain unlicensed or partially licensed. Moreover, 72% of the respondents (licence holders) claimed to have paid more than the prescribed cost while obtaining a licence.

Alongside, we examined the frequency, transparency and procedural fairness of the inspections regime. Through survey responses we find that inspections are carried out at least once a month, with 80% respondents claiming that they are inspected 2 to 3 times a month. In a bid to examine the efficacy of these inspections, we carried out our own mock inspections. We appraise the extent to which 19 visually verifiable regulations, chosen from the MCD and FSSAI checklists, were being complied with. Of the 70 meat shops we mock inspected, only 2 were compliant with more than 80% of the 19 selected regulations. Based on this finding, we argue that despite frequent inspections, regulatory agencies have been ineffective in their primary purpose of promoting compliance. We also find that traders are burdened by the arbitrariness of the inspection procedures, discretionary powers exercised by inspectors and absence of an adequate grievance redressal system. All this put together, we argue, does not make doing business in the sector easy while channels of rent seeking are flourishing.

1 Introduction

India houses the largest number of livestock in the world (Sharma 2012). The livestock sector in India contributes 25.6% to the agricultural GDP and employs more than 16.4 million people as of 2013 [70th National Sample Survey 2013].

India produced 7.4 million tonnes (MT) of meat in 2016 to 2017 (Department of Animal Husbandry, Dairying and Fisheries 2017a) while its meat production grew by 8.48% in 2016 to 2017 (Department of Animal Husbandry, Dairying and Fisheries 2017b). The domestic market in India for non-vegetarian food is large: 71% of Indians over the age of 15 identify as non-vegetarians as of 2012 (Ministry of Statistics and Programme Implementation 2014).

The meat export industry of India is also among the largest in the world. Buffalo meat surpassed basmati rice to become the largest agricultural export of India and fetched India Rs. 25,000 crore in 2017 to 2018 (APEDA 2018). According to the Department of Animal Husbandry, Dairying and Fisheries, in 2017, India ranked second in the world on exports of buffalo and fifth for sheep and goat.

Figure 1 shows that total meat production in India has nearly quadrupled in the last two decades.

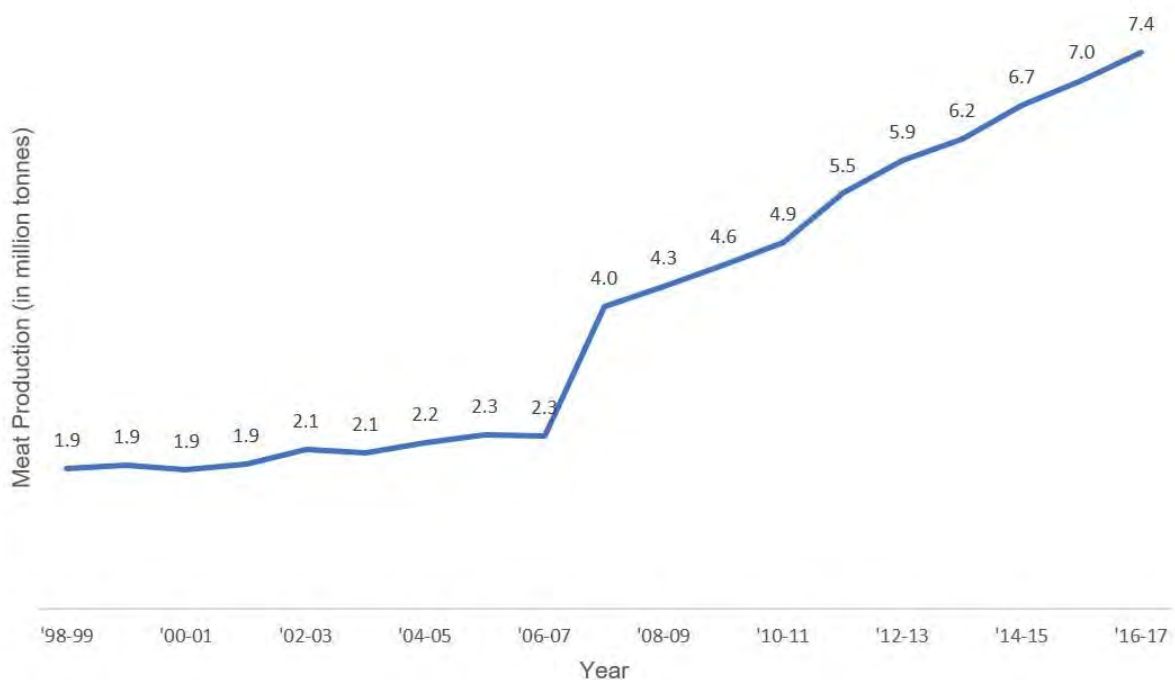


Figure 1: Total Meat Production in India From 1998-99 to 2016-17 (CMIE 2018)

However, the industry imposes significant negative externalities on the environment and is at the centre of emerging public health and hygiene concerns (Pradere 2014). There are also several socio-cultural and religious constraints on the production and consumption of

meat in India. All these, coupled with the need for ethical treatment of animals, demand government interventions in the sector.

Over the years, government has made ad hoc rules and amendments to existing regulations without adequate consultation, conflicting objectives, and has attempted to pacify socio-cultural debate through instruments not fit for purpose. This has led to many unintended consequences.

First, sudden changes in the formulation and implementation of rules governing trade and property rights over animals have fomented business uncertainty. For example, the central Ministry of Shipping suddenly and indefinitely banned the export of livestock from ports in 2018 (Kateshiya 2018). The ban was imposed just before the Bakr-Id festival when a large number of goats are exported to the Middle-East for religious sacrifices. News reports document that export of livestock, which had since 2013, witnessed a 56.06% CAGR rise¹ in the value of export shipments, was suddenly stopped in its tracks and the ruling affected about 40,000 families (The Hindu 2008).

Second, the confusion created in law, coupled with the negative perception of meat traders and the already weak rule of law apparatus, has manifested in the form of vigilantism and violence. Several news reports have documented how traders are often attacked when transporting animals from farms to slaughterhouses. These cases and decisions have coalesced into a climate of fear among traders.

Third, incorrect public planning for slaughterhouses in cities such as Delhi constraints the supply chain of meat. This has led to the growth of unauthorised meat shops that also slaughter animals. The growth is, despite a clear restriction on the slaughter of any animal, within the premises of the shop.

Finally, the entry barriers to new businesses create difficulties in opening and operating formal businesses. The businessmen who do pay the one-time costs and obtain the licences are subjected to unclear and arbitrary inspections. These short- and long-term costs deter entrepreneurs from growing their business.

This paper examines the regulatory challenges with a focus on its impact on the small meat traders in Delhi. It describes the perceptions of various stakeholders and explores gaps between on-paper and on-ground policy. It also explores the licensing and inspections of slaughterhouses and meat shops—while scrutinizing the last two stages of the supply chain of meat in Delhi in greater detail.

There are four stages in the supply chain of meat. First, the rearing of animals on farms—the meat that is consumed in Delhi is mostly reared on farms in Haryana and Uttar Pradesh; second, the transportation and sale of these animals to a trader in a market or a murga mandi; third, the slaughter of these traded animals in a slaughterhouse; and fourth, the sale of meat that is extracted from the slaughtered animal in a meat shop. Figure 2 represents the supply chain of meat and the focus of our study.

1. The exports increased from Rs. 69.30 crore in 2013 to 2014 to Rs. 411.02 crore in 2017 to 2018.

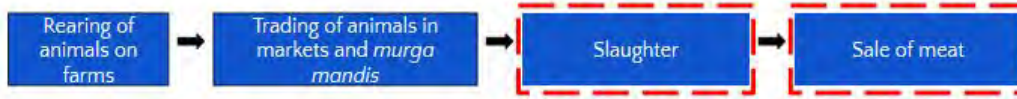


Figure 2: Supply Chain of Meat in Delhi

The study of regulatory challenges with the slaughter of animals is based on secondary research and semi-structured interviews with individuals who are directly (business owners and exporters of livestock) or indirectly (journalists, lawyers and advocacy group members) involved in the meat industry of Delhi. We also interviewed officers of the relevant regulatory agencies such as the FSSAI and the Veterinary Department of the South Delhi Municipal Corporation (SDMC).

The study of meat shops was based on structured interviews of 52 shop owners to gauge their perception of licensing and inspection procedures. A mock inspection of 70 meat shops for 19 visually verifiable regulations was conducted to examine their compliance level. Further details of the methodology are in Appendix 1.

2 Regulation of Slaughterhouses in Delhi

A slaughterhouse or an abattoir is a facility where animals are slaughtered for consumption as food. The activities of slaughterhouses are sensitive for, broadly three reasons. First, the slaughter of an animal requires compliance with minimum hygiene and quality standards. Failure to maintain hygiene has a direct implication on public health. Second, slaughterhouse waste, constituting the inedible part of animals such as blood and other by-products, is polluting in nature and requires proper treatment and disposal. Third, arrangements to minimize animal suffering are required to preserve animal rights. This is done by ensuring adequate storage conditions, availability of food and water and compliance with a defined slaughter process alongside an inspection process.

The rules governing these issues are set by three central government agencies, the FSSAI, the Central Pollution Control Board (CPCB) and the Animal Welfare Board of India (AWBI). In Delhi state, our study geography, the Department of Food Safety, Government of National Capital Territory (NCT) of Delhi implements the regulations set by the FSSAI; the Delhi Pollution Control Committee (DPCC) implements the rules set by the CPCB; and the functions of the AWBI are performed by the MCD and the New Delhi Municipal Council.

2.1 Prescriptive Requirements to Open and Operate a Slaughterhouse

The regulating agencies use licences as the principal instrument to oversee and control the activities of slaughterhouses. While issuing licences, the corresponding agency spec-

ifies the requirements that each slaughterhouse needs to meet. It also conducts regular inspections to check their compliance during the course of operations.

Each regulatory agency issues its own licence. An entrepreneur must obtain the following licences in the given order to establish a slaughterhouse in Delhi:

1. Consent to Establish from the CPCB
2. No Objection Certificate (NOC) and a trade/storage licence from the MCD
3. Food Licence from the FSSAI
4. Consent to Operate from the CPCB.

The imposed requirements, validity, processing time and fees for each licence vary. Details of the eligibility, time, cost are provided in Appendix 2, while the required documents are listed in Appendix 3.

2.2 Barriers to Entry in Opening and Running a Slaughterhouse in Delhi

The primary barriers on establishing a slaughterhouse are legal in nature. This consists of the licensing system and the statutory requirements laid out in acts and department regulations. They are described in the subsequent sections, which also examine their impact—both unintended and unintended.

2.2.1 Prohibition on Operating Private Slaughterhouses in Delhi

The MCD, one of the local governing bodies in the state of Delhi, is responsible for the planning of slaughterhouses and their operation. It was established through the Delhi Municipal Corporation (DMC) Act of 1957.

Section 42 of the DMC Act lists out the Obligatory Functions of the Corporation, stating, ‘[it] shall be incumbent on the Corporation to make adequate provision by any means or measures which it may lawfully use or take [on the matters listed in Section 42]. The regulation of slaughterhouses is included in Section 42 (k) making the MCD responsible, [for] the construction and maintenance of municipal markets and slaughterhouses and the regulation of all markets and slaughterhouses’.

The Act defines a slaughterhouse as ‘any place ordinarily used for the slaughter of animals for the purpose of selling the flesh thereof for human consumption’.^{2 3}, The two types of slaughterhouses are:

- Municipal slaughterhouses: ‘A slaughterhouse vested in or managed by the Corporation’⁴;

2. As defined in S.2(56) of the DMC Act, 1957.

3. Permission for slaughter outside municipal slaughterhouses, albeit provided with the prior permission of the Commissioner, is restricted only for religious purposes.

4. As defined in S.2(30) of the DMC Act, 1957.

- Private slaughterhouses: ‘A slaughterhouse which is not a municipal slaughterhouse.’⁵

Despite defining a private slaughterhouse, the DMC Act in Section 407(2) states, ‘No place other than a municipal slaughterhouse shall be used as a slaughterhouse’.⁶ This effectively means that no animal can be slaughtered for consumption in any place except a slaughterhouse run by the MCD. As a result, no authorised privately owned slaughterhouses can be established and operated and a government monopoly is established over an essential service.

2.2.2 Only Slaughterhouse in Delhi is Government-owned, Operated and Regulated

The MCD owns and operates the only authorised slaughterhouse in Delhi. Located in Ghazipur, the MCD Ghazipur The slaughterhouse was opened in 2009 after sealing off a nearly 200-year old municipal slaughterhouse at Idgah near Jama Masjid. It was established to provide hygienic and modern facilities and expand production for export and local consumption. It has a capacity to process 5,000 small animals (goats and sheep) and 1,000 large animals (buffaloes) per shift (Bhardwaj 2009).

Currently, it is run on a public-private partnership model between the East Delhi Municipal Corporation and M/s Frigorifico Allanasons Pvt. Ltd. The operation is conducted in three shifts; morning and evening shifts are open for general traders, and the afternoon is reserved for the concessionaire—Frigorifico Allanasons.

Concerns with Conflicts of Interest The ownership status of the Ghazipur slaughterhouse does not exempt it from regulations; the FSSAI, MCD, AWBI and CPCB are still required to inspect and promote compliance with regulation. This is a conflict of interest and a departure from the doctrine of separation of powers. For instance, preventing cruelty to animals before and during slaughter is the responsibility of AWBI, the statutory body to advise the Government of India on laws aimed to prevent cruelty towards animals. But since the AWBI does not have its own enforcement mechanism, it executes its responsibilities through local governments. In Delhi, the responsibilities of AWBI are executed by the MCD.⁷

Under the existing incentive structure, it is often not in the interest of enforcement officials to penalize Ghazipur slaughterhouse for several violations which then remain unaddressed. A lack of independent oversight creates perverse incentives for the slaughterhouse to also hide faults from public view.

5. As defined in S.2(41) of the DMC Act, 1957.

6. Exceptions to this rule include the slaughter of any animal for any religious festival or ceremony in accordance to religious customs subject to the approval of the Commissioner, with the sanction of the Corporation.

7. For example, the AWBI does not issue its own licence to set up slaughterhouses. The requirements of AWBI are merged with the inspection checklist of the MCD for issuing the NOC.

Reports and articles have highlighted several prima facie rule violations in the Ghazipur slaughterhouse.

- Food Safety and Standards (Licencing and Registration of Food Businesses) Regulations 2011 (FSSR 2011)⁸ and the PCA (Slaughter House) Rules 2001⁹ both mandate the use of stunning before slaughter. They also require the use of a separate place for this process.
- Buffaloes were electrocuted by placing a live wire on their body instead of being stunned (ENS 2016) (PETA 2006). However, the slaughter of animals through electrocution is rejected as a humane method for slaughter (Chaudry and Shimshony 2011) and is in violation of Section A.6.(a) of the FSSR 2011.¹⁰ Apart from being an act of cruelty against animals, electrocution also has an impact on the quality of meat obtained.
- Animals were overcrowded in small lairages, that is, holding pens without adequate water and food (Maanvi 2016). This contradicts Section A.3.5 of Part IV of Schedule 4 of the FSSR 2011, which mandates the use of adequately sized lairages.¹¹
- Sick and pregnant animals were slaughtered without an ante-mortem examination (PETA 2009). This contradicts the Section 3 (2) of the PCA (Slaughter House) Rules, 2001, which states that any animal showing signs of disease should be condemned and rejected after an inspection.¹² The violation of this regulation is of particular concern as it directly impacts public health (Mahapatra 2009).

Concerns with Monopoly Market Power A state monopoly has several harmful consequences. Theorists have argued that a monopoly leads to an inefficient allocation of resources, management and production; output production below the market level; restrictions on the choice of consumers and a larger erosion of incentive for growth and amelioration in the absence of market competition and viable alternatives (Morton and Sophister 1995).

In the practical sense, this has three direct consequences.

1. Prohibiting the establishment of private slaughterhouses leads to a lack of alternatives and market competition. In the absence of viable alternatives, consumers are left with no choice on the products they purchase and consume. A consumer

8. S.4.1 of Part IV of Schedule 4 of the FSSR 2011 states, 'stunning before slaughter should be mandatory ... [it] can avoid and minimise reactions of fear and anxiety as well as pain... among the animals concerned'.

9. S.6(4) of the PCA (Slaughter House) Rules, 2001 states, 'Every slaughterhouse... shall provide a separate space for stunning of animals prior to slaughter, bleeding and dressing of the carcasses'.

10. S.A.6(a) of Part IV of Schedule 4 of the FSSR 2011 states, 'it is essential that animals be reared, handled, transported, and slaughtered using humane practices. A healthy and peaceful animal is an essential requirement for hygienic slaughter and safety of the meat product'.

11. S.A.3.5 of Part IV of Schedule 4 of the FSSR 2011 states, 'the lairage shall be adequate in size for the number of animals to be laired'.

12. S.7(3) of Part IV of Schedule 4 of the FSSR 2011 states, 'an animal showing signs of any disease at the time of ante-mortem inspection that would cause its carcass being ultimately condemned on post-mortem shall be marked as 'condemned' and rejected'.

wanting to purchase meat produced in more hygienic conditions or with greater protection of animal rights has no options. Moreover, in the absence of any competition there is no incentive to bring about change or greater efficiency in the operation of the slaughterhouse.

2. All meat traders in the state are dependent upon the supply from one slaughterhouse, which chokes the supply chain.
3. The operations of this slaughterhouse are in part funded by taxpayer contributions who, regardless of their lifestyle choices, have to become a party to the slaughtering of animals.

2.2.3 All Chicken and Pig Slaughter in Delhi Is Officially Illegal

The Ghazipur abattoir processes only buffalo, goat and sheep and has no provisions to slaughter chicken or pigs.

In Delhi, roughly 240,000 poultry birds are slaughtered every day to meet the daily demand while the daily pork consumption is about 120,000 kg, which requires the slaughter of around 2,000 pigs (Singh 2017). Despite this sizeable demand, the regulations governing slaughter of meat in Delhi have rendered all forms of chicken and pig slaughter illegal, irrespective of any methods employed to prevent pollution and pain in the process. The regulations have created a deadlock for conducting business where traders of chicken cannot conduct business without circumventing the law.

Pig slaughter often takes place in swamps or wastelands adjacent to meat shops (TNN 2012). While the traders of pork have the option to avoid this by transporting processed meat from other states and selling it in Delhi, it leads to an increased cost. Leading meat retailers such as Khub Chand & Bros. use this method of procuring meat.

While a pig abattoir in Rani Khera was conceived of in 2009 and is expected to be functional by 2021, Delhi neither has a legal slaughterhouse for chicken and pig, nor plans on making one for chicken.

Despite the fact that Section 407(2) of the DMC Act completely prohibits private slaughterhouses in Delhi and Section 9.05 of FSSR 2011 prohibits the slaughter of animals or birds inside the shop premises, chicken are slaughtered openly within the premises of meat shops.¹³ Buyers of chicken meat insist that it be freshly slaughtered, and transporting non-frozen chicken meat is not an option.

Recognising the catch-22, MCD inspectors allow meat shops selling chicken to slaughter them in the premises of their shop without the need of any additional licence by following an 'unofficial policy'.¹⁴ However, this policy apart, chicken shops are operating by breaking another law.

13. According to S.9.05 of the FSSR 2011, 'slaughtering of animal/birds inside the shop premises should be strictly prohibited'.

14. 'Additional' here refers to the licences that may be required over and above the ones required to establish a meat shop.

All 39 chicken shop owners we interviewed admitted to slaughtering chicken in their shops as a standard business practice. Despite this, 30 of these shops were either licensed by the MCD or registered with the FSSAI. Both, the FSSAI and the MCD have issued licences to several shops which clearly violate their regulations and do not fulfill the requirements to obtain the licences. This raises questions on the effectiveness of the licensing procedure in promoting compliance and vetting establishments which violate regulations.

The thoughtless regulatory set-up creates difficulties for businessmen who are vulnerable to rent seeking during inspections and the threat of penal action for violating the law. They also operate in a climate of uncertainty since the ‘unofficial policy’ has no written basis in law and can be revoked at any point of time. This also has a negative impact on consumers who, in the absence of an effective licensing and regulatory system cannot ascertain the quality of the meat they purchase.

Pork traders/retailers are also vulnerable to this regulatory dissonance. However, due to a separation between the shop and the area where pigs are slaughtered, it is only the slaughter of pig, and not its selling, which is under apparent scrutiny. This indicates the presence of a marginally better situation for the sale of pork in comparison to chicken which is most impacted by the inadvertent prohibition of private slaughterhouses.

3 Regulation of Meat Shops in Delhi

After an animal is killed in a slaughterhouse, its meat is sold in shops, either whole or in smaller pieces. Such stores that sell meat are called meat shops. These include not only shops exclusively dealing in meat but also supermarkets and grocery stores that offer meat on their shelves.

The FSSAI and Department of Weights and Measures (DWM), alongside the MCD, are the regulatory agencies that oversee the activities of meat shops in Delhi. While the FSSAI and MCD regulate meat shops to ensure hygiene and quality of meat sold, the DWM ensures fairness and transparency in the scales employed for measurement of the meat sold. The DWM regulates only the sale of meat; the FSSAI and MCD regulate both the production at slaughterhouses and sale at meat shops. They distinguish, identify and define both parts of the supply chain, and have set out regulations and licences depending on whether the enterprise produces meat for consumption or sells it.

3.1 Licences Required to Open and Operate a Meat Shop

The regulating agencies use licences as the principal instrument to oversee and control the activities of meat shops while upholding adequate standards of quality and hygiene. While issuing licences, the corresponding agency specifies the requirements that each meat shop needs to meet and conducts regular inspections to check their compliance during the course of operations.

To operate a meat shop in Delhi, the shopkeeper requires the following three licences:

1. Veterinary Licence from the MCD ¹⁵
2. Food Licence from the FSSAI
3. Weights and Measurements certificate from the DWM.

Table 1: Details of Licences Required to Operate a Meat Shop in Delhi

Licence Name	Eligibility	Annual Fees (<i>in Rs.</i>)	Validity (<i>Year</i>)	Time Taken (<i>in Days</i>)	No. of Documents
Municipal Corporation of Delhi					
The Veterinary Licence certifies the structural stability of the establishment alongside its compliance with a few regulations on food quality and standards. The primary distinction between this licence and a General Trade Licence issued to other shops is that the establishments of Veterinary Licence holders are inspected by veterinarians rather than a health inspector.					
Veterinary Licence	All businesses dealing in buffalo meat halal, pork, mutton, chicken, fish and cattle/dairy farms	2,400 (licence fee), 300 (processing fee), 500 (registration fee)	Up to 31 March every year	60	15
FSSAI, Department of Food Safety, Government of Delhi NCT					
The FSSAI regulates meat shops by laying down procedural requirements while listing tools and facilities each shop should have to ensure hygiene in storage and processing alongside quality control mechanisms. There are three categories within this, the details of which are listed below.					
Central Licence	Turnover more than Rs. 20 crores	7,500		60	18
State Licence	Turnover between Rs. 12 lakhs and Rs. 20 crores	2,000	Upto 5 years	60	18
Registration Certificate	Turnover up to Rs. 12 Lakhs	100		7	7

¹⁵. Unlike other retail establishments, meat shops come within the purview of the Veterinary and not Health Department due to the hygienic and environmental issues associated with meat.

Licence Name	Eligibility	Annual Fees (in Rs.)	Validity (Year)	Time Taken (in Days)	No. of Documents
Department of Weights and Measures, Government of Delhi NCT					
The certificate of Weights and Measures is issued to ensure the standardization of weights used in the shop. It mentions the kinds of weights used in the shop alongside their respective quantity, both of which determine the fees to be paid to obtain this certificate. For inspections under this, only the display of a valid certificate in a prominent position in the shop is seen.					
Certificate of Weights and Measures	Any business using standardized weights for their business	5-30 (Depending on size and number of weights used)	5	—	Form A-3

Although licences are mandatory for businesses, they choose to remain unlicensed. Studies find that it is more cost-effective for them to stay unlicensed at their scale of operations because regulatory compliance would otherwise render them uneconomical (De Soto 1989; Dutta, Kar, and Roy 2011; La Porta and Shleifer 2014). In our survey of meat shops of Delhi, we witnessed similar claims and circumstances. Our findings are presented below.

3.1.1 Licences Acquired by Respondents

Of the 52 shops in the sample, 9 were completely unlicensed. Only three shops had all the necessary licences while the remaining had incomplete combinations.

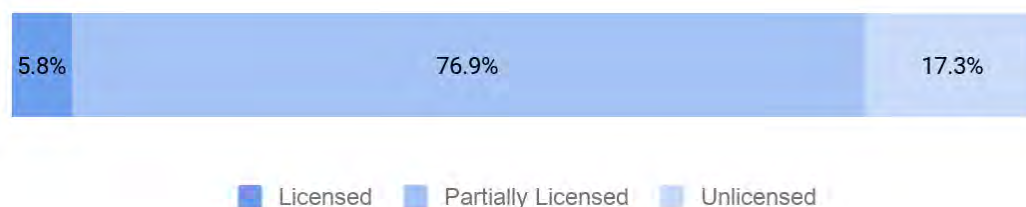


Figure 3: Percentage of Licensed, Partially Licensed and Unlicensed Respondents (n=52)

A majority of the licensed establishments only had a Veterinary licence. Numerous shop owners, when asked about the Food Licence, were unaware of it. Thus, despite being easier to obtain (see Figure 4), the Food Licence had not been obtained by 72.5% of the respondents. The Weights and Measurements Certificate, which only requires the submission of one form, was also not obtained by 87% of the respondents.

Survey respondents stated that the regulatory agencies conduct sealing drives to force unlicensed shops to acquire licence. For example, meat shop owners in the INA market acquired a Veterinary and Food Licence after the MCD and FSSAI sealed several shops in the vicinity in 2002 and 2012 respectively. An inspector in the Central Zone office of

the SDMC also said that more than 100 unlicensed meat shops were closed in 2017.¹⁶ In addition, FSSAI officers also claimed to conduct ‘extensive facilitation drives’ to improve the number of licence holders.¹⁷ Despite this, 94.2% of the respondents did not have all the requisite licences choosing to remain unlicensed or partially licensed.

The remaining unlicensed meat shops gave the following reasons for not obtaining the necessary licences:

- *“Licensing can become unaffordable”*: Shopkeepers have to fulfill the necessary requirements listed by the MCD, FSSAI and DWM in order to acquire a licence. According to some shopkeepers, despite fulfilling these requirements, the official and unofficial cost of obtaining a licence can go up to Rs. 3-4 lakhs. Shopkeepers consider the cost of abiding by these regulations and acquiring licences to be prohibitively expensive and chose to keep their shops unlicensed.
- *“Operating from a Rented Premises”*: Most small shopkeepers rent their business premises. This creates complications in the licencing process as they are required to provide a permanent address or submit a greater number of documents for licensing the rented premise.
- *“Too many documents required for obtaining a licence”*: A minimum of 23 documents must be submitted to obtain all the licences necessary to open a meat shop.¹⁸ The availability of all these documents in proper order and condition was also considered as challenging by the shopkeepers.
- *“Difficulty in comprehending the regulations governing businesses”*: The regulations which span across three statute acts, four inspection checklists and several rules are often amended and written in complex legal jargon. When asked if regulations governing their business were easy to understand, 41 out of 52 shopkeepers responded as difficult.

3.1.2 Ease of Obtaining Licences

All the licence required to run a meat shop formally cost between Rs. 600 and Rs. 12,000 (based on the turnover) and require between 60 and 120 days to process. As the cost and time indicated are contingent on providing adequate documents, the actual figures may vary.

To understand the perceived level of difficulty in acquiring these licence, we interviewed 33 licence holders (Figure 4).

16. Refers to the Veterinary licence of the MCD.

17. Claimed by a Designated Officer of the FSSAI Delhi State office. They also claimed their facilitation drives and registration centres to have enabled even the smallest meat shop owners to formalise.

18. See Table 2.

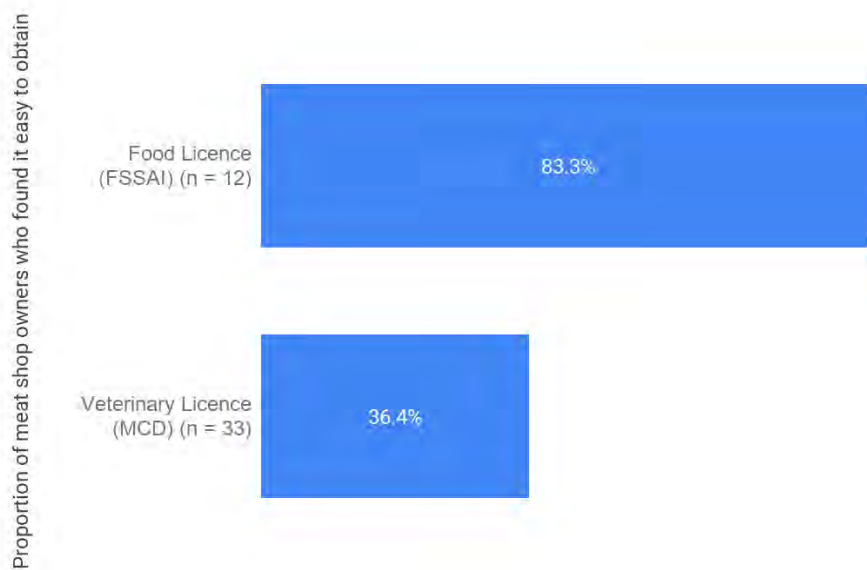


Figure 4: Perceived Level of Difficulty in Obtaining Licences¹⁹

While the Veterinary Licence was seen to be more difficult to obtain than the Food Licence, a greater number of respondents chose to obtain it over the Food licence.

Due to difficulties in acquiring these licences, the shop owners resort to help from ‘third-party agents’ such as business consultants, touts and other influential people. Of the 43 people who were interviewed, about 25% claimed to have received assistance from third-party agents. This is despite the digitization of the process and claims by both the MCD and the FSSAI to opening up several ‘facilitation centres’ to decrease the use of third-party agents and ease the process of obtaining licences.²⁰

3.1.3 Corruption in the Licensing Process

Interaction with government officials while acquiring licences creates scope for corruption according to the respondents. To acquire the Veterinary Licence, about 72% of the licence holders claimed to have paid more than the prescribed cost of Rs. 2,700 (Figure 5).

19. The remaining respondents found it difficult to obtain these licences. We did not conduct a perception survey for the WMC because very few respondents had obtained it.

20. As told to us by a Designated Officer in the FSSAI and an Inspector in the SDMC. These centres were claimed to have been established in their administrative offices where officials could guide businessmen through the application process free of cost.



Figure 5: Amount in Rupees Paid to Obtain Veterinary Licence (n = 18)

3.2 Nature and Efficacy of the Inspections Regime Governing Meat Shops

The MCD and FSSAI are the two agencies that inspect meat shops in Delhi. Their inspections are meant to ensure compliance with regulations, particularly those related to food quality and hygienic conditions (complete list of Inspection Requirements in Appendix 5). We investigated how both these agencies conduct inspections, and the efficacy of the inspection process in enforcing the rules. Based on interviews, surveys and mock inspections, we find that the existing inspection procedure is burdensome on meat shop owners who repeatedly cite it as a channel for rent seeking and disruption. The inspections are not only poorly managed and conducted but also ineffective in bringing about compliance.

3.2.1 Distance of the Inspection Regime From Best Practices

The Organisation for Economic Co-operation and Development (OECD), in their list of best practices and core principles which lead to effective enforcement, states that an inspection should follow an evidence-based enforcement, responsive regulation, transparent governance, clear and fair process alongside compliance promotion (OECD 2014).

We interviewed officials from inspectorates in Delhi and surveyed meat shop owners asking questions around each of these criteria to assess if the inspections regime that governs them is proportional, consistent and follows due process (*ibid.*).

Frequency The OECD best practices on risk focus and proportionality of the enforcement regime argue that, ‘the frequency of inspections and the resources employed should be proportional to the level of risk and enforcement actions should be aiming at reducing the actual risk posed by infractions’.

While the FSSR 2011 mandates at least an annual inspection of meat shops, the DMC Act only requires inspections to be ‘frequent’²¹ Neither specifies the criteria that qualify a business for inspections or their frequency. To ascertain the nature and frequency of inspections, we conducted interviews with inspectors from the South and Central Zone

21. According to S.424 of the DMC Act and S.2.1.5(2) of Chapter 2 of Schedule 4 of FSSR 2011.

offices of the SDMC. Their responses were cross-verified with the meat shops in their corresponding region.

Inspectors from the SDMC claimed to inspect every establishment once a year. However, the responses from the surveys indicate a frequency of at least once a month, 12 times higher a number than that reported by inspectors. The distribution of monthly inspections is represented in Figure 6.



Figure 6: Claimed Frequency of Inspections Per Month (n = 52)

Transparency Transparency relates to the public availability of information on the inspections process to be followed and expectations from business owners (Blanc 2017). Transparency of inspections can be facilitated through the use of an *inspection checklist* which lays down the parameters on which a business is to be judged during inspections and controls the excesses of the inspectors. The OECD best practices for a transparent process state, ‘coherent legislation to organise inspections and enforcement needs to be adopted and published, and clearly articulate rights and obligations of officials and of businesses’ (OECD 2014).

While the FSSAI has a published inspection checklist on their website and office, the checklist of SDMC is neither officially published nor publicly available²²(see Appendix 6).

During interviews, inspectors from both the SDMC and the FSSAI mentioned that checklists are used during inspections. However, about 81% of meat shop owners (out of 43) were unaware of the parameters that were inspected, which makes it difficult for the shopkeepers to comply with them.

Procedural Fairness Procedural fairness relates to the following processes that are both fair to the rights of the businesses and clear on the limitations of the inspectors (OECD 2012). The two key elements that facilitate procedural fairness of inspections are inspection reports and process of prosecution on non-compliance.

22. The SDMC inspection checklist was obtained from a Veterinary Inspector on the condition of anonymity.

Inspection Report It is a document that establishes a detailed record of events (date, time, duration, inspecting officer, compliance level, violations, evidence of violations etc.) from the inspection visit. These reports act as the proof of inspection, ensure coherency between observation and reporting and hold both the parties accountable (businessmen for violations and inspectors for corrective measures).

A Veterinary Inspector from the Central Zone of the SDMC claimed to record his findings on the inspection checklist that also doubles up as an inspection report.²³ A Designated Officer from the Delhi state office of the FSSAI described a similar system to us.

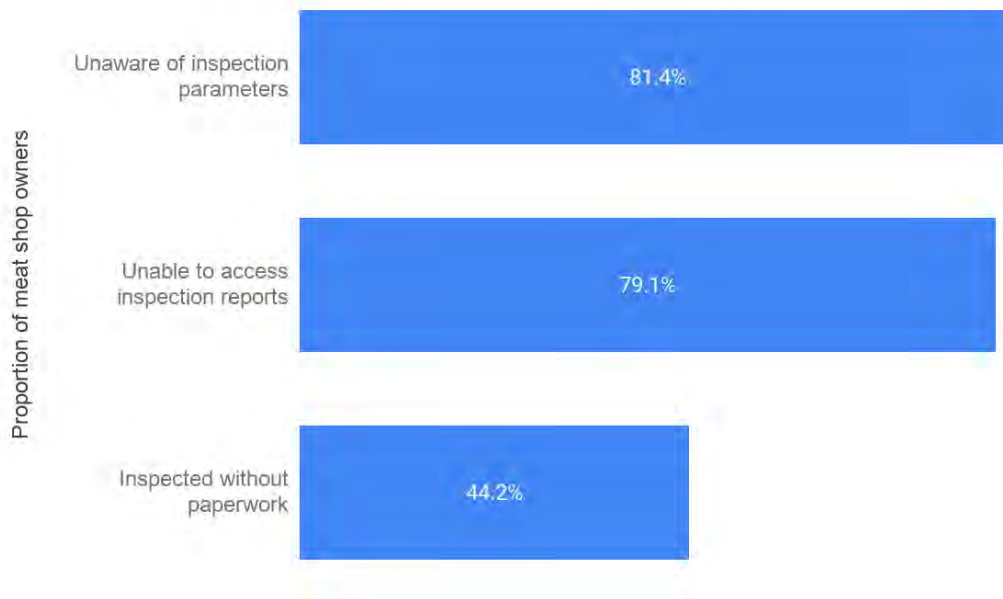


Figure 7: Lack of Awareness of Transparency and Procedural Fairness Parameters
(n = 43)²⁴

The claims of the officers, however, were not supported by the survey respondents (see Figure 7); 44% of the survey respondents said that inspectors often maintained neither paperwork nor records of the inspections. Moreover, 81% (35 out of 43) of the respondents reported being unable to view or access the inspection reports. This meant that the businesses did not know their alleged violations and had no access to their case files. Of the respondents who accessed the report, about 55% (five of the nine respondents) were unable to appeal against the report.

A key function of these reports while ensuring transparency is also to promote compliance among shop owners. Lack of access to inspection reports impedes the meat shop owners'

23. The inspection checklist is mandated to be carried during inspections. It also contains a provision to record the findings.

24. These were binary response questions. The remaining respondents said yes.

ability to address faults and improve compliance. This also affects the process of appeal, restricting a shop owner's ability to challenge inaccurate or false inspection reports.

Prosecution on Non-compliance Section 68 of The Food Safety & Standards Act, 2006, lays down the process of adjudicating a case of non-compliance. It states that 'an officer not below the rank of Additional District Magistrate of the district where the alleged offence is committed, shall be notified by the State Government as the Adjudicating Officer... The Adjudicating Officer shall, after giving the person a reasonable opportunity for making representation in the matter'. The Adjudicating Officer can impose such penalty as he thinks fit based on provisions relating to the offence. Offences include selling substandard food or food not of the nature of quality demanded, failure to comply with regulations and directions of Food Safety Officers (FSOs), obstructing an FSO from exercising his functions, carrying out a business without a licence, etc. Each violation has a defined punishment.

The ability of the FSSAI to monitor and enforce compliance in Delhi is severely constrained by a shortage of inspectors. The FSSAI currently has only 25 Food Inspectors tasked with inspecting all Food Business Operators (FBOs) in Delhi.

The DMC Act, however, does not specify any such process in the case of non-compliance. However, the MCD inspectors claimed that a procedure for prosecution does exist. During interviews, they outlined a three-step process that is followed in the case of non-compliance:

- *Improvement notice*: On observing a violation during inspections, an improvement notice is served to the establishments. It specifies the violated regulations and provides a period of 15 days to make amends and ensure compliance.
- *Challan or a show cause notice*: If not complied with despite the improvement notice, a challan or a show cause notice is served. While the challan is a fine paid by the licensed establishments for repeated non-compliance, a show cause notice requires the meat shop to justify against any action towards him. It is served before the closure notice and given 15 days to reply.
- *Closure notice*: If not complied with despite the challan and show cause notice, a closure notice is served. Once served, the shop can be closed with immediate effect. These closure notices are also used as a deterrent tool against unlicensed establishments that consistently violate regulations.

