US-China Law Review, January 2022, Vol. 19, No. 1, 35-52
doi:10.17265/1548-6605/2022.01.003

Law and Policy Reforms in India amidst COVID-19 to Mitigate Risk in Infrastructure Structured Project Financing

Amit Kumar Kashyap
Manipal University Jaipur, Rajasthan; Nirma University, Ahmedabad, India
Vijaylaxmi Sharma
Manipal University Jaipur, Rajasthan, India

The management of risk is critical for creating a strong project financing market that, in turn, supports infrastructure development. Legal risk reduction is a crucial topic that must be addressed for the growth of the infrastructure industry and project finance. It anticipates regulatory incentives based on the expanding infrastructure sector's demands. Over the last decade, it has been observed that India's regulatory environment for taking action to address non-performing assets and the Reserve Bank of India's (RBI) strict insolvency resolution norms for stressed assets has been cumbersome and does not give the infrastructure financing market any special treatment. The project financing industry has suffered a blow due to significant corporations like IL & FS and Dewan Housing Finance Ltd (DHFL) defaulting on payment commitments in the Non-Banking Financial Firm (NBFC) sector in 2018-2019. Furthermore, due to the Novel coronavirus (COVID-19) spread, India's project financing business, which is dominated by banks (both government-owned and private), is already experiencing a downturn. Legal claims and many conflicts would arise if the project were to be disrupted. Due to increasing interconnectivity, a downturn in the project financing industry would send several shocks across the whole financial system. This situation has compelled the Indian government and authorities to take several significant moves in the lending and project finance markets. The author attempted to investigate the influence of recent financial sector failures and COVID-19 on structured project financing. This article examines how regulatory changes assist the practice in the structured financial market to revive and address difficulties while evaluating concerns and challenges in the infrastructure sector's current structured project finance market.

Keywords: project finance, structured finance, banking, non-banking financial companies, special purpose vehicle, infrastructure and policy

Structured Project Finance in Infrastructure: An Overview

Infrastructure is a critical engine of economic development and progress (Crescenzi & Rodríguez-Pose, 2012). The infrastructure sector has overgrown in recent years, with its emphasis solely on economic growth and

Amit Kumar Kashyap, research scholar, School of Law, Manipal University Jaipur, Rajasthan; asst. prof., Institute of Law, Nirma University, Ahmedabad, India.
Vijaylaxmi Sharma, Dr., professor, director, School of Law, Manipal University Jaipur, Rajasthan, India.

the production of multiplier effects. However, the efforts of infrastructure development plans (or plans for infrastructure development) should be directed towards creating a socio-economic environment that, in turn, should result in economic growth. Even while there is widespread concern and demand for the development of infrastructure in the nation, which is considered to be a significant indication of the country's developmental growth, there are several obstacles that stand in the way of its advancement. Various factors contribute to the failure(s) of infrastructure provision. These include inefficiency in management, a lack of funding, and bad execution, among others (Ball, 2001). In most cases, the project business is a thinly financed special purpose entity, and lenders have little or no recourse against sponsors if the project underperforms underperforming (Bain, 2009). Because of the complex nature of structured project finance, a disagreement over one contract might have far-reaching consequences for the whole project.

In finance, structured finance is a complicated kind of financing that is often utilised on a scale that is too huge for a traditional loan or bond (Pinto, 2013). Project finance is the long-term financing of infrastructure and industrial projects based on a non-recourse or limited alternative of financial structure. The project debt and equity used to finance the project are repaid from its cash flow throughout its life (Gupta & Sravat, 1998). The usage of Special Purpose Vehicles (SPVs) is a critical component of structured finance, regardless of its form. In typical financing, a sponsor (the corporation that owns the assets that need funding) transfers a pool of assets to one or more Special-Purpose Vehicles (SPVs) that hold the assets and issue fixed-income securities to investors (also known as debt financing) (Basel Committee on Banking Supervision, 2009). An SPV, or Special Purpose Entity (SPE), is a legal entity formed by the sponsor or originator, usually an investment bank or an insurance business, to sponsor packaged assets (Nwandem, 2015). It helps both the investors and the pooled assets' profit maximising potential. It gives investors access to investment options and a new means of generating money. Infrastructure projects are often long-term in nature, necessitating long-term finance (Grimsey & Lewis, 2002).

Long-term financing is provided mainly by insurance and pension funds, which seek low-risk long-term investments. The author of this study article believes that bank deposits are India's most common type of financial savings. Furthermore, insurance and pension funds often do not invest in infrastructure projects because of the complicated risk profiles involved with infrastructure projects. It is pertinent to understand how the process is beneficial for the project finance sector (Taneja, 2006). Three things are advantageous in structured project financing in the infrastructure sector:

- First, it provides a source of funding for those sectors that are themselves blocked and of no use;
- Second, it allows a much larger number of people to participate; and
- Third, it is responsible for lowering the cost of funding due to its existence and the feasibility of long-term funding sources.

Structured Project Finance Market in India

There is no umbrella law and no one government agency governing project finance transactions in India, which allows it to be used for greenfield and brownfield projects. In addition, there is no single government agency that supervises project finance transactions in India (Chaudhuri, 2011). When it comes to project development, several sets of laws will be applied based on the type of project financing transaction and the industry in which the project is being carried out. The realisation that the infrastructure sector must be opened to private operators to meet the growing investment needs of the country has been occurring since the beginning of the reform process in 1991. With the removal of the rigid licencing policy and various restrictions in industries in India, it has been realised that the infrastructure sector must also be opened to private operators to meet the growing investment needs of the country (Vickers & Yarrow, 1991). In addition, the government recognised that additional finance methods would be required to satisfy these demands. As a result, infrastructure development has been a significant focus of the Indian government—11th Five Year Plan (2007-2012) (Planning Commission, 2006). Since then, India has experienced a surge in project finance. India has opened up the infrastructure sector to private sector engagement and international investment, recognising the significance of infrastructure as the backbone of the Indian economy. Since 2012, most private-sector finance for PPP projects has come through project financing by scheduled commercial banks, which accounts for 70-85% of their debt requirements on average (Hemant Sahai, 2013).

Project finance structures in India are, in most cases, no different from those seen in other nations throughout the world. Foreign sponsors may engage in joint venture agreements with an Indian partner to construct a Special Purpose Vehicle (SPV) that will be responsible for the project's execution and implementation. Later, the SPV may engage in a concession arrangement with an Indian government body, construction and operation agreements with numerous contractors, and finance agreements with financial institutions. G20 Global Infrastructure Outlook forecasts that India would need $4.5 trillion in infrastructure funding throughout its whole existence by 2040, of which $3.9 trillion may be covered by domestic savings (PTI, 2018).

It's also essential to comprehend the government's responsibility in safeguarding and protecting the country in this situation. In general, project finance mechanisms in India are similar to those in other nations (Stern & Holder, 1999). Foreign sponsors may incorporate a Special Purpose Vehicle (SPV) with an Indian partner to carry out the project. The SPV may then engage in concession agreements with Indian government entities, construction and operation contracts with contractors, and finance arrangements with project lenders. The roles of low-risk users, medium risk users, and residuary users may be used to understand how the government plays an essential role. The project is purchased on a construct, operate, and transfer basis in the event of low-risk consumers. The government's participation is shown when it promises the lowest possible toll and concession, regardless of whether the customers pay the concession or toll (Beckett-Camarata, 2020). Banks and other debt investors often require additional credit guarantees to decrease the risk of failure to an acceptable level and assure long-term financing costs. Credit insurance is usually sponsored by the public sector or other multilateral organisations, such as government agencies.

In recent years, infrastructure has been a focal point in the Indian economy since it is expected to boost overall development. To speed infrastructure development, the government has proclaimed implementing large infrastructure projects like smart cities, industrial corridors, freight corridors, waterways, Bharatmala, Sagarmala Program, and others. The NITI Aayog estimates that the country's infrastructure would need $4.5 trillion by 2040 (PTI, 2021b). According to the Global Infrastructure Outlook, India will need around USD 4.5 trillion in investments through 2040. In the Union Budget 2019-2020, the Indian government allotted Rs 4.56 lakh crore

(US$ 63.20 billion) to the infrastructure sector (Globular Inc., 2021). India presently invests between US$100 and US$110 billion each year in infrastructure (Yoshimatsu, 2021).