However, the choice between these deterrence tools is left to the inspector. While it is necessary to serve a show cause notice before a closure notice, it is up to the discretion of the inspector to serve a *challan*. This discretion leads to arbitrary powers to impose punishments. Roy et al. 2019 capture the consequences of arbitrary power with inspectors in awarding punishment: 'This leads to arrogance and corruption. If investigators and prosecutors know they can easily inflict punishment, they lose the incentive to do thorough work'.

The three-step process does not apply to unlicensed²⁵ meat shops. The MCD has the power to directly issue a closure notice to these shops.

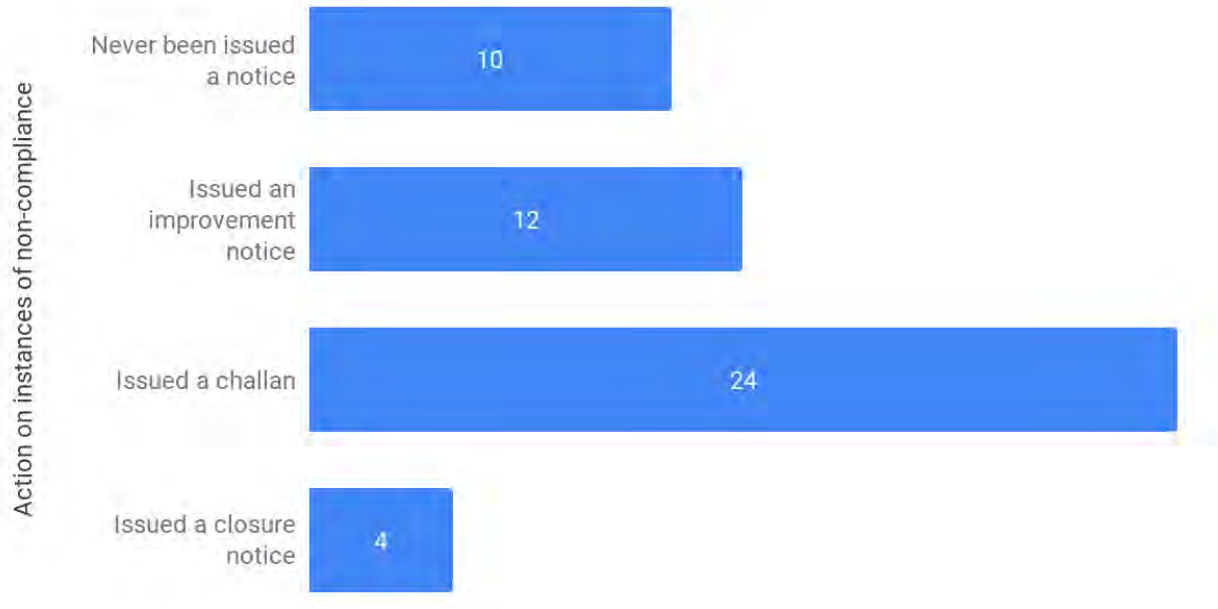


Figure 8: Notices Issued to Licensed Meat Shops (n = 43)²⁶

While inspectors from the SDMC state that a challan is given only on repeated non-compliance and after improvement notices, our survey results contradict the claim. Responses in Figure 8 show that among licensed shops, the number of challan recipients is greater than that of improvement notices. Meat shop owners say that the challan amount ranges from Rs. 100 to Rs. 3,000²⁷ When asked about whether it was clear as to what would happen in the case of non-compliance, nearly 90% of respondents were unaware of the specified penalties for the violations. We searched public fora to find penalty specifications but came up empty.

3.2.2 Efficacy of Inspections in Promoting Compliance

The objective of meat shop inspections is to ensure their compliance with regulations, which are aimed at mitigating negative externalities on the environment and public health and hygiene concerns. Interviews with meat shop owners indicate that inspections occur frequently. Moreover, MCD inspections seem to be occurring at least once a month. Now

25. Refers to the Veterinary Licence of MCD.

26. None of the respondents in our sample were given a show cause notice instead of a *challan*.

27. However, according to a meat shop owner in Jamia Nagar, the challan amount was increased from Rs. 500 to Rs. 2000 in 2016 without any prior information.

while this is prima facie evidence that inspections are at least being conducted, it does not provide any insight on whether the inspections meet their objective. We inspected 70 meat shops to assess levels of compliance on 19 regulations (from the inspection checklists of the MCD and FSSAI).¹ For complete checklists, see Appendix 6. These regulations were deliberately chosen for being easily verifiable through mere visual inspections. We found that only 2 of the 70 shops in the sample complied with more than 80% of the rules we checked for, indicating widespread non-compliance with rules despite frequent inspections conducted.

The findings from our inspection are presented in Table 2.

Table 2: Percentage of Shops not Complying with Certain Regulations

Shops not Complying (%)	Inspection Requirements
90-100	<ul style="list-style-type: none"> • Pedal dustbin • Display no smoking and no spitting signboards prominently
80-90	<ul style="list-style-type: none"> • Free from undesirable odour, smoke, dust and other contaminants • Cleanliness of the shop and surrounding areas leading up to the shop • Fly proofing of the shop • Hides, hooves, skins and heads will not be stored in the premises
60-80	<ul style="list-style-type: none"> • Strict prohibition of the slaughtering of an animal within the premise • Display-type refrigerator • Provision of geyser
40-60	<ul style="list-style-type: none"> • Self-closing door with small sliding window • Signboard with the type of meat sold listed
20-40	<ul style="list-style-type: none"> • Wash basin with liquid soap dispenser and nail brushes • Refrigerator/deep refrigerator/cold storage for raw meat • Rails with non-corrosive metal hooks to hang carcasses • Fan and exhaust fan to ensure cross ventilation • Dark glass to prevent visibility of goods inside the shop from outside • Sloped floor
0-20	<ul style="list-style-type: none"> • Hardwood block • Marble top

While the primary purpose was to observe the efficacy of the inspection process, substantive concerns on the responsiveness of regulation also emerged. For example, checklists specify regulations meat shop owners saw as incompatible with prevalent business practices and customer needs.

Conclusion

This paper examined the regulatory framework binding slaughterhouses and meat shops in Delhi. We scrutinised the prescriptive requirements to set up and operate slaughterhouses and a meat shop. We also conducted a perception survey with meat shop owners

for the licences required and inspections conducted to regulate meat shops.

First, regulations such as the ban on all private slaughterhouses are often drawn without considering their indirect consequences. This negligence leads to the prevalence of informality and a government monopoly over the slaughter of animals. It creates a concentration of supply and lack of market competition and alternatives. The MCD also lacks a separation of powers between its role as a regulator and a service provider, giving rise to non-compliance.

The absence of any legal slaughterhouses for chicken and pork leads to concerns over public health, product quality and soil and water contamination. Moreover, in the current framework, every single shop slaughtering birds or animals is illegal irrespective of hygiene followed or methods employed. Unauthorised slaughterhouses including facilities at Khanpur, Mehrauli and Said Ul Ajaib operate to meet the gap between the demand of the city and the supply of the Ghazipur slaughterhouse. Owing to the regulations which make their operation illegal, these slaughterhouses are forced to operate stealthily, lest they attract government supervision.

Second, of the three licences required to open and operate a meat shop, the Veterinary Licence and Food Licence are overlapping in their requirements and inspection parameters. Given the wide range of requirements, it is difficult to see how and why even well-meaning entrepreneurs could comply. We find that a vast number of meat shop owners are choosing to stay unlicensed. This indicates a possibility where the operational costs while complying with regulations are higher than the benefits. It also suggests that the regulations prescribed are not high on the list of consumer criteria for purchase. Under the circumstances, it is not hard to imagine a scenario of pervasive rent seeking and an inability to collateralise assets and grow using formal credit.

Third, despite a high frequency of inspections conducted, non-compliance of regulations among licensed establishments is prevalent. This indicates that inspections are often ineffective in promoting compliance and can also digress into channels of rent seeking. Lack of public availability of MCD inspection checklists, access to inspection reports for increased transparency and procedural fairness also need to be tackled. The distance between the existing inspection practices and the OECD best practices indicates a need to rethink and redraw both the licensing and inspections rules to close this gap. There is a need to review both the FSSAI and MCD regulations while keeping in mind their intended application and context applicability and also setting limits to the arbitrary powers of inspectors.

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Appendix 1: Methodology

The findings in the paper are based on semi-structured interviews with individuals who are directly (business owners and exporters of livestock) or indirectly (journalists, lawyers and members of advocacy groups) involved in the meat industry in Delhi alongside officers from relevant regulatory authorities. A list of the interviewees and their relevance to the industry are provided in Table 3.

Table 3: Details of Interviewees and Relevance to Study

Name	Designation/Industry	Relevance
Sayantan Bera	Journalist with Mint (previously with Down to Earth)	Covers agriculture and allied areas; problems faced by traders and butchers to operate in the current market system; and problems faced in animal rearing.
Anas Tanweer Siddiqui	Advocate, Supreme Court	Worked extensively to provide free legal aid to meat traders; explored the gap between regulations and their implementation in the meat industry; and worked on multiple legal disputes faced by small meat traders.
Fauzan Alavi	- Secretary, AIMLEA (All India Meat and Livestock Exporters Association) - General Manager, Allanasons Pvt. Ltd.	- AIMLEA has been on the forefront of advocacy for reform in the policy and is a conglomeration of Industry leaders. - Allanasons Pvt Ltd runs the only slaughterhouse in Delhi, located in Ghazipur, and is the largest exporter of buffalo meat in India.
Satish Kumar Gupta	Designated Officer, (South, South West, South East), Department of Food Safety, Govt. of NCT of Delhi	Supervises the inspection and registration of all FBOs in the South, South-East and South-West Zones of Delhi.
Dr. Pramod M. Kothekar	Designated Officer (East, Shahdara), Department of Food Safety, Govt. of NCT of Delhi	Supervises the inspection and registration of all FBOs in the East and Shahdara Zones of Delhi. Has conducted multiple inspections of the Ghazipur slaughterhouse.
Mohit Gaur	Public Relations Officer, Central FSSAI Office	Handles grievance redressal and queries from FBOs.
Dr. CB Singh	Inspector, Veterinary Department, South Zone, SDMC	In-charge of conducting inspections in meat shops in the South Zone of the SDMC.
Puran Singh	Inspector, Veterinary Department, Central Zone, SDMC	In-charge of conducting inspections in meat shops in the Central Zone of the SDMC.

All the shops were sampled from the major meat markets of South and Central Zones of SDMC. The interviewees were selected from carabeef (buffalo meat), chicken and mutton sellers. A description of the sample that was interviewed are provided in Table 4 and Table 5.

Table 4: Meat Markets sampled

Market	Number of Shops	Market	Number of Shops
Kishangarh	1	INA Meat Market	9
Mehrauli	9	Bhogal	5
Khirki Village	3	Jamia Nagar	7
Said Ul Ajaib	5	Chirag Delhi	3
Hauz Rani Village	8	CR Park	2

Table 5: Description of the Sample of Interviewees

Type of Meat	Number of Shops	Type of Meat	Number of Shops
Carabeef	11	Chicken	20
Chicken & Mutton	19	Mutton	2

Appendix 2: List of Licences Required to Set Up a Municipal Slaughterhouse

Table 6: List of Licences Required to Set Up a Municipal Slaughterhouse

Licence	Eligibility	Fees (Rs.)	Validity (years)	Time Taken (months)	No. of Documents
Central Pollution Control Board					
Consent to Establish	Any industrial unit emitting pollution by way of water, air and noise	100 (One Time Cost)	N/A	4	6
Consent of Operation	Any industrial unit emitting pollution by way of water, air and noise	For Air Act 250-2,000 (Capital Investment) For Water Act 200-6,400 (Water Consumption)	5	–	5
Municipal Corporation of Delhi					
Trade / Storage Licence	Those slaughterhouses vested in by the MCD	550 (Online) 800 (Offline)	5	–	10
NOC	Every slaughterhouse licensed by the FSSAI, which slaughters more than ten animals per day	–	–	–	–
Food Safety and Standards Authority of India					
Central Licence	>50 large animals, >150 small animals >1,000 poultry birds per day	7,500	5	60	19
State Licence	2-50 large animals, 10-150 small animals 50-1,000 poultry birds per day	3,000 (< 1 MT of prod.) 5,000 (> 1 MT of prod.)	5	60	17
Registration Certificate	Up to 2 large animals, 10 small animals and 50 poultry birds per day	100	5	7	3

Appendix 3: Documents Required for Licences for Slaughterhouses

CPCB Consent to Establish

- Affidavit in a prescribed format duly attested by notary public
- Application form
- Project report giving details of the unit, proposed investment, numbers of workers and employees, manufacturing process in detail with flow chart, raw materials, products and by-products (with quantity per day), details of water consumption and discharge, source of wastewater/emissions and proposed pollution control system/measures (details of design and constitute units), as applicable,
- Layout plan
- Location plan
- Proof of possession of plot/allotment letter/lease deed. In the case of rental premises, rent agreement and ownership proof of premises.

CPCB Consent of Operation

- Affidavit in a prescribed format duly attested by notary public
- Application form
- Project report with details of the unit, proposed capital investment, various activities, numbers of workers and employees, manufacturing process in detail with flow chart, raw materials, products and by-products (with quantity per day), details of water consumption and discharge, source of wastewater/emissions and proposed pollution control system/measures (details of design and constitute units), as applicable,
- Layout/Location plan
- Proof of possession of plot/allotment letter/lease deed/rent agreement and ownership proof

MCD General Trade Licence

- Documentary proof of legal occupancy of the unit
- Documentary proof of establishment of trade w.e.f. the date
- Site plan
- Key plan
- Documentary proof of existence of firefighting equipment at the unit (NOC)
- Documentary proof regarding non-existence of unauthorised construction at the unit on or before 30 June 1977 (NOC)
- Indemnity bond for Rs. 100
- Affidavit for Rs. 10
- NOCs from a land-owning agency
- Deed of constitution, if any

FSSAI Central Licence

- Form B duly completed and signed by the proprietor

- Blueprint/Layout plans of the processing unit (optional)
- List of directors/partners/proprietors/executive members of society and trust (mandatory for companies)
- Name and list of equipment and machinery along with number, installed capacity and horsepower used
- Photo ID and address proof issued by Government Authority
- List of food category among the 38 meat categories
- Authority letter with name and address of responsible person nominated by the manufacturer along with alternative responsible person indicating powers
- Analysis report (chemical and bacteriological) of water from a recognised/public health laboratory to confirm the portability
- Proof of possession of premises (optional)
- Partnership deed/self-declaration for proprietorship/memorandum and articles of association towards the constitution of the firm (optional)
- NOCs from a local body
- Food Safety Management System Plan (if any)
- Source of raw material for meat and meat-processing plants
- Supporting documentary proof of turnover
- Recall plan (wherever applicable)
- Nominations of persons by a company along with board resolution

FSSAI State Licence

- Declaration Form
- Export- Ministry of Commerce Certificate for 100% EOU and IE Code issued by the DGFT
- Form B duly completed and signed by the proprietor
- Blueprint/layout plans of the processing unit (optional)
- List of directors/partners/proprietors/executive members of society and trust (mandatory for companies)
- Name and list of equipment and machinery along with number, installed capacity and horsepower used
- Photo ID and address proof issued by Government Authority
- List of food category among the 38 meat categories
- Authority letter with name and address of responsible person nominated by the manufacturer along with alternative responsible person indicating powers
- Analysis report (chemical and bacteriological) of water from a recognised or public health laboratory to confirm the portability
- Proof of possession of premises (optional)
- Partnership deed/self-declaration for proprietorship/memorandum and articles of association towards the constitution of the firm (optional)
- NOCs from a local body
- Food Safety Management System Plan (if any)
- Source of raw material for meat and meat-processing plants
- Supporting documentary proof of turnover
- Recall plan (wherever applicable)
- Nominations of persons by a company along with board resolution
- Declaration Form

FSSAI Registration Certificate

- Photo of FBO

- Document for identity proof
 - Supporting documents (if any)
-

Appendix 4: Questionnaire for Meat Shop Owners

Section 1

1. What products do you sell?
2. Where do you source your meat from?

Section 2

1. What licences do you have?
2. When did you take these licences?
3. Was it easy or difficult to obtain a licence from the MCD? (Easy/Difficult)
4. Was it easy or difficult to obtain a licence from the FSSAI? (Easy/Difficult)
5. How much did it cost (formally and informally) to obtain a Veterinary Licence?
6. Did you hire any third-party agency for the licencing process? (Yes/No)
7. How often do you receive the MCD and FSSAI licences renewed?
8. If you are unlicensed, why?

Section 3

1. How many times per month do government officials visit your shop for inspections?
2. Are you aware of what government officials look for when they come for inspections? (Yes/No)
3. Which of the following government notices have you been issued? (Improvement Notice/Show Cause Notice (*Challan*)/Closure Notice/No, I have never been given a notice)
4. Is it clear as to what would happen if you were found to be non-compliant with the regulations? (Yes/No)
5. Are post-inspection reports available to you? If yes, can you challenge them? (Available and can challenge/Available but cannot challenge/Not available)
6. Are all inspections conducted formally with paperwork filed? (Yes/No)

Section 4

1. Are the regulations governing your business easy to understand? (Yes/No)
2. Is the administration open to questions on regulations asked by you? If yes, do they give precise answers? (Yes, and give precise answers/Yes, but don't give precise answers/No)
3. Do you have multiple people to contact within the administration? If yes, do they all give the same answers? (Yes, and they give same answers/Yes, but they don't give same answers/No)

Appendix 5: Documents Required for Licences for Meat Shops

MCD Veterinary Licence

- Application for licence
 - Identity proof
 - Structural Stability Certificate
 - Ownership proof
 - Registration of shop
 - Conversion charges
 - Rental agreement or rent receipts in the case of tenant
 - Any other document required by the MCD
 - Site and key plan
 - Affidavit as per prescribed format
 - Indemnity bond
 - Water bill
 - Electricity bill
 - Medical Certificate for sputum, X-ray chest for TB and stool for worms and bacteria, such as Escherichia coli, Salmonella, Shigella and Vibrio cholerae
 - NOCs from the Managing Committee and/or Imam of the masjid if the licence is applied for a shop situated in the compound/building of a masjid (mosque)
-

FSSAI Central Licence

- Form B duly completed and signed by the proprietor
 - Blueprint/layout plans of the processing unit (optional)
 - List of directors/partners/proprietors/executive members of society and trust (mandatory for companies)
 - Name and list of equipment and machinery along with number, installed capacity and horsepower
 - Photo ID and address proof issued by Government Authority
 - List of food category among the 38 meat categories
 - Authority letter with name and address of responsible person nominated by the manufacturer along with alternative responsible person indicating powers
 - Analysis report (chemical and bacteriological) of water from a recognised/public health laboratory
 - Proof of possession of premises (optional)
 - Partnership deed/self-declaration for proprietorship/memorandum and articles of association towards the constitution of the firm (optional)
 - NOCs from a local body
 - Food Safety Management System Plan (if any)
 - Source of raw material for meat and meat-processing plants
 - Supporting documentary proof of turnover
 - Recall plan (wherever applicable)
 - Nominations of persons by a company along with board resolution
 - Declaration Form
 - NOCs from the police/local administration in case licence for pork and buffalo
-

FSSAI State Licence

- Form B duly completed and signed by the proprietor
- Blueprint/layout plans of the processing unit (optional)
- List of directors/partners/proprietors/executive members of society and trust (mandatory for companies)
- Name and list of equipment and machinery along with number, installed capacity and horsepower used
- Photo ID and address proof issued by Government Authority
- List of food category among the 38 meat categories
- Authority letter with name and address of responsible person nominated by the manufacturer along with alternative responsible person indicating powers
- Analysis report (chemical and bacteriological) of water from a recognised/public health laboratory to confirm the portability
- Proof of possession of premises (optional)
- Partnership deed/self-declaration for proprietorship/memorandum and articles of association towards the constitution of the firm (optional)
- NOCs from a local body
- Food Safety Management System Plan (if any)
- Source of raw material for meat and meat-processing plants
- Supporting documentary proof of turnover
- Recall plan (wherever applicable)
- Nominations of persons by a company along with board resolution
- Declaration Form
- NOCs from the police/local administration in case licence for pork and buffalo

FSSAI Registration Certificate

- Photo of FBO
 - Document for identity proof
 - Supporting documents (if any)
-

Appendix 6: Inspection Requirements for Meat Shops

Table 7: Inspection Requirements for Meat Shops

MCD	FSSAI
Location and Size	
<ul style="list-style-type: none"> • MCD requires that the shop should be 50 metres away from a place of worship. • Should be at least 10 feet in height. 	<ul style="list-style-type: none"> • Establishment should be located in a sanitary place, free from filthy surroundings with an adequate space. • Should be away from environmental pollution and heavy industrial activity. If present, must take precautionary measures. • The manufacturing premise should not have direct access to residential areas. • It should preferably be a unit of meat market located away from vegetable, fish or other food markets and shall be free from undesirable odour, smoke, dust or other contaminants. • Individual shops should be: <ol style="list-style-type: none"> a) at least 50 metres from a place of worship b) at least 100 metres if directly opposite to the entry gate of a religious place c) If near to a religious place, must be fitted with black glass doors which must be kept closed at all times except in the case of entry or exit • Height of an Air-Conditioned (AC) shop should be at least 2.5 metres. • Height of a non-AC shop should be greater than 3 metres.
Ventilation, Water and Electricity	
<ul style="list-style-type: none"> • For ventilation, the MCD mandates fan, exhaust fan and cross-ventilation facility • Establishments should have electric supply and continuous water supply 	<ul style="list-style-type: none"> • Continuous supply of potable water shall be ensured, and in the case of intermittent supply, adequate storage shall be ensured. • Water storage tanks should be cleaned periodically with maintained records. • Non-potable water can be used, if not in contact with food and production, with pipes distinguished from potable water. • Natural and mechanical ventilation

MCD	FSSAI
	<ul style="list-style-type: none"> • Should have an air filter and at least one exhaust and electric fan
Internal Structures and Display	
<ul style="list-style-type: none"> • Tiles up to 1.8 metres • Self-closing door • Dark glass invisible from outside • Marble top • Signboard with type of meat sold and showing halal/jhatka • Washbasin • Geyser • Non-corrosive fittings rails for hanging carcasses, non-corrosive metal hooks, • Signboard with type of meat sold, showing halal/ jhatka • Self-closing door and small sliding window 	<ul style="list-style-type: none"> • Floors, ceilings and walls must be smooth and easy to clean, made with an impervious concrete material with no flaking paint or plaster. • Floors and walls should be washed with an effective disinfectant. • Doors should be made of smooth, non-absorbent surfaces and should be self-closing. • No carcasses should be displayed in any manner visible from outside. • Use of only non-corrosive hanging hooks with distance between hooks being 30 cm and rails being 60-70 cm. • Floors should have at least 5 cm of slope • Wash basin made of stainless steel/ porcelain • Provision of geyser
Pest Control, Fly and Rodent Proofing	
<ul style="list-style-type: none"> • The establishment should be fly proof. • The establishment should be 'Pest Control Proof'. 	<ul style="list-style-type: none"> • No spraying should be done during business; instead fly swats and flaps should be used to kill flies. • Windows, doors and all openings should be fitted with a wire mesh, net or screen to make the premise fly free. • Holes, drains and other places where pests can gain access should be kept sealed. • Food materials should be kept in pest-proof containers.
Waste Management	
<ul style="list-style-type: none"> • Pedal dustbin 	<ul style="list-style-type: none"> • Efficient drainage system with adequate provisions for disposal of refuse

MCD	FSSAI
<ul style="list-style-type: none"> • Floor sewer 	<ul style="list-style-type: none"> • Pedalled dust bin from where waste is periodically removed • Comply with the requirements of Factory/ Environment Control Board • Must have a provision of a sewer connection for drainage of wastewater • Waste of meat shops should be disposed packed in heavy polythene bags in dhalaos (burial pits)
Equipment	
<ul style="list-style-type: none"> • Non-corrosive fittings • Rails for hanging carcasses with non-corrosive metal hooks • Stainless steel pan of scale • Hardwood block • Stainless steel knives and tools 	<ul style="list-style-type: none"> • Equipment and machinery with design to ensure easy cleaning with arrangements for cleaning. Where possible, adopt a clean-in-place system • No equipment likely to cause metallic contamination should be employed • All equipment should be placed well away from the wall. • Weighing scales should be made of stainless steel or nickel coated. • Chopping block should be made of hardwood or food-grade material. • Equipment coming in contact with food should be corrosion free and easy to clean and must be covered to keep food clean. • Knives and tools should be made of stainless steel with sufficient cupboard and racks.
Personnel	
<ul style="list-style-type: none"> • Identity proof of all employees • Medical certificate • Reports: sputum, chest x-ray and stool 	<p>The workers in processing and preparation should use clean aprons, hand gloves and hand wears.</p> <ul style="list-style-type: none"> • Person suffering from infectious diseases should not be permitted to work. • Wounds and cuts should remain covered and out of direct contact with food. • Food handlers should keep finger nails trimmed and clean and wash their hands with soap before commencing work and after using the toilet. Scratching of body and touching of hair should be avoided. • Rest and refreshment rooms should be provided.

- Eating, chewing, smoking, spitting and nose blowing should be absolutely prohibited on the premises.
- Those believed to be suffering from or a carrier of any disease or illness should not be allowed to enter the food-handling area.
- Arrangements for getting all employees medically examined should be made once a year with records of the same maintained, including examination of sputum, x-ray of chest for TB and stool for protozoal and helminthic infestations
- All workers should be vaccinated in the case of an epidemic.

Documentation and Records

- | | |
|--|--|
| <ul style="list-style-type: none"> • Proof of Ownership | <ul style="list-style-type: none"> • Periodic audit according to the Standard of Procedure (SOP) to find out fault/gap in the GMP/GHP system |
| <ul style="list-style-type: none"> • Affidavit that none of other species of meat would be cooked of meat, sewer drainage | <ul style="list-style-type: none"> • Maintain records of food processing/preparation, production/cooking, storage, distribution, service, food quality, laboratory test results, cleaning and sanitation, pest control and product recall for 1.5 years or shelf life, whichever is more. |
| <ul style="list-style-type: none"> • Site and key plan | <ul style="list-style-type: none"> • Maintain records of specific areas to be cleaned, cleaning frequency, cleaning procedure, equipment and materials used. |
| <ul style="list-style-type: none"> • Photograph of the shop | <ul style="list-style-type: none"> • Maintain record of medical fitness of employees handling meat. |
| <ul style="list-style-type: none"> • Structure stability certificate | <ul style="list-style-type: none"> • Maintain records of pest control measures employed |

Storage

- | | |
|--|---|
| <ul style="list-style-type: none"> • Refrigerated/deep refrigerator/ cold storage for raw meat | <ul style="list-style-type: none"> • All articles that are stored or are intended for sale must be maintained in good repair and kept clean. |
| <ul style="list-style-type: none"> • Good sanitary and hygienic condition of the cold storage for raw meat | <ul style="list-style-type: none"> • Insecticides and disinfectants should be stored differently. |
| <ul style="list-style-type: none"> • Hides, skins, hooves, heads and unclean gut should not be allowed to be stored on the premise. | <ul style="list-style-type: none"> • Cold storage facility for raw material |
| | <ul style="list-style-type: none"> • Segregation for storage of raw, processed, rejected, recalled or returned material |
-

MCD

FSSAI

Food Testing Facilities

- Well-equipped laboratory for testing food materials;
 - Physical, microbiological and chemical analyses inside the premise for regular/ periodic testing or testing through accredited lab notified by the FSSAI.
-

Raw Materials

- Facility to wash raw material must be provided with hot and cold water
 - Maintain records for raw material source
 - Should be checked and cleaned physically
-

Sanitary Practices

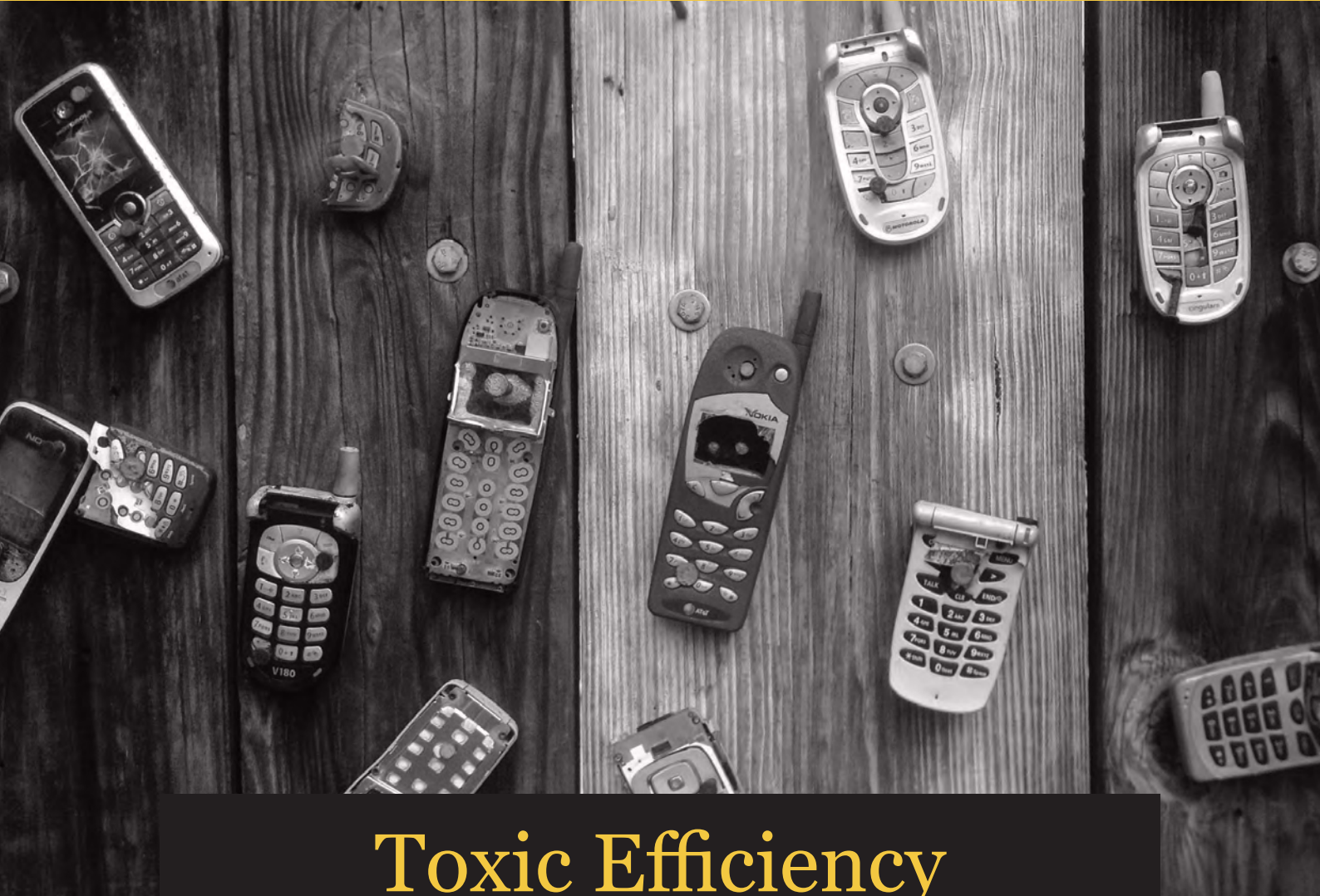
- Chopping block should be sanitized daily by covering the top with sea salt after cleaning with hot water.
 - Floor should be washed daily with disinfectant/ detergent/ sanitizer.
 - High standard of cleanliness with no material lying on the floor
 - Refrigeration regularly cleaned and well maintained
 - Slaughtering of animals/birds inside shop premises strictly prohibited
 - Carcasses not allowed to be covered with wet clothes
 - Chopping instruments should be cleaned with hot water (82 degrees C)
 - Preparation of food of any type should be prohibited.
-

Packaging

- Use of food-grade packaging which is non-toxic
 - Prepared meat should be packed in waxed paper and then placed in polyethylene bags or food-grade plastics
-

Management

- Detailed Standard Operating Procedure for processing, packing, dispatch and storage of food
 - Cleaning and sanitation programme to be drawn up and observed
-



Toxic Efficiency

REFINING EXTENDED PRODUCER RESPONSIBILITY FOR **E-WASTE**

Tarini Sudhakar, Akshat Singh, and Shubham Singh

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List of Abbreviations

CPCB	Central Pollution Control Board
CTE	Consent to Establish
CTO	Consent to Operate
DIC	District Industries Centre
DRS	Deposit Refund Scheme
EEE	Electronics and Electrical Equipment
EPR	Extended Producer Responsibility
ETP	Effluent Treatment Plant
GoI	Government of India
EWM	E-Waste Management
HWM	Hazardous Waste Management
MoEFCC	Ministry of Environment, Forest and Climate Change
IT	Information Technology
MTA	Metric Tonnes per Annum
NCR	National Capital Region
PET	Polyethylene Terephthalate
PRO	Producer Responsibility Organisation
SPCB	State Pollution Control Board
TSDF	Treatment, Storage and Disposal Facility
UP	Uttar Pradesh

Executive Summary

India generates two million metric tonnes of e-waste annually and ranks amongst the top five e-waste generating countries in the world (Shenoy 2018). The informal sector handles almost 95% of this amount through the process of dismantling or refurbishing (ASSOCHAM 2018b). Only 5% of the total e-waste is recycled, and 90% of this is recycled informally (ASSOCHAM 2018b; Kumar 2018). The authorised recycling sector in India is still nascent while informal recycling operations have been in place for a long time, employing over one million people (Baldé et al. 2017).

The profit inherent to recycling e-waste lies in extracting and selling metals from electronic products. While it is profitable to extract metals like gold and copper, the extraction of toxic substances, such as mercury and lead, is not as financially rewarding (Worstell 2016). Moreover, these hazardous substances need to be disposed of properly.

Unfortunately, informal recyclers circumvent the cost of treating these toxic components by dumping them in the open. This neglect contaminates the soil and pollutes water bodies.

The Government of India (GoI) has attempted to divert the flow of e-waste from the informal sector to the formal sector through the Extended Producer Responsibility (EPR) model introduced in the E-Waste Management (EWM) Rules, 2011. Producers—defined in the EWM Rules, 2011 as any people who manufacture or sell electrical and electronic equipment and their components—are obligated under EPR to channelise the e-waste generated by their products to authorised recyclers. They do so by collecting their products back from the consumers and selling the e-waste to the authorised recyclers.

However, this envisioned EPR model does not match the actual flow of e-waste in India. Interviews with authorised recyclers in India showed that many of the 178 authorised recycling firms registered with the Central Pollution Control Board (CPCB) in 2016 are currently performing under-capacity or running at a loss while the informal sector controls a significant portion of the e-waste market. Our survey revealed that this is because informal recyclers quote at least double the prices offered by the authorised recyclers for buying e-waste. Through this study, we attempt to understand the factors that hinder the authorised recycling sector from competing with the informal sector.

The first section of the paper examines the EPR model in India and the changes brought forth by the EWM Rules, 2016, to check the leakages to the informal sector. These adjustments include the introduction of mandatory collection targets and collection mechanisms other than take-back schemes and collection centres.

The second section compares the intended flow of e-waste with its actual movement and claims that despite revising the 2011 Rules, authorised recyclers are unable to thrive in comparison to informal recyclers. Our survey of six recycling firms in Faridabad, Rohtak, Manesar and Hapur showed that these authorised recyclers were operating at 39.9% of their total capacity to recycle e-waste.

The third section explores the possible reasons for this dissonance and the failure of the current EPR model. We argue that the current model fails to accommodate the higher

prices offered by the informal recycler to buy e-waste. For instance, an HP laptop sells for Rs. 4,642.9 in the informal sector compared to Rs. 1,133.3 in the authorised.

We hypothesise that the price difference between authorised and informal recyclers is the result of the latter's operational efficiency (Chaturvedi and Bharadwaj 2013). Using this as a base, we study the operating costs for both authorised and informal recyclers. These include the licences required to enter the authorised recycling market, compliance with government regulations, secure disposal of hazardous residue, and secondary markets for refurbished goods. These costs could keep authorised recyclers from quoting prices similar to those of informal recyclers who operate without the necessary licences. For instance, the average official time taken to obtain Consent to Establish and Consent to Operate from the Haryana and Uttar Pradesh State Pollution Control Boards (SPCBs) for recycling e-waste is 1.3 months. According to our survey, the actual time taken to acquire these licences ranges from less than 1 month to 24 months. Therefore, the actual time taken to obtain licences could serve as a transaction cost for authorised recyclers.

The last section lays out a proposal for a revitalised EPR model that tackles the price difference between authorised and informal recyclers in India. Our model suggests three modifications to the existing EPR system in the form of a mandatory Deposit Refund Scheme (DRS), a Common Deposit Account, and third-party audits.

First, the mandatory DRS incentivises the consumers to return their devices to the producers and not the *kabadiwala*.¹ DRSs have been shown to increase recycling rates. After the implementation of a mandatory DRS, the recycling rate for lead-acid batteries in the USA rose from 86% to 97% (Walls 2011). Second, the Common Deposit Account enhances the efficiency of our model. It collects all the Deposit Refund fees into a common account, which allows the consumers to return their devices to any producer. Finally, the third-party audits check e-waste from moving to the informal sector.

1. A *kabadiwala* is a small-scale scrap collector who regularly purchases unwanted items such as newspapers, mobile phones and old television sets, from households.

1 Introduction

The production of electronic appliances has been steadily rising over the years, and there are no signs of their demand waning anytime soon (Chidambaram, Samuel, and Needhidasan 2014). The electronics and hardware industry of India is expected to grow at a compound annual growth rate of 12% to 13% and reach \$112 to \$133 hundred crores by 2018 (ASSOCHAM and Ernst & Young 2016). New producers from Brazil, India and China and the widespread use of semiconductors have been instrumental in bringing down the cost of manufacturing electronic devices and hence, their prices (Ahmed 2016).

The fall in prices alongside a growing middle class with an increasing disposable income contributes to a larger market for Electronics and Electrical Equipment (EEE) (ASSOCHAM and NEC 2018). Consumers are driven to replace functional products as soon as newer models enter the market. Planned obsolescence may have also increased the units of EEE sold to replace products from 3.5% in 2004 to 8.3% in 2012 (Ala-Kurikka 2015).

This rise in the manufacture of EEE has been simultaneously followed by an increase in the amount of e-waste or end-of-life EEE generated. The global volume of e-waste is expected to reach 52.2 million metric tonnes per annum (MTA) by 2021 at an annual growth rate of 3.15% (ASSOCHAM 2018b).

E-Waste is a pertinent ecological issue. EEE include certain components that are made of valuable metals such as gold and copper. It is profitable to process these parts and sell the metals as raw material. However, electronic products also contain a mix of toxic elements like mercury and lead. These hazardous constituents are often not recycled because it is deemed more economical to recycle the valuable metals and dispose of the rest (Worstell 2016). If disposed of improperly, these toxic components can cause significant environmental damage by contaminating the topsoil and leaching into the groundwater.

Government interventions are necessary to encourage and facilitate the safe disposal of hazardous residue. Accordingly, the Government of India (GoI) has issued the E-Waste Management (EWM) Rules, 2016. As per these rules, e-waste management in India is under the ambit of the Ministry of Environment, Forest and Climate Change (MoEFCC). The MoEFCC has mandated producers and recyclers to obtain ‘authorisation’ under the EWM Rules, 2016, and Hazardous and Other Wastes (Management and Transboundary Movement) (HWM) Rules, 2016.² Producers and recyclers are allowed to continue operations in India only if they meet necessary standards for the safe and proper handling of e-waste.

Despite these regulations, more than 95% of the generated e-waste ends up with the informal sector, which operates without the necessary authorisations (ASSOCHAM 2018b). Much of the informal recycling takes place through open burning, grinding and washing, and acid baths (Centre for Science and Environment 2015). These processes are highly

2. Only applicable to those who process e-waste that comes under Part C, Schedule III of the HWM Rules, 2016.

dangerous and release toxic elements into the environment. For instance, informal recyclers dump high amounts of ash left over from burning e-waste in the Ramganga River in Moradabad, Uttar Pradesh (UP) (*ibid.*).

Informal recyclers further amplify the problem by dumping the non-recycled hazardous components openly on the riverside or the ground. Studies show that the soil in areas such as Loni, Mandoli and Krishna Vihar in New Delhi is deeply contaminated with heavy metals (Toxics Link 2014; Saha 2018). Moreover, informal workers also do not have the necessary tools for the safe handling and recycling of e-waste (Kumar 2018). This neglect leads to severe (individual and public) health repercussions (Bhowmick 2011).

In order to divert the supply of e-waste to the authorised sector, the GoI introduced the concept of EPR to e-waste in India in 2011. The concept was adopted after it successfully solved similar problems in other countries. However, its implementation in India has not delivered the expected results. The informal sector still processes most of the e-waste in India while authorised recyclers struggle to operate competitively.

In this paper, we look at the current design of EPR in India, examine its shortcomings and propose improvements to cover its limitations. Our study is based on interviews with authorised and informal recyclers operating in the National Capital Region (NCR) of India.

2 Extended Producer Responsibility for E-Waste in India

On 8 April 2010, a man was exposed to Cobalt 60 while attempting to dismantle radioactive pipes in Mayapuri—one of the informal e-recycling hubs in Delhi. He died 19 days later due to the adverse effects of the radiation. There were several other victims of the same (Bhaduri 2017). The outcry that followed pushed the government into passing the EWM Rules in 2011.

While many environmental regulations were put in place in India for managing hazardous waste, until 2011, e-waste was only dealt with briefly under two laws—the Hazardous Waste Management (HWM) Rules, 2008, and the Batteries (Management and Handling) Rules, 2001. The government had not enacted any rules that were explicitly dedicated to e-waste. This patchwork of legislation was hampered without an effective enforcement of the existing regulations (Kumar and Singh 2013). For instance, the HWM Rules, 2008, required any person recycling or reprocessing hazardous waste, including e-waste, to acquire authorisation from the CPCB. However, only 23 recyclers had been authorised under the HWM Rules until 2010 (Bhaskar and Turaga 2017).

The informal sector predominantly handled the supply of e-waste (Thakur 2017). The consumer would sell EEE products to their local *kabadiwala*. The *kabadiwala* then resold the collected waste to the local scrap dealers. The scrap dealers sorted the waste and sold it to the informal dismantlers, refurbishers and recyclers.

The EWM Rules, 2011, defined electronic waste or e-waste as ‘electrical and electronic

equipment that has been discarded in whole or in part by individual and bulk consumers and during manufacturing, refurbishment and repairing processes' and introduced the concept of EPR.

2.1 Concept of Extended Producer Responsibility

EPR holds the producer physically or financially responsible for the total environmental damage caused by his/her product at the end of its lifespan (Walls 2004). Thomas Lindhqvist, a Swedish academic, introduced the concept of EPR to the Government of the Kingdom of Sweden in 1990. It was then implemented for the first time in 1991 in Germany to manage the waste generated by the packaging industry (Toxics Link 2007).

When EPR is implemented in a sector, the producer's responsibility is extended from the product's manufacturing and consumption to its treatment at the end of its life (*ibid.*). For example, consider the implementation of EPR in the bottled water sector. In a world without EPR, a company selling bottled water in polyethylene terephthalate (PET) bottles would only be responsible for the quality of the bottle and the water within. Despite the pollution risk posed by the PET bottles, neither the company nor the consumer would be liable for its safe disposal. With EPR, the company would be responsible not only for the water and its packaging but also for ensuring the secure disposal of the PET bottles after usage.

In traditional waste management models, consumers bear the burden of ensuring proper waste disposal. The local administration taxes consumers, and the revenue generated is used to run a waste management system. Since producers have no incentive to reduce the negative environmental externalities caused by their products, there is no change in the volume of e-waste generated, toxicity or the safe disposal of EEE components. EPR changes the incentive structure and holds the producers responsible for the inflicted environmental harm (Bhaskar and Turaga 2015).

2.2 Current Design of Extended Producer Responsibility for E-Waste in India

With the objective to ensure the safe disposal of e-waste, the EWM Rules, 2011, brought EPR to waste management in India, making producers³ of EEE responsible for collecting their e-waste and treating it appropriately.

However, the rules failed to achieve the anticipated results. While registered recycling capacities increased, authorised recyclers still received only 5% to 15% of the total supply of e-waste (Bhaskar and Turaga 2017). Instead of encouraging the development of better collection and recycling infrastructure, the EWM Rules, 2011, ended up compelling the producers to implement a few inexpensive aspects of EPR (*ibid.*).

3. Defined in the EWM Rules, 2011, as 'any person who manufactures or sells electrical and electronic equipment and their components'.

The EWM Rules, 2016, were implemented to fix these shortcomings.⁴ Three major changes that came under the new rules were modifications to the EPR Authorisation process, addition of various collection mechanisms for the producers to comply with EPR, and institution of mandatory collection targets. If the producers defaulted on any of these counts, they could be charged financial penalties approved by the CPCB under the Environmental Protection Act, 1986.⁵

2.2.1 Extended Producer Responsibility Authorisation

Granted by the CPCB under the EWM Rules, 2016, EPR Authorisation ensures that producers can be held accountable for channelling their e-waste to authorised recyclers. The authorisation requires a detailed EPR Plan outlining the mechanism chosen by producers for EPR implementation and agreements with authorised dismantlers and recyclers. It also helps the government maintain a record of all the firms processing e-waste in the country. As per Rule 13 (1) (iv) of the EWM Rules, 2016, if the producers' applications for EPR Authorisation fail, their operations will be stopped until they are duly authorised to exercise EPR.

2.2.2 Collection Mechanisms

EWM Rules, 2011, had failed to mention any specific method apart from setting up collection centres and instituting take-back arrangements for implementing EPR. This ambiguity contributed to the difficulty of its execution (Press Information Bureau 2016). For example, a study undertaken in 2015 showed that almost 35% of the major EEE (both international and domestic) producers in India had either taken zero or limited action to implement EPR. Another 29% had attempted to set up mechanisms but failed to achieve positive results. Most of these producers neither established take-back systems nor conveyed information about e-waste to their consumers, as directed in the EWM Rules, 2011 (Toxics Link 2015).

Therefore, to make it easier for the producers to implement their EPR, EWM Rules, 2016, offered new instruments for channelising the e-waste towards authorised recycling and disposal. These included the DRS and Producer Responsibility Organisations (PROs).

Collection Centres According to the EWM Rules, 2011, collection centres—points or centres set up to gather e-waste—had to acquire authorisation from the State Pollution Control Boards (SPCBs) to operate. The EWM Rules, 2016, removed the need for this authorisation to allow flexibility for the producers while executing their EPR (PIB 2016). They could now be set up by an individual producer or an association, PROs, dismantlers or recyclers in order to channel waste to the authorised recyclers (Press Information Bureau 2016).

4. After issuing the EWM Rules, 2011, the GoI released the EWM Rules, 2016. This set of Rules was amended in March 2018 and came to be known as the EWM Amendment Rules, 2018.

5. See Rule 21 (2) of the EWM Amendment Rules, 2018.

Deposit Refund Scheme Under the EWM Rules, 2016, producers who implement a DRS charge an additional amount as a deposit at the time of sale of EEE. Consumers receive this amount (along with the appropriate interest) only when they deposit the EEE at the end of its life with producers. In this manner, the deposit incentivises consumers to return used products to producers.

Producer Responsibility Organisation PROs serve as a means for producers to outsource their EPR implementation to meet collection targets. PROs aid producers by setting up and running collection centres and spreading awareness about e-waste to consumers. They can also enact mechanisms such as a take-back or a DRS (Central Pollution Control Board 2018).

The EWM Rules, 2016, recognise the PROs as an important stakeholder in the e-waste market in India. Given their steadily growing presence, PROs are now required to register with the CPCB as per Rule 13 (1) (xvii) of the EWM Amendment Rules, 2018. Upon failure to do so, the PROs would face penalisation under the Environmental Protection Act, 1986.⁶

2.2.3 Mandatory Collection Targets

The EWM Rules, 2016, also sought to improve the success rate of EPR implementation by introducing mandatory minimum collection targets for each producer (Press Information Bureau 2016). The EPR collection target was set as 30% of the quantity of waste generated by the producers for 2016 to 2018.⁷ This target would increase in subsequent years, and by 2022, the producers would have to collect 70% of the waste generated.

However, in March 2018, the MoEFCC amended the EWM Rules, 2016, and reduced the collection targets. Producers were required to collect only 10% of the e-waste generated in 2017 to 2018 with 10% annual increments. After 2022, they would need to meet the EWM Rules target of 70% waste generated.⁸ This mandated rate is significantly higher than the collection rates in many developed countries, which plateau between 40% and 50%. Nonetheless, it should be noted that consumers in these countries bear the cost of recycling unlike in India, where recyclers pay them for e-waste (Veit 2014).

The amendment also introduced separate EPR targets for newer producers.⁹ As per Rule 13 (1) (xii) in the EWM Amendment Rules, 2018, these new producers were defined as those who had been operating in the market for a shorter period than their product's average lifespan. Their EPR collection targets were based on the previous year's sales figures and were lower than the targets for the older producers.¹⁰

6. See Guideline 11 in Guidelines for Producer Responsibility Organization (PRO), CPCB.

7. See Schedule III of the EWM Rules, 2016

8. See Schedule III of the EWM Amendment Rules, 2018.

9. See Schedule III A of the EWM Amendment Rules, 2018.

10. *Ibid.*

3 Movement of E-Waste after Extended Producer Responsibility

The EWM Rules, 2016, made important changes to the EPR model in order to divert the supply of e-waste to the authorised recyclers. However, the actual movement of e-waste continues to differ significantly from the intended direction, as the informal sector still handles more than 95% of the domestically generated e-waste (ASSOCHAM 2018b) while authorised recyclers are unable to engage a competitive portion of the market.

3.1 Intended Flow of E-Waste

The mechanism envisioned in the EWM Rules, 2016 (see Figure 1) to reroute the flow of e-waste to the authorised recyclers involved four key steps.

1. After using the EEE, the consumers would deposit the product (e-waste) with the authorised producers.
2. Mandated targets would compel producers to collect the e-waste by employing one (or a combination) of the several collection mechanisms.
3. The producers would channel the collected e-waste to authorised recyclers.
4. The recyclers would then choose to either recycle or refurbish the e-waste and send the hazardous residue to Treatment, Storage and Disposal Facilities (TSDFs).

The government would place two checks to ensure that the objective of EPR is fulfilled. First, it would monitor the producers to ensure that they meet the annual collection targets.¹¹ Second, it would audit the authorised recyclers to ensure that they dispose of hazardous material safely.¹²

11. As per Rule 5 (4) of the EWM Rules, 2016, producers are required to submit an annual report detailing the e-waste handled.

12. As per Rule 11 (8) of the EWM Rules, 2016, recyclers are required to submit an annual report detailing the e-waste collected, dismantled and recycled.

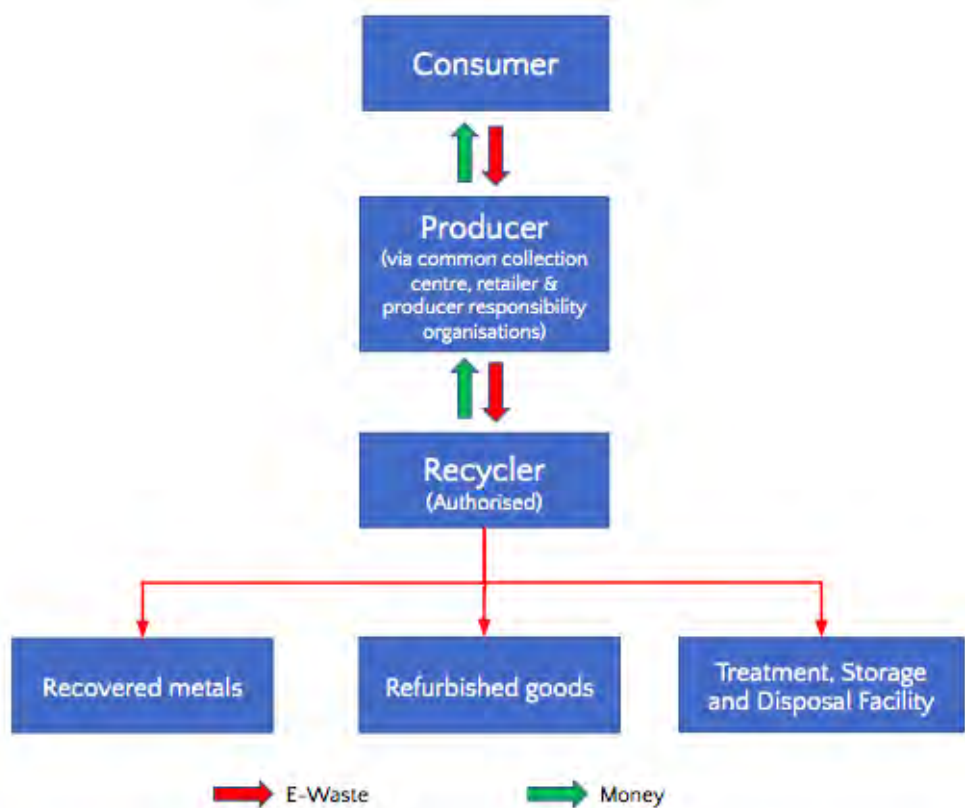


Figure 1: The EPR Model in India as per the EWM Rules, 2016

3.2 Actual Flow of E-Waste

In reality, the flow of e-waste in India is much more complicated. Based on our interaction with authorised and informal recyclers, we realised that the EPR model visualised in the EWM Rules, 2016, was not functioning as intended.

For instance, the NCR generates 85,000 metric tonnes of e-waste annually and has 28 recycling firms with a capacity of 1,07,976 MTA (ASSOCHAM 2018a; Central Pollution Control Board 2016). However, our survey of six recycling firms in Faridabad, Rohtak, Manesar and Hapur showed that these authorised recyclers were operating at 39.9% of their total capacity (see Appendix 1). Their capacity to process e-waste was far greater than the amount they were recycling.

Instead, most of the e-waste is being diverted to the informal recyclers in the following manner.

1. After using the EEE, the individual consumers sell the product (e-waste) to the *kabadiwala* instead of the authorised collection entities. The *kabadiwala* resells the waste to the informal recycler who processes it unsafely.
2. The authorised producers meet their mandated targets by collecting their e-waste from bulk consumers like information technology (IT) companies. It is more eco-

nomical to meet a 10% collection target by focusing on the bulk consumers than implementing any of the collection mechanisms specified in the EWM Rules, 2016.

3. Producers sell this e-waste to authorised recyclers. However, authorised recyclers do not process the e-waste.
4. Instead, the authorised recycler sells the e-waste to the informal recyclers. These informal recyclers, after processing the waste, continue to dump the hazardous residue improperly.

The checks placed by the government have proven to be ineffective. In our interviews with the formal recyclers, we noted that some authorised producers and recyclers sold the e-waste that they had collected to the informal recyclers.

Our visit to Seelampur corroborated this circumvention of regulations. We posed as potential consumers looking to sell e-waste and asked if we could have some legitimate proof of our transaction. In response, the informal recycler offered us a certificate that verified his status as an authorised recycler and a Goods and Services Tax transaction ID validating our sale. He bought these documents from other authorised recyclers for a certain fee. If we chose to take the documents verifying our transaction, he would accommodate this fee in the e-waste prices quoted to us. In this manner, the formal sector diverted e-waste towards the informal recyclers.

We argue that in reality, e-waste in India moves along the channels shown in Figure 2.

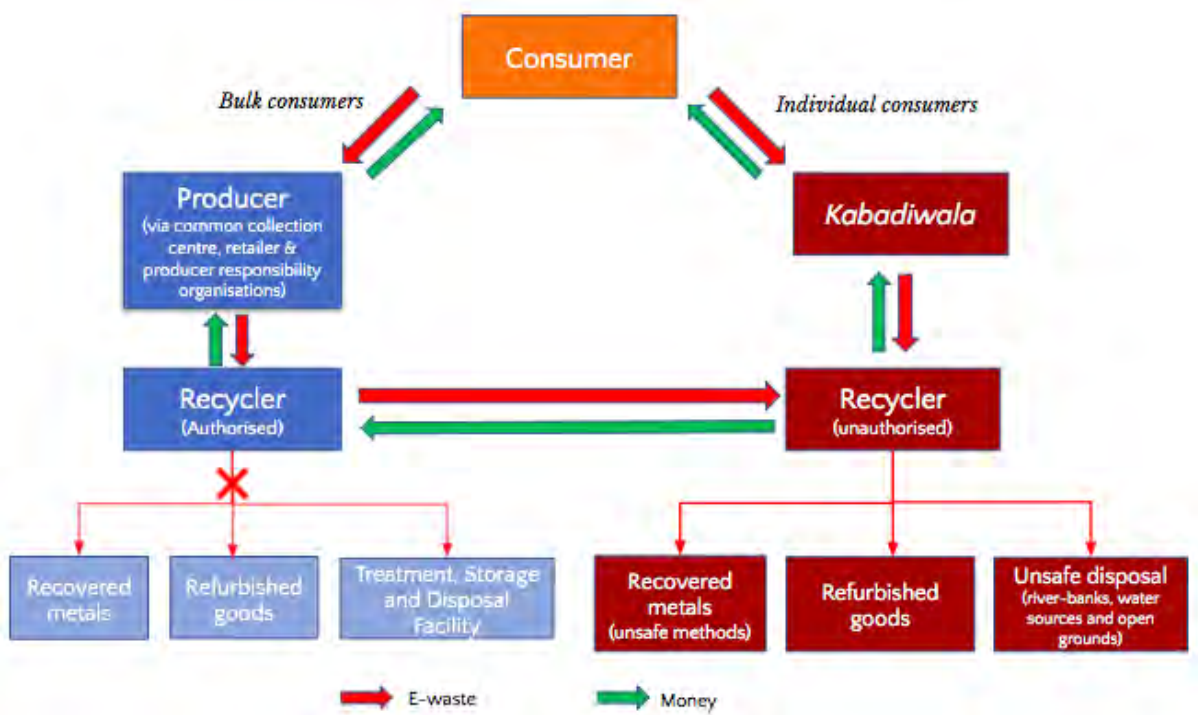


Figure 2: Actual Flow of E-Waste in India

4 Price Difference Between Authorised and Informal Recyclers

To understand why consumers were routing e-waste to informal recyclers, we visited some of the e-waste hubs of Delhi—namely, Seelampur and Shastri Park.

In 2013, the Chintan Environmental Research and Action Group evaluated the prices offered by both informal and authorised recyclers in Shastri Park, Seelampur and Turkman Gate (Chaturvedi and Bharadwaj 2013). Using this study as a base, we averaged the prices offered for end-of-life EEE by seven informal shops in Shastri Park and Seelampur and five authorised recycling firms spread across the NCR (Faridabad, Hapur and Panipat).

Informal recyclers quoted at least double the prices offered by authorised recyclers (see Appendix 2). ACs and computer monitors were exceptions; the prices given by both were similar.¹³ However, this price difference (see Figure 3) allowed the informal recyclers to attract more e-waste than the authorised recyclers.

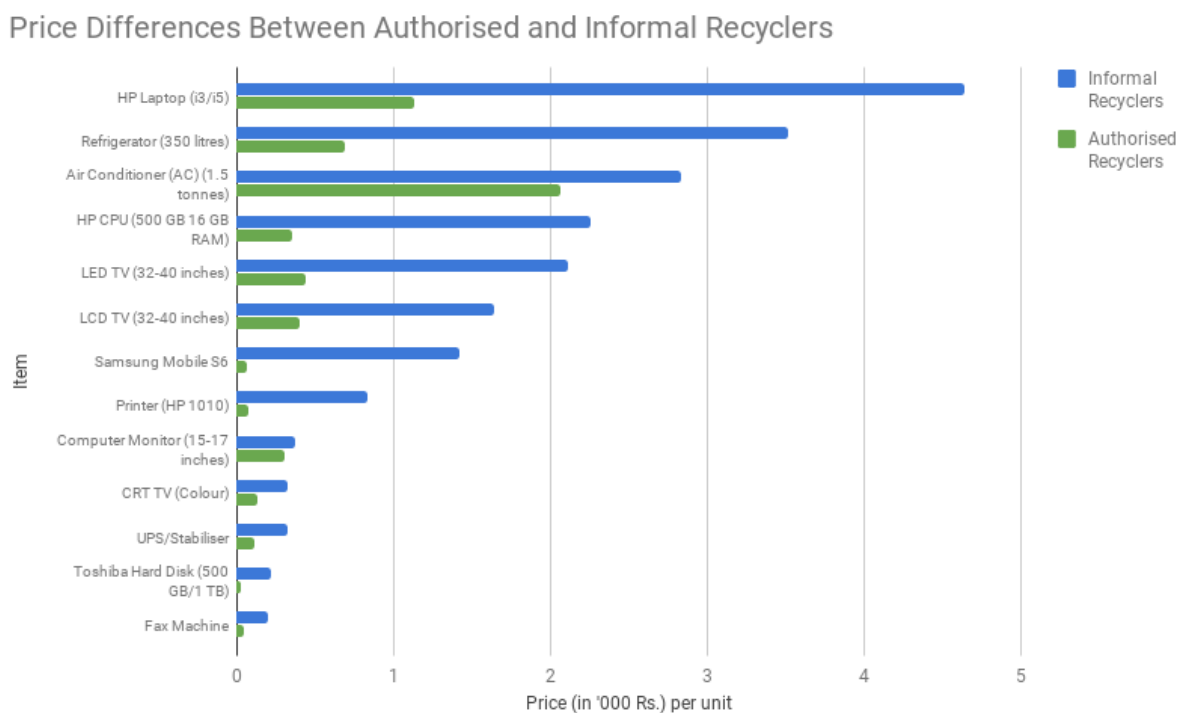


Figure 3: Visualisation of Price Difference Between Authorised and Informal Recyclers

13. The reason for the similarity in prices for these products has not been examined in this paper.

4.1 Understanding Operational Efficiency

Informal recyclers function with far lower operating costs than authorised recyclers in India do. These costs allow them to quote higher prices and capture a significant portion of the market (*ibid.*). In this section, we offer explanations accounting for the price difference between authorised and informal recyclers.

4.1.1 Cost of Licences

Under the EWM Rules, 2016, a recycler needs to acquire certain licences to begin operations. We hypothesised that the cost of acquiring these licences was significant and would ultimately reflect in the price that the authorised recyclers could afford to pay for the e-waste. Informal recyclers do not bear this cost, as they operate without the necessary licences.

An authorised recycler needs to acquire the following registrations/licences to start processing e-waste:

1. *Consent to Establish* (CTE) from the SPCB;
2. *Consent to Operate* (CTO) from the SPCB;
3. *Certificate of Registration* from the District Industries Centre (DIC);
4. *Proof of Installed Capacity* of plant and machinery from the DIC;
5. *Environmental Clearance* from the SPCB;
6. *E-Waste Licence* under the EWM Rules, 2016 from the SPCB;
7. *Hazardous Waste Licence* under the HWM Rules, 2016 from the SPCB.¹⁴

As the Environmental Clearance (No. 5) was required for plants with a capacity greater than 25,000 MTA and only 2 of the 178 registered plants had this capacity, its cost has been omitted from our calculations (Central Pollution Control Board 2016). The cost of registering with the DIC (No. 3 and No. 4) is also not included due to logistical restraints.

The official costs for the E-Waste Licence and Hazardous Waste Licence comprise the cost of acquiring standard industry licences—CTE and CTO (No. 1 and No. 2). The official costs for these licences vary according to the initial investment of the firm. Through our interviews, we gauged this initial investment for a recycling firm to be between Rs. 1 and 5 crores. We then computed the official costs levied by each SPCB for the industry licences using the information provided on the respective SPCB websites.

As our study focuses on the NCR, we specifically looked at the costs imposed by UP and Haryana. We tried to capture the actual time taken to acquire the licences as it may have been a source of transaction costs. However, we were only able to survey six firms

14. For firms which handle waste that comes under Part C, Schedule III of the HWM Rules, 2016.

in the NCR. Therefore, we calculated the official time taken to grant licences in UP and Haryana. Table 1 records these costs.

Table 1: Official Cost of Acquiring CTE and CTO

State	Licence	Cost in Rs. <i>(For Investment Between 1 and 10 crores)</i>	Official Time Taken <i>(in days)</i>
Uttar Pradesh	CTE + CTO	1,17,000	40-60
Haryana	CTE + CTO	3,84,000	20-40

The official costs for these licences range between Rs. 1 and 4 lakhs. The average official time taken to obtain them is 1.3 months. According to our survey, the actual time taken to acquire these licences ranged from less than 1 month to 24 months.

4.1.2 Cost of Regulatory Compliance

Authorised recyclers need to comply with other regulations that the informal sector does not need to. Auditing and physical inspections are part of the scrutinisation process. These provisions place a check on the e-waste handled by producers and recyclers and impose an additional cost on them. Informal recyclers do not incur these costs nor do they pay the appropriate taxes levied on authorised recyclers.

There are also costs associated with adhering to labour regulations. An authorised recycler needs to implement specific occupational and safety measures before starting operations (see Appendix 3). However, informal recyclers often work with the bare minimum gear and do not comply with these rules. They also do not abide by child labour laws as over 4.5 lakhs children are allegedly employed by the informal sector (ASSOCHAM 2014).

4.1.3 Cost of Disposing Hazardous Residue

Authorised recyclers incur additional costs when they attempt to meet the standards set by government regulations. However, even if these regulatory costs were lifted, authorised recyclers would still have to pay for safely disposing of the hazardous residue.

The regulations in place to oversee the secure disposal of toxic components require authorised recyclers to send their processual residue to authorised TSDFs.¹⁵ Informal recyclers circumvent this obligation and avoid the cost of treating their toxic waste in TSDFs by dumping it in the open.

4.1.4 Access to Secondary Markets for Refurbished Goods

An often-overlooked element of the e-waste market is the refurbishment and reuse of waste EEE. More than recycling, the informal recycler focuses on the reuse, resale and

¹⁵. See Rule 11 (7) of the EWM Rules, 2016.

refurbishment of goods (Gidwani and Corwin 2017). Much of e-waste is repaired and sold in secondary markets. These markets usually sell refurbished goods without obtaining prior approval from the producer companies. For example, in New Delhi, Nehru Place and Gaffar Market are prime secondary markets for EEE.

Reselling refurbished goods is more profitable than merely selling recycled metal. Informal recyclers are at an advantage and can quote higher prices for the e-waste, as the authorised recyclers are often forbidden from reselling. The producer companies that employ authorised recyclers to handle their e-waste fear the creation of parallel competition for their new products (Alev 2015). Our interviews with authorised recyclers revealed that some of their clients (producer companies) demanded that the recyclers photographed the shredded e-waste. This evidence ensured that the recyclers could not resell the waste EEE in the secondary markets.

Numerous factors, such as the ones mentioned above, contribute to the price gap between authorised and informal recyclers. This price gap incentivises consumers to sell e-waste to the informal sector and thus, negates the envisioned EPR model.

5 Revitalised Extended Producer Responsibility Model

In order to seal off the e-waste leakages to the informal market and make the authorised sector more competitive, the EPR model needs to tackle the difference in prices that authorised and informal recyclers offer to buy e-waste. We suggest three modifications to the current system: a mandatory DRS, a Common Deposit Account, and third-party audits. The mandatory DRS secures the supply of e-waste to the authorised recyclers, and audits are required to prevent e-waste from leaking to the informal sector. The Common Deposit Account is an optional addition to improve the efficiency of the new model (see Figure 4).

5.1 Mandatory Deposit Refund Scheme

Under the EWM Rules, 2016, producers can choose to execute their EPR through any scheme of their liking. Therefore, the decision to impose a DRS lies with them. If a producer chooses to impose a DRS, it would increase the price of his product and reduce sales, making him less competitive in the market. The case would be similar if any other collection mechanism were employed which directly imposes the cost on the producer. Therefore, it would be in the producer's best interest to refrain from implementing it.

When the Deposit Refund fee is made mandatory, all authorised producers would be required to impose it. This would raise the prices quoted by all producers and decrease overall sales. However, no one producer would be singled out and be at a disadvantage.

Unfortunately, the problem would persist if producers were free to determine the quantum of the fee. It would be in their best interest to have the fee closest to zero, rendering the mandatory fees moot. Therefore, the minimum fee for every type of product should also

be mandated. If this fee is higher than the price offered by the informal sector, consumers will choose to sell their e-waste to the authorised producer as opposed to the *kabadiwala*. The government should also attempt to lower the operational costs faced by authorised recyclers before setting the fees. It can ease access to secondary markets and reduce any unnecessary regulatory costs related to licences. These changes would make the prices of authorised recyclers more competitive in comparison with those of informal recyclers.

The government-mandated fee would also not entirely keep e-waste in the authorised sector. Producers would still have an incentive to sell the waste to the informal sector as opposed to authorised recyclers. Therefore, third-party audits should cross-validate the Deposit Refund fees withdrawn from the producers' accounts to give the consumers against the e-waste sold to the authorised recyclers.

DRSs have been shown to improve recycling rates. For example, 44 states in the USA have implemented some variation of a mandatory DRS for lead-acid batteries. Retailers charge a \$10 deposit on batteries, which is refunded to consumers if they return used batteries within 30 to 45 days of purchase. After the introduction of the DRS, the recycling rate for lead-acid batteries rose from 86% to 97% (Walls 2011).

5.2 Common Deposit Account

If a DRS were implemented in either the current or the proposed model, consumers would be unable to avail of the Deposit Refund fee from a new producer who is different from the original producer. This is because the Deposit Refund fee, initially deposited with the original producer, would be inaccessible to the new producer.

A Common Deposit Account would solve this problem. If all the collected Deposit Refund fees were placed in an account accessible to all the producers, consumers would be able to receive their refund from any producer after depositing the end-of-life EEE.

While there aren't any large-scale applications of a Common Deposit Account for producers, countries have utilised common money funds to subsidise recycling. For instance, the Environmental Protection Administration of the Government of Taiwan manages a Recycling Fund Management Committee. Manufacturers and importers of EEE have to transfer funds into the Recycling Fund. These funds are used to provide subsidies for those participating in the collection and recycling of e-waste (Chung, Murakami-Suzuki, and Kojima 2009).

Therefore, in our model, the government would need to set up the Common Deposit Account and supervise the collection of all Deposit Refund fees received by producers.

5.3 Third-Party Audits

In the current system, the responsibility of safely disposing of the hazardous material lies with authorised recyclers. However, the mechanism to oversee the execution of this responsibility is ineffective. As a result, some authorised recyclers sell the e-waste that they acquire to the informal sector for higher profit margins.

A check should be established on the activities of the authorised recyclers to ensure that they properly treat the toxic content in the e-waste. The quantity of hazardous material in the e-waste transferred from the producer should be cross-validated against the quantity that the recyclers disposed of securely. While the government can audit the recycling firms, experience has proved it to be ineffective. As mentioned earlier, authorised producers and recyclers still sell their e-waste to the informal recyclers. However, according to the EWM Rules, 2016, they can only channelise it to authorised recyclers.¹⁶

An alternative would be to engage third-party auditors to perform the inspection processes. In case the government does not have adequate resources to conduct quality inspections, third-party auditors can administer better checks while conserving state resources (McAllister 2012). Nevertheless, private audit companies often have an incentive to downplay issues with regulatory compliance since the firms that they need to inspect usually pay them (Short and Toffel 2015). Although this issue requires further research, conflict of interest for auditors can be tackled by routing their payment through a government-controlled fund instead of allowing their clients to pay directly for inspections (Dufflo et al. 2013).

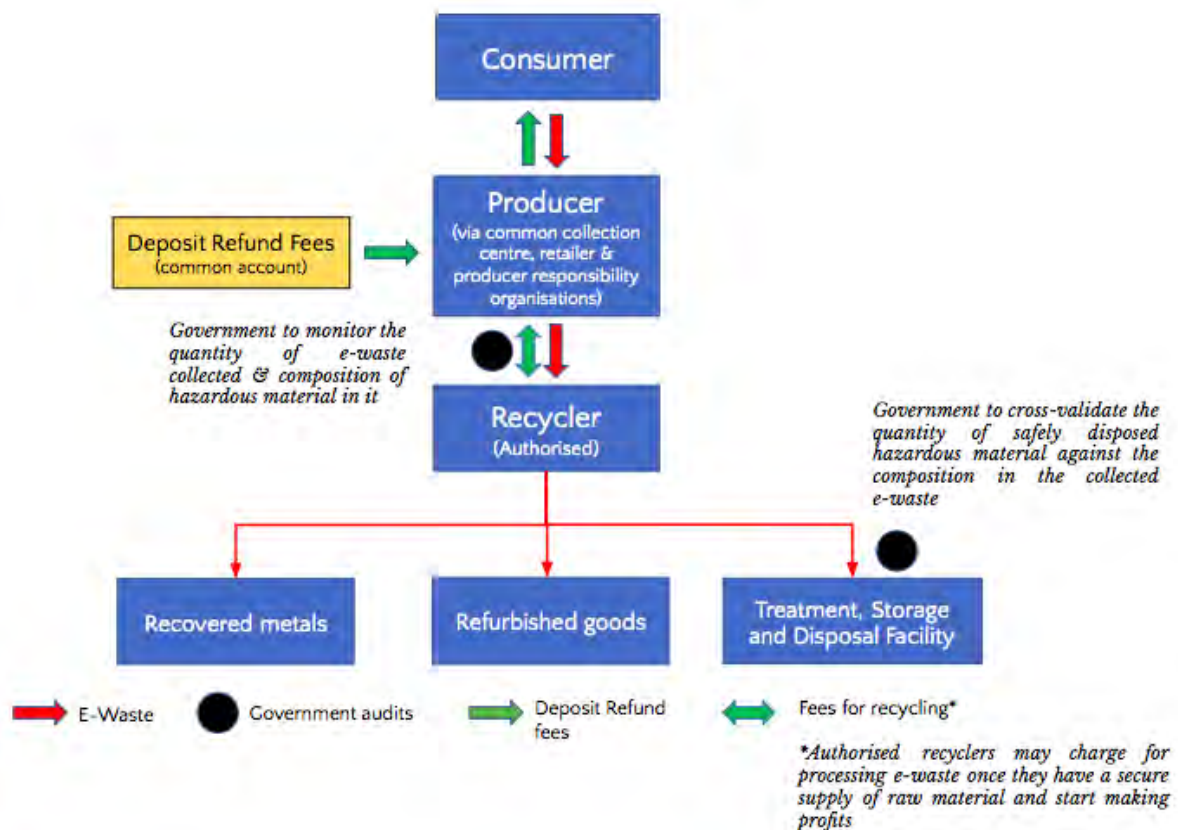


Figure 4: The Revitalised EPR Model

16. In the EWM Rules, 2016, Rule 5 (1) (b) dictates that producers have to channelise their e-waste to authorised recyclers under EPR. Similarly, Rule 11 (6) says that recyclers need to send fractions or non-recycled e-waste to authorised recyclers.

5.4 Possible Repercussions

The implementation of the proposed EPR model may also have certain unfavourable consequences. The changes in the demand for EEE would depend upon the price elasticity for particular goods. The Deposit fee could lead to an increase in smuggled devices, as the mandatory DRS would only be applicable in India and would raise the prices of domestic products. Each producer could also potentially lose consumers who will look for cheaper alternatives.

Conclusion

The quantity of e-waste generated in Delhi-NCR is projected to hit 1,50,000 MTA by 2020 (ASSOCHAM 2018a). Its potential for environmental and health hazards makes e-waste a critical issue to be dealt with.

While the EPR model was a step in the right direction, it is yet to fulfil its aim. The informal sector processes over 95% of e-waste in India, often handling it roughly without appropriate safety measures (ASSOCHAM 2018b). Moreover, it dumps the toxic residue without treating it properly.

In this paper, we studied the current EPR model to account for its limitations and focused on the sharp difference in prices offered by the informal and authorised recyclers. Incentivised by these higher prices of the *kabadiwala* or the local scrap dealer, consumers sold their products to the informal sector instead of returning the EEE to the producers.

Our proposed modifications to the existing EPR model would tackle this price gap in three ways. The mandatory Deposit fee equalling or higher than the informal sector's prices would keep the consumers from selling their products to the *kabadiwala* and the Common Deposit Account would make it convenient for consumers to return their devices to the producers. Third-party audits would cross-check the amount of e-waste transferred from the producers with the quantity processed by the authorised recyclers. This would help ensure that the hazardous residue is treated properly.

This is only a broad idea of how the EPR model can be reformed. Further research needs to be conducted to hammer out the execution. Aspects such as incentivising the reduction of hazardous substances in EEE and interest rate on the Deposit Refund fees have to be taken into account. Moreover, it is difficult to gather information on the different types of EEE and set the optimal quantum of fees that will direct e-waste to the authorised recyclers. Therefore, an alternate scenario where the market, instead of the government, can set the Deposit fee needs to be explored.

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Appendix 1: Capacity of Recycling Firms

Table 2: Actual Working and Optimum Recycling Capacity of Surveyed Firms

Name of Recycling Firm	Optimum Capacity (in tonnes)	Capacity Utilised for 2017-18 (in tonnes)
Namo E-Waste Management, Faridabad	5,796	870
SMS Enterprises, Pace City, Gurgaon	360	8
Greeniva Recycler, Hapur	1,500	700
Royal Faiz Recycling, Hapur	9,000	6,500
Hind Recycling, Hapur	9,000	2,000
Earth Waste Management, Rohtak	600	400
Total	26,256	10,478

Appendix 2: Price Comparison Between Authorised and Informal Recyclers

Table 3: Price Comparison Between Authorised and Informal Recyclers

Item	Authorised Recyclers (Rs. per unit)	Informal Recyclers (Rs. per unit)
HP Laptop (i3/i5)	1,133.3	4,642.9
Refrigerator (350 litres)	683.3	3,514.3
Air Conditioner (AC) (1.5 tonnes)	2,058.3	2,835.7
HP CPU (500 GB 16 GB RAM)	351.6	2,253.6
LED TV (32-40 inches)	436.6	2,107.1
LCD TV (32-40 inches)	403.3	1,642.9
Samsung Mobile S6	62.5	1,418.6
Printer (HP 1010)	75.8	828.6
Computer Monitor (15-17 inches)	302.6	371.4
CRT TV (Colour)	127.5	325
UPS/Stabiliser	112.5	324.3
Toshiba Hard Disk (500 GB/1 TB)	28.6	221.3
Fax Machine	40	197.9

Appendix 3: Additional Requirements for Authorising Recyclers

According to the Implementation Guidelines given by the CPCB¹⁷ for the EWM Rules, 2016, a recycling facility needs to provide the following to the SPCB:

1. Details of air pollution control devices along with a diagram and the design scheme
2. Details of effluent treatment plants (ETPs) installed in the unit along with a diagram and the design scheme
3. Details of storage facility separate for raw material, segregated material, dismantled parts, hazardous waste, bag filter residue/floor cleaning dust, ETP sludge, non-recyclable/non-removable components
4. Membership and registration with a Treatment, Storage, Disposal Facility operator authorised under the HWM Rules, 2008
5. Power of attorney/authority letter of signature to the applicant
6. Details of handling, dismantling/recycling/refurbishing provided at the facility for e-waste and hazardous waste
 - (a) Should include adequate wastewater treatment facilities and air pollution control equipment
 - (b) Provide technology for data destruction
7. Copy of allotment letter from the Municipal Corporation with details of land and building plan

Recyclers are also required to operate on a minimum of 500 sq. metres if their capacity is one metric tonne per day.

The documents to be submitted for the Hazardous Waste (under the HWM Rules, 2016) Licence to the SPCB are:

1. Certificate authorising the Occupier (any person who has control over a factory that deals with hazardous and other wastes)
2. Nature and quantity of different wastes received annually from domestic sources or imports
3. Emergency Response Plan with procedures to be followed in an emergency such as a spillage or a fire
4. Details of the secured storage facility for hazardous wastes and their mode of disposal
5. Details of pollution control systems such as ETPs
6. Details of occupational health and safety measures
7. Process flow sheet showing equipment details, inputs (raw materials) and outputs (products, by-products, waste, emissions)
8. Details of the end user of products or by-products

17. See Implementation Guidelines for E-Waste (Management) Rules, 2016.

9. Proof of application given to the operator of a Common Hazardous and Other Wastes Treatment, Storage and Disposal Facility (CHWTSDF)

Appendix 4: Questionnaire Administered to Authorised Recyclers

1. General Information:
 - (a) Name of the firm
 - (b) When was it established? (mm/yyyy)
 - (c) Where is it located?
2. When did you begin to acquire licences to register your firm? (mm/yyyy)
3. How long did it take to acquire all the licences necessary for registration?
4. Were you able to find clear guidelines for acquiring the licences on the SPCB website?
5. Did you pay consultants/brokers/lawyers/others to help with the registration process?
6. How long did it take for you to acquire the E-Waste Licence (under the EWM Rules, 2016)?
7. What were the official costs incurred to acquire the E-Waste Licence?
8. How long did it take for you to acquire the Hazardous Waste Licence (under the HWM Rules, 2016)?
9. What were the official costs incurred to acquire the Hazardous Waste Licence?
10. When did you start processing e-waste? (mm/yyyy)
11. Who are your major sources of raw material?
 - (a) Local *kabadiwalas*
 - (b) Informal scrap dealers
 - (c) Bulk consumers like IT companies
 - (d) Individual households
 - (e) Authorised Collectors/Producer Responsibility Organisations
 - (f) Others: ----
12. What is the maximum recycling capacity of your firm? (in MTA)
13. What was the actual working capacity of your firm in the previous year? (in MTA)
14. What is the quantity of e-waste that is projected to be recycled by you in 2018? (in MTA)
15. Has your firm reached its break-even point?
16. How long did it take to reach the break-even point after beginning operations?



Risky Business

**ASSESSING THE POLLUTION MONITORING
AND ENFORCEMENT FRAMEWORK FOR
ENTERPRISES IN DELHI**

Pushyami Chilakapati, Ayesha Selwyn, and Parth Singh

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List of Abbreviations

BRAP	Business Reforms Action Plan
CPCB	Central Pollution Control Board
CRA	Computerised Risk Assessment
CTE	Consent to Establish
CTO	Consent to Operate
DIPP	Department of Industrial Policy and Promotion
DPCB	Delhi Pollution Control Committee
DG	Diesel Generator
EE	Environmental Engineer
SEE	Senior Environmental Engineer
SOP	Standard Operating Procedure
SPCB	State Pollution Control Board
VPI	Visit Priority Index

Executive Summary

The 2017 Business Reform Action Plan (BRAP) of the Department of Industrial Policy and Promotion (DIPP) of the Ministry of Commerce and Industry presented 405 recommendations for states to implement for improving the business climate, including six reforms to the way regulatory inspections are carried out.

A rationalised, consistent and effective inspection regime is the starting point for regulatory enforcement. Unfortunately, inspections have long been infamous in India as the breeding ground for corruption and the extortion of money by government officials based on discretionary powers assigned to them (PHD Research Bureau: PHD Chamber of Commerce & Industry 2015). With the focus on ease of doing business, reforms to end the inspector raj (Nanda 2014) have been front and centre on the agenda.

The six inspection enabler reforms suggested by the DIPP can potentially change the way inspections are conducted today, particularly in the area of environmental compliance by the State Pollution Control Boards (SPCB). A risk-based approach to target inspections, transparency measures and process checklists, introduced in this round of reforms, are some of the best practices implemented globally for inspection reform (Blanc 2012). By introducing a computerised risk assessment system, the SPCBs could reduce the discretionary power Environmental Engineers (EEs) (loosely called inspectors) wield over enterprises. EEs are now required to upload the inspection reports within 48 hours of the inspection, and reports can no longer be modified after they have been uploaded.

The Delhi Pollution Control Committee (DPCC) is the SPCB responsible for the enforcement of environmental standards for industries in Delhi stipulated under the Air and Water Acts and Hazardous Waste Management Rules (Delhi Pollution Control Committee 2016b).

In this paper, we assess the quality of implementation of different inspection reforms implemented by the DPCC in 2017 as part of the effort to improve the ease of doing business in Delhi. The inspections norms of DPCC have been the primary vehicle through which it ensures compliance and are also how businesses experience regulations and interact with the agency (Delhi Pollution Control Committee 2016b).

To study the extent to which the DPCC, which is the SPCB of Delhi, has implemented these reform suggestions and assess how the reforms have affected the functioning of DPCC, we interviewed Senior Environmental Engineers (SEEs) and businesses. In the course of our investigation, we also studied the Standard Operating Procedure (SOP) that EEs are required to follow to ensure the consistent implementation of regulations. We have not analysed the content and quality of SOPs or the BRAP reforms and have restricted ourselves to studying the implementation of the SOPs and recommended reforms.

We find that while the DPCC has implemented some of the reforms it has claimed to, some are executed only partially, failing to meet the intended objectives. For example, the DPCC has published the inspection checklist on its website and now provides a unique login identification (ID) to enterprises to access the inspection reports. However,

the DPCC does not yet use risk assessment software to identify enterprises for inspection—a key reform that it has claimed to have implemented. Even now, a committee manually identifies enterprises that are to be inspected. The DPCC claims that it cannot implement this system due to a shortage of personnel, as only 60% of its sanctioned posts are currently filled. This is counterintuitive, as technology should ease some of the administrative workloads and help officials focus on primary tasks such as site inspection.

Additionally, we find that EEs only partially follow the SOPs, raising concerns of procedural consistency across inspections. Enterprises are not always asked to sign the inspection report, and a formal notice detailing corrective measures is not always sent to enterprises. Not all enterprises have access to their inspection reports within 24 hours, and not all enterprises are notified of their risk category. Regardless of how well an SOP is designed, if it is not followed, it is likely to fail its intended purpose.

The DIPP has so far primarily relied on self-reported evidence by states. In 2017, it introduced a system to include business feedback. Although business feedback is key to reform, it has its shortcomings. For instance, a business survey may not be able to judge the efficacy of changes to the back-office functioning of a government department. The current state of affairs calls for a close evaluation of the implementation of reforms, as reliance on self-reported evidence by state governments or a survey of business enterprises may paint a false picture.

1 Introduction

The DPCC enforces national pollution standards in Delhi and is responsible for the ‘entire environmental status of the State’ (National Green Tribunal 2017).

Although there are over 200 regulations governing environmental protection, the Water (Prevention and Control of Pollution) Act, 1974,¹ and the Air (Prevention and Control of Pollution) Act of 1981² are the two essential acts that empower SPCBs to regulate the emissions and effluents discharged by any industry (OECD 2006). The DPCC also grants Consent to Establish (CTE) and Consent to Operate (CTO) to industries to establish and operate under these two acts.

The quality of a regulatory regime and its effectiveness in achieving the regulatory goals depends as much on the way regulations are implemented and enforced as on the design of regulations. Unfortunately, the enforcement and implementation of regulations are not evaluated as often as regulation design, creating an informational lacuna (OECD 2014).

One of the critical ways of carrying out regulatory action is through inspections. While the regulatory regime sets the rules for compliance, inspectors—who are at the frontlines of enforcement—generally have some autonomy and discretion in the way they enforce regulations (May and Wood 2003). For most businesses, inspections are the primary form through which regulations are experienced and are a particularly important concern because they are recurring in nature (Blanc 2012).

Inspection is the primary tool used by the DPCC to monitor and enforce compliance environment standards. As per the Office Order of DPCC dated 26 July 2016, it conducts inspections to meet three objectives: first, to assess pollution potential; second, to evaluate compliance with standards stipulated for industries under the environment acts; and third, to guide industries to improve (Delhi Pollution Control Committee 2016b).

1.1 Regulatory Reforms Introduced in 2017

Regulatory reforms are generally motivated by the need to ease the regulatory burden on businesses, to improve compliance and to improve government efficiency. The DIPP, of the Ministry of Commerce and Industry, conceived the BRAP in 2014, primarily to improve the ease of doing business and improve government efficiency. The implementation of reforms is evaluated by the DIPP and the World Bank periodically based on self-reported evidence. As of June 2018, Delhi had implemented 33.9% of the reforms recommended under the BRAP and was ranked 23rd out of 36 states.

Besides self-reported evidence, the DIPP and the World Bank also verified implementation through business surveys in 2017. However, there are two challenges in the use of a business survey to evaluate implementation. First, businesses may not be aware of governance changes introduced within government departments, and second, it sought to

1. Last amended in 2003.

2. Amended in 1987.

verify only selected reforms. Some improvements that have no direct bearing on business activity may remain unverified.

Realising the gaps in evaluating the status of reforms in Delhi, we set out to study the enforcement of one part of the 2017 plan: inspections reforms. These inspections reforms apply to state government departments, such as the Labour Department, SPCBs and the Forest Department. In our study, we have only explored the reforms suggested and implemented by the SPCB in Delhi, that is, the DPCC.

To streamline the inspection process of the SPCBs, BRAP 2017 recommended six reforms each under the Air and Water Acts. The six reforms under the Air Act are identical to those under the Water Act.

The six distinct reforms (which are the same for the Air Act and the Water Act) include:

1. Design and implement a system for identifying enterprises that need to be inspected based on a computerised risk assessment (*Recommendations 165 and 171*).
2. Publish a well-defined inspection procedure and checklist on the department's website (*Recommendations 164 and 170*).
3. Allow enterprises to view and download submitted inspection reports for at least the past 2 years (*Recommendations 167 and 173*).
4. Mandate the online submission of inspection reports within 48 hours of the inspection to the DPCC (*Recommendations 166 and 172*).
5. Design and implement a system for the computerised allocation of inspectors (*Recommendations 168 and 173*).
6. Mandate that the same inspector will not inspect the same enterprise twice consecutively (*Recommendations 169 and 175*) (Department of Industrial Policy and Promotion 2017a).

Delhi has provided evidence on the DIPP website on the implementation of a total of three of these six reforms under each Act.³

The first reform, identification of enterprises for inspection through a computerised risk assessment (CRA) system, reduces not only the burden of administration (Department of Industrial Policy and Promotion 2017d) but also the scope for bias in the selection of enterprises and, therefore, the scope for inspector raj (Nanda 2014).

Computerisation has a couple of benefits: the integration of inspection processes into one system and the elimination of overlapping inspections and the repetition of work (PWC 2017). Findings made by an inspectorate can also be relevant to other agencies. This data can be used to have a current assessment of the risk level of each business, without spending additional resources (OECD 2014). The identification of enterprises for inspection through a computerised system allows for reduced bias, limits human errors and increases transparency.

3. Recommendations 164, 170, 165, 171, 167, 173.

Besides the CRA system, three reforms aim to make information on the inspection procedure publicly available and enable enterprises to view inspection reports online, enhancing transparency.⁴ Publicly available checklists allow enterprises to be aware of the expectations of them and bring consistency in the enforcement of norms (Blanc 2012). Improving access to information is critical to the quality of government service, empowers citizens and ensures greater accountability from government officials. In fact, easy access to regulatory information is associated with improved governance and reduced corruption (Geginat and Saltane 2016).

The paper focuses on the pollution inspection reforms implemented by the DPCC under BRAP 2017. The first section of the paper examines the implementation status of the CRA system in Delhi, as it is the most substantive recommendation made by the DIPP. The second section of the paper examines the implementation of other process improvement reforms and presents a preliminary assessment of the use of SOPs for inspection in the DPCC. Study findings are based on structured interviews with government officials at the DIPP, SEEs at the DPCC and enterprises.⁵

2 Assessing the Implementation Status of Computerised Risk Assessment for Environment Inspections

The DIPP recommended that the DPCC should design and implement a computerised system to identify enterprises for inspection based on a risk assessment. Risk is the probability and scale of the impact of an occurrence. Risk assessment has two aspects: identifying risk and taking measures to control or eliminate it (Stoneburner and Feringa 2002). In the context of environmental protection, risk assessment refers to evaluating potential harm to humans, flora and fauna (Environmental Protection Agency, n.d.). The assessment of potential harm helps to identify the people and regions most susceptible to the risk, to prioritise hazards⁶ and to determine whether control measures are required for a particular hazard.

Most countries have developed their own method of assessing environmental risk. The DIPP in the BRAP reforms (*Recommendations 165 and 171*) prescribed the implementation of the CRA system to identify enterprises for inspection.

According to DIPP officials, the CRA system involves using a computer software to assess risk. The results of the CRA system can be used to identify enterprises eligible for inspection. The DIPP recommends that this system of identifying enterprises must be computerised. The computerisation of the risk assessment process reduces the EEs' role in assigning risk categories to enterprises when they apply for CTE and CTO and in deciding if, when and by whom they have to be inspected. It results in two benefits:

4. Recommendations 164, 170, 167, 173, 166, 172.

5. Details of the interviews conducted are in Appendix 1.

6. A hazard is a potential source of harm. It is different from risk, as risk is the probability of the hazard occurring (Hazard and Safety Authority).

elimination of human errors and bias (and scope for rent seeking) during risk assessment and freeing up the risk assessor’s time. Moreover, computerisation allows for easy and transparent access to the results of assessment and inspection.

In Sections 2.1. to 2.3., we evaluate the degree to which the computerisation of risk assessment has been introduced. Section 2.1. describes the risk assessment process currently in place, and section 2.2. discusses how the DPCC currently identifies enterprises for inspection post the risk assessment. Section 2.3. examines risk assessment practices in other states.

2.1 Risk Assessment Currently Practised by the Delhi Pollution Control Committee

The DPCC uses the risk assessment method devised by the Central Pollution Control Board (CPCB) in 2016 to assess the risk of industries. It categorises industries as Red, Orange, Green or White based on their potential to pollute air and water.

The pollution potential index takes into account the emissions of an enterprise (air pollutants), effluents (water pollutants), hazardous waste generated and consumption of resources. The pollution potential index is calculated based on the number and quantity of pollutants typically released by each industry. The current system assumes that each enterprise within an industry type would discharge similar amounts of effluents, emissions and waste and consume similar types and quantities of resources. The score for any industry ranges from 0 to 100, where a higher score indicates a higher pollution potential.

Table 1: CPCB Risk Categories

Risk Category	Pollution Index Score	Validity Period of CTE/CTO	Examples of Activities
Red	60-100	5 years	<ul style="list-style-type: none"> • Healthcare establishments. • Automobile manufacturing • Slaughterhouses
Orange	41-59	10 years	<ul style="list-style-type: none"> • Bakery and confectionary units with a production capacity of more than 1 tonne per day with an oven or furnace • Hotels with less than t stars or more than 20, but less than 100 beds • Food and food processing, including fruit and vegetable processing.

Risk Category	Pollution Index Score	Validity Period of CTE/CTO	Examples of Activities
Green	21-40	15 years	<ul style="list-style-type: none"> • Bakery and confectionary units with a production capacity of less than 1 tonne per day with a gas or electric oven • Hotels up to 20 rooms and without boilers • Digital printing on polyvinyl chloride clothes
White	0-20	CTE/CTO not required ⁷	<ul style="list-style-type: none"> • Repairing electric motors and generators using a dry mechanical process • Blending and packing of tea • Packing of powdered milk

Source: (Central Pollution Control Board 2016)

In addition to the risk categories assigned by the CPCB, DPCC uses another set of risk categories for industries—I, II(a) and II(b)—to determine the members of the committee that will issue CTE/CTO to each industry.

Table 2: DPCC Risk Categories

Risk Category	Requirement of Pollution Control Devices	Members of the Committee That Issue CTE/ CTO	DecisionMaking Time Period
I	Does not require the installation of pollution control devices	<ul style="list-style-type: none"> • SEEs of the concerned cell⁸ 	Decision to issue CTE/CTO to be made within 7 days of receipt of the application

7. White category industries are required to submit undertakings but do not require CTE or CTO.

8. According to the organisational structure available on the DPCC website, there are 11 cells at the DPCC: Planning and Coordination, Cess Assessment, Consent Management, Waste Management, Planning, IT, Enquiry Counter, Environmental Impact Assessment, Laboratory, Legal, Admin and Accounts Cell.

Risk Category	Requirement of Pollution Control Devices	Members of the Committee That Issue CTE/ CTO	DecisionMaking Time Period
II(a)	Requires the installation of pollution control devices, such as the sewage or water treatment plants of Delhi Jal Board, common effluent treatment plants, power plants or municipal solid waste plants	<ul style="list-style-type: none"> • Chairman • Member Secretary • Two Engineering Professors • Director, Department of Environment • SEEs of the concerned cell • EEs of the concerned cell 	Decision to issue CTE/CTO to be made within 30 days of receipt of the application
II(b)	Requires the installation of pollution control devices not listed under category II(a)	<ul style="list-style-type: none"> • Member Secretary • SEEs of concerned cell • EEs of concerned cell 	Decision to issue CTE/CTO to be made within 30 days of receipt of the application

Source: (*Delhi Pollution Control Committee 2017*)

The system to assign industries a CPCB risk category (Red, Orange, Green or White) and a DPCC risk category [I, II(a) or II(b)] has been computerised.⁹ When an enterprise applies online for CTE or CTO from the DPCC, it is automatically assigned both risk categories based on its type of activity.¹⁰ Consents were earlier issued through a manual system and now are being issued via a computer interface based on the manual system. This essentially means that the manual system has merely been digitised but the basis for determining risk has not been computerised.

2.2 Current System of Identifying Enterprises Using Computerised Risk Assessment

While the DPCC has claimed to implement a computerised system to identify enterprises for inspection (Department of Industrial Policy and Promotion 2017b), in practice, the function is still carried out manually.

According to the DPCC Office Order dated 26 July 2016, the computerised system, if implemented by the DPCC, is supposed to apply the following frequency to inspections:

9. This computerised system was designed by M/s Srijan Webmatics.

10. Before this system was in place, if an enterprise wanted to know its risk category, it had to refer to the list of CPCB risk categories (Red, Orange, Green or White) available on the DPCC website.

- Enterprises in category II(a) to be inspected before CTE/CTO/Renewal is issued;
- Monthly inspections of 5% of enterprises from category II(a) that have been issued CTO;
- Monthly inspections of 4% of enterprises from category II(b) that have been issued CTO;
- Monthly inspections of 1% of enterprises from category I that have been issued CTO (Delhi Pollution Control Committee 2016b).

However, such a system does not exist. The DPCC SEEs we interviewed argued that a shortage of workforce in the department is the reason for the absence of a fixed schedule. An official from the DPCC confirmed that out of 267 sanctioned positions, 105 positions are currently vacant. The SEEs claimed that no new recruitments have been made since 1993 and that there were only 30 engineers in the department. According to the SEEs, a computerised system to identify and schedule inspections would not yield any benefit, as they do not have enough EEs in the department to conduct the number of inspections that a computerised identification system would schedule.

Currently, inspections are only conducted for three types of enterprises: (1) Those for whom a court order mandates inspection, (2) Those that have a complaint against them and (3) Those that have applied for CTE/CTO. The Executive Committee identifies the latter two. The Executive Committee does not have a fixed schedule, but they meet once a month on an average, according to the SEE. This means that enterprises are not inspected at random based on their risk category, as they are supposed to be, and there are no regular checks on enterprises, raising concerns over the implementation of environmental standards in Delhi.

2.3 Risk Assessment Practices in Other States

As of June 2017, 20 SPCBs (including Delhi) have claimed to implement a CRA system.¹¹ The computerised system in most state relies primarily on the risk category defined by the CPCB. The CPCB risk categorisation assumes that each enterprise within an industry type discharges similar amounts of effluents, emissions and waste and consumes similar types and quantities of resources. It does not depend on the actual amount of emissions or effluents discharged by each enterprise.

However, some states have employed additional measures in the risk assessment process, such as the Green category exemption, mandated timeline and size of the industry.¹²

11. Andhra Pradesh, Assam, Bihar, Chhattisgarh, Delhi, Goa, Gujarat, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Madhya Pradesh, Maharashtra, Odisha, Rajasthan, Tamil Nadu, Telangana, Uttarakhand, Uttar Pradesh and West Bengal.

12. We have not verified the implementation status of the risk assessment processes in these states. The information here is based on claims made by the states on the DIPP website corresponding to Recommendations 165 and 171 (design and implement a system to identify enterprises to be inspected based on the CRA system).

Three states have **exempted inspection post-CTE for industries in the Green category** (Department of Industrial Policy and Promotion 2017d).¹³ Such enterprises are only inspected in case of any complaints issued or court orders mandating inspection. This is in contrast to the CPCB norm, wherein only White category industries are exempted from obtaining CTE/CTO from SPCBs. While the DPCC currently conducts inspections based only on complaints, court orders or CTE/CTO/Renewal applications, it does not officially exempt Green category enterprises from being inspected.

Fifteen states have introduced a **mandated timeline** for compliance inspections.¹⁴ The SPCBs in each of these states have prescribed the frequency of inspections for enterprises in each risk category. This frequency also takes into consideration the size and pollution potential of a particular industry. Based on this frequency, they have fixed a schedule for inspections. For example, in Himachal Pradesh, an industry which falls under the Red category and is categorised as a large industry has to be inspected fortnightly while a small-sized Green industry has to be inspected annually (Himachal Pradesh Pollution Control Board 2017). Delhi does not take into consideration the size of the industries and there is no fixed schedule of inspections.

Some states use parameters beyond those prescribed by the CPCB such as the **size of the industry** (calculated on the basis of the type of machinery installed and the area of the industrial unit), **capital invested** and **time elapsed since the inspection was due** (as per the mandated timeline for each industry). The score on these parameters is added to the overall risk score to prioritise large industries or those whose inspection has been long due compared to the ones inspected on time as per the mandated timeline.

The Gujarat Pollution Control Board has developed a single integrated software called the Xtended Green Node (Gujarat Pollution Control Board 2015). The **Xtended Green Node** is an integrated software that performs the live monitoring of air and water quality, handles online consent management of CTE/CTO, performs the risk-based identification of industries and randomly allocates inspectors. The software has been replicated in five other states.¹⁵

As per the evidence provided on the DIPP portal, SPCBs in Gujarat (Gujarat Pollution Control Board 2015) and Uttarakhand (Uttarakhand Environment Protection and Pollution Control Board 2017) have further designed a Visit Priority Index (VPI) which supplements the existing risk assessment parameters to identify and inspect enterprises. The VPI is calculated as follows:

$$VPI = R_c * F_c$$

where R_c is the risk category and F_c is the frequency criteria.

$R_c = A * B$, where

A is the factor based on pollution potential;

13. West Bengal, Telangana and Karnataka.

14. Andhra Pradesh, Assam, Bihar, Chhattisgarh, Gujarat, Haryana, Himachal Pradesh, Jharkhand, Maharashtra, Odisha, Rajasthan, Tamil Nadu, Telangana, Uttarakhand and West Bengal.

15. Goa, Himachal Pradesh, Karnataka, Madhya Pradesh and Uttarakhand.

B is the factor based on the size of the industry/installation.

$F_c = C * D$, where

C is the factor based on the frequency of visits to the industrial unit;

D is the factor for any exemption from inspections granted to units.

While the DPCC does have a CRA system in place, other states use more parameters to measure risk than the DPCC does. These additional parameters aim to reduce human interference in the risk assessment process and reduce the burden on EEs.

3 Assessing Practices That Increase Access to Information and Reduce Discretionary Powers

The DPCC has claimed to have implemented two other reforms apart from designing and implementing a CRA system. These reforms aim to increase access to information. By increasing enterprises' access to information, EEs can be held accountable for their actions. In this section, we evaluate how the DPCC implements these reforms.

While studying these reforms, we came across the SOP of DPCC. The SOP describes the inspection procedure that the DPCC EEs are meant to follow. We interviewed enterprises to understand whether certain parts of the SOP were being followed. Our findings on the discrepancies in following the SOP are also explained in this section.

3.1 Reforms That Increase Access to Information

The first three of the six inspections reforms under the BRAP aim to increase access to information by making details of the inspection procedure publicly available and enabling enterprises to view inspection reports online. The State Implementation Guidelines (Department of Industrial Policy and Promotion 2017c) recommended that SPCBs publish the inspection procedure and checklist on their websites and enable enterprises to view and download inspection reports. Improving access to information enables greater accountability from government officials and is considered to improve governance and reduce corruption (Geginat and Saltane 2016).

3.1.1 Publication of the Inspection Procedure and Checklist on the Department Website

Documents that specify business regulatory norms often use complex terminology, making it difficult for businesses to understand (OECD 2014). Inconsistent interpretations of the norms by EEs and the lack of clarity add to the burden for businesses and create a low compliance rate. Under BRAP 2017, the DPCC was required to publish an online checklist for compliance inspections under the Air and Water Act (Recommendations 164

and 170).¹⁶ A checklist is a document that provides key requirements in a straightforward manner (OECD 2014). Before the publication of an online checklist, the information, now available as a checklist, was only available in the Air Act, Water Act and Hazardous Waste Rules.

3.1.2 Allowing Enterprises Access to View and Download Inspection Reports

Under this, the DPCC provides unique login credentials to enterprises to enable access to inspection reports on the DPCC portal. Prior to this reform, the inspection reports were manually filed by the DPCC and were not available to enterprises.

Of the 30 enterprises we interviewed, 14 (46.7%) had the credentials to log in to the DPCC portal. It is possible that only those enterprises granted CTE/CTO/Renewal after the reform was implemented have the credentials to log in. This may explain why over 50% of the organisations responded negatively. According to an SEE we interviewed, the last 400-500 enterprises that had applied for CTE/CTO/Renewal have all been provided with login credentials.

Nine out of 14 (64.3%) enterprises that claim to have access to the portal had claimed to have viewed the reports and the remaining had not checked.

3.2 Discrepancies in Following the Standard Operating Procedure

An SOP is a process document that lists the steps involved in conducting any recurring task, primarily to ensure consistency and integrity in the way an activity is conducted. It serves two purposes: it limits arbitrary implementation to obtain consistent results, making the inspection procedure comparable and credible, and it reduces the likelihood of missed steps. Often, SOPs are used as checklists by EEs during inspections. SOPs are a useful tool but if not drafted correctly, they serve a limited purpose, and if not followed, even the best drafted SOPs fail to serve the intended purpose (Environmental Protection Agency 2007).

As we set out to research the implementation of BRAP reforms, we came across the SOP of DPCC.¹⁷ The SOP outlines what the DPCC EEs are supposed to check for when they go to any enterprise and the procedure to be followed after inspection. We highlight four measures from the SOP that aim to facilitate transparency.

The SOP requires a representative from the enterprise to sign the inspection report and the inspectorate to send a formal notice detailing the corrective measures (if any) to be taken by the enterprise. The EE is also supposed to upload the report within 24 hours after the inspection. These procedures aim to ensure that enterprises are aware of the results of the inspection. Making a representative of the enterprise sign the report ensures that the EE does not record false information and that the enterprise cannot contest the

16. Details of the checklist are given in Appendix 2.

17. A summary of the SOP of DPCC is given in Appendix 3.

report at a later date. Notifying enterprises of corrective measures increases accountability and, potentially, the improvement measures taken by an enterprise (Schweinberger et al. 2017).

The DPCC is also supposed to inform all enterprises of their risk category (Delhi Pollution Control Committee 2016a). It is only when enterprises know their risk category can they comply with the standards pertaining to that risk category.

Table 3 displays the results of interviews with 30 enterprises to understand the extent to which these measures are followed during interviews.

Table 3: Implementation of Standard Operating Procedure When Verified with Enterprises

Requirement	Findings
Inspection report is signed by a representative at the enterprise. Refusal to sign is also supposed to be noted.	8/18 (44.4%) enterprises were not asked to sign the inspection report; 6/18 (33.33%) enterprises were not shown the inspection report once the inspection was completed.
A formal notice detailing the corrective measures is sent to enterprises at a later date.	7/18 (38.9%) enterprises were not sent a formal notice. However, it is unclear whether these seven enterprises did not need corrective measures or whether the DPCC did not send the notice. ¹⁸
DPCC to send a formal notice to all enterprises informing them of their risk category.	<p>Only 11/30 (36.6%) enterprises knew their risk category.</p> <p>6/11 (54.54%) enterprises were informed of their risk category through an official notice from the DPCC.</p> <p>3/11 (27.27%) enterprises found out about their risk category by checking the DPCC website.</p>

18. The SEE we interviewed claimed that if the enterprise is non-compliant, the inspector informs them of corrective measures to be taken verbally post inspection. Four out of 18 (22.22%) enterprises were not informed of corrective measures immediately after the inspection. However, it is unclear whether these four enterprises did not need to take corrective measures or whether the DPCC did not send the notice with corrective measures.

Requirement	Findings
All inspection reports have to be uploaded online on the DPCC portal within 24 hours of the inspection.	Inspection reports are currently being uploaded online. However, an SEE at the DPCC informed us that the timeline to upload inspection reports online is not strictly adhered to.

During our interviews at the DPCC, the SEEs also mentioned that all inspections are meant to be surprise inspections. These surprise inspections enable inspectors to catch enterprises violating the law off guard. Studies find that corrupt inspectors may warn enterprises before an investigation in exchange for a bribe, eliminating the element of surprise (Dechenaux 2014). Five out of 17 (29.42%) enterprises claimed that they were informed prior to inspection, often more than 24 hours prior to inspection.

Conclusion

Regulations are instituted to protect the rights and safety of citizens. Inspections are the primary channel for enforcing rules and serve as a bridge between the regulator and the regulated. Inspections need to be consistent, transparent and standardised to avoid rent seeking or distress to enterprises and to help prevent hazards and monitor negative externalities.

This paper studies the reforms instituted to improve the ease of doing business in one such inspectorate in Delhi: the DPCC.

To streamline the inspection process and improve the ease of doing business, the DPCC claimed to have implemented six reforms prescribed in BRAP 2017. The evaluation of the changes implemented is based on self-reported evidence and feedback from businesses. Given that these methods may not capture changes introduced in the back-office operations of a government department accurately, this paper attempted to verify the implementation claims of DPCC.

We found that the DPCC has only partially implemented Recommendations 165 and 171, i.e., the use of a CRA system to identify enterprises for inspection under the Air and Water Acts. Although the DPCC has designed a digitised system, it is only used to assign a risk category to firms and not to identify enterprises for inspection. The digitisation is merely a check-box exercise; the risk category for each activity is determined manually based on the activity classification of CPCB and fed into the software so that when an enterprise picks an activity online, it is assigned its risk category.

The current inspections schedule of the DPCC is not based on any active or dynamic risk calculation such as hazard probability or scale of impact. Instead, inspections are only undertaken to provide CTE/CTO, or if there is a court order or complaints against an enterprise. Enterprises are chosen for inspection manually by the Executive Committee, failing the objective of reducing human bias and errors in enterprise selection. The DPCC

SEEs cited workforce shortages as the reason for not implementing the reform. This is, however, counterintuitive, as a computerised system should reduce the burden on the staff and free up their time for inspections.

The DPCC has, however, implemented some reforms that serve to improve access to information for businesses.¹⁹ For instance, it has published an inspection procedure and checklist on the department's website. Although we have not evaluated the quality of the checklist, making information plentifully and easily available is a step in the right direction.

During the course of our study, we also found that key aspects of the SOP might not be followed consistently. For example, although all enterprises are meant to sign the inspection report on site, more than half were not asked to do so. Similarly, though a formal notice detailing corrective measures is to be sent to enterprises after the inspection, less than 40% of the enterprises we interviewed claimed that the DPCC sent them a notice specifying corrective actions. SEEs at the DPCC themselves claimed that they do not strictly adhere to the procedure of uploading reports within 24 hours of the inspection. A caveat here is that the information is solely based on feedback from 30 enterprises and we have been unable to triangulate information using administrative data from the department.

The focus on reforms to reduce the regulatory burden on enterprises is a positive step, but it also needs to take into account enforcement hygiene. Changing the regulations might prove to be difficult for many reasons. Even if regulations remain unchanged, improving the methods of implementation of these regulations can reduce the burden on businesses and the cost to the government (Blanc 2012).

OECD's Regulatory Enforcement and Inspections Toolkit emphasises a risk focus and the proportionality of inspections (OECD 2018). Currently, it is difficult to say how distant the inspections processes of the DPCC are from this best practice standard. However, from our preliminary investigation, it appears that the reform efforts of the DPCC are partial and their procedural hygiene is not up to the mark. The next step is to investigate the current method used by the DPCC to assess risk and identify if their inspections set-up is fit for the purpose.

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Appendix 1: Methodology

We interviewed 30 enterprises, 3 SEEs at the DPCC and 2 DIPP officials as part of our research to understand the nature, quality and purpose of reforms implemented by the DPCC under BRAP 2017. In the absence of a database of enterprises sorted by their risk category, we chose enterprises manually, keeping in mind their risk category. The details of the questions asked in the interviews and surveys are given in Sections 6.1 to 6.3. A profile of the study is given in Table 4.

Table 4: Study Profile

Area	South Delhi Municipal Corporation
SEEs, DPCC interviewed	3
Officials at DIPP interviewed	2
Red category enterprises surveyed	10
Orange category enterprises surveyed	14
Green category enterprises surveyed	6

Semi-Structured Interview with Senior Environmental Engineers at the Delhi Pollution Control Committee

1. What does your job as an inspector entail? How is it different from the duties of a junior inspector?
2. Do you exclusively inspect establishments for air or water pollution? Alternatively, are there separate inspectors for air and water pollution?
3. Approximately how many inspections does the DPCC conduct per month?
4. Do the establishments know what the inspection process is? Is it public information?
5. When you go to an establishment, do you have to write a report even if everything is fine? If yes, do you have to make the report there or go back to the office and do it?
6. Do you show the establishment the report? Do establishments have access to their inspection reports? Are the reports published online?
7. Is a computer system in place to help with inspections?
8. How long has it been in place?
9. Do you use it?
10. Is it mandatory to use it?
11. Is it easy to use?
12. The systems were put in place to help businesses. Does it help inspectors with the inspection process or make it quicker? Does the computerised system make the inspection process easier for you to conduct as compared to earlier when you didn't have the system?
13. Is the system used to allocate inspectors randomly?
14. How does the DPCC identify which establishments to inspect?

15. Are inspections carried out on a complaint basis? Who complains? How is it dealt with?
16. How is risk assessed? Is it a manual or computerised system?
17. Can you tell us what the CRA of polluting establishments entails? What is it supposed to do?
18. Does the portal automatically show what establishments are to be inspected and how often?
19. How does the DPCC decide which establishments to inspect?
20. How often is the list of establishments revised?
21. Is there a fixed schedule for the week or month?
22. Is this schedule flexible or rigid?
23. What are the changes in the inspection system that have come about after the computerised system?
24. Do you see any benefit from having a CRA system? What are they? Would you know the reason for having a computerised system?
25. Is there a list of establishments under each category? How many establishments are in each category? Do establishments know which category they belong to? How are they supposed to know?
26. Was the computerised system designed by the DPCC or was it given to a vendor? Can you put us in touch with them? Does inspection frequency vary among the Red-Orange-Green-White system firms?
27. What can establishments do on the portal?
28. What happens to the reports after an inspection? Are the reports uploaded online for establishments to view?
29. Can establishments view the inspection reports of past years on the portal?
30. Can a third party view the reports on the portal?
31. Who designed the DPCC website and portal? Can you put us in touch with them?

Semi-Structured Interview with Officials at the Department of Industrial Policy and Promotion

1. What was the idea behind the BRAP?
2. What is your process to verify the details/evidence entered in the portal?
3. One reform is to design and implement a CRA system to identify polluting establishments for inspection by the DPCC. Can you explain the meaning of CRA and the objective of making a computerised risk assessment system? What was the inspiration for this idea? What was the need for this idea?
4. The DPCC is currently using the Red-Orange-Green-White and I, II(a), II(b) to assess risk. Does this qualify as a CRA?
5. Does the system to identify enterprises for inspections need to be computerised as well?

Questionnaire for Establishments

Section 1: General Information

1. Please state your name.
2. Please state your designation.
3. Please state the name of your establishment.
4. What is the type of your establishment? (Bakery, Dry Cleaner, Guest House Hospital, Hotel, Mall, Marble Stone Items, Petrol Pump, Photo Studio, Restaurant, Other)
5. Please state the location of your establishment. (North Delhi, South Delhi, East Delhi, West Delhi, Central Delhi)

Section 2: Inspection

1. Do you have Consent to Establish/Operate from the DPCC? (Y/N)
2. Has this establishment ever been inspected by the DPCC? (Y/N)

Section 3: Inspection Process—Details

1. Did the DPCC conduct an inspection before issuing Consent to Establish/Operate? (Y/N)
2. When was the last time it was inspected by the DPCC? Check the applicable box (month and year).

Period	2018	2017	2016	2015
January to March				
April to June				
July to September				
October to December				

3. How many DPCC inspections have been conducted in the last year? (None/ 1/ 2/ 3/ 4)
4. Do inspectors ask for unofficial payments to facilitate inspection? 'Unofficial payments' refers to payments that are not recorded or officially required. (Y/N)
5. What prompts a DPCC inspection? * Check all that are applicable. (Renewal of consent; Surprise check; Based on a complaint; Based on a court order; Do not know; Other)
6. Are you informed prior to a DPCC inspection? (No/ Yes, less than 3 hours prior to the inspection/ Yes, 3 to 12 hours prior to inspection/ Yes, 12 to 24 hours prior to inspection/ Yes, more than 24 hours prior to inspection)

7. How many DPCC inspectors typically come for an inspection? (One officer/ Two officers/ Three officers/ Four or more officers)
8. How many hours does a DPCC inspection typically go on for? (1 to 2 hours/ 3 to 4 hours/ 5 to 6 hours/ 6 to 8 hours/ More than 8 hours)
9. At the time of inspection, do you have to pay any charges apart from those that are officially required? 'Charges' refers to any off-the-books payments made to inspectors or facilitators. (Always/ Sometimes/ Rarely/ Never)
10. What documents do DPCC inspectors ask to check during inspections? * Check all that are applicable. (No documents/ Current consent/ Health Licence/ Police Licence/ Do not know/ Other)
11. Does the DPCC inspector let you read the report immediately after the inspection? (Y/N)
12. Are you asked to sign the report? (Y/N)
13. Are you allowed to contest inspection findings? (Yes/ No/ Do not know)
14. Do the inspectors tell you the corrective measures to be taken immediately after the inspection? (Y/N)
15. Do the inspectors send you a notice detailing corrective measures at a later date? (Y/N)

Section 4: DPCC Portal

1. Do you have a unique login ID and password to access the DPCC portal? (Y/N)
2. If yes, do you have access to the inspection report on the DPCC portal? (Yes/ No/ Have not checked)

Section 5: Awareness of Inspection Standards

1. Are you aware of the risk category your establishment falls under? (No/ Yes: Red category/ Yes: Orange category/ Yes: Green category/ Yes: White category/ Other)
2. If yes, how did you know which risk category your establishment falls under? Check all that are applicable. (Informally from the DPCC/ Formal documentation from the DPCC/ DPCC website/ CPCB website/ Private consultant/ Other)
3. Are you aware of the old risk category your establishment fell under? (No/ Yes: Category I/ Yes: Category II(a)/ Yes: Category II(b)/ Yes: Category II(c)/ Yes: Category II(d))
4. If yes, how did you know which old risk category your establishment fell under? Check all that are applicable. (Informally from the DPCC/ Formal documentation from the DPCC/ DPCC website/ CPCB website/ Private consultant/ Other)
5. How do you know the standards you have to maintain to comply with the DPCC inspections? (DPCC inspectors tell us/ DPCC SOP DPCC website/ Read the Air

Act/ 1981/ and the Water Act/ 1974/ New Delhi Municipal Council notice/ Delhi Cantonment Board notice/ Municipal Corporation of Delhi notice/ Delhi Medical Association bulletin/ Private consultant/ Don't know/ Other)

6. Who assists you in meeting the DPCC standards? (Internal engineering department/ Private consultant/ Other)
7. Are you aware of the Air (Prevention and Control of Pollution) Act/ 1981? (Yes/ I know the details of the Act/ Yes/ I have a general understanding of the Act/ No/ I am not aware of the Act)
8. Are you aware of the Water (Prevention and Control of Pollution) Act/ 1974? (Yes/ I know the details of the Act/ Yes/ I have a general understanding of the Act/ No/ I am not aware of the Act)
9. Are you aware of the Hazardous Waste (Management/ Handling and Transboundary Movement) Rules/ 2008? (Yes/ I know the details of the rules/ Yes/ I have a general understanding of the rules/ No/ I am not aware of the rules)

Section 6

1. Do you agree with the following statements about rules and regulations governing your type of enterprise?

Regulation Statement	Yes	No
The government consults entrepreneurs before changing or introducing new regulations that impact my business.		
The regulations governing my business are easy to understand.		
Regulations imposed by different departments are compatible with each other.		
The administration gives precise answers when asked questions or clarifications concerning regulations.		
It is clear what would happen if I were found non-compliant with regulations.		

2. Do you agree with the following statements about inspection once you are operational?

Inspection Statement	Yes	No
I can challenge the way any inspection is conducted or its findings.		

Requirement	Findings
Administrative decisions or inspection reports are based on clear grounds. The answers I receive from the administrators are the same regardless of whom I contact. All inspections are conducted formally with paperwork filed. Inspection reports are made available to us post-inspection.	

3. In the last 12 months, the regulatory burden on my business (apart from Goods and Services Tax) has: (Increased a lot/ Increased a little/ Decreased a lot/ Decreased a little/ Remains more or less equal/ Do not know)
4. Are there laws, regulations or administrative processes that you find particularly cumbersome or prone to misuse? If so, can you give us an example?

Appendix 2: The Delhi Pollution Control Committee Checklist

An inspection of the following areas in the industry premises shall be made and recorded in writing and uploaded thereafter within 24 hours' time or in online mode directly:

- Manufacturing areas;
- Raw materials and finished products' storage areas;
- Water source(s) of the unit;
- Effluent generating sources;
- Effluent collection, storage, treatment and disposal areas;
- Air pollution sources and control systems;
- Solid and hazardous waste generation sources, storage and disposal areas;
- Environmental Management Cell to verify record maintenance;
- Existence of diesel generator (DG) sets and provision of an acoustic system/enclosure for noise pollution control. Details about the stack/chimney height of the DG sets and details of the air pollution control systems installed/proposed to be installed.

The inspecting officials shall also verify:

- Records pertaining to water pollution and its sources and treatment;
- Air pollution sources and control systems, including stack height for the dispersion of the pollutants;
- Management and handling of solid and hazardous waste;
- Operational status of the industry (whether in operation/seasonal/sick/closed/etc.);
- Consumption quantities of major raw materials;
- Details of water consumption and status of flow meters provided, if any, for recording water consumption for various purposes along with meter readings;
- Details of Water Cess assessment and payment;
- Effluent generation sources and quantities (as per record);
- Effluent collection, treatment and disposal details;
- Operation and maintenance of air pollution control equipment/systems;
- Status of energy meters provided for effluent treatment and air pollution control systems along with meter readings;

- During an inspection, the necessary effluent/solid samples shall be collected duly, following the prescribed procedure, and the samples will be submitted to the laboratory. The analysis reports shall be submitted online within 7 days by the concerned laboratory without fail. Complete confidentiality of the source of samples shall be maintained (Delhi Pollution Control Committee 2016b).

Appendix 3: Summary of the Standard Operating Procedure of the Delhi Pollution Control Committee

The SOP mandates that enterprises are inspected only on working days and during their working hours. Representatives of the industry are informed about the purpose of the inspection. The inspecting official is required to inspect the surrounding areas along the premises of the industry to check if there is any discharge/dumping of effluents/hazardous waste. Key areas within each industry, like the manufacturing areas, water sources of the unit, etc. are inspected and observations are recorded. The inspecting officials also check some other things like records regarding water pollution: sources and treatment, air pollution sources and control systems, management of solid and hazardous waste, operational status of the industry, consumption quantities of major raw materials, etc.

The inspection report has a prescribed format that details the compliance status of the industry with the Air and Water Acts and Hazardous Waste Management Rules. The SOP mandates that the inspection report is uploaded to the DPCC portal within 24 hours so that it can be accessed and downloaded by enterprises (Delhi Pollution Control Committee 2016b).



Inspecting the Inspectors

MANDATE VERSUS REALITY
ANALYSIS OF **LABOUR REGULATION**
ENFORCEMENT IN DELHI

Vatsal Bajaj, Shivani Pandey, and Aastha Sood

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List of Abbreviations

BRAP	Business Reforms Action Plan
CRA	Computerized Risk Assessment
DIPP	Department of Industrial Policy and Promotion
EoDB	Ease of Doing Business
ILO	International Labour Organisation
GoNCT	Government of National Capital Territory
OECD	Organisation of Economic Cooperation and Development
SOP	Standard Operating Procedure

Executive Summary

India has 44 central labour laws, which apply across the country, to promote and safeguard the interests of workers. In addition, states have their own labour laws and regulations. Labour inspectors at state labour departments in India monitor how these laws are applied in the workplace and are responsible for ensuring compliance by the employers, workers and worker unions. Over the years, discretionary powers vested in labour inspectors, lack of procedural clarity and opacity in the resolution process have harmed labour and enforcement and made the operating environment for businesses challenging.

In a bid to improve the ease of doing business (EoDB), Government of India's Department of Industrial Policy and Promotion (DIPP) released the second iteration of the Business Reforms Action Plan (BRAP) in 2017. A segment of BRAP 2017 aimed to meet industry concerns around the 'inspector raj' in labour law enforcement and suggested six reforms in the functioning of state labour inspectorates as they enforce each labour law. These six reforms were aimed at reducing arbitrary powers assigned to the inspectorates and bringing transparency and consistency to labour inspections. The first of these asks state labour departments to publish information about the inspections procedure and a comprehensive inspection checklist on their website.

In its submission to the DIPP on the progress in the BRAP in October 2017, the Government of National Capital Territory (GoNCT) claims to have published, and by extension/inference, adopted the use of standard operating procedures (SOP) in the monitoring and enforcement of seven key labour laws under the purview of the Delhi Labour Department. As part of a larger research project on the EoDB in Delhi, we examine the claims of GoNCT on the implementation of SOPs in the inspections conducted by the Delhi Labour Department.¹

We studied the administrative records of nearly 850 labour complaint entries received at the New Delhi district labour office, one of the nine inspectorates of the Delhi Labour Department. Through our analysis, we found several discrepancies in the use of SOPs to schedule, manage and conduct inspections in the labour inspection set-up in Delhi. To our knowledge, this is the first study that systematically looks at administrative data from complaint registers and case files to understand procedural hygiene in complaint resolution.

While SOPs have been published on the website of the Department, they are likely not being met with rigor. Indifferent, haphazard and nonstandardised record keeping, missing procedural hygiene and lack of fidelity to prescribed timelines are three nontrivial departures from SOPs.

First, we find that 98% of the entries in the complaint registers had at least one missing field of information. For example, 92% of the entries did not mention the Labour Act under which the complaint was registered, a crucial determinant of the SOP to be followed. Such inconsistent record keeping restricts the government from tracking progress,

1. Throughout this research, we have referred to the state of Delhi as 'Delhi' and to the New Delhi district as 'New Delhi'.

allocating manpower, and providing documentation that is beyond reproach in case of a legal challenge.

Second, our investigation into the records highlighted that missing definitions were making the lines between on-site inspections and in-office hearings blurry. Currently, SOPs for inspecting violations of the Minimum Wage Act and Payment of Bonus Act do not require on-site observations, but it is not clear how the inspectorate resolves these complaints. In addition, even for complaints registered under the Acts that do require on-site observations, we found no proof that on-site inspections were ever conducted.

Third, we find that timelines prescribed in SOPs are not being met. More than a third of the inspections from 2016 to 2018 were not conducted within 15 days after the receipt of complaints as prescribed. In addition, the high number of cases pending resolution may be highlighting a deeper malaise as more than half the complaints on the books remain unsettled nearly a year on.

Our interviews with Delhi Labour Department officials and complainants corroborate some of these concerns. Our interviews indicate that labour inspectors are unaware of crucial provisions of the labour laws and may not be applying SOPs correctly. Simultaneously, 60% of complainants are dissatisfied with the redressal system for reasons ranging from excessive time taken for complaint resolution to proximity between the management and the inspector.

A catch-all explanation in our interviews with department officials is a shortage of manpower in the department. However, an analysis of the workload of New Delhi District Labour Office does not bear this out. On average, inspectors receive one complaint a day and more than 90% of complaints can be resolved without conducting an on-site inspection. In such a situation, it is unclear why inspectors claim to be overburdened. We argue that poor procedural hygiene such as blurry lines between on-site inspections and in-office hearings and low levels of awareness among inspectors about the laws are perhaps more significant to complainant dissatisfaction, high pendency and a continued poor reputation.

In this study, we first outline the evolution of labour law enforcement in Delhi from suo-moto inspections to a complaint-based inspection system. Second, we describe the procedure for labour inspections as outlined under the SOPs for seven key laws. Third, we report the differences between mandate and practice in the current labour inspection system in New Delhi. This is based on an analysis of departmental administrative data, including complaints data, from the New Delhi District Labour Office and interviews with complainants and labour inspectors. Finally, we conclude.

1 Introduction

Labour laws uphold provisions related to hours of work, wages, safety, health and welfare of persons employed as labour, as well as the employment of children. Strong labour laws can, in theory, lead to better working conditions, EoDB and a path to development (Deshingkar 2009).

In the seven decades since Independence, India has passed numerous labour laws that address core standards of worker health, safety and protection from injustices as specified by the International Labour Organisation (ILO). The first law enacted in India for the protection of workers' rights was the Trade Unions Act, 1926. This was followed by the Factories Act, 1940. Other labour laws such as the Delhi Shops and Establishments Act, 1954, Contract Labour (Regulation And Abolition) Act, 1970, and the Payment of Gratuity Act, 1972, came into force post-independence. At present, there are 44 central labour laws and one state labour law governing employers and employees in Delhi. The subject of labour is in the concurrent list of the Constitution of India. This gives power to both the state and the central governments to enact legislations for the workforce.²

Over the years, a labour inspection system was formed to ensure compliance to the comprehensive legal structure for labour welfare and protection in India. Labour inspectorates have been set up at the state level to ensure that these labour laws are upheld. Deshingkar (*ibid.*), however, finds that 'despite having one of the most comprehensive labour legislative frameworks in the world, India continues to suffer from the widespread violation of labour laws'.

Inspections are the most visible and important among regulatory enforcement activities (OECD Library 2018, 9). An efficient and effective labour inspections system can ensure both workers' welfare and improved financial results through higher productivity (International Labour Organization 2010).

While labour inspections serve workers' interests, they can be a serious hindrance in conducting business unless they follow prescribed procedures, and are transparent and based on the rule of law. Ensuring that inspections are carried out in a fair and accountable manner where employers are not harassed and employee complaints are duly addressed becomes a crucial part of the EoDB.

1.1 Recommendations on Labour Inspections Reforms in Business Reform Action Plan 2017

In order to improve EoDB in India, the DIPP of the Ministry of Commerce and Industry released the BRAP.³ As of September 2018, Delhi ranked 23 out of a total of 34 states, having implemented a third of the reforms suggested under the BRAP 2017.

2. See Appendix 1 for a list of all labour laws in force in Delhi.

3. The first iteration of the BRAP was released in 2015. However, we look at the most recent plan, i.e the BRAP 2017.

In light of the importance of cleaning up labour inspections, the BRAP 2017 of DIPP recommended six inspections reforms as applied to seven key labour laws:

1. **Publish a well-defined inspection procedure and checklist on the website of the department:** This includes all applicable steps and process maps if available. The reform requires the State Labour Department to publish this information explicitly without referring to Acts or rules. This inspection checklist published on the website is to further contain the SOPs being followed by state labour departments in inspections pertaining to every Act.
2. **Design and implement a system for computerised allocation of inspectors:** The inspector allocation system must be linked to the online application and approval system, and the approval authority should be able to allocate inspectors once applications are submitted either by jurisdiction or randomly. The inspector should also have an online workspace in the system where they can see their workflows and submit reports.
3. **Mandate online submission of inspection report within 48 hours to the Department.**
4. **Allow establishments to view and download submitted inspection reports of at least past two years:** The signed inspection reports of the last 2 years—signed either digitally or manually and scanned—should be made available for viewing and downloading by the user on the portal or the website.
5. **Design and implement a system for identifying establishments that need to be inspected based on computerised risk assessment (CRA):** To reduce burden on limited inspectors and increase efficiency, inspectorates should define risk criteria and ensure that they are programmed into the system to make sure that inspections occur only for certain high-risk categories, instead of in 100% of the applications.
6. **Mandate that the same inspector will not inspect the same establishment twice consecutively:** Inspectors should be assigned randomly for inspections in consecutive years in order to increase transparency and reduce the potential for corruption.

1.2 Progress of the Government of National Capital Territory in Implementing Labour Inspection Reforms

Table 1 provides a summary of the progress of the GoNCT in implementing labour inspections reforms. The GoNCT on the website of DIPP website has claimed to have implemented the first. None of the five remaining recommendations have been implemented by Delhi.

Table 1: Labour Inspection Reforms Adopted by Delhi under the BRAP 2017

Act to Which the Reform Applies	Six Key Labour Inspection Reforms Under the BRAP 2017 (Nos. refer to the Specific Reform Item in the Implementation Guideline)					
	Checklist + SOP	Computerised Inspector Allocation	Online Submission Of Reports	Remotely Accessible Reports	CRA	Unique Inspector Per Visit
Equal Remuneration Act	#116 ✓	#117 ✗	#118 ✗	#119 ✗	#120 ✗	#121 ✗
Minimum Wages Act	#128 ✓	#129 ✗	#130 ✗	#131 ✗	#132 ✗	#133 ✗
Shops & Establishment Act	#134 ✓	#135 ✗	#136 ✗	#137 ✗	#138 ✗	#139 ✗
Payment of Bonus Act	#140 ✓	#141 ✗	#142 ✗	#143 ✗	#144 ✗	#145 ✗
Payment of Wages Act	#146 ✓	#147 ✗	#148 ✗	#149 ✗	#150 ✗	#151 ✗
Payment of Gratuity Act	#152 ✓	#153 ✗	#154 ✗	#155 ✗	#156 ✗	#157 ✗
Contract Labour Act	#158 ✓	#159 ✗	#160 ✗	#161 ✗	#162 ✗	#163 ✗

The first reform recommendation likely follows from Principle 9 of the Organisation for Economic Co-operation and Development (OECD) best practices for inspections that states: Governments should ensure clarity of rules and process for inspections: coherent legislation to organise inspections and enforcement needs to be adopted and published, and clearly articulate rights and obligations of inspectors and of businesses. The OECD best practices further emphasise the importance of establishing clear requirements for each step of the inspection process to ensure a well-functioning regulatory enforcement mechanism (OECD Library 2014, 55).

The recommendation of DIPP mentions publishing a well-defined inspection checklist which contains detailed SOPs covering all applicable steps of an inspection for each Act on the State Labour Department website.⁴ The aim of SOPs is to strengthen the labour inspectorate and standardise labour inspections.

The Delhi Labour Department has published the SOP followed for every Act under its purview on its website. The SOPs in the inspection checklist, as given in the Delhi Labour Department website, gives a list of all documents, including registers and records of a firm, an inspector will/must check, key observations that an inspector will/must be made during an inspection, and forms an inspector will/must fill in the process of investigating a complaint through an inspection. This self-reported progress from the Department to the DIPP is limited, as it does not substantiate whether the checklist and the applicable steps of an inspection procedure are actually followed.

4. The Delhi Labour Department has published a single inspections checklist document on their website containing seven distinct SOPs to be followed for investigation and resolution of complaints under the seven Acts.

The purpose of published inspection checklists is threefold: enhancing awareness among employees, employers and inspectors about rights and obligations, ensuring procedural transparency, and providing a clear basis for investigation and resolving contentions. Publishing a well-defined checklist ensures that all inspections are uniformly and transparently conducted. The employers should know the registers, records and questions an inspector has a right to check and ask under a stated Act. Only when SOPs are consistently followed will the system be a transparent one where any departures are put in the case record and available for all parties to review.

In this paper, we investigate whether the published inspection checklist and the SOPs contained within it are followed by the Delhi Labour Department. We focus on the implementation of these in inspections conducted by the New Delhi District Labour Office related to seven labour Acts. We focus on these seven Acts (Payment of Bonus Act, 1965; Delhi Shops and Establishment Act, 1954; Equal Remuneration Act, 1976; Payment of Wages, 1936; Payment of Gratuity Act, 1972; Contract Labour Act, 1970; and Minimum Wages Act, 1938) because reforms have been suggested by the DIPP only for these seven Acts. We do not study the content and appropriateness of SOPs but merely whether they are followed.

2 Machinery for Enforcing Labour Laws in Delhi

The Department of Labour and Industries was instituted in Delhi state in the year 1952. In 1954, the Labour Department was separated from the Department of Industries (Government of NCT of Delhi, Labour Department 2017). The Delhi Labour Department today has a mandate of monitoring and enforcing compliance of 44 central laws and one Delhi-specific labour law governing employers and employees in Delhi. The Department is spread across nine district inspectorates: New Delhi, West, Central, North-East, East, North, North-West, South-West and South.

For many years, the Delhi Labour Department undertook periodical surveys, suo-moto inspections and complaint-based inspections of industries to monitor compliance with labour laws. According to the government officials, the Delhi Labour Department moved exclusively to a complaints-based inspection system in 2003. This move followed from the complaints that rent seeking was rampant in the suo-moto inspection regime. Under the new system, labour inspections are carried out only after receiving complaints or based on court orders.

2.1 Mandate for Labour Inspections Under Seven Acts

To resolve a complaint, the labour inspector is required to follow an SOP for each of the seven Acts, as prescribed under the inspection checklist. Table 2 summarises the seven laws and examples of violations under each law. The last two columns in the table, major observations and registers, highlight all that an inspector is required to examine when resolving a complaint.

An Act warrants an on-site inspection only if the accompanying SOP has an observations section. Since the SOPs for the Minimum Wages Act, 1948, and the Payment of Bonus Act, 1965, do not provide for any observations, the complaints filed under these laws are settled by calling the complainants and establishments to the District Labour Office for hearings. These hearings are to take place in the District Labour Office and the proceedings are to be documented and maintained in the case files. There are no on-site inspections for complaints under these two Acts. **However, none of the Act or the inspection checklist defines an inspection, an on-site inspection or even a hearing.**

Table 2: Seven Key Labour Laws and their Mandate

Summary of the Act	Examples of Violations under the Act	To Do in an Inspection as per the Inspection Checklist	
		<i>Observations To Be Made</i>	<i>Records To Be Checked</i>
Equal Remuneration Act, 1976 (Central Act)			
Ensures equal wages to both women and men workers for equal work and equal rights in the workplace.	Discrimination during recruitment, promotion, training or transfer, and different wages for equal work.	Reduction in remuneration rate, discrimination in recruitment/ remuneration/ promotion/ training.	Whether Form-D ⁵ under Rule 6 of the Act maintained.
Minimum Wages Act, 1948 (Central Act)			
Sets the minimum wages that must be paid to workers in the industries.	Nonpayment of wages, payment below the minimum wage and payment for overtime.	N/A	Register of fine, overtime register and more.
Shops and Establishment Act, 1954 (State Act)			
Regulates the condition of service of employees in shops and establishments.	Nonpayment of overtime wages, child labour and poor or faulty record keeping.	Working hours of employees, instances of child labour and drinking water availability.	Remuneration and leave register, appointment letters and more.
Payment of Bonus Act, 1965 (Central Act)			
Provides for the payment of bonus to persons employed in establishments employing 20 or more people.	Nonpayment of bonus, bonus given outside the mandated maximum or minimum amounts.	N/A	Profit and Loss A/c, Balance Sheet, Attendance, Payment of Wages register and more.

Summary of the Act	Examples of Violations under the Act	To Do in an Inspection as per the Inspection Checklist	
		<i>Observations To Be Made</i>	<i>Records To Be Checked</i>
Payment of Wages Act, 1936 (Central Act)			
Ensures timely payment of wages to the workers and wages without unauthorised deductions.	Impermissible deductions of wages outside the limit prescribed by the Act and absence of wage records.	Whether deductions were within limits, fines imposed on employees and approvals of the GoNCT.	Wages register, register of deduction and more.
Payment of Gratuity Act, 1972 (Central Act)			
Demands payment of gratuity to employees in the event of superannuation, retirement, resignation and death or total disablement due to accident or disease.	Nonpayment of gratuity, payment of lesser amount than stipulated and payment to the wrong person.	Number of employees retired/ superannuated/ resigned/ died or disabled due to accident or disease and number of employees who have been paid their gratuity and its mode.	Notice of opening, notice of change, nomination (in Form F), Abstract of the Act and Rules and more.
Contract Labour Act, 1970 (Central Act)			
Regulates the employment of contract labour in establishments with 20 or more workers.	Nondisbursement of wages to contract labour in time or right amount and unsatisfactory health conditions at the workplace.	Availability of first aid box, urinals and latrines, drinking water, canteen, contractors' licence and working hours.	Register of contractors, annual returns, notice of commencement, hours of work and more.

2.2 Procedure for Addressing Malfeasance Complaints Under SOPs

The following steps are to be chronologically adhered to in resolving a complaint:

Receipt of complaint and assignment to an inspector: The Delhi Labour Department monitors compliance only based on complaints received at one of the nine inspectorates or court orders. After a complaint is received, the Assistant Labour Commissioner/Labour Officer conducts a preliminary examination and assigns the complaint

5. The form has questions such as the number of male and female employees, rate of remuneration paid, social security benefits provided, description of work and so forth.

to a labour inspector for investigation. All labour Acts under different clauses describe an inspector as a person appointed to monitor conditions of work and compliance with regulations and to provide an avenue for workers to seek help.⁶

Inspection: Depending on which Act the complaint is filed under and the nature of the complaint, the inspector either inspects the establishment or calls the management to the District Labour Office for a hearing. Although all the seven Acts and the inspection checklist require the inspector to conduct an inspection, they do not define an inspection or specify whether inspections ought to be on-site.

If the inspector does not visit the establishment, he/she summons the management and complainant to the Labour Office. The management is asked to provide documentation to prove that they have not violated any labour laws. If the management fails to comply or provide necessary documentation in the first hearing, a second hearing date is set.

However, this procedure where management and employee are summoned to the District Labour Office is not mentioned in either the inspection checklist or the Acts. Our interviews with inspectors indicated that this is an informal policy in the department because they do not have the time or resources to inspect establishments for every complaint they receive.

Submission of inspection report: If the inspector does visit the establishment, he/she is supposed to file an inspection report or findings summary within 48 hours of the inspection, as can be seen in Figure 1. If there is a violation, the inspectorate sends a compliance notice to the management. In cases where the management is called to the office, we refer to the first hearing as the inspection which is supposed to be held within 15 days of receipt of complaint. The inspector submits an inspection report to the district Assistant Labour Commissioner who examines it 48 hours after the first hearing.

Checking compliance to notice, resolution/filing of challan and submission of final report: If the management fails to comply after a compliance notice has been issued or after a series of hearings, a challan is filed against the management.⁷ If the management complies, the case is resolved. The inspector, then, submits the final report within 48 hours. For example, if the complaint was for nonpayment of salary, a resolution would mean that the management paid the salary when the inspector issued them the notice. Noncompliance to the notice from the inspector leads to the filing of challan at the court of competent jurisdiction.

All this information is recorded in the case files and the complaint register. The case files consist of all correspondence between the inspectors, the establishments and the complainant, while the complaint register records the names of the complainants, the establishment and important dates such as the date of complaint, date of first hearing and date of settlement. Figure 1 summarises this inspection process as given in the

6. All the labour Acts uniformly state that ‘The appropriate Government may, by notification, appoint such persons as it think fit to be Inspectors for the purpose of making an investigation as to whether the provisions of this Act, or the rules made thereunder, are being complied with by employers, and may define the local limits within which an Inspector may make such investigation’.

7. Challan is a common Hindi word for charge sheet. We use the term ‘challan’ throughout because the Labour Department website and the SOPs use the term ‘challan’.

Labour Office inspection checklist.

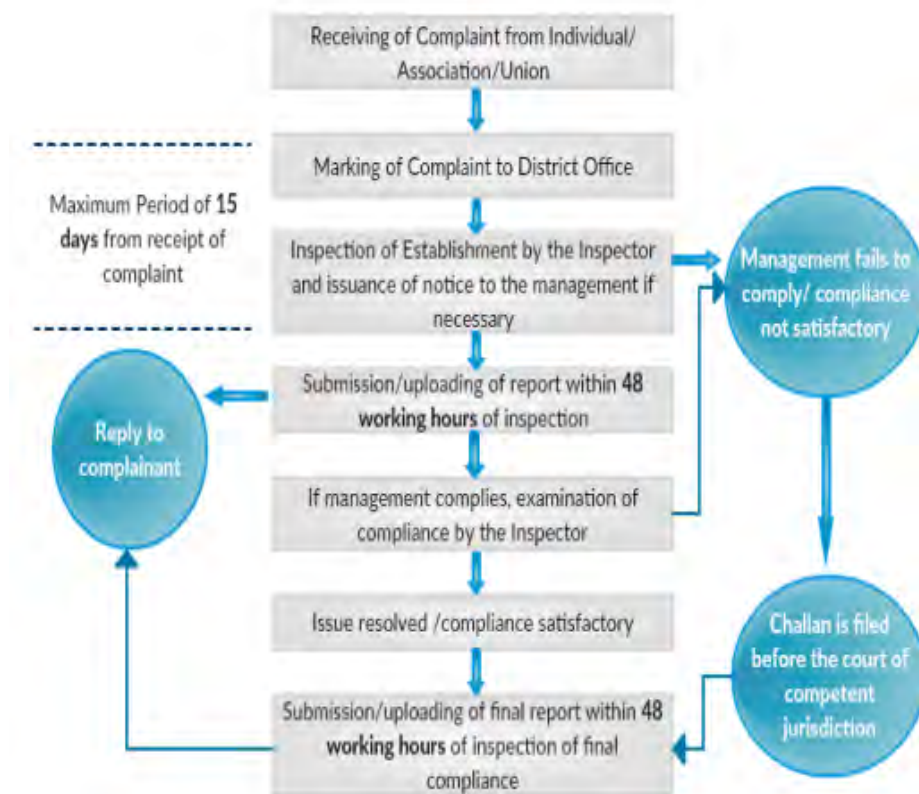


Figure 1: Inspection Procedure Flowchart as Given in the Inspection Checklist by the Delhi Labour Department Website

Following each of the aforementioned listed steps are certain requirements. For instance, Step 3, that is the conduct of inspections, necessitates that inspectors know and follow the inspection checklist as provided in the SOPs attached to each of the seven laws. For this, inspectors must know which Acts necessitate an on-site inspection. Similarly, following time frames such as submission of reports within 48 hours of inspection requires that all dates and times be clearly mentioned to monitor case progress.

We explore the reality of inspection procedures given in the labour law of Delhi by looking at whether these requirements are met.

3 Analysing the Reality of Labour Inspections in Delhi

Our team set out to better understand the labour inspection procedures, investigate timelines and determine how we could objectively analyse the effectiveness of labour inspections in correcting labour malfeasance. In order to study the implementation of the inspection checklist in the New Delhi District Labour Office, we did three things:

- We assembled administrative data from complaint registers and case files and analysed it against SOP requirements or good practices in inspections.
- We conducted semi-structured interviews with the Additional Labour Commissioner, Labour Officer, Inspecting Officer and Inspector of the New Delhi district office.⁸
- We interviewed 15 complainants asking them about the kinds of problems they faced with the inspection process and their satisfaction with the process. We found the names and contact details of these complainants from complaint registers. The questionnaire for these interviews is provided in Appendix 2.

In this study we have not reached out to enterprises named in the complaints.

3.1 Administrative Records Analysis of Labour Violation Complaints Data

Every complaint received is supposed to have an entry into the complaint register along with the detailed case file. We were granted access to four such complaint registers and 20 such case files maintained by the New Delhi District Labour Office. To our knowledge, this is the first study that systematically looks at administrative data from complaint registers and case files to understand procedural hygiene in complaint resolution.

3.1.1 Tabulation and Study of Complaint Registers

The complaint register is a record of all the complaints received by the office. It consists of

- names and addresses of complainants;
- important dates (complaint receipt, hearings, settlement);
- the Acts under which individual complaints were registered;
- whether the case was settled.^{9 10}

A total of 846 complaints were filed between 1 January 2016 and 11 July 2018 in the registers provided to us. Table 3 shows how we tabulated all the 846 complaints. The actual register includes other parameters such as the name, address, and phone number of the complainant, which we omitted from our tabulation.

8. The post of an inspector is a group C post, while that of an inspecting officer is a group B post. Their jobs remain the same but there is a difference in salary, seniority and mode of recruitment. Inspectors are recruited through Delhi Subordinate Services Selection Board, while inspecting officers are recruited through Staff Selection Board.

9. Settlement means that either the complaint was resolved or it was forwarded to the court of appropriate jurisdiction.

10. Some cases don't get settled but are simply closed from the inspector's end as complainants stop responding. Date of closure does not indicate whether the case was settled or not.

Table 3: Sample Tabulation of Administrative Data from Complainant Register

Act	Settled	Relevant Dates		
		<i>Receipt of Complaint</i>	<i>First Day of Hearing</i>	<i>Resolution or Closure</i>
–	Yes	01/01/2016	11/01/2016	11/03/2016
–	Yes	–	05/02/2016	05/02/2016
–	No	05/01/2016	27/05/2016	–
Minimum Wages Act, 1948	Yes	08/01/2016	18/01/2016	–

Not all parameters were uniformly entered in the registers. As a result, each finding in our analysis was based on a unique usable dataset of register entries for which the relevant information was entered in the register. For example, to calculate the time taken to resolution, we used entries that included dates for receipt of complaints and available dates of resolution. Our tabulation of entries in the complaint registers and data analysis is available in Appendix 3 for reference.

3.1.2 Study of Case Files

Each complaint in the registers had a separate case file. We analysed 20 such case files.

A case file consists of all the documentation provided by the establishment and past correspondence between the inspectorate, the complainants and the establishment for that one complaint. Case files typically include:

- the original complaint (received in the form of a letter);
- the notices issued by the inspector to the management;
- notes from any correspondence between the inspector, complainant and management;
- written responses of the management to the notice from the inspector;
- a copy of the challan (charge sheet), if filed. (Filing the challan means that the case has been forwarded to the appropriate court for resolution.)

In the next section, we present our findings from the analysis of these 846 unique complaints and findings from interviews with the New Delhi District Labour Office officials and complainants. We acknowledge that administrative data accuracy relies on the ability of the inspector to input the data accurately and honestly.

4 Actual Procedural Hygiene of Labour Compliance Enforcement in New Delhi

Through our analysis of administrative data on complaints and through interviews with inspecting officers and complainants, we find that while SOPs have been published on the website of the department, they are likely not being met with rigour. We estimate that the labour complaint resolution process in Delhi falls short of meeting best practice standards in several areas.

1. Indifferent, haphazard and nonstandardised record keeping and lack of fidelity to prescribed timelines are nontrivial departures from SOPs or best practices.
2. The high number of cases pending resolution may be highlighting a deeper malaise with the redressal mechanism because more than half of the complaints we analysed remain unsettled for almost a year.¹¹
3. The resolution process relies on inspections and hearings which are not defined in SOPs. This has likely made inspections vulnerable to ‘window dressing’.
4. Complainants remain dissatisfied with the redressal mechanism. Most complainants emphasise collusion between department officials and plaintiff representatives.
5. Contrary to claims by department officials that manpower shortages are the key reason for poor procedural hygiene, high pendency and complainant dissatisfaction, we estimate that low levels of awareness among inspectors about the laws and blurry lines between on-site inspections and in-office hearings may be contributing to these poor outcomes.

4.1 Indifferent and Inconsistent Record Keeping

Requirement: No requirement and no prescribed format given for how labour inspectors should maintain registers.

Reality: Since there is no prescribed format or mandate for record keeping, we find that registers and case files have been maintained in an inconsistent manner.

Record keeping is a matter of policy and good administrative practice developed over time and built into work processes to ensure that the organisation can refer to records of past transactions. This aids organisations to perform subsequent actions, produce evidence of financial or contractual obligations and avoid disputes or protect against legal liability. It also helps draw on evidence of past events to make informed decisions for the present and future. Good record keeping practices allow organisations to account for their actions and decisions when required to do so.

11. In the complaint register that we analysed, the inspector had marked ‘Settled’ for the complaints that were settled. The inspector, however, did not mark any complaint as not settled. Therefore, we assumed that any complaints not marked ‘settled’ have not been settled till date.

Labour inspectors have access to very valuable information given their interactions with the management, visit workplaces and access to the records of the establishment. In order to fully utilise this information, it should be collected in accordance with certain guidelines, principles and methodologies (International Labour Organization 2016, 1). In fact, if labour inspectorates record the data required for administrative purposes methodologically and uniformly, the data can help in the diagnosis of issues and the design of responses to priority problems (*ibid.*, 2).

The procedure for inspections and resolution of complaints entails maintenance of complaint registers and preparation of individual case files. Both these at the New Delhi District Labour Office are poorly maintained.

Case files are supposed to contain proof of all correspondence between the complainant, the employer and the inspector. Case files typically include the original complaint (received in the form of a letter), notices issued by the inspector to the management, notes from any telephonic correspondence between the inspector, the complainant and the management, letter responses of the management to the notice from the inspector and a copy of the challan if filed. Filing of the challan means that the case has been forwarded to the court of appropriate jurisdiction for resolution.

For the 20 case files we analysed, we found several documents missing from the files. These case files were assigned to us by the inspectors. Thus, one can presume that these case files were the least controversial ones. Some cases had the copy of the first notice missing, while some case files did not have the complaint letter to begin with.

Complaint registers are also poorly maintained. They are currently handwritten and manually maintained, which reduces their accessibility. Our visit to the New Delhi District Labour Office revealed that the inspector at the district did not even have a computer.

In the absence of a prescribed format or method for entering information in registers, there was no uniformity in tabulation between the complaint registers we analysed. For example, one of the four complaint registers mentioned all the dates of inspections/hearings while the other three only mentioned the date of first hearing. The writing was illegible and complaints were not recorded in a standardised language. The complaints were written in either Hindi or English.

The five parameters that we used to tabulate the data from the complaint registers had missing information. For 781 out of 846 complaints the **Act** they were filed under was missing. The **date of receipt of a complaint** for 63 out of 846 complaints, **date of first hearing** for 166 out of 846 complaints and **date of resolution** for 89 out of 382 resolved cases had not been mentioned. For all 846 complaints it was said if they had been settled or not. Table 4 shows just how poorly the registers are compiled and maintained.

Table 4: Analysis of Complaints in the Four Complaint Registers of the New Delhi District Labour Office

Parameter	Findings
Number of complaints in the register	846

Missing complaint dates	7.4%
Missing first hearing dates	19.6%
Missing closure dates	23.3%
Missing Act of the registered complaint	92.3%

Other Findings from the Registers

- 98.5% of the cases in the registers had at least one or the other field with missing information.
 - Of the 20 case files we studied, one-fourth (25%) had no mention in the registers.
 - In 12 complaints from the registers, the date of hearing was after the date of receipt of the complaint.
 - In 6 complaints from the register, the date of closure was before the date of receipt.
 - In 3 complaints, the date of receipt is after 11 July 2018—the date when we analyzed the registers.
 - Complaint records are not written in a standardized language.
 - The order of sections in the four registers were different. There were differences even within the same register as documentation format changed month to month.
-

All of the problems mentioned in the aforementioned table could potentially be avoided through a standardised system of record keeping.

4.2 Lack of Fidelity to Prescribed Timelines

SOP Requirement: According to the inspections checklist on the Delhi Labour Department website, inspections have to be conducted within 15 days of receipt of complaint.

Reality: We find that inspections timelines are regularly not met.

Under the complaint redressal system, labour inspectors are supposed to carry out inspections within 15 days of receipt of complaint; and inspection reports should be submitted to a higher authority or uploaded online within 48 hours of inspection (Government of NCT of Delhi, Labour Department 2018). We find that in 33.6% cases inspections were held after 15 days of receipt of complaints, with the average time between receipt of complaint and first hearing being 16.8 days (See Table 5).

Table 5: Compliance with Timelines for Resolution of Complaints

Parameter	Number of observations which had relevant timelines	Findings
Inspections held after required 15 days of receipt of complaint	612/846 cases ¹²	33.6 %
Average time from receipt of complaint till first hearing	612/846 cases	16.8 days (more than the mandated 15 days.)

Other Findings

- Although inspectors maintain handwritten reports as a part of case files, interviews with inspectors illustrated that inspectors are unaware of the provision requiring submission of inspection reports to senior officers within 48 hours.
-

Delay in the resolution of these complaints causes heightened distrust in the inspectors, as disclosed by complainants in interviews.

We have no information about whether the final reports are submitted within 48 hours of conducting the inspection or not. Recommendations C and D of the BRAP, which mandate submission of reports online and allow establishments to download reports, were never adopted by the Government of Delhi. Complainants mentioned during the interview how they were unaware whether the inspector played any part at all in resolving their complaints because they did not have access to the inspection reports.

Timely reports can help formulate effective inspection policies, while also providing proof of proceedings (International Labour Organization 2013). The report should be completed as soon as possible after the inspection, preferably on the same day. There should ideally be binding deadlines throughout the inspectorate with clear, achievable performance standards. Timely submission of reports to a higher authority leads to increased accountability, which improves performance.

4.3 High Number of Cases Pending Settlement

Requirement: No given time frame within which cases should be settled.

Reality: In a system with no given time frame for complaint resolution, 54.8% of the cases have been left unresolved for an average of 311.5 days.

There are time frames provided in the labour inspections checklist for steps in the inspection process, such as date till inspection and submission of reports. There is, however, no time frame mentioned for cases to be settled/resolved. A case is only settled/resolved if the complaint has been resolved by the inspector or the complaint has been forwarded to the appropriate court for further action. For 2016–2018 in New Delhi, 55.9% of the cases have been unresolved for an average of 311.5 days for the 436 cases that have not been settled.¹³ The 260 cases that had been settled took an average time of 43.6 days. This is an interesting relationship because the cases that got settled were resolved fairly quickly compared with the unresolved cases.

12. Only 612 out of 846 entries in the registers had information about complaint dates and first hearing dates.

13. Settled here means that either the complaint was resolved by the inspector or it was forwarded to the appropriate court for further action.

Table 6: Discrepancies in Resolution of Labour-Related Complaints

Parameters	Usable Data	Findings
Unsettled cases	846 cases	54.8%
Average time taken to solve complaints	260 settled cases ¹⁴	43.6 days
Average time since receipt of complaint	438 unsettled cases	311.5 days
Other Findings		
<p>Of the 15 complainant interviewed, about half claimed that their complaints were yet to be unresolved:</p> <ul style="list-style-type: none"> •25% of the complainants who were yet to see resolution were harassed by the management and, therefore, did not pursue their complaints. •The other 75% have been waiting for an average of 161 days since the date of receipt of complaint by the Delhi Labour Department for resolution as of 16 July 2018 (the date of the interviews). •Meanwhile, the 47% of complaints that did get resolved, were done so in 35 days on average. 		

4.4 Confusion Between ‘Inspection’ and ‘Hearing’ in the Absence of a Clear Definition

SOP Requirement: On-site inspections are required for five out of the seven labour Acts mentioned in the BRAP reforms. No prescribed format of redressing complaints of the other two Acts exists.

Reality: Less than 10% of the complaints are registered under the five Acts which require on-site inspections, and even in those cases on-site inspections are hardly ever conducted. For the other cases, an informal system of summoning the management and the employee to the Labour Office is followed.

On-site inspections provide a way for inspectors to triangulate complaints. On-site inspections in New Delhi, however, are hardly ever conducted. In most cases, the establishments are simply called to the Labour Office to redress the complaint.

In our analysis of the 20 case files, we came across only 2 complaints where an on-site inspection was carried out. Our basis for concluding that an inspection was carried out for these two cases is the existence of the photocopy of the inspection report in these two files. Additionally, when we asked the labour officer to show us any case file in which case an on-site inspection was conducted, they could not find any.

Under the complaint redressal system, labour inspectors are required to conduct on-site inspections in all cases, except for complaints under the Payment of Bonus Act, 1965,

¹⁴. The two numbers do not add to the total of 846 cases because of the presence of unusable data.

and the Minimum Wages Act, 1948. From the 48 complaints filed in 2018¹⁵ which did have the Act mentioned, 93.6% of the complaints were under either the Minimum Wages Act, 1948, or the Payment of Bonus Act, 1965. As a result, inspectors mostly summon the management of the concerned establishment to the respective district office, where the relevant records are produced for inspection.

One of the key disadvantages of such an inspection process is ‘window dressing’ and documents being ‘missing’ (International Labour Organization 2010). Moreover, this system of calling the management to the Labour Office is not mentioned in either the inspection checklist or the Acts. As a result, there is no prescribed format. It is unclear what the due process is and whether it is followed.

4.5 Dissatisfaction Among Complainants with Inspections and Resolution Process

Interviews with the complainants revealed that 40% of the complainants were not satisfied with the complaint redressal system. Complainants cited various causes of dissatisfaction: harassment from the management of the concerned establishment; the management not appearing at the hearing; failure of the inspector to furnish the final inspection report to the complainant; and close proximity between the labour inspector and establishment resulting in a bias against the complainant. Complainants faced challenges when filing the complaints because of lack of awareness. For example, complainants were not able to gain access to inspection reports or had to pay a fee to file their complaint.

Where complainants claimed that their case was a pending resolution, an average of 161.25 days had elapsed since registering the complaint. Where complaints were resolved, complainants stated that it took about 35 days on average.

Table 7 illustrates our findings from the complainant interviews we conducted.

Table 7: Findings from Complainants

Parameter	Findings (%)
Complainants who met the inspector ¹⁶	87
Complainants who faced problems with filing of complaint.	54
Satisfaction with the Complaint Redressal system	40
Complainants who claimed to be harassed by Management	60
Complainants that claimed Inspector was not proactive	40
Complainants who viewed their complaint to be unresolved	47

15. Registers for 2016 and 2017 did not have a column for acts. We, therefore, only look at complaints from the 2018 register.

Complainants argue that there is close proximity between the management and the inspectors, which allows the management to window dress their records and files and is prone to corruption. Since inspectors are aware that it makes economic sense for employers to compromise with the monitors of laws rather than implement them, they make extortionist demands that employers comply with (Sundar 2015). The complaint redressal mechanism, as in force today, leaves a large degree of discretion at the hands of the inspectors and thereby encourages corruption and rent seeking (Debroy 2014).

4.6 Other Issues

4.6.1 Lack of Awareness Among Inspectors

Requirement: Inspectors are required to know what constitutes violations of labour laws in order to follow the SOPs for each Act.

Reality: During interviews, inspectors demonstrated a lack of knowledge about what constitutes the violation of labour laws such as the Equal Remuneration Act.

We went beyond our analysis of the complaint register and the case files to find how well the primary enforcers of labour laws, ‘the inspectors’, know the various labour laws. To our dismay, we found through our interviews with the inspectors that they were unaware about the crucial provisions of labour laws.

For example, labour inspectors seemed unaware about discrimination clauses of the Equal Remuneration Act, 1976. When asked how they judge discrimination under the Act, inspectors claimed that discrimination during promotion did not come under the Act. However, Section 5 of the Equal Remuneration Act, 1976, clearly states that discrimination during recruitment/promotion is a violation. The Additional Labour Commissioner claimed that the Act was redundant because there had not been any cases under it in the last 25 years. This claim, however, is refuted by the Delhi Labour Department website, which shows that there were 2,826 inspections under the Equal Remuneration Act in 2002 (Government of NCT of Delhi, Labour Department 2017).

4.6.2 Unclear Manpower Planning

Delhi Labour Department currently has a large proportion of vacant positions. In order to assess the organisation team strength for 2018, our team visited the office of the Labour Commissioners and accessed data on the number of vacancies in the department through their administrative office (See Table 8).

Table 8: Sanctioned and Vacant Positions within the Delhi Labour Department

16. One of the complainants did not meet the inspector because she resolved the complaint with the management and one reported that the labour court was not responsive.

Post	Sanctioned Positions	Vacant Positions	Vacancy %
Inspecting Officer	19	13	68.4
Inspector (Grade 2)	38	27	71.1
Inspector (Grade 3)	13	9	69.2
Labour Officer	11	3	27.3
Assistant Labour Commissioner (ALC)	11	0	0.0
Deputy Labour Commissioner (DLC)	13	7	53.8
Inspector of Factory	10	5	50.0
Joint Labour Commissioner (JLC)	3	0	0.0
Total	118	64	54.2

There are only 15 inspectors in the Delhi Labour Department spread over nine district offices. Approximately, 83% of the sanctioned inspector positions remain unfilled. Since 2013, the number of inspectors in the department in Delhi has increased by only 2 (Yadav 2015).

The large number of vacancies, however, does not imply that the Delhi Labour Department is overburdened. This is certainly not the case for the New Delhi District Labour Office. While inspectors at the New Delhi District Labour Office claimed to deal with approximately 60–80 cases per month, our analysis of the complaint register does not support the claim. The complaint register shows that an inspector receives 25.9 complaints a month, which implies approximately 1 complaint per day. Moreover, most complaints received are filed under the Minimum Wages Act, 1948, and the Payment of Bonus Act, 1965, which do not necessitate an on-site inspection as explained earlier.

Conclusion

The DIPP has employed self-reporting as a method of receiving feedback on progress made in the implementation of reforms by states under the BRAP 2017. Our study highlights the limitations that arise from self-reporting of progress and emphasises the need to critically examine the veracity of claims made with regard to the implementation of reforms and investigate what is not being said.

We find that the GoNCT currently handles labour inspections in a rudimentary manner: record keeping is done manually, and inspection reports are not uploaded online. Our preliminary investigation reveals that procedural hygiene in the New Delhi Labour Inspectorate is not up to the mark.

Several states in India have employed measures to increase transparency and efficiency in the existing system of inspections. Instead of shifting to a complaint redressal system, the procedure of suo-moto inspections has been improvised. In 2011, the ILO recognised

the Labour Management System (LMS) developed by the Government of Maharashtra to facilitate compliance with labour laws. The LMS was designed to streamline the labour machinery of the state by consolidating information gathered from labour inspections and generating automatic alerts to help monitor labour law compliance (International Labour Organization 2011). It provides for an online complaint window for businesses and labourers (Accenture 2014) and allows users to track their past inspections (Labour Department 2018). Moreover, several states, including Andhra Pradesh and Telangana, have developed a portal for employers and employees to download inspection reports (Government of AP 2018), thus making the system more transparent.

Taking guidance from the BRAP 2017, released by the DIPP, Jharkhand and Andhra Pradesh introduced centralised portals for dealing with inspections. The practice followed in Jharkhand has been listed as the best practice for labour reforms by the DIPP. These systems categorise establishments, randomly allocate establishments to inspectors, display a list of establishments to be inspected and allow employers and employees to access inspection reports.

The Delhi Labour Department, however, does not appear to be meeting the intent behind the BRAP 2017 implementation guideline. A regulatory system must be built on the doctrine of rule of law. There should be no opportunities for abuse of power, transparency in all aspects of enforcement, strong challengibility in a court of law and high standards of professional conduct. In Delhi, however, one doesn't know if due process and procedural hygiene are being adhered to.

We asked the complainants about their views on improving the system at play in Delhi and they suggested the following:

- Labour court proceedings should be conducted in front of a camera so that files and evidence do not get 'misplaced' as certain complainants have experienced.
- Inspectors should retroactively check if the management continues to comply with the laws and have not harassed the workers after the complaint has been settled.
- Also, 33.3% of the complainants recommended that there should be regular inspections rather than complaint-based inspections. CRA, as recommended under Reform E of the BRAP implementation guidelines, is a possible alternative which ensures regular inspections in high-risk areas.

Since 'inspector raj' is a product of unchecked discretion placed in the hands of the inspectors, self-reporting by these inspectors does not provide us with a clear perspective of progress on eliminating it. The aim of reforming the inspection system is to provide for equal treatment of all, bring in transparency and accountability and put in place a satisfactory complaint redressal mechanism. Mere publishing SOPs on the department websites hardly fulfils the purpose of ease of doing business.

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Appendix 1: List of Labour Laws in Force in Delhi

List of Central Labour Acts

1. The Workmen's Compensation Act, 1923 (now renamed as the Employees Compensation Act, 1923)
2. The Working Journalists and Other Newspapers Employees (Conditions of Service) and Compensation Act, 1923)
3. The Trade Unions Act, 1926
4. The Payment of Wages Act, 1936
5. The Children's (Pledging of Labour) Act, 1938
6. The Employees Liability Act, 1938
7. The Weekly Holidays Act, 1942
8. The Industrial Employment (Standing Orders) Act, 1946
9. The Mica Mines Labour Welfare Fund Act, 1946
10. The Industrial Disputes Act, 1947
11. The Factories Act, 1948
12. The Employees State Insurance Act, 1948
13. The Minimum Wages Act, 1948
14. The Plantation Labour Act, 1951
15. The Employees Provident Fund and Miscellaneous Provisions Act, 1952
16. The Mines Act, 1952
17. Miscellaneous Provisions Act, 1955
18. The Employment Exchange (Compulsory Notification of Vacancies) Act, 1959
19. The Building and Other Construction Workers Cess Act, 1996
20. The Apprentices Act, 1961
21. The Maternity Benefit Act, 1961
22. The Motor Transport Act, 1961
23. The Personal Injuries (Emergency Provisions) Act, 1962
24. The Personal Injuries (Compensation Insurance) Act, 1963
25. The Payment of Bonus Act, 1965
26. The Beedi and Cigar Workers (Conditions of Employment) Act, 1966
27. The Contract Labour (Regulation and Abolition) Act, 1970
28. The Limestone and Dolomite Mines Labour Welfare Fund Act, 1972
29. The Payment of Gratuity Act, 1972
30. The Sales Promotion Employees (Conditions of Service) Act, 1976
31. The Bonded Labour System (Abolition) Act, 1976
32. The Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Fund Act, 1976
33. The Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare (Cess) Act, 1976
34. The Beedi Workers Welfare Fund Act, 1976
35. The Beedi Workers Welfare Cess Act, 1976
36. The Equal Remuneration Act, 1976
37. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979

38. The Cine Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981
39. The Cine Workers Welfare (Cess) Act, 1981
40. The Cine Workers Welfare Fund Act, 1981
41. The Dock Workers (Safety, Health and Welfare) Act, 1986
42. The Child Labour (Prohibition and Regulation) Act, 1986
43. The Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988
44. The Building and Other Constructions Workers' (Regulation of Employment and Conditions of Service) Act, 1996
45. The Unorganised Workers Social Security Act, 2008

Act Passed by the GoNCT

1. The Delhi Shops & Establishment Act, 1954

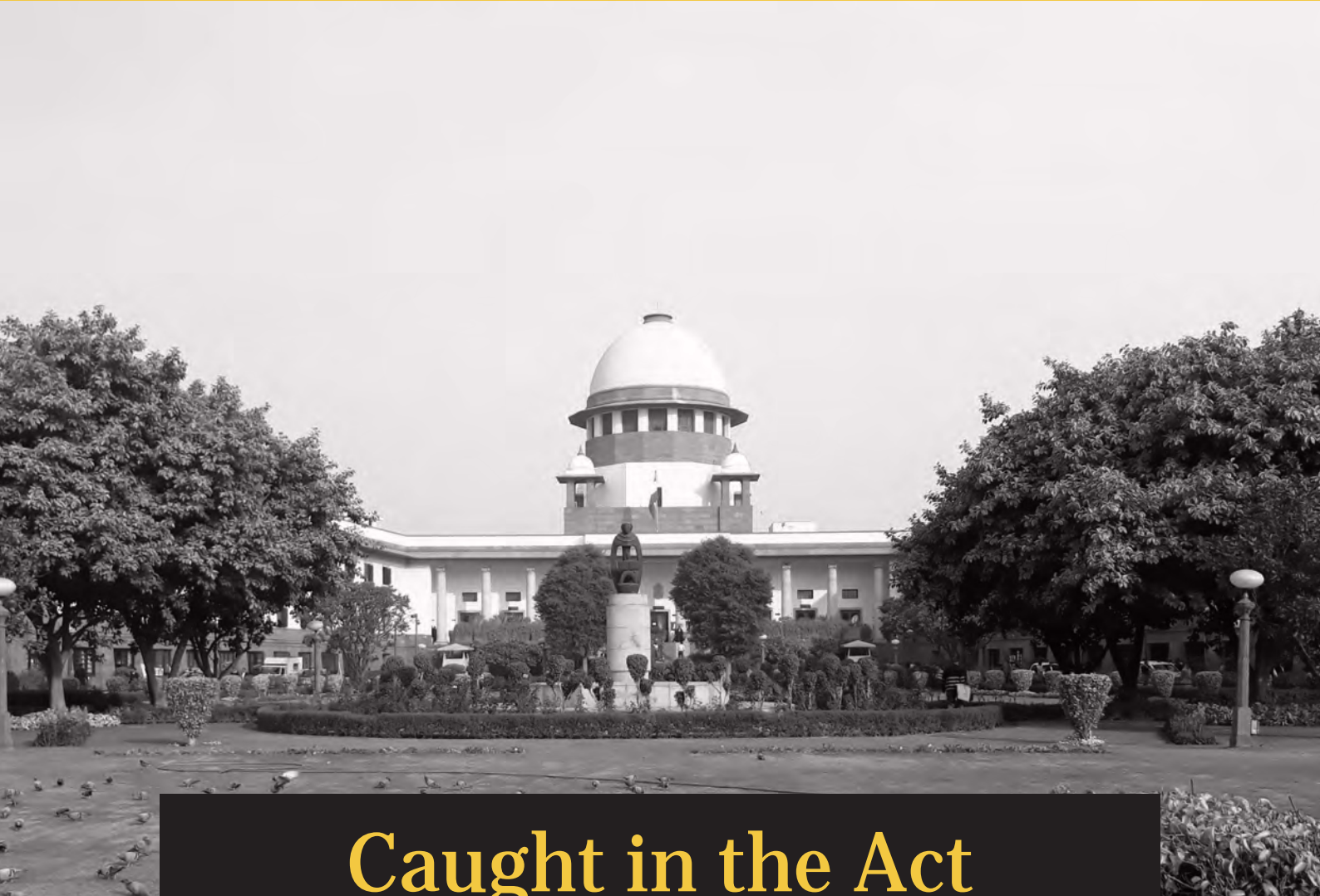
Appendix 2: Questionnaire for Complainant Interviews

Did the inspector ever meet you?	Yes/No/Other
Was the inspector proactive in solving your complaint?	Yes/No/Other
What problems did you face in filing the complaint?	-
How much money did it cost?	-
Did you pay a bribe to expedite the case?	Yes/No/Other
How long did it take to solve your complaint?	-
What is the current status of your complaint?	-
Are you satisfied by the resolution of the complaint?	Yes/No
Are you satisfied with the process of the complaint-resolving mechanism?	Yes/No
Did you face any kind of harassment for filing of the complaint?	Yes/No/Maybe
If yes, did you inform of the same to the inspector?	Yes/No/Maybe
How do you think the system can be improved? (Will regular/periodic inspections prove useful?)	

Appendix 3: Database and Analysis of Register Data and Case Files

Database Link: <http://bit.ly/2EBOJU1>

Data Analysis Link: <http://bit.ly/2ys71BC>



Caught in the Act

ASSESSING THE FUNCTIONING OF COMMERCIAL COURTS IN DELHI

*Kruthika Jerome**

* *The author would like to thank Pujeet Manot and Aryan Aggarwal for their invaluable help in field research and writing this paper.*

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List of Abbreviations

BRAP	Business Reforms Action Plan
DIPP	Department of Industrial Policy and Promotion
EoDB	Ease of Doing Business
GoNCT	Government of National Capital Territory

Executive Summary

For an effective market-based economy, there must be legal systems and processes that protect property rights and economic opportunities on behalf of individuals who lack traditional political and economic powers (Dakolias, Freestone, and Kyle 2003). To engender investment and jobs, laws and legal institutions must provide an environment conducive to economic activity. Enforcing contracts becomes an integral part of an open business environment.

Post-2015, India witnessed a huge drive towards improving the ease of doing business, as part of the economic agenda of the central government. This was supplemented by a 340-point Business Reform Action Plan (BRAP), which listed key recommendations and action points to actualize this goal. Despite a better overall rank in terms of the Doing Business index of the World Bank, India has consistently ranked in the bottom 30 on the issue of contract enforcement.

The BRAP 2017 recommended that state governments set up specialised commercial courts to focus on commercial disputes exclusively. It also suggested that 90% of the vacancies for the post of judges be filled by new recruitments, timelines be defined and adhered to for first hearings, and filing of defence statements, submission of evidence, filing of expert testimonies and submission of final judgements be ensured (Department of Industrial Policy and Promotion 2017).

Self-reported evidence from the Government of National Capital Territory of Delhi (GoNCT) to Department of Industrial Policy and Promotion (DIPP) shows that Delhi is yet to implement the recommendation regarding fulfilling vacancies and specifying timelines. The government has, however, instituted a commercial division in the High Court of Delhi under the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (hereafter denoted as Commercial Courts Act, 2015).

The Act defined and categorised commercial suits to be civil suits above a specified value of Rs. 1 crore (Rs. 10 million). These cases were to be tried by a specialised commercial bench launched in the High Court of Delhi in November 2015 (Press Information Bureau 2015). However, the commercial bench continues to adjudicate other civil disputes apart from hearing commercial disputes.

This study set out to investigate the functioning of the commercial bench, asking whether there were any substantial efficiency gains from setting up the bench. In order to study the functioning of the commercial bench, the study used two tools.

First, this study used a time-and-motion study to shine a light on the functioning of the commercial bench at the High Court of Delhi and to analyse the time spent on commercial cases specifically. With this, the study compared the actual time spent on commercial cases as opposed to noncommercial original-side cases. The study also quantified the proportion of time spent on procedural, substantive matters and adjournments in commercial and noncommercial original-side cases.

Thereafter, the study compared the relative pendency of commercial original-side disputes with overall civil disputes and contrasted it with the actual time spent on both

from the time-and-motion study. The study also compared the proportion of time spent on commercial disputes with the theoretical time available per case per judge on the commercial bench.

The study found that more time was spent on noncommercial cases, the time spent on commercial disputes was not proportional to the level of pending commercial cases, and the time available with judges was likely not proportionally assigned between commercial and noncommercial cases.

Second, to understand whether the findings from the time-and-motion study could point to efficiency gains from the period of setting up the commercial bench, the study placed findings in the context of the disposal time for commercial disputes. The study measured average disposal time for 903 commercial cases in the High Court of Delhi, from January 2017 to December 2017, and found that the median disposal time for commercial disputes in 2017 was surprisingly low at 151 days compared with the World Bank estimates. Additionally, while it might be perceived that the Court handled settlement more speedily than a full court hearing, it was also found that more than 80% of the decreed and settled commercial cases had similar disposal times. Despite this, the pendency for commercial disputes continues to remain high.

The study argued that while a commercial bench was instituted at the High Court of Delhi, it did not serve to drive a specialised Court approach. Even though the time available per judge per case at the High Court of Delhi has increased over the past 6 years, no specific slots have been dedicated to commercial disputes. In fact, a large amount of the Court's time is taken up by other civil disputes, leaving little time for commercial cases. The time spent on commercial versus noncommercial original-side cases is not proportional to the relative pendency of commercial disputes to noncommercial disputes.

It is also unclear to what extent the surprisingly low disposal time for commercial cases will be affected by the changes in the handling of commercial disputes. The changes in the pecuniary jurisdiction can increase the caseload of the High Court of Delhi. In addition, since not much has changed in how the Court functions, substantial judicial efficiency gains may be some distance away. Ultimately the goal of bringing focus to commercial disputes, as recommended by the BRAP, may not be achieved in the absence of a specialised court.

1 Introduction

A poor enforcement system fails to inspire trust in investors and entrepreneurs and slows prospects for economic growth and development (Dam 2006). Enhancing the efficiency of the judicial system, the key institution for enforcing rules of the game, can improve the business climate, foster innovation, attract foreign direct investment and secure tax revenues (Esposito, Lanau, and Pompe 2014).

Judicial efficiency is the ability of a court to meet the demand imposed on it. Judicial efficiency can be measured through indicators such as the number of cases pending before the Court at the end of each year (pendency), the year-on-year change in pendency levels and the time it takes for cases to be disposed of (Dakolias 1999). ‘Disposal’ indicates the conclusion of a case through a decree judgement, settlement or withdrawal. These are reliable indicators of efficiency because congestion, cost and delay are the problems most often complained about by the public in most countries (Dakolias and Buscaglia 1996; Dakolias 1999).

The ‘Ease of Doing Business’ (EoDB) index incorporates judicial efficiency in its ranking methodology. Under the head ‘Enforcing Contracts’, the report measures the time and cost taken to resolve a commercial dispute. These include the time taken to file and serve a case, time taken for trial, judgement and enforcement of a contract, average attorney fees and court and enforcement charges. In the 2018 EoDB index, the mean time to solve a commercial dispute in India was found to be 1445 days, placing us at 164 out of 190 ranked countries (World Bank 2018).

To improve the business environment in the country, particularly to reduce the time and the cost of enforcing contracts, the DIPP of the Government of India recommended the institution of exclusive commercial courts at the High Court and District Court levels in 2015. According to the Business Reform Action Plan (BRAP) 2017 of the DIPP, ‘these specialised commercial courts at High Courts and District Courts could focus on contract disputes exclusively, reducing the requirement for complainants and defendants to wait for delayed judgements through the regular court system’. Such reforms have yielded positive results in different parts of the world such as Uganda and England (Hon Justice B. J. Odoki 2010; Applebaum 2011; Palumbo et al. 2013).

While a commercial bench was instituted in the High Court of Delhi in 2015, the bench does not exclusively look at commercial disputes.¹ This marks a deviation from the original intent to fast-track commercial disputes through a specialised commercial court system. This study attempted to assess the implementation status of the commercialised bench at the High Court of Delhi and whether any efficiency gains are likely to accrue on account of this nonexclusive commercial bench.

In the last few years, many researchers have drawn out the reasons for judicial delay and

1. BRAP recommends the setup of commercial courts at the High Court and district level. While the Commercial Courts Amendment Act, 2018, introduces the provision to set up commercial courts at the district level, the Commercial Courts Act, 2015, only led to the creation of a commercial bench in the High Court of Delhi (as opposed to a specialized commercial court). Please note that we use ‘bench’ and ‘division’ interchangeably in this context.

pendency in Indian courts using empirical methods. Khaitan et al. (Khaitan, Seetharam, and Chandrashekar 2017) looked at the orders of the High Court of Delhi from 2011 to 2015 to understand judicial delays. They identified and recorded several types of inefficient behaviour, such as the absence of judges and counsel, adjournments and lack of adequate court time to hear listed cases. Regy and Roy (Regy and Roy 2017) analysed a total of 22 judgements of the Debt Recovery Tribunal. They found that the litigants and lawyers themselves were not incentivised to reach a judgement, thus leading to a delay. A study conducted by Daksh (2016) measured court-side inefficiencies by quantifying the time spent on adjournments and summons. Using this line of literature, this study examined the functioning of commercial courts after the institution of the commercial bench in the High Court of Delhi.

The paper is organised as follows. The first section gives a brief overview of commercial court reforms in India over the past few years and outlines the changes as they apply to the High Court of Delhi. The second section outlines the two-pronged approach in this study to assessing the functioning of the commercial bench at the High Court of Delhi. The third section presents results from the analysis organised around the question of likely efficiency gains from setting up the commercial bench at the High Court of Delhi. Finally, the conclusion summarises the findings and presents broad inferences.

2 Commercial Courts Reforms in India

The Commercial Courts Act, 2015 (a central legislation), was passed on 23 October 2015, with the objective of establishing within High Courts and District Courts specialised commercial courts that could exclusively focus on contract disputes. The Act

1. *Established specialised commercial courts* at the district level in most states and a commercial division in High Courts where the Courts performed ordinary original jurisdiction² (e.g. Himachal Pradesh, Delhi, Bombay, Calcutta and Chennai) (Section 3)
2. *Defined a commercial court* and gave an exhaustive list of cases which would be considered as commercial cases (Section 2)
3. *Set timelines for various procedures:* such as 120 days for the defendant to file the written statement; 6 months from the first day of hearing to complete arguments; 90 days for declaration of judgement from the closure of arguments; 60 days to appeal against the decision of the Commercial Court and 6 months to dismiss appeals at the commercial appellate division (Order IX; Sections 1 and 2)
4. *Enabled courts to levy costs on parties:* including costs for frivolous claims or counterclaim and refusal of a reasonable offer for settlement (Appended Schedule; Section 16)

2. Original-side jurisdiction indicates the power to hear a case for the first time, as opposed to appellate jurisdiction when a higher court reviews the decision of a lower court.

5. *Enabled summary judgements*: Allowing courts to decide a claim pertaining to any commercial dispute without recording oral evidence when plaintiff or defendant has no real prospect of succeeding (Order XIII-A; Section 3)

Prior to the enforcement of Commercial Courts Act, 2015, the High Court of Delhi had a pecuniary jurisdiction of Rs. 2 crore (for original-side cases), meaning that any case with a claim above or equal to this value in Delhi was filed at the High Court of Delhi.³ All commercial cases that came to the Court were treated as ordinary civil disputes. That is, there was no defined category of commercial disputes.

The Commercial Courts Act, 2015, specified a claim value of Rs. 1 crore (specified value), above which particular kinds of civil disputes would be categorised as commercial cases.⁴ This effectively brought down the pecuniary jurisdiction of the Court for commercial cases only⁵ (Table 1).

A *commercial division* was created at the High Court of Delhi, consisting of all seven judges who hear original-side cases at the Court. Even if the Act had not been passed, the same judges would be listening to commercial matters. Apart from the procedural provisions that set timelines for disposal and allowed the Court to impose costs on the parties, the material change brought about by the Act is limited to bringing commercial cases with values between Rs. 1 crore and Rs. 2 crore that would have been previously heard at the District Court, to the High Court of Delhi.

The Act was further amended by the Commercial Division and Commercial Appellate Division of High Courts (Amendment) Act, 2018 (hereafter denoted as the Commercial Courts Amendment Act, 2018). Under the Amendment, the specified value was revised to Rs. 3 lakh. Cases below the claim value of Rs. 3 lakh would be treated as ordinary civil cases and first heard by the District Courts. Commercial cases of claim value between Rs. 3 lakh and Rs. 1 crore would be heard at the Commercial Courts set up at the district level. Prior to the amendment, these were treated as ordinary civil disputes and heard in District Courts. Commercial cases above claim value of Rs. 1 crore would be tried by the commercial bench at the High Court of Delhi. The Amendment also introduced mandatory pre-institution mediation for all commercial cases (above the claim value of Rs. 3 lakh). That is, parties would have to attempt mediation after filing of the suit.

3. Pecuniary means ‘related to money’; thus, a pecuniary jurisdiction limits the judicial authority of the court on the basis of the amount of claim in the suit.

4. These include disputes arising out of ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents, including enforcement and interpretation of such documents, export or import of merchandise or services, licensing and distribution agreements etc. For the full list, please see Section 2 of the Act.

5. The pecuniary jurisdiction for other civil disputes remained at 2 crore, effectively only introducing cases between 1 crore and 2 crore that were commercial in nature, to the jurisdiction of the High Court of Delhi.

Table 1: Changes in the Pecuniary Jurisdiction of Original Side Cases following the Commercial Courts Act and Amendment Act

Civil Dispute	Court	Commercial Courts Act, 2015		Commercial Courts Amendment Act, 2018
		<i>Before</i>	<i>After</i>	<i>Current Status</i>
Commercial	High Court of Delhi	N/A	Disputes ⁶ >Rs. 1 Cr	Disputes >Rs. 1 Cr
	District Court	N/A	N/A	Disputes between Rs. 3 Lakhs to Rs. 1 Cr
Noncommercial	High Court of Delhi	Civil Cases >Rs. 2 Cr	Civil Cases >Rs. 2 Cr	Civil Cases >Rs. 2 Cr
	District Court	All Civil Cases <Rs. 2 Cr	All Civil Cases <Rs. 2 Cr	All Civil Cases <Rs. 2 Cr

The 2018 Amendment was passed in August 2018, at the end of our study period. Our study thus only examined the functioning of the commercial bench in the High Court of Delhi as set up under the Commercial Courts Act, 2015.

3 Studying the Functioning of Commercial Courts in Delhi

This study attempted to examine whether the commercial bench at the High Court of Delhi was set up in a way that could affect judicial efficiency, that is (a) quick resolution of new commercial cases and (b) pendency reduction in a short span of time. This study was part of a larger research project on the EoDB in Delhi, and hence our study focused on the High Court of Delhi.

3.1 Time-and-Motion Study to Quantify Time Allocation for the Commercial Bench

Across the world, time-and-motion studies have been conducted to review the number of time judges spend on activities throughout the day, which has ultimately helped them determine judicial resources required and effective case allocation (Tallarico, Douglas, and Friess 2014; Balmer and Genn 2016; Lombard and Krafka 2005). In the Indian context, Daksh, a civil society organisation dedicated to measuring political and judicial performance in India conducted such a study in 2016 wherein they researched four district and

6. While there are other criteria that qualify a civil dispute as a commercial dispute (See Section 2 of the Act), the primary criterion being considered here is the claim value.

session courts in Karnataka. The study recorded the amount of time spent in adjournments, summons and hearing by a court in session, thus providing valuable insight into court-side inefficiencies due to inadequate time management (DAKSH 2016).

This study used a similar time-and-motion study to examine the functioning of the commercial bench at the High Court of Delhi and quantify how the bench spends its time. Of the seven judges on the commercial bench, three judges were chosen at random for the time-and-motion study. This study recorded the activities of Court number 19, Court number 20 and Court number 23, all of which were assigned to a single judge from the commercial bench.

The research team sat in three separate courtrooms for a total of 9 days and recorded the following:

1. Length of time the courts were in session each day
2. Time spent on each case and, in particular, commercial cases⁷
3. Time spent by judges on cases with only procedural matters
4. Time spent by judges on cases which were adjourned
5. Time spent by judges on cases with substantive matters.

Our method for categorising judicial activities into procedural, substantive or adjournments is given in Table 2. The study also recorded day-wise observations under Annexure A, providing the breakdown between the time spent on procedural, substantive stage and adjournments across the three courts.

Table 2: Segregation of Judicial Activities into Procedural, Substantive and Adjournments

Judicial Activity		
Category	Type	Description
Procedural	Pleading	Includes activities such as filing of reply and plaint, substitution of authorized signatory, reinstatement of suit and admission or denial of matter
	Issue Framing	Issues framed after evidence
	Summons	Parties served with notice
	Transfer	Transferred to another court/bench
Substantive	Hearing	Includes activities such as hearing arguments, injunction orders and final judgment

7. During the 9 days that team spent at the High Court of Delhi, they came across cases which were heard more than once in a day. This could be due to one of the lawyers not being present, the judge delaying the case to be heard at the end of the day (mostly because arguments in that case had to be heard) and various other reasons. In these scenarios, all the minutes spread throughout the day were combined together because all those minutes were spent on one case only. The team also encountered instances when two or three cases were heard together because they were related. For these cases, the study has taken a conservative estimate by treating these cases as if they were heard separately. Thus, to find the average time spent on each case, the total time spent on these cases was divided by the number of cases which were being heard together.

Judicial Activity		
Category	Type	Description
	Partly Heard	Includes Submissions, Interim Applications along with partly heard arguments heard and/or arguments listed for further hearing on the next date
	Dismissed	Includes activities with judge's discretion on suit withdrawal, enforcement of mediation, arbitration or settlement terms along with disposal of a case due to default
Adjournment	Adjournment	Includes adjournments given due to lack of time, request by counsel, lack of supporting documents, absence of counsel, ongoing settlement and request for more time by parties involved

In order to remove any bias resulting from distinct cases or individual judge behaviour, the results took into consideration the average time spent across the three courts. The study arrived at the proportion of time spent on commercial cases by dividing the sum of total time spent on commercial cases by the total time the three courts were in session during the 9 days of our data collection.⁸

Appendix 1 presents the day-wise breakdown of the time-and-motion study.

3.2 Contextualising the Time-and-Motion Study Through Other Datasets

In conjunction with the time-and-motion study, this study looked at three different datasets to contextualise the study.

First, it looked at the 'Real Time Pendency' report to extract live pendency estimates for commercial and noncommercial original-side cases. This was done to determine whether the time spent on commercial cases was proportional to its current pendency compared with noncommercial original-side cases.

Second, it looked at annual judiciary reports published by the Supreme Court of India and the biennial reports published by the High Court of Delhi to determine whether the time available to each judge within the commercial bench (also the original jurisdiction roster) had increased over the past 6 years. The study compared and contrasted the time available to the actual time spent on commercial disputes based on the findings of the time-and-motion study.

Third, the research team created a database of all commercial original-side cases (civil suits) that were scheduled for a hearing (i.e. listed) in the Court from 1 January 2017 to 31 December 2017 to establish average disposal time for commercial disputes. The team was able to extract the case numbers and case status (disposed, pending or transferred to another jurisdiction) from the Delhi High Court website. Using the case numbers, further

8. These observations were taken during the first 2 weeks following summer break, which could have possibly introduced some unobservable bias.

details were found within ‘Case History’ for each disposed-of case. Thereafter, the team consolidated information on parameters such as filing date, registration date, disposal date, nature of disposal and number of hearings for each case by going over the case orders. This information was added to the database against each case number extracted earlier (See Annexure B). This study used the findings from these three datasets to help put the time-and-motion study into perspective and to determine the relevance of these findings.

4 Is the Commercial Bench at High Court of Delhi likely to have an Efficiency Impact?

Through the time-and-motion study and an analysis of court information, the study attempted to gauge the efficiency impact of the commercial bench at the High Court of Delhi. Overall, the key findings were as follows:

1. Currently, there is no dedicated time being spent on commercial disputes
 - On average, less time is spent on commercial than noncommercial original-side cases daily
 - While the average time available to judges in the commercial division has increased, it is not evident that it is being proportionally allocated to commercial cases
 - This may be due to the fact that there is no clear demarcation of time for commercial and noncommercial original-side cases. They are handled by the same judges, courtrooms and common scheduling
2. This is unlikely to create a major impact in reducing pendency for commercial disputes
 - The time spent on commercial versus noncommercial original-side cases is not proportional to the relative pendency of commercial disputes to noncommercial disputes
 - The median disposal time for disposed commercial cases is much lower than the figure put forward by the World Bank. It is unclear to what extent this will be affected by the changes in the handling of commercial disputes. The changes in the pecuniary jurisdiction can increase the caseload of the High Court of Delhi. In addition, since not much has changed in how the Court functions, substantial judicial efficiency gains may be some distance away

4.1 How Does the Commercial Bench Spend Its Time?

4.1.1 Time Spent on Commercial Versus Noncommercial Civil Cases

While Courts are scheduled to work for 5 hours each day, the researchers observed that the Court was actually in session for about 3.5 hours on average. This amounted to a loss of approximately 35 working hours annually per courtroom in the High Court of Delhi, or more than 3% of the total number of working hours.

Looking at the absolute value of the time spent on commercial cases, commercial disputes were given less time as opposed to noncommercial original-side cases (Table 4). The cumulative frequency distribution in Figure 1 plots the time given to commercial cases exclusively.

Further, 64.25% of the commercial cases before the Court were given less than 5 minutes. Across the 9 days in the three courtrooms, the cumulative time spent on noncommercial original-side jurisdiction was 2.73 times as much that on commercial disputes.

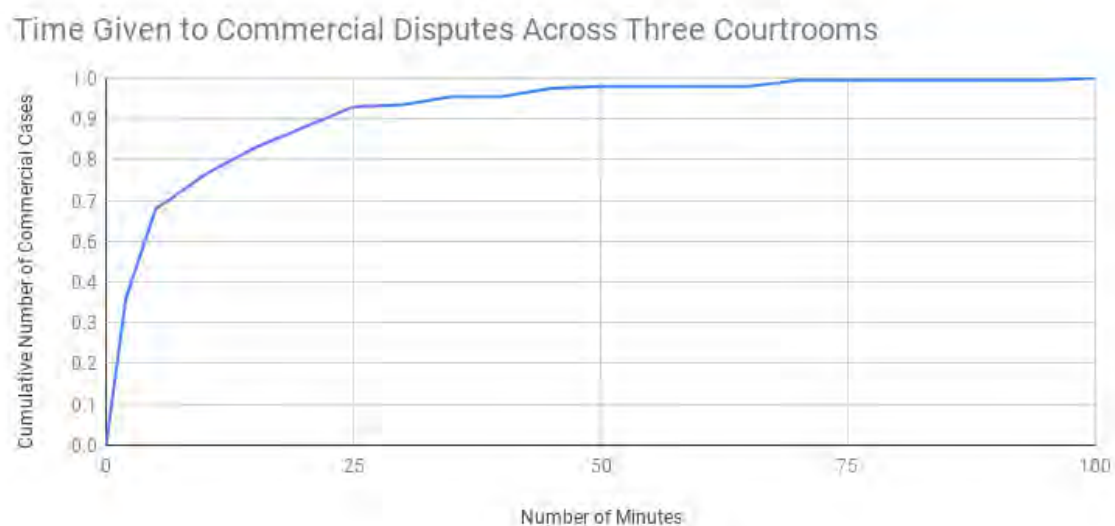


Figure 1: Cumulative Frequency Distribution of the Time Spent on Each Commercial Case Across Three Courtrooms in the 9-day Time-and-Motion Study

4.1.2 Time Spent on Procedure, Substance and Adjournments

The study found that, in general, less than 65% of the total working hours of the court were spent on substantive matters and about 32% on procedural matters and adjournments across the three courts, over the 9-day period (Table 3).

The provisions introduced by the Commercial Courts Act, 2015, streamlined various judicial tasks. Many procedural activities (e.g. recording evidence and witness statements) have now been brought under the purview of Judicial Registrars and Local Commissioners, thus saving the time of the Court. Despite that, in many cases, there was frequent back-and-forth between the parties and counsel over core issues, filing and evidence. This ended up requiring the discretion of the judge and, consequently, the time of the Court.

Additionally, while the amendments to the Code of Civil Procedure by the Commercial Courts Act, 2015, direct judges to refuse adjournments for cases where the lawyers are absent, the research team observed several instances where adjournments were given in contravention of this directive.

In order to compare how the Court spent its time on commercial original-side cases as opposed to noncommercial original-side cases, the team calculated the proportion of the time spent on procedural, substantive matters and adjournments, specifically for commercial cases (Table 3).

Table 3: Time Spent on Judicial Activities for Commercial and Non-Commercial Original Side Cases

Type of Matters	Share of Time Spent Across 9 Days in Three Courtrooms (%)		
	<i>All Types of Cases</i>	<i>Commercial Cases</i>	<i>Noncommercial Cases</i>
Procedural	13.31	17.96	16.81
Substantive	64.28	71.60	49.00
Adjournments	19.24	10.43	34.19

Despite the fact that commercial cases were given less hearing time (Table 4) compared with noncommercial original-side disputes, the time-and-motion study found that commercial cases took lesser time on procedural matters and more time on substantive matters than noncommercial cases. The time spent on substantive stage for commercial disputes was 7.32 percentage points higher compared with all original-side cases.

4.2 Do Commercial Cases Get the Dedicated Focus They Need?

Given that the commercial bench does not look at commercial disputes exclusively, it is important to understand whether commercial disputes get the focus they require. This study attempted to approach this question by studying the relationship between time spent and pendency of commercial disputes as opposed to noncommercial original-side cases. It then went on to explore the proportion of time spent on commercial disputes in light of the time available to a judge per case.

4.2.1 Is the Time Spent on Commercial Cases Proportional to Its Pendency?

The team looked at the ratio of the pendency of cases which were commercial in nature to the other cases, which were filed before the original-side jurisdiction roster. The data for this were obtained from the ‘Real Time Pendency’ report available on the website of the High Court of Delhi. The pendency as of 17 July 2018 was taken.

As of 17 July 2018, 41.43% of all pending civil original-side cases at the High Court of Delhi were commercial cases (as defined by the Commercial Courts Act, 2015). Given the commercial bench has jurisdiction over both categories, this pendency proportion

was compared to the time spent on commercial disputes in the time-and-motion study. The actual time spent on commercial original-side disputes, as opposed to noncommercial original-side disputes, was limited to 26.79%.

Table 4: Pendency and Time Allocated for Commercial and Noncommercial Original Side Civil Cases in 2018

Type of Case (Original Side)	Pending Cases (High Court of Delhi Real Time Pendency Report) (as of 17 July 2018)		Time spent (Time-and-Motion study) (3 July-13 July 2018)	
	<i>Number</i>	<i>Proportion of total (%)</i>	<i>Minutes</i>	<i>Proportion of total (%)</i>
Commercial	3664	41.4	1554.7	26.7
Noncommercial	5180	58.5	4249	73.2

4.2.2 Time Available per Judge Versus Actual Time Spent on Commercial Cases

The data provided by the High Court of Delhi show that the number of judges on the bench has increased over the past 6 years. Simultaneously, the pendency for all original-side cases has gone down.⁹ These data were used to perform a year-on-year comparison of the average time available per case per judge for all original-side cases. This was calculated as follows:

Average Time per Case per Judge¹⁰ =

$$\frac{300 \times \text{Number of Judges} \times \text{Number of Working Days}}{\text{Number of Cases}}$$

where 300 is the number of minutes in each working day.¹¹

Please note that the data for the years 2012–13 and 2014–15 is not publicly available, and thus the time available per bench per case for these time periods was not measured. Additionally, the pendency includes all cases listed under original jurisdiction for the High Court and does not differentiate commercial from noncommercial cases.

The time available per judge per case has increased progressively over the years for the original-side roster for the time period 2011–12, 2015–16, 2016–17 and 2018 (Table 5).

9. However, this could also be attributed to the change in pecuniary jurisdiction from Rs.20 lakh and above to Rs. 2 crore and above. A total of 10,886 cases were transferred from the High Court of Delhi to the District Courts as per the 2015–16 Annual Judiciary Report, along with 1,838 cases in 2016–17. These were not included in the final pendency statistics reported under Original-Side Cases in the Annual Judiciary Report.

10. The formula for calculating average time per case per judge was taken from the biennial report published by the High Court of Delhi.

11. From 10:30 am to 1:30 pm and then 2:30 pm to 5:30 pm.

Table 5: YoY Comparison for Time Available per Bench per Case¹²

Parameter	2011- 2012	2015-2016	2016-2017	2018
Cases Pending	15,782	10,768	9,218	8,844
Judges in the Court	6	6	5	7
Judges in the Court	6	6	5	7
Annual Working Days	211	211	215	221
Daily Caseload per Judge	12	8	9	6
Time available per Judge per Case (mins)*	24	36	35	52

Sources: 2011-12: Biennial report of High Court of Delhi; 2015-16 and 2016-17: Supreme Court of India Annual Report; 2018: Real Time Pendency Report High Court of Delhi.
*Numbers have been rounded up.

4.3 Will the New Approach Affect Disposal Times for Commercial Cases?

The Doing Business report of the World Bank estimates that it takes 1,445 days on average to resolve a contractual dispute in India. The study attempted to examine whether the constitution of the commercial bench at the High Court of Delhi would have an impact on the average time taken for the disposal of a commercial case.

4.3.1 Average Disposal Time for Commercial Cases

To do this, the team first calculated the average time taken to dispose of a commercial original-side case (civil suit) in the High Court of Delhi in 2017.

There is no single repository of information on all commercial cases. This begs the question, how efficiently can one evaluate the performance of contract enforcement systems if they are not institutionally set up to monitor the results?

Disposal time could vary significantly for different kinds of civil disputes (e.g. a family dispute and dispute over licensing agreement), thus skewing averages for commercial disputes. Thus, using a measure of average disposal time for all cases would not be indicative of the performance of contract enforcement.

12. While the High Court publishes biennial report, it has not published this report after 2011-12. The data for 2018 was taken from the “Real Time Pendency” report published on the website of the High Court of Delhi (as of 17 July, 2018). The Supreme Court of India publishes an annual judiciary report which provided us with statistics for the High Court of Delhi. However, there was no report available for the remaining years on the website of Supreme Court of India.

Therefore, the study team first created a database of commercial cases (civil suits) listed at the High Court of Delhi in the year 2017 (i.e. scheduled to be heard between 1 January 2017 and 31 December 2017), a total of 903 cases.¹³ Using the data, the team tried to understand the nature of disposal for all disposed-of cases and estimated the average time taken to resolve a commercial case.

The disposal time for settled and decreed cases was of specific interest because intuitively one might think that settlements took less than a full court hearing. On studying disposed commercial cases, the research team found that 37.97% of the cases were decreed and 40% of the cases were either withdrawn or settled (Figure 2). This finding was consistent with the results presented by Khaitan et al. (Khaitan, Seetharam, and Chandrashekar 2017), wherein they argued that disposal rates could be skewed upwards due to cases which were withdrawn or settled early (compared with full hearings).

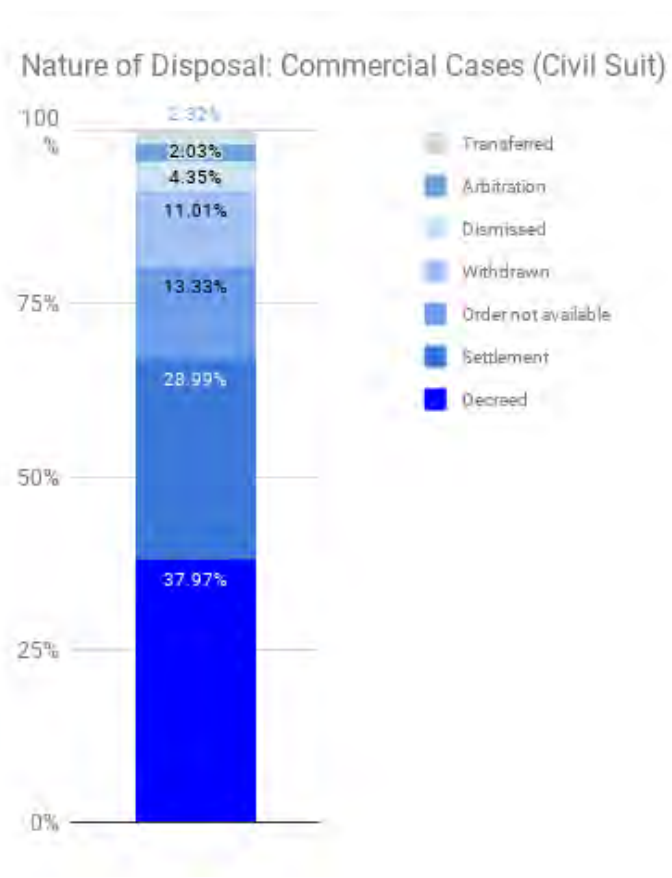


Figure 2: Nature of Disposal¹⁴

Given the high mean disposal time for decreed cases, one might assume that full hearings

13. For the complete database, please refer to Annexures B and C; this is available online.

14. The nature of disposal includes the following activities: Decreed, judgement passed; Withdrawn, matter withdrawn by the party who initially filed the case; Settled, matter settled through mutual agreement between parties and no judgement passed; Transferred, matter transferred to another court; Dismissed, matter dismissed due to being of frivolous nature; Arbitration, matter settled through an arbitration process.

took a long time for resolution. However, more outliers were observed within decreed cases, skewing the overall mean upwards. When the median disposal time was considered, the average was actually lower for decreed cases. At a closer examination, the study found that more than 80% of the decreed and settled cases had similar disposal time, thus indicating little difference between the two (Figure 3).

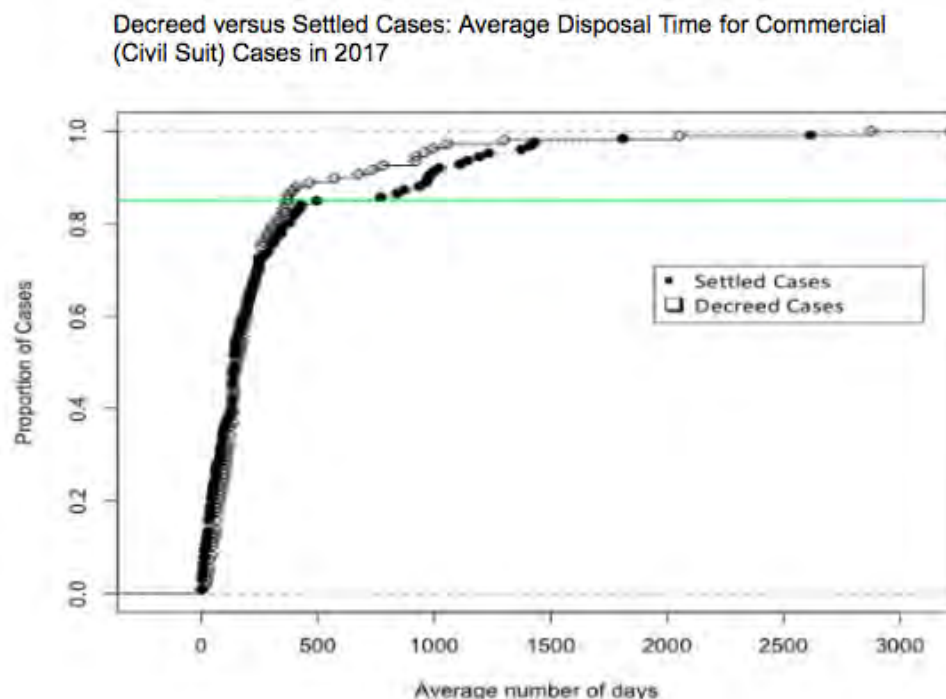


Figure 3: Average Disposal Time Decreed Versus Settled Cases

When the team studied the days between filing and disposal for commercial cases, the median disposal time was surprisingly low compared with the World Bank estimates. Compared with the figures put out by the bank, it appeared that, for the January 2017 to December 2017 period, in the High Court of Delhi, the median time for disposal for commercial original-side cases (civil suits) was only about 151 days (Table 6). Additionally, the average time taken between hearings was 39 days.

Table 6: Average Disposal Time (in Days)

	Days Between Filing and Disposal		
	<i>Disposed (All)</i>	<i>Decreed</i>	<i>Settled</i>
Mean	448	639	273
Median	151	142	154
Max	40865	40865	2876

It is important to view these results in light of the existing pendency. Commercial courts were proposed to ‘speed things up’; however, in this case, no specialised court was actually

set up. To increase judicial efficiency, the time allotted to commercial disputes, especially in the substantive stage, will need to increase.

Conclusion

The Commercial Courts Act, 2015, introduced the provision to set up commercial courts at District and High Court levels. Following the Act, the High Court of Delhi instituted a commercial division.

When the team visited the commercial division at the High Court of Delhi, their first observation was the lack of an exclusive commercial division. It was also found that commercial disputes did not have any time slots dedicated exclusively for them at the High Court of Delhi. There was no distinction in the way commercial cases and ordinary civil disputes were handled by the judge. Commercial cases were listed along with other civil original-side disputes and were heard and proceeded the same way. In fact, other civil disputes were given more of the division's time.

While the time available to a judge in the commercial division (per case) has increased over the years, the time spent on commercial disputes was not found to be proportional to relative pendency or to time available with the judge when comparing pendency of commercial disputes to all original-side cases.

Additionally, the study found that the median disposal time for commercial cases in 2017 was surprisingly low compared with the World Bank estimates. Achieving further efficiency gains will likely require a substantial increase in the amount of time dedicated towards commercial disputes.

This study only examined commercial original-side cases (civil suit) for a short period of time. Consequently, how this maps out for appeals and lower courts is unclear. Despite this caveat, the nonspecialised approach will likely not take us quite far in improving judicial efficiency at the High Court level.

Systems adopted in other countries may offer some clues to bring about further efficiency gains. In the case of Ireland, the case management system is such that core issues, evidence and witness statements are agreed upon beforehand, avoiding back-and-forth during the trial. In Uganda, courts were exclusively set up for commercial disputes with dedicated judges and frequent training in the dynamic realm of commerce (Hon Justice B. J. Odoki 2010). Positive gains were observed in England with such specialisation, where mean disposal time (filing to hearing) reduced by 57.2% from 2006 to 2015 (Ministry of Justice 2016). In particular, the study suggested that the government worked on reforms which reduced the time spent by judges on procedural matters and adjournments.

While this study attempted to understand the current state of commercial courts in Delhi and discern potential areas of improvement, it did not address causality or try to determine which model would work best for India. Further research would be needed to arrive at an appropriate model.

On a final note, the EoDB ranking parameter for contract enforcement considers cases whose claim size would amount to be Rs. 321,665 or above for India. The Commercial Courts Act, 2015, only affected cases with a listed claim amount of Rs. 1 crore or above. With the Commercial Courts Amendment Act, 2018, this claim value has been brought down to Rs. 300,000, thus including all cases which would be evaluated to determine the Contract Enforcement Rank of India. If India is able to achieve improved efficiency within specialised commercial courts (i.e. reduce time and costs for such cases), it can possibly impact our EoDB ranking.

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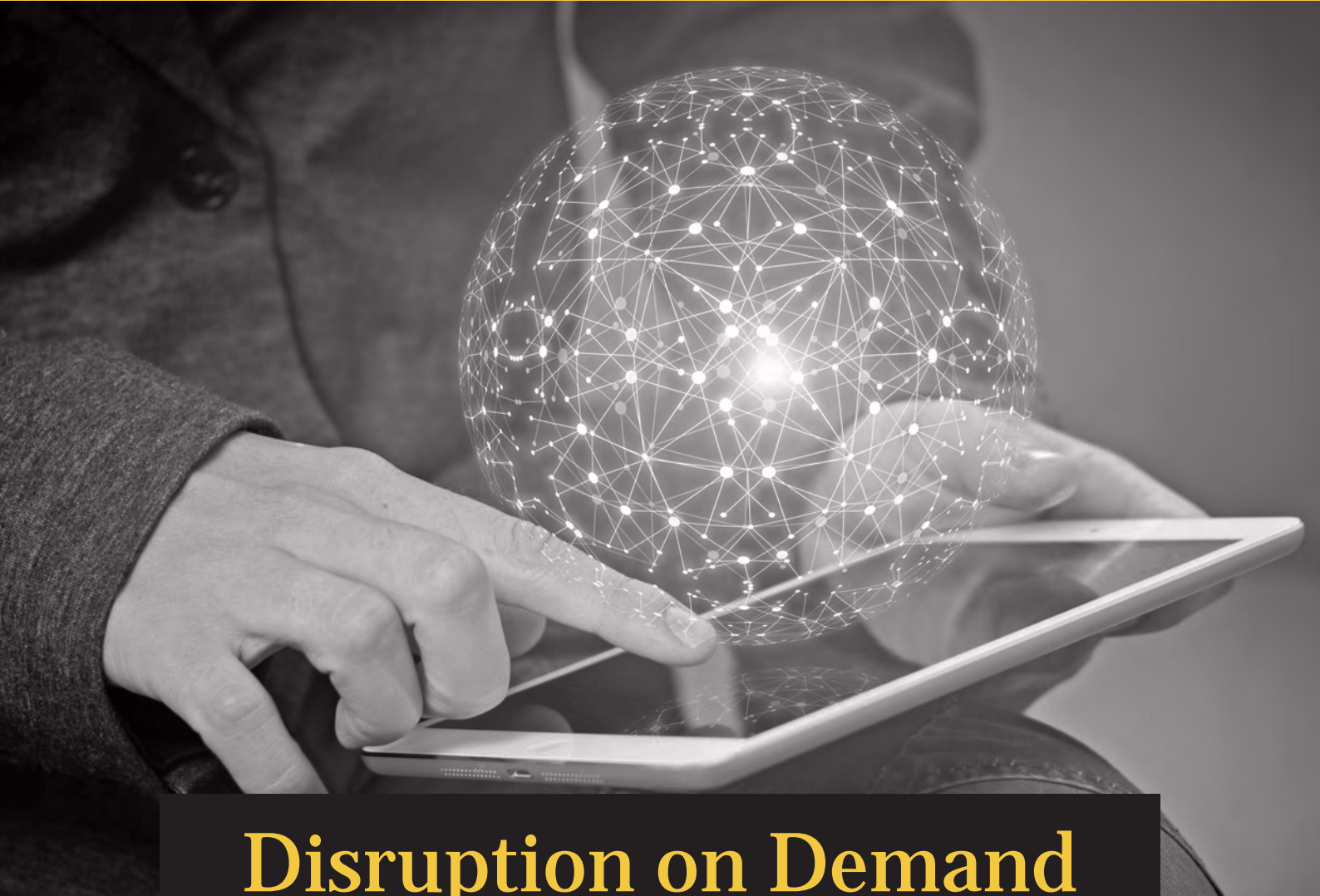
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Appendix 1: Day-Wise Breakdown of Time and Motion Study across three courtrooms

Table 7: Day-Wise Breakdown of Time and Motion Study across Three Courtrooms

A = Time (hh:mm:ss); B = Percentage share of the day						
	A	B	A	B	A	B
	<i>Courtroom #19</i>		<i>Courtroom #20</i>		<i>Courtroom #23</i>	
Day 1: 03-Jul-18						
Court in Session	2:28:00		3:54:15		2:36:15	
Procedural matters	0:13:00	8.78	0:17:44	7.57	0:05:24	3.46
Adjournments matters	0:00:00	0	0:55:00	23.48	0:11:18	7.23
Substantive matters	2:15:00	91.22	2:32:15	64.99	2:12:36	84.86
Day 2: 04-Jul-18						
Court in session	2:55:00		4:05:47		2:47:55	
Procedural matters	0:19:00	10.9	0:23:07	9.4	0:55:06	32.8
Adjournments matters	0:10:00	5.7	0:33:58	13.8	0:50:07	29.9
Substantive matters	2:25:00	82.9	2:59:18	72.9	0:44:57	26.8
Day 3: 05-Jul-18						
Court in session	2:57:00		4:51:01		2:53:01	
Procedural matters	0:16:00	9	1:34:12	32.4	0:24:51	14.4
Adjournments matters	0:09:00	5.1	0:31:54	10.9	0:31:28	18.2
Substantive matters	2:32:00	85.9	2:27:50	50.9	1:49:39	63.4
Day 4: 06-Jul-18						
Court in session	2:35:00		4:21:22		3:42:57	
Procedural matters	0:21:00	13.6	0:23:47	9.1	0:29:50	13.4
Adjournments matters	0:08:00	5.2	1:44:22	39.9	0:47:46	21.4
Substantive matters	2:06:00	81.3	2:00:08	45.9	2:13:22	59.8
Day 5: 09-Jul-18						
Court in session	0:45:00		5:09:39		2:57:45	
Procedural matters	0:26:30	58.9	0:31:51	10.3	1:36:12	54.1
Adjournments matters	0:12:00	26.7	0:46:36	15.1	0:25:39	14.4
Substantive matters	0:06:30	14.4	3:35:47	69.7	0:20:21	11.5
Day 6: 10-Jul-18						
Court in session	3:02:00		4:58:06		3:25:23	
Procedural matters	0:41:30	22.8	0:43:34	14.6	1:25:37	41.7
Adjournments matters	0:03:00	1.7	0:51:03	17.1	0:38:12	18.6
Substantive matters	2:17:30	75.6	3:17:55	66.4	0:59:00	28.7
Day 7: 11-Jul-18						
Court in session	3:27:00		4:43:07		2:59:18	
Procedural matters	0:18:00	8.7	0:35:56	12.7	1:08:16	38.1
Adjournments matters	0:01:00	0.5	0:31:03	10.9	0:14:19	7.9
Substantive matters	3:08:00	90.8	3:24:38	72.3	1:25:04	47.5
Day 8: 12-Jul-18						

A = Time (hh:mm:ss); B = Percentage share of the day						
	A	B	A	B	A	B
	<i>Courtroom #19</i>		<i>Courtroom #20</i>		<i>Courtroom #23</i>	
Court in session	3:45:30		4:47:32		3:53:35	
Procedural matters	0:11:30	5.1	0:17:08	5.9	0:28:09	12.1
Adjournments matters	0:07:00	3.1	0:30:38	10.7	0:16:37	7.1
Substantive matters	3:27:00	91.8	3:54:52	81.7	2:59:38	76.9
Day 9: 13-Jul-18						
Court in session	3:46:00		4:58:02		3:58:13	
Procedural matters	0:54:30	24.1	0:57:16	19.2	1:03:03	26.5
Adjournments matters	0:22:00	9.7	0:33:21	11.2	0:56:45	23.8
Substantive matters	2:29:30	66.2	3:01:02	60.7	2:48:37	70.8
Average						
	<i>Courtroom #19</i>		<i>Courtroom #20</i>		<i>Courtroom #23</i>	
Time court was in session	2:51:10		4:38:46		3:14:56	
Proportion of Time Spent						
Procedural matters	17.98%		13.47%		26.27%	
Adjournment matters	6.40%		17.02%		16.52%	
Substantive matters	75.56%		65.05%		52.24%	



Disruption on Demand

A STUDY OF HOW **AGGREGATORS**
ARE CHALLENGING THE
REGULATORY STRUCTURE

Jayana Bedi, Adarsh Ranjan, Jibin Joseph, and Prajwal Seth

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Executive Summary

Aggregators in India are riddled with uncertainty and suspicion. Since they play the role of technology mediators and not 'service providers', they are able to claim exemption from regulations. Regulators who aim to guarantee consumer protection face the conundrum of how to manage aggregators in the marketplace. Their definition and treatment and the liabilities that ought to be imposed on them are all unclear. Since aggregators provide a platform for several, small, individual entrepreneurs to access the marketplace, redrawing the regulatory framework for these service industries without throttling entrepreneurship or opportunities for self-employment is a non-trivial challenge.

Our study on aggregators in India comes in response to the debate around the way in which aggregators ought to be regulated. By focussing on four aggregators, Airbnb, Uber, UrbanClap and Zomato,¹ we argue that understanding how they inadvertently tackle questions of consumer protection can help in redrawing the regulatory frameworks.

First, we highlight the consumer protection challenge being tackled by aggregators through an analysis of some of the mechanisms they put in place, especially those that increase information exchange between consumers and enable a collective governance framework on the platform. We argue that trust mechanisms employed by aggregators in India act as proxies for service standards by analysing three such mechanisms: post-service feedback, checks against dishonest behaviour and monitoring safety and quality standards. We find that while fake and biased ratings are a serious threat to the credibility of online reputation mechanisms, aggregators are taking several corrective measures to stem them. We also highlight the important role played by insurance in the way aggregators deal with broken trust.

In the next section, we contrast the existing regulations with the service standards that aggregators put in place for the same service. We study regulations in the two services where aggregators have caused considerable disruption, hospitality and taxicabs. Using data mining, we create a comprehensive database of listings on Airbnb in Delhi and carry out a sentiment analysis of the reviews to highlight how, in many instances, the needs of the consumers are at odds with what regulations deem important. In the case of taxi regulations, we highlight how certain conditions put in place by the regulations are difficult to implement and have limited enforceability. In both these service industries, we find that existing prescriptive rules increase the regulatory burden on enterprises but fail to meet the key goal of consumer protection as state capacity is thinly spread. We find that the ex-post measures of quality assurance employed by online platforms, such as Airbnb and Uber, are better suited to reflect the dynamism of the market. These aggregators replace prescriptive norms with information, incentives and strong feedback mechanisms.

Finally, we argue that the aggregators' approach of prizing trust and diversity are fast rendering certain traditional regulations obsolete and showing the way for a principle-based approach. State capacity can be relieved by replacing prescriptive specifications

1. While Airbnb and Uber are foreign companies (headquartered in San Francisco) that have extended their market to India through their Indian subsidiaries, UrbanClap and Zomato are of Indian origin.

with the mechanisms of trust creation employed by aggregators and potentially imposing liabilities on aggregators that meet the good-faith standards of consumer protection.

1 Introduction

Regulations in India, which aim to protect consumer interests by ensuring fair trade and correcting information asymmetries (Dudley and Brito 2012), are typically product based and reactionary and thereby restrain innovation. In addition, due to the tendency of regulatory capture by traditional players, the regulatory intent of protecting the consumers is rarely met while the costs of entry and operation for enterprises remain high.

Over the last decade, particularly in the services sector, technology has changed the game. Enterprises that provide a low-cost platform to connect service providers and customers have mushroomed. Aggregators like Airbnb, Uber and Zomato have stepped in to meet rapidly escalating and changing consumer demands.

Aggregators that offer services such as ridesharing and peer-to-peer accommodation are growing at rates much higher than their traditional counterparts are. For instance, Uber in India has claimed that its business is growing over 100% year on year, due to the adoption of services like carpool and expansion into smaller cities (PTI 2017). It has over 3 lakh drivers and manages to complete over 10 million weekly trips (PTI 2018). Similarly, Airbnb has made major inroads into India with nearly 200% growth in 2016 to 2017 (Laghate 2017). Some of the reasons for aggregators having seen such a rapid growth include their ability to reduce the cost of market entry and to achieve greater operational efficiency.

Their rapid growth has raised public debate on the nature of regulations and the responsibilities that these aggregators must bear. In India, aggregators operate in a regulatory vacuum due to a lack of clarity on their definition. At the heart of the discussion on what rules ought to govern aggregators is the question of whether they are trying or will try hard enough to protect the interests of consumers.

While increasing the size of the market, aggregators have inadvertently begun tackling questions of consumer protection and information asymmetry.

The business model of online platforms is to meet user expectations by reducing the information asymmetries through crowd-sourcing and making information on past transactions inexpensive and transparent. Leveraging technological developments, aggregators coordinate dispersed knowledge about buyers and sellers to facilitate transactions (Thierer et al. 2015).

Using feedback and reputational mechanisms that allow for reviewing both the quality of the product and the trustworthiness of the seller, aggregators are developing new ways to mitigate the vulnerabilities and risks involved in carrying out a transaction. In addition, by instituting ‘community standards’, they are gradually building monitoring capability to protect the interests of the consumers. Even in the absence of complete information on both sides (buyers and sellers), the series of incentives and disincentives put in place by aggregators encourage ‘bad’ actors to be weeded out from the platform.

Given the volume of transactions on these online platforms, the benefits from this collective governance model accrue to individuals even outside of such interactions. Scholars argue that besides enabling optimal resource allocation (Hamari, Sjöklint, and Ukko-

nen 2016), the sharing and on-demand economies will promote safety and effectiveness (Feeney and Uber 2015), improve human development, create more jobs, rationalise the use of energy, and reduce greenhouse gas emissions (Wu and Zhi 2016).

2 Consumer Protection Through Trust Mechanisms in the Aggregator Business Model

Market participants in any economy recognise that each one of them is keen on maximising their self-interests. Hence, before any transaction, they are likely to view the transacting party with mistrust.

One way in which markets have responded to this challenge is through the price system, which is based on the valuation of goods by consumers. An offline marketplace has many other mechanisms to establish trust, including seeking referrals, viewing credentials, participating in service trials, consultations, using guarantees, warranty or trusting a middleman (Thierer et al. 2015).

A lack of trust that enterprises will serve consumer interests also creates public demand for governmental intervention in the form of ex-ante regulations. In particular, countries with lower levels of trust and high corruption see greater demand for interventions in the form of regulations (Aghion et al. 2010). In addition, excessive regulation may discourage the formation of trust (Aghion et al. 2010). In such a scenario, trust mechanisms play an important role in complementing or acting as a substitute for formal enforcement mechanisms (Thierer et al. 2015).

In India, the emergence of aggregators in sectors such as hospitality (Airbnb), taxi services (Uber and Ola) and food (Swiggy and Zomato) has led to the development of new trust-building mechanisms and the integration of existing ones within these platforms. In this section, we have consolidated the various methods aggregators use to build trust between the users based on an analysis of their websites and interviews with aggregators and their service partners. These include reputation and feedback mechanisms, checks against dishonest behaviour, and monitoring safety and quality. We discuss the susceptibility of feedback mechanisms to fraud and the measures aggregators use to check these in order to maintain trust. Finally, we discuss ways in which aggregators deal with broken trust in the form of insurances and grievance redressal.

2.1 Trust Mechanisms Employed on Platforms

2.1.1 Collecting Customer Feedback Through Ratings and Reviews

Platforms have used buyer's incentive to gather maximum information about products and services as an entrepreneurial opportunity, developing robust reputational and feedback mechanisms (Thierer et al. 2015). The mechanisms usually involve the supplier and the consumer giving each other an overall rating or specific ratings based on certain parameters. Ratings may also be accompanied by a written review, providing future buyers and sellers with useful information about the transaction. Reviews serve as guiding points, discouraging or encouraging exchange between individuals. By making information about the product and the seller easy to find, widely available and inexpensive, these reputational feedback mechanisms have lowered transaction costs (Ernst and LLP, n.d.).

2.1.2 Information Made Easy Through the Aggregation and Organisation of Feedback

While each individual's evaluation of a transaction differs based on their perception of quality, the systematic organisation and categorisation of the reviews and ratings help provide a fair assessment of a seller or buyer. Aggregators follow different approaches to ensure that the most useful information is communicated in the right way.

For example, Airbnb provides a breakdown of ratings on parameters such as accuracy, communication, location, cleanliness, check-in and value. Further, while viewing listings in other countries, a user is first shown the reviews written by people from his country. By being sensitive to the idea that an individual's needs and expectations are shaped by their cultural and social contexts and likely to be anticipated or recorded by their compatriots, Airbnb enhances the experience for users.

Similarly, while calculating average rating of a restaurant, Zomato allocates higher weightage to ratings given by top-rated reviewers. It also displays such users' reviews before others. This increases trust on the platform by ensuring that reviews considered useful by people are discovered first (Goyal 2012).

2.1.3 Evolving Feedback Tools

In order to stay dynamic, effective and responsive to evolving consumer needs, aggregators constantly adjust their feedback tools. For example, Zomato introduced hygiene ratings for restaurants in collaboration with third-party hygiene auditors. This was motivated by a survey conducted by Zomato where 93% of platform users gave more weightage to restaurant hygiene than factors such as the taste of food (Goyal 2017). Figure 2 provides a breakdown of the hygiene parameters on which restaurants were graded. However, Zomato recently removed this breakdown and chose to only display the overall hygiene rating (Figure 1).



Figure 1: Food Hygiene Ratings Displayed on the Zomato App as Updated on 20 July 2018.

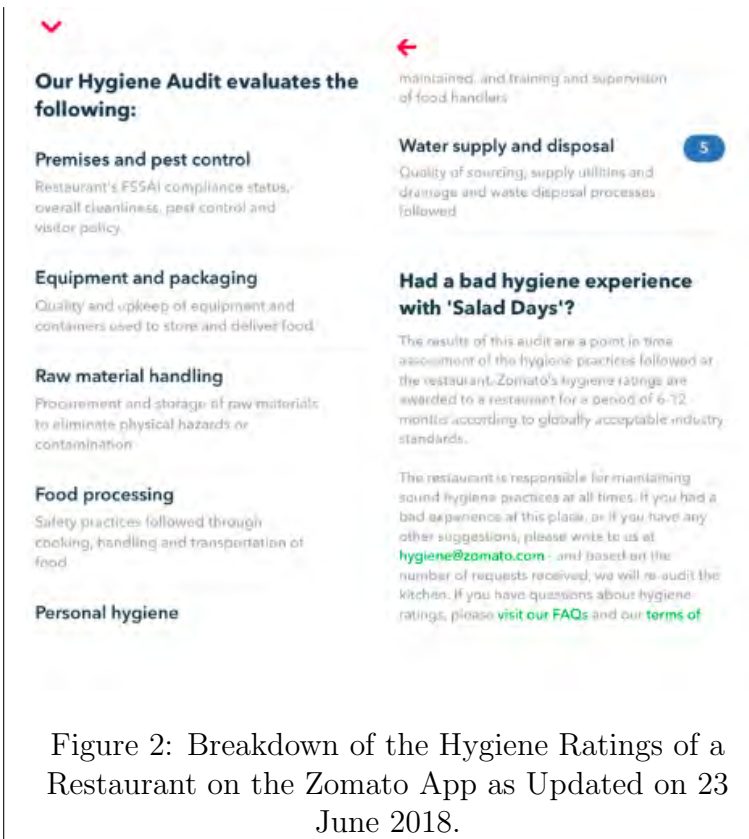


Figure 2: Breakdown of the Hygiene Ratings of a Restaurant on the Zomato App as Updated on 23 June 2018.

2.1.4 Using Customer Feedback to Ease Market Entry and Reward Good Behaviour

Feedback systems based on reputation provide novel ways for new service providers to come up to par with those already existing on the platform. UrbanClap, for instance, asks past customers or colleagues to write references for a new service provider on the platform. Airbnb too allows hosts and guests to receive public references from friends, family members and colleagues to help build their profile. This enables transferring the trust built in one context to another, relatively unfamiliar context and eases entry on the platform.

Ratings also enable users to collectively reward trustworthy behaviour with increased business. Some platforms actively ensure that trustworthy sellers receive a competitive advantage. The ‘superhost’ status awarded to reliable and highly rated hosts on Airbnb is one example of this.² Superhosts earn 22% more than other hosts on an average, receive priority support during grievance redressal and enjoy increased visibility on the platform.³

Further, the personal profiles of users serve as ‘social cues’ or ‘trust signals’ and facilitate decision-making. A study by Eyal Ert, Aliza Fleischer and Nathan Magen reveals how the

2. The ‘superhost’ status is accorded to hosts who have a rating above 4.8, a response rate above 90%, received at least 10 bookings in a year, and initiated 0 cancellations.

3. Other benefits include additional referral bonus, travel vouchers and special superhost discounts.

perceived trustworthiness of a host based on their personal photo increases or decreases the probability of transacting with them (Ert, Fleischer, and Magen 2016).

The UrbanClap partner app displays the top six, most highly rated professionals in each category to all professionals to encourage the trustworthy behaviour.

Since positive reputation acts in favour of service providers, it becomes 'rational' or 'profitable' for them to be trustworthy. In this way, ratings and reviews constantly keep service quality in check and increase its likelihood of meeting consumer expectations.

2.1.5 Minimising Distortions and Biases in Ratings and Reviews

According to the Local Consumer Review Survey by BrightLocal in the USA, 54% of consumers consider the average star rating to be the most critical factor. Eighty-four percent of the respondents trusted online reviews as much as a personal recommendation and 91% of the respondents read reviews to determine if a local business is good or bad (BrightLocal 2017).

Ensuring that reviews remain representative of service quality and consumer experience is no mean challenge. Not all reviews are equally informative, and it can be tedious and time-consuming for a consumer to go through each review. In addition, fake reviews could also abound. Recent studies have revealed that 15% to 30% of all online reviews are false (Ivanova and Scholz 2017). In India, platforms such as Zomato, that allow users who have not transacted to give feedback, may create situations where sellers write positive reviews for themselves and negative reviews for their competitors. Reviewers on these platforms may solicit meals in exchange for good reviews, raising questions on the authenticity of a review (Chaddah 2016).

Consumers typically respond more to the coarser information provided by average ratings than reviews (Dai et al. 2012). Ratings, however, could be hostage to selection biases: first, only consumers with an expected positive utility will purchase the product in the first place, giving rise to an acquisition bias; and second, even within the people who bought the product, only consumers with distinctly positive or negative experiences are likely to provide feedback, leading to an over-representation of these experiences in the sample of reviews. A study of ratings on Amazon reveals that they exhibit a bimodal distribution with more positive than negative reviews (Luca and Zervas 2016). An analysis by Hu, Pavlou and Zhang shows that consumers are not entirely rational and are unable to adjust for the effect of these biases, making rating an inaccurate proxy for the product (Hu, Pavlou, and Zhang 2017). Bhole and Hanna, on the other hand, find that, in fact, the underreporting bias does not decrease the effectiveness of the mean star rating except for in cases where the product quality is either extremely high or low (Bhole and Hanna 2017).

Aggregators try to mitigate these risks using a few methods.

An over-representation of people with extreme experiences can be solved either by providing incentives to encourage all users to review or by making rating compulsory for every transaction. Some aggregators offer monetary incentives (in the form of discounts

or coupons) while others like Glassdoor follow a give-to-get policy. Ola, a taxi aggregator in India, requires a user to rate the previous ride before they can book the next one, ensuring the evaluation of every trip and not only very good or bad ones. However, in Uber, a user can skip the option to rate. On Airbnb, well over 75% of stays end in a review, and this has become one of their signature features.⁴

To remedy the errors associated with fake ratings, Zomato ranks every rating to give higher weightage to trustworthy entries and removes dubious entries from the calculation while generating the mean rating of a restaurant (Goyal 2012). It has also introduced a system—similar to the one suggested by a study done on Yelp.com (Luca 2016)—that uses algorithms to mine text and characteristics giving specific reviews more weightage than to others. Reviews identified as trustworthy, feature at the top of a restaurants' page.

The challenge of fake or promotional entries is lower for platforms like Uber and Airbnb where a user can only rate and review after a transaction has occurred.

2.2 Checks Against Dishonest Behaviour

Besides the use of ratings and reviews to deter dishonest behaviour, aggregators also put in place additional checks to prevent suspicious activities.

For instance, Airbnb claims to use predictive analytics and machine-learning algorithms to assess the risk score of every booking and to identify and investigate suspicious activities before they happen. Irrespective of the validity or rigour of their approach, they use other means to penalise bad behaviour. For example, hosts who cancel confirmed reservations have an automated review posted on their profile as a penalty for cancellation. Airbnb also does not allow a user to review a guest or a host unless the stay actually happened. Additionally, in 2014, their system was updated to create a process of 'double blind' reviews, where neither side gets to see the review before it is published to allow for candid, honest and unbiased feedback.

Uber tracks the activities of drivers and may deactivate their account in case of excessive cancellations, a deliberate increase in the time or distance of a trip, an acceptance of trips without the intention to complete them, claiming fraudulent charges or creating dummy driver accounts for fraudulent purposes. They also claim to deactivate the account permanently if a routine motor vehicle record or background check reveals anything that violates Uber safety standards (or any other criteria depending on local regulations).

The content team of Zomato regularly verifies the menu, timings and other details of each restaurant to ensure that only genuine restaurants are listed on the platform. Furthermore, following growing incidents of spam, fake and plagiarised reviews, Zomato rolled out a rule in 2017 to limit the maximum number of reviews by an individual to 10 per month (Narang 2017).

4. Written evidence from Airbnb'. Last modified December 2015.

Finally, UrbanClap discourages dishonest behaviour by publishing a list of ‘blacklisted professionals’ on its website⁵ to protect customer interest.

2.3 Establishing Identity for Quality and Safety

In order to build credibility and increase trust in their brand, aggregators monitor the quality and safety of the platform. They set a minimum threshold of ratings that suppliers, and often consumers, must meet to continue operating on the platform. Figure 3 highlights the importance accorded to higher ratings, with more than 90% of the listings on Airbnb having a rating of 4.5 stars or above (on a 5-star scale).

Rating	Number of Airbnbs	Percentage
Rating \geq 4.5	298	93.71%
Rating $<$ 4.5	20	6.29%

Figure 3: Number and Percentage of Airbnbs in Delhi, which fall under the given Rating Parameters. Data Mined on 29 June 2018.

Aggregators carry out the verification of government identity documents (IDs) and licences to establish the identity of users. Uber and UrbanClap make it mandatory for partners and service providers to provide specified government IDs. Airbnb also collects the government IDs (driver’s licence, passport, visa, etc.) of hosts and guests. Similarly, Zomato now collects the Food Safety and Standards Authority of India licence of restaurants before listing them. These measures deter fake profiles on the platform.

Aggregators increase safety by providing details of not only the service/product but also the transacting individuals. Uber, for instance, allows riders to view the detailed profile of their driver, including compliments that other riders have given and milestones achieved by the driver. The riders can find safety tips built in partnership with law enforcement and obtain details of the driver screening processes, insurance protections and community guidelines. Uber also allows both riders and drivers to share their location with up to five people while on a trip.

In the case of Airbnb, guests and hosts are encouraged to link their online identities—Facebook, Twitter and LinkedIn—with their Airbnb profiles. This provides insight into people’s personalities and interests and increases the chances of people representing

5. ‘Blacklisted Professionals’. UrbanClap. Accessed 17 July 2018.

themselves accurately. Further, it allows guests to send their prospective host a message (with the host having the discretion to accept or decline) in a bid to increase familiarity.

2.4 Actions Taken When Trust Is Broken

Although the trust mechanisms employed by aggregators provide a layer of protection to consumers, trust and safety are also contingent on the dispute resolution and grievance redressal facilities available when trust is broken. The aggregator model of business introduced distributed trust (Botsman 2017). Since trust becomes distributed across people interacting on the platform and between the platform and the people, so does accountability.

While aggregators expand opportunities for consumers and service providers, they also increase the risks of sharing resources. Demarcating obligations and laying down where the onus lies in case trust is broken has always been a point of contention in the aggregator business model. To avoid this from constraining their growth prospects, aggregators often insure users against any plausible damages. A survey conducted by Lloyd revealed that the 71% of consumers (out of a sample of 5,000) globally would be more comfortable using sharing economy services if insurance was offered and 70% were more likely to consider sharing or offering a service if insurance was offered.

It is in this context that we see the emergence of insurance programs, such as the Host Guarantee Program by Airbnb, which covers hosts for damages of up to Rs. 6,00,00,000 caused by a residing guest. The host has to first contact the guest and try to settle the claim with them. If this fails, the host must review Airbnb's Host guarantee terms and determine their case's eligibility.⁶ Following this, Airbnb analyses the documentation and gives a decision on the claim.

Similarly, treating its driver partners also as customers on the platform, Uber rolled out free insurance for more than 4,50,000 drivers on its platform in India, as a part of its remuneration deal for them. This insurance policy announced by Uber in 2017, through collaboration with ICICI Lombard General Insurance Co., includes accidental death, disablement, hospitalisation and medical treatment.⁷ Uber and other rideshare aggregators in India are also experimenting with per ride insurance options for passengers, along the lines of air travel (Venkatesh 2017).

UrbanClap also provides insurance up to Rs. 10,000 to customers for damages done by a professional while delivering services.

Lastly, aggregators make use of customer care helplines and chat support systems for addressing grievances. Using these, both customers and service providers on Airbnb, Uber and UrbanClap can report issues. Airbnb also has an urgent customer support

6. Hosts are advised to file a police report, and this is mandatory in case the claim amount exceeds \$300 (approximately Rs. 20,700) After doing so, the host must submit all relevant. documentation to Airbnb via a web form. The request has to be filed within 14 days of the dispute or before the next guest checks in, whichever is earlier.

7. The program includes as much as Rs. 500,000 for death insurance, Rs. 500,000 for permanent disability and Rs. 200,000 for hospitalisation coverage.

helpline number for travellers to report physical harm. Uber allows drivers to avail help and register complaints through a designated 24 x 7 customer service helpline.⁸ In case, a user rates an Uber trip four stars or below, the app allows the user to give reasons why they believe that the service was of inadequate quality.⁹ Uber considers this feedback while monitoring the behaviour of drivers in the future. It can subsequently block the Uber partner's account until they visit an Uber greenlight hub and resolve the dispute.¹⁰ With the help of these insurance programs and helpline numbers, aggregators are taking greater accountability in dealing with broken trust.

3 Limitations of the Current 'Specification-Centric' Regulatory Framework in Accommodating Aggregators

In India, regulations tend to be overly prescriptive or entirely proscriptive, and state capacity for enforcement is limited. The differences between traditional suppliers and aggregators make it impractical to co-opt existing regulations. Furthermore, most government directives tend to establish uniform service specifications across industry participants, restricting not only supplier entry but also access for consumers who do not necessarily seek the same level of quality. As opposed to uniform service specifications, aggregators rely on the power of information and trust mechanisms to enable the community to decide and regulate. The persistence of uniform service specifications, whose initial justification is no longer valid, not only imposes costs on businesses but may also work against the interests of consumers (Koopman, Mitchell, and Thierer 2014).

In this section, we contrast government regulations with comparable mechanisms employed by aggregators that seek to protect the interests of consumers. We look at the two sectors—bed and breakfasts (B&Bs) and taxi providers—that have grabbed attention as disruptors of traditional markets and, consequently, many demand greater regulation and scrutiny of their operations. For B&Bs, we evaluate how the mechanisms adopted by them manage to meet consumer expectations of quality. Using the text mining software Leximancer, we mined reviews of all Airbnb listings in Delhi. An analysis of these reviews provides a list of the most commonly occurring words in the reviews, revealing the amenities that are most important for guests. For the section on taxis, we examine the conditions laid down by the City Taxi Scheme 2015 and the requirements under Uber that expand opportunities for service providers while, at the same time, protect the interests of consumers.

8. These include instances of where the driver was unprofessional or if the driver's face did not match.

9. The app provides multiple options that the user can select for easy access. These include, but are not limited to, price, professionalism, comfort, driving, music and route taken.

10. Grievance redressal cells for drivers are located at several locations in the city.

3.1 Contrasting Regulations Governing Bed and Breakfasts with Mechanisms Used by Airbnb

A B&B is a small, independent establishment for overnight accommodation and breakfast. In Delhi, a B&B is not treated as a commercial unit and one does not require a licence to provide food or lodging services to the guests.¹¹ Any family may voluntarily choose to register itself either under the National Capital Territory of Delhi (Incredible India) Bed and Breakfast Establishments (Registration and Regulation) Act 2007 or under the 'The Incredible India Bed and Breakfast Establishments Scheme' of Government of India.¹² The objective of the two schemes is to 'provide a clean and affordable place for foreigners and domestic tourists alike including an opportunity for foreign tourists to stay with an Indian family to experience Indian customs and traditions and relish authentic Indian cuisine'.¹³

Registration under The Delhi Bread and Breakfast Establishment Act imposes certain restrictions on the owners of such properties. The owner is required to:

- Physically reside in the property;
- Maintain a register or computerised record in electronic form, giving detailed particulars of the guests, and keep it available for inspection at all times;
- Send information about the guests staying in the establishment to the local authority and the police every fortnight on the 15th and last day of every month;
- Not maintain a front office and the entire house should appear like a normal residential house;
- Not carry out or allow any commercial activity of tours and travel, sightseeing, transport, handicrafts or any other similar activity in or from the establishment;
- Not allow guests to run a separate kitchen in the establishment.

Besides these, the Application Form for registration of Bed and Breakfast Establishments lays out specific requirements to categorise units as silver or gold. There are 36 requirements in total. We discuss some of these and contrast them with the approach followed by Airbnb.

3.1.1 Specific Requirements Versus Disclosure Norms

The Act defines a room as 'a bedroom with not more than two beds and provision for extra beds for children accompanying the guest'. A silver category B&B must have a room of 20 sq. ft. whereas gold must have a room of 200 sq. ft. In contrast, Airbnb does not impose any restrictions on the size of the room or the number of beds in it.

11. See Rule 15 (Chapter 3) of the NCT of Delhi (Incredible India) Bed and Breakfast Establishments (Registration and Regulation) Act 2007.

12. An establishment registered with the latter is automatically approved and registered under the former.

13. See the Incredible India Bed and Breakfast Guidelines, Ministry of Tourism.

The Act mandates each room to have an attached bathroom with 24-hour running hot and cold water. It specifies the size to be at least 30 sq. ft. for a silver establishment and 40 sq. ft. for gold. To register with Airbnb, a private bathroom is not required, but information about whether it is private or shared is made available to the guest before the booking.

The Act necessitates an air-conditioning/heating facility with room temperatures between 20 and 25 degrees Celsius. Some of the other mandatory requirements to register under the Act include an iron, iron board, Internet connection and wardrobe with at least four clothes hangers. Registration as a gold establishment requires meeting other conditions such as a refrigerator and telephone in the room, washing machine, lounge and seating arrangement. Contrastingly, Airbnb has a checklist with the list of amenities that a host is free to select from. It specifies that ‘None of these things are required, but sometimes they add a nice touch to help guests feel welcome’. While a customer is booking an establishment, Airbnb lists the available and unavailable facilities, to facilitate informed decision-making.

3.1.2 No Assumption on Guest Preferences

Airbnb does not itself set the benchmark for the customer or supplier but allows users to set standards through ratings on different parameters and reviews. It makes no assumption on the preferences of the guest. For example, instead of the requirements of the Government of Delhi such as ‘wardrobe with at least four clothes hangers in the guest room’ or ‘shelves or drawer space in the guest rooms’, registration with Airbnb requires one to answer if the offering is ‘set up as a dedicated guest space’. If one answers in the negative and mentions that they keep their personal belongings in the room, a pop-up informs them that guests prefer to know if they will see the host’s personal things (like pictures or clothes) in the room.

3.1.3 Consumer Protection Through Self-Governance

Furthermore, while the government relies on inspection by the ‘classification committee’ to identify any shortcomings, Airbnb tracks the performance of an individual host against the average performance, imposing penalties on listings that consistently fall below the average.

The approaches followed by the government and by Airbnb to protect the consumer from fraudulent practices and to manage grievances are different. In case a B&B owner engages in ‘false representation or misrepresentation to the guest in respect of the establishment or fails to provide the food and other facilities or amenities promised to him’, one may ‘make a written complaint to the prescribed authority’. As opposed to this, the reputation system employed by Airbnb continuously identifies and punishes underhandedness and weeds out troublesome people from the platform. Any inefficiency or misconduct leads to a negative change in ratings. As soon as the minimum threshold is reached, Airbnb first notifies the user, warns them and finally removes the user (host or guest) from the platform in case of continued non-compliance.

Apart from this, if need be, Airbnb also checks all relevant documents to ensure the credibility of the host and in the absence of any such document, prohibits hosts from entering the platform. Finally, Airbnb provides other options, such as ‘Guest Refund Policy’, which is applicable to guests who face either a cancellation just before the scheduled day, or any misrepresentation of the listing.

3.1.4 Mismatch Between Consumer Preferences and Regulatory Specifications

On the basis of reviews mined from Airbnb, we draw a contrast between the approach of the government to ensure the quality of service and the modus operandi of Airbnb. While the former assumes the desirable characteristics of a B&B, the latter allows service providers of different size and styles to co-exist.

We first classified the reviews into two broad concepts, favourable and unfavourable,¹⁴ and then carried out a sentiment analysis of the reviews to determine the veracity of the classification.

Some of the words that occur most frequently and are favourable include ‘friendly’, ‘located’, ‘home’, ‘safe’, ‘comfortable’ and ‘kitchen’ (Figure 4). Table 2 in the Appendix gives a comprehensive list of the most frequently occurring words. The likelihood percentage reveals the probability of a word being favourable or unfavourable. For example, reviews that have the word ‘friendly’ have an 89% likelihood of being favourable. The analysis shows that only 4% of the total reviews have an unfavourable sentiment.

We find that several features and amenities that are invaluable to the consumer are not accommodated in government regulations. For example, the government prohibits B&Bs from building kitchens and yet ‘kitchen’ appears to be a sought-after feature in Airbnbs. Data mining of Airbnbs in Delhi reveals that out of 453 times that kitchen is mentioned by a guest, its written in a favourable context 427 of those times. That means that almost 95%¹⁵ of all guests who reviewed the kitchen did so in a favourable context.

14. This classification only gives a simple count of specific words without actually recognising the intent behind those words.

15. Though the data suggests that 95% of all guests write about kitchens in a positive context, it should be noted that the likelihood of this data being accurate, i.e. of 95% reviews being desirable, is only 46%.

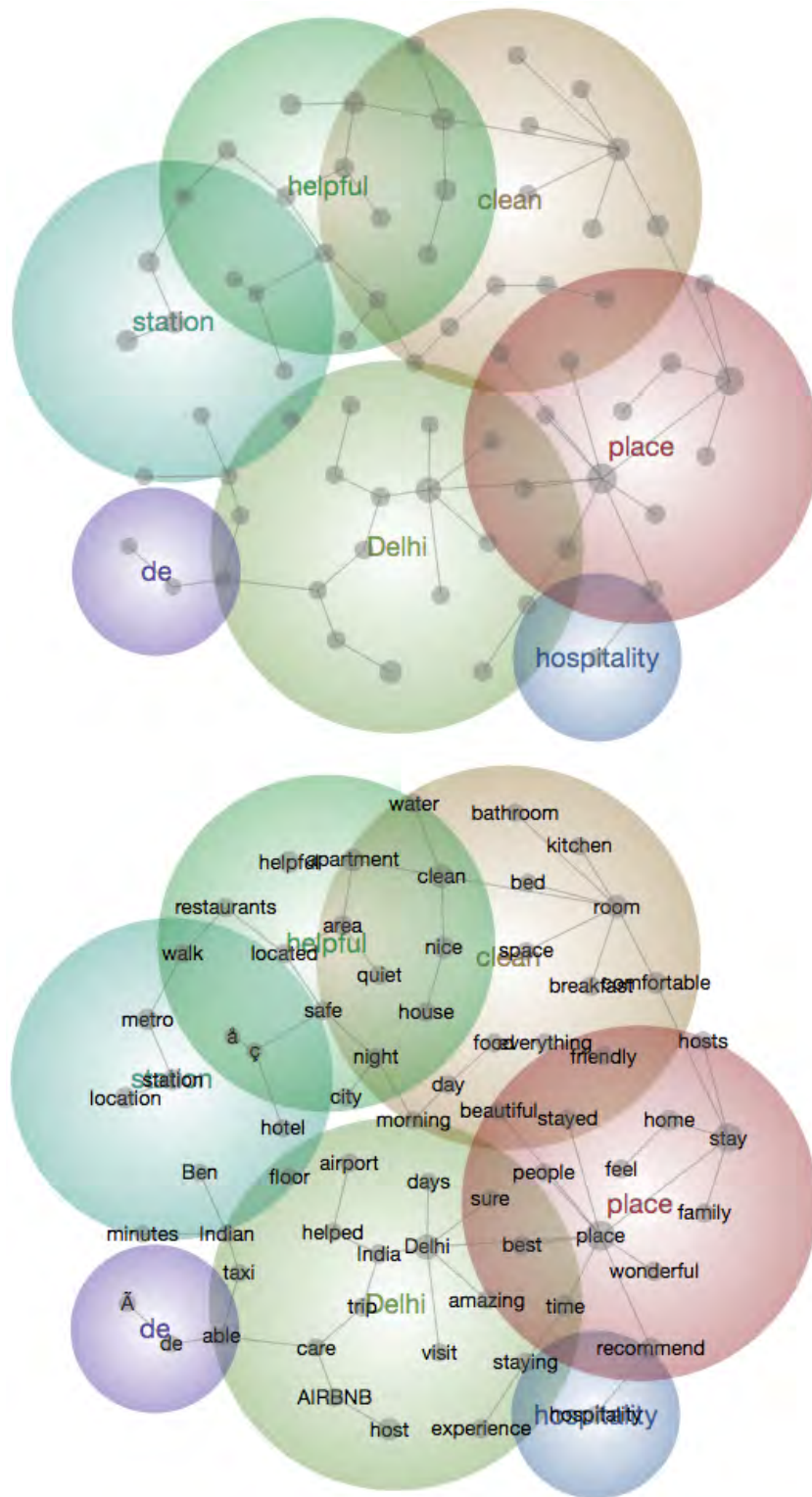


Figure 4: Leximancer Analysis of 13,021 Reviews of Airbnb Hosts in Delhi. Data Mined on 13 July 2018.

3.2 Contrasting the Rules Under the City Taxi Scheme (Delhi) with the Service Requirements Under Uber

All taxis in Delhi are regulated under the City Taxi Scheme 2015, which merged the Radio Taxi Scheme 2006 and the Economy Radio Taxi Scheme 2010. The Scheme falls under sections 93, 95 and 96 of the Motor Vehicle Act, 1988, and is applicable to all taxi service providers, including an aggregator of taxis. Hereunder, we contrast the specifications under the Scheme with the requirements that service providers need to meet on Uber.

3.2.1 Operational Requirements

A Group category licensee, under the City Taxi Scheme, requires a web portal with details of its ownership, address, fare structure, services offered and ‘contact details of a duly appointed grievance redressal officer’. The licensee, in both categories, needs to ensure that each taxi is fitted with a temperature control device and a working electronic digital fare metre. A liquid crystal display panel visible from both the front and rear is required to be installed on the roof of the taxi, to communicate whether it is available or not.

Every taxi also needs to make the photograph of the driver, licence number and registration details of the car visible to the passenger. Other requirements include fitting the taxi with a global positioning system (GPS) and general packet radio service-based tracking device that shows the path traversed and the total distance covered. Finally, the taxi must also have a feedback register that is accessible to passengers at all times.

As opposed to this, Uber has select vehicle requirements, such as the capacity to carry four passengers, have four doors and be 15 years old or newer and without missing pieces or cosmetic damages.

The app makes redundant some of the conditions under the Scheme such as the requirement to show the availability of a cab and the need to have a metre or a feedback register. The rating system, for example, functions as a useful proxy to determine the driver’s behaviour with passengers. The app also has an inbuilt GPS system for directions and lists the details of the fare, driver, their photograph, rating, number of past rides and phone number.

Before anyone is brought onboard, Uber verifies a set of government documents, such as driving licence, police verification, registration certificate, vehicle insurance and tourist permit.

3.2.2 Ease of Entry and Exit

The City Taxi Scheme lays out the different requirements for an ‘individual’, who owns a single taxi, or a ‘Group’ that requires a minimum fleet of 200 taxis.

Uber, on the other hand, allows for all different variations of owner-driver arrangements. It provides three options to a driver who want to join the app: ‘driver cum owner’, ‘driver

under partner’ (driving a vehicle owned by a non-driving person), or as a ‘non-driving partner’ (one who does not drive but owns a vehicle and manages at least one driver).

By defining a driver in this way, Uber expands entry in two ways: first, it includes one who does not own a vehicle, and second, it removes capital restrictions for a non-driving partner by allowing anybody with more than one taxi to join the platform. By accommodating all kinds of suppliers under one app, it increases the market size and, therefore, resolves some of the ‘matching’ challenges the industry previously faced.

The different ways of associating with the platform and the relatively easier operational mechanisms facilitate market entry for individuals or entrepreneurs who own a fleet of cabs. It allows those who do not own vehicles to lease them through its collaboration with Xchange Leasing India Private Limited. It leases vehicles to Uber partners for up to 60 months, increasing access for those who lack funds to own a vehicle.

Finally, Uber allows easy exit from the app and provides drivers with the flexibility to switch to a different firm, aggregator or otherwise, whenever they wish. The flexible nature of working hours allows drivers to join the platform part-time and earn additional income.

3.2.3 Driver Profile

The City Taxi Scheme mentions that the drivers must have adequate knowledge of city roads, must have completed middle school (have passed at least eighth grade) and must be of good moral character. The driver on duty has to be in a uniform, either as approved by the department or the company. The regulation puts the onus on the licensee (who owns a fleet) to ensure the quality of drivers and their conduct with passengers. The licensee has to ensure that the driver is reliable, trustworthy and safe. Finally, the licensee is required to conduct training sessions for the drivers, to ensure ‘passenger etiquette’ and safe driving skills, at least once a year.

To ensure its drivers are trained, Uber makes use of in-app videos, to guide drivers on how they must behave with riders. Further, drivers receive ‘in-person support’ at Uber greenlight hub (a support centre based in the National Capital Region, to address the queries of drivers), on things such as learning how to install the app, setting up an account and dealing with other queries. Uber attempts to improve their user interface constantly to enhance the experiences of both riders and drivers.

Uber also puts in place certain ‘community guidelines’ (that cover areas such as discriminatory behaviour, fraud, safety and quality) to ensure a ‘respectful and safe environment’ for the users. This helps guide the behaviour of drivers (as well as riders) and assists them in maintaining a higher rating. These guidelines also explicitly mention that the driver or rider may lose access to the app (temporarily blocked or deactivated) if they fail to comply with the terms. After a period of warning, if the rating of a driver continues to fall below a particular threshold or the driver is involved in a certain number of offences, they may be penalised. Since such an action limits the earning of a driver, it helps to establish checks against the dishonest behaviour.

3.2.4 Fare Structure

Under the City Taxi Scheme, a licensee is required to charge the fare prescribed by the department of transport. The licensee can also include waiting charges and night charges as approved by the department of transport. As opposed to this, Uber follows dynamic pricing, as determined by its algorithm, based on the supply and demand (and, in some instances, estimated traffic). In situations when demand exceeds supply, there is a surge in the prices to incentivise the drivers to go where there is high demand. As a result, it tries to ensure that supply meets demand to maintain an overall efficient outcome. Once the balance is brought out, prices go back to normal.

In order to be fair, Uber attempts to be completely transparent about this dynamic pricing model and its working. The riders are informed about the surge in prices in case they wish to switch to cheaper alternatives for transport. This mechanism plays an important role in reducing the number of unfulfilled requests and matching the demand and supply, especially during peak travel hours.

3.2.5 Suspension of Licence

According to the City Taxi Scheme, if the licensee fails to comply with the terms and conditions mentioned under the Scheme, the licencing authority may suspend their licence for a particular period of time or cancel it.

In the case of Uber, instead of the decision on the suspension of licence being taken by a particular licencing authority, it is based on the ratings given collectively by the riders who experience the service. Not only this, the rating system increases the accessibility of records and the influence of timelines since the entire history of a driver can be tracked.

While many of the specifications laid down under the City Taxi Scheme are made with the intention of protecting the consumers and ensuring their safety, they often become difficult to enforce and implement. These specifications also require regular crackdowns and inspections. Furthermore, rules such as ensuring that the driver is of a ‘good moral character’ and has ‘adequate knowledge of the roads’ are riddled with ambiguity and are difficult to check or enforce. On the other hand, through the use of its app-based technology, matching algorithm, feedback mechanisms and a set of incentives, Uber has managed to provide many of these facilities with ease.

4 Rethinking the Regulatory Approach for Aggregators

The disruption caused by aggregators has intensified the debate on the kind of regulation appropriate for them. A key distinction between a traditional business and that of an aggregators’ is that the former has full control of almost every aspect of the goods and services they provide and can thereby devise in-house policies to govern their actions. On the other hand, aggregators identify themselves as ‘matchmakers’ and not service

providers. By extension, they don't hold themselves liable and only claim to mediate grievances between aggrieved participants.

Two kinds of regulatory responses can be taken towards aggregators:

1. Reactionary, status-quo sympathetic or product based;
2. Anticipatory, accommodative or principles-based.

Under a reactionary, status-quo sympathetic or product-based regulatory framework, aggregators would be defined and treated similarly to traditional enterprises and all regulations imposed on the latter will have to be met by the former.

Many traditional businesses oppose the recent growth of aggregators on the grounds that they continue to face the regulatory burdens that these new entrants are evading (Koopman, Mitchell, and Thierer 2014). This includes licencing requirements, permits, taxation and administrative clearances amongst other things.

For instance, listings on platforms such as Airbnb do not have to meet the onerous regulations governing licensed hotels in India. Over 42 licences are required to start and operate a hotel in the organised sector in India. Moreover, five-star hotels pay 38% of their room revenue as taxes. The Hotel and Restaurant Association of Western India uses this to argue for a uniform and a level playing field for all those in the hospitality sector (Chaturvedi 2017).

Similarly, Meru Cabs, a taxi cab service based in Mumbai, accused Uber of following predatory pricing in order to increase their market share. The chief executive officer of Meru Cabs, Nilesh Sangoi, reasons that the huge subsidy given to drivers and impractical discounts to customers offered by Uber has distorted the taxi service market (Kalra and Dave 2017).

However, once Airbnb listings begin to comply with all the regulations governing hotels or B&Bs, they will cease to be attractive. Once all regulations that apply to taxicab companies apply to Uber, it will cease to be Uber.

While regulations are necessary in the face of the exploitation of consumers and information asymmetries, they generally fail to be dynamic and respond to changes in the market by constraining businesses and innovation. Such regulations, although intended to protect consumers by preventing worst-case scenarios, often end up preventing the best-case scenarios from ever surfacing (Koopman, Mitchell, and Thierer 2014). Excessive regulations also result in business harassment by inspectors who demand bribes or favours in exchange of favourable reports. Further, since state capacity is limited, having extensive areas of intervention leads to the government spreading itself thin.

In thinking through a regulatory approach to govern aggregators within sector-specific regulations, it is essential to recall that the aggregator business model makes it profitable to reduce friction between the transacting parties, solidify trust and facilitate economic transactions. By treating both service providers and buyers as customers of the platform, aggregators encourage accountability on both sides. Instead of emphasising guarantees and warranties, platforms create mechanisms that incentivise buyers and sellers to reveal

necessary information and act in mutual interest. Moreover, they enable users to set standards for safety and quality collectively.

The limitations in adopting a status quoist or reactionary approach for regulating aggregators nudges us to explore the merits of a principles-based and accommodative approach. A principles-based regulation does not need to be revised with every change in the service offering. Rather, it entails instituting guidelines that have a high level of generality. Irrespective of how the market changes, it works by creating overarching requirements as opposed to binding rules.

Conclusion

Most regulations that currently apply to service providers ignore the idea that every current market failure is an opportunity, incentivising entrepreneurial efforts to tackle it (Thierer et al. 2015).

The growth of aggregators has transformed the delivery and nature of the services sector, particularly in hospitality and transportation. In a constantly evolving and changing market, regulations in India are failing to keep up with the dynamism of the market.

The ‘regulatory lag’ in developing specification-based regulations raises questions on the applicability of the existing framework to the new ways of service delivery. When new ways of regulation have not emerged and old ways become obsolete, the vacuum creates an opportunity for firms to self-regulate in response to consumer needs and concerns. The purpose of our research is to describe the phenomenon of self- and third-party regulation emerging with the growth of aggregators such as Uber, Airbnb and Zomato, and explain how it resolves some of the information problems.

While aggregators in India have been accused of ‘regulatory arbitrage’ and considered rule-breakers, there is insufficient research on the unconventional ways in which they are meeting these rules and making new ones. Using existing literature, a thorough analysis of their websites and data mining, we have shown the type of market that the aggregators have opened up for both consumers and service providers. In the process of growing their business, they have developed several trust-building mechanisms and sets of standards (both in the form of laying down guidelines and user feedback) that have inadvertently started tackling the issues of market failure and consumer protection.

Our contrast of consumer preferences to the language adopted by regulations points at how conventional rule making in India is, in some instances, at odds with customer needs and preferences. Our research shows that the mechanisms adopted by aggregators are helping meet these needs and preferences differently: by defining standards broadly and creating incentives to increase consumer satisfaction. Not only this, these standards are also constantly being revised.

In response to the existing challenge of regulating aggregators, we highlight how the solution may lie in moving towards a principles-based approach. Such an approach can be at once accommodative of innovations and changes in the market, without compromising

on the underlying objective of protecting consumers and dealing with market failures. Further, it would help free up state capacity, by encouraging regulatory retreat in areas where it may no longer be required and by doing away with obsolete laws. This, in turn, is likely to reduce the regulatory burden on firms while making sure that no leniency is granted with respect to consumer protection.

While our paper suggests a need to rethink existing regulations through a brief analysis of the new methods introduced by aggregators and the gaps in current regulations, further research is required to understand the basis for drawing new frameworks. The answer could lie in understanding the red lines of standards that all enterprises in the sector ought to meet, irrespective of their business model.

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Appendix 1: Amenities Provided by Airbnbs

Table 1: Number of Airbnbs Providing Each Amenity in Delhi. Data Mined on 13 July 2018

Amenity	No. of Airbnbs	Amenity	No. of Airbnbs
Air-conditioning	301	Hot tub	7
Baby bath	2	Hot water	247
Babysitter recommendations	2	Indoor fireplace	4
Bathtub	4	Iron	238
Barbecue grill	21	Kitchen	264
Bed linens	144	Lake access	1
Breakfast	129	Laptop-friendly workspace	265
Building staff	103	Lock on the bedroom door	152
Cable TV	187	Lockbox	2
Carbon monoxide detector	47	Long-term stays allowed	187
Changing table	2	Luggage dropoff allowed	156
Children's books and toys	23	Microwave	124
Children's dinnerware	2	Outlet covers	1
Cleaning before checkout	13	Oven	49
Coffee maker	60	Pack 'n Play/travel crib	1
Cooking basics	117	Paid parking off premises	31
Crib	2	Paid parking on premises	10
Dishes and silverware	113	Patio or balcony	84
Dishwasher	9	Pocket Wifi	13
Dryer	132	Pool	7
Elevator	78	Private entrance	131
Essentials	312	Private living room	21
Ethernet connection	14	Stair gates	10
Electric vehicle charger	7	Stove	113
Extra pillows and blankets	108	Table corner guards	1
Fire extinguisher	148	TV	235
Fireplace guards	1	Washer	204
First aid kit	215	Waterfront	8
Free parking on premises	180	Wifi	307
Free street parking	150	Window guards	8
Game console	2	Refrigerator	153
Garden or backyard	42	Room-darkening shades	17
Gym	21	Shampoo	260
Hairdryer	199	Single level home	32
Hangers	276	Ski in/Ski out	2
Heating	202	High chair	13
Smoke detector	66	Host greets you	123

Appendix 2: Sentiment Analysis for Reviews of all Airbnbs

Table 2: Sentiment Analysis for Reviews of all Airbnbs in Delhi. Data Mined on 13 July 2018

Concept	Word	Count	Likelihood Percent	Concept	Word	Count	Likelihood Percent
favourable	wonderful	1289	91%	unfavourable	night	60	5%
favourable	nice	2428	91%	unfavourable	water	63	5%
favourable	helpful	2480	90%	unfavourable	helped	44	5%
favourable	beautiful	937	89%	unfavourable	hotel	28	5%
favourable	friendly	1322	89%	unfavourable	taxi	33	4%
favourable	best	1149	87%	unfavourable	people	45	4%
favourable	location	1764	69%	unfavourable	sure	41	4%
favourable	hosts	1001	69%	unfavourable	floor	18	4%
favourable	host	2636	69%	unfavourable	day	47	4%
favourable	restaurants	831	67%	unfavourable	airport	44	4%
favourable	food	810	64%	unfavourable	able	16	4%
favourable	breakfast	1078	63%	unfavourable	trip	34	4%
favourable	experience	1011	63%	unfavourable	bathroom	26	3%
favourable	located	760	62%	unfavourable	bed	24	3%
favourable	area	960	60%	unfavourable	experience	54	3%
favourable	quiet	778	60%	unfavourable	days	26	3%
favourable	clean	2119	59%	unfavourable	everything	45	3%
favourable	apartment	1744	58%	unfavourable	city	29	3%
favourable	metro	1078	58%	unfavourable	room	105	3%
favourable	family	835	58%	unfavourable	morning	29	3%
favourable	hospitality	476	58%	unfavourable	area	47	3%
favourable	place	4776	57%	unfavourable	location	74	3%
favourable	station	1184	57%	unfavourable	stayed	40	3%
favourable	city	549	57%	unfavourable	kitchen	26	3%
favourable	stay	4374	57%	unfavourable	apartment	83	3%
favourable	helped	544	56%	unfavourable	care	24	3%
favourable	space	417	56%	unfavourable	time	71	3%
favourable	time	1438	56%	unfavourable	station	54	3%
favourable	comfortable	1479	56%	unfavourable	nice	69	3%
favourable	house	882	56%	unfavourable	metro	45	2%
favourable	people	581	55%	unfavourable	house	38	2%
favourable	safe	694	55%	unfavourable	best	31	2%
favourable	walk	452	54%	unfavourable	host	89	2%
favourable	everything	784	54%	unfavourable	helpful	60	2%
favourable	stayed	742	53%	unfavourable	walk	18	2%
favourable	bathroom	400	53%	unfavourable	comfortable	57	2%
favourable	morning	509	52%	unfavourable	feel	25	2%
favourable	home	1220	52%	unfavourable	place	172	2%
favourable	feel	626	52%	unfavourable	amazing	25	2%
favourable	room	1822	52%	unfavourable	restaurants	24	2%
favourable	airport	598	51%	unfavourable	safe	24	2%
favourable	day	621	51%	unfavourable	food	24	2%
favourable	amazing	644	50%	unfavourable	breakfast	32	2%

Concept	Word	Count	Likelihood Percent	Concept	Word	Count	Likelihood Percent
favourable	staying	657	49%	unfavourable	stay	143	2%
favourable	care	424	49%	unfavourable	hospitality	15	2%
favourable	night	551	48%	unfavourable	recommend	55	2%
favourable	bed	337	48%	unfavourable	family	25	2%
favourable	water	575	47%	unfavourable	hosts	25	2%
favourable	visit	435	47%	unfavourable	home	39	2%
favourable	kitchen	427	46%	unfavourable	friendly	24	2%
favourable	trip	422	46%	unfavourable	beautiful	16	2%
favourable	sure	442	45%	unfavourable	minutes	5	2%
favourable	recommend	1291	41%	unfavourable	clean	54	1%
favourable	days	302	39%	unfavourable	located	18	1%
favourable	floor	156	35%	unfavourable	visit	13	1%
favourable	hotel	205	33%	unfavourable	staying	14	1%
favourable	taxi	244	32%	unfavourable	quiet	17	1%
favourable	able	72	17%	unfavourable	space	9	1%
favourable	minutes	50	15%	unfavourable	wonderful	15	1%

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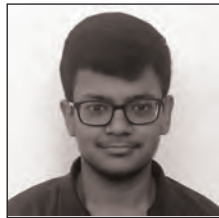
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