Due to instances of defaults in the debt market by large Non-Banking Financial Firms (NBFCs), which directly influence the project financing market, the government's plan for strong infrastructure has suffered a setback. The government took over the IL & FS board on October 1, 2018, and named six new directors to help the firm recover (MUDS Management, 2020). The second major shock occurred in September 2018, when DSP Mutual Fund sold commercial papers worth Rs 3 billion from Dewan Housing Finance Ltd (DHFL), India's third-biggest mortgage lender, at a higher yield, causing a 60% intra-day drop in the company's stock price on September 21 (Attarwala & Balasubramaniam, 2020). Furthermore, the coronavirus pandemic is likely to have a significant effect on credit delivery and asset quality in India, with over US$30.5 billion in loans expected to default in the next year. However, even before the epidemic, the Indian financial industry displayed symptoms of crisis due to the declining economy. However, banks continue to dominate India's structured project financing industry (government-owned and private).

Structured Project Finance & Risk Matrix

Financial difficulties often beset infrastructure investments. The hazards are often not sufficiently addressed. Unfortunately, inadequate risk management is one of the critical drivers of the delay, which can result in long-term cost overruns and delays. It is impossible to reduce the total risk connected with any infrastructure project or strategy. On the other hand, risk allocation must be done so that all parties are incentivized to prevent expensive delays and overruns in the budget (Ullah et al., 2021). The environment around PPP was not ideal, and the epidemic propagated by COVID-19 served as the last nail in the coffin, wreaking havoc on both current and growing PPP. Draw-stop events, which often include an event of default or impending default, an actual or predicted financing shortage, and construction delays, may prompt lenders to refuse to disburse balances if projects are under development and loans have not been completely drawn. Under project contracts, the industry experiences frequent payment concerns from counterparties. Several risks might result in a disagreement between financers and borrowers in structured transactions since infrastructure projects often need a substantial capital outlay, increased investment risk, and more extended gestation periods (Marhewka, 2020).

Financial Risk

The risk of finance is the most significant risk associated with an infrastructure project (P. T. Nguyen & P. C. Nguyen, 2020). When the whole project is reliant on large sums of money, a risk related to financing might constitute a stumbling block for infrastructure projects of this kind. Unavailability of cash or a lack of investors is two of the most common financial concerns businesses confront. Furthermore, if the borrowers cannot make payments to the lenders, this would result in another sort of financial risk.

Cost of Construction

Because the financial assumptions and ratios are all based on the project's projected construction cost, the cost of completion is critical to its economic sustainability. As a result, lenders will require a way to manage risk if the project company's completion cost exceeds what was expected at financial closure. To minimise price escalation, the project firm also tries to lock in some expenses, such as commodity pricing, as early as feasible in the project.

Delay

The conclusion of the project's construction phase is known as completion. Because the construction contractor is responsible for liquidated damages if the project is not completed on time, the definition of "completion" significantly influences the contractor's risk.

Operating Risks

The estimated operating expenses determine the project's feasibility. If any aspect of the operation's cost rises, lenders will want to be safeguarded to the degree that it would affect the income stream. To some degree, the price can be locked in via hedging, futures contracts, and input agreements, but there will almost certainly be certain expenses that are not hedged, and the lenders will want to make sure that they are kept to a minimum. Another significant operational expense is the cost of labour, which is typically included in the agreement using a wage inflation assumption.

Force Majeure and Change in Law

It is critical to remember that the financing agreements will not contain force majeure or changes in the legislation. In the case of force majeure or a difference in the legislation, the responsibility to repay the debts will remain. Lenders will want to check the force majeure and change in legislation clauses in the project papers and confirm that they are consistent with the concession agreement (to the extent feasible).

Political Risk

Concerns regarding political risk have increased as the market for project financing transactions has expanded into developing nations. Significant risks include a government's decision to cancel a project, change the terms of the contract, or default on its obligations, the political or regulatory risk associated with failing to implement tariff increases agreed upon in the contract, and the risk of a government's expropriation or nationalisation of project assets. Some of this will be addressed in the project agreements. The government shares some of the dangers in the form of compensation to be paid in unilateral termination or expropriation. Still, not all political chances are likely to be shared.

While commercial lenders may be willing to bear some political risk, perceived political risk limits or even bans funding of otherwise feasible initiatives in other nations.

Currency Exchange Risk

While project financing debt is often obtained from overseas lenders and priced in foreign currencies, project earnings are almost always expressed in local currency. The cost of debt may rise rapidly when the currency of income and the currency of debt are at odds. The notion of buying power parity states that a depreciated currency would ultimately return to equality due to inflationary forces. However, lenders in the project financing industry are not that patient (with average periods of about 10 years).

Lenders will want to see revenue streams updated to compensate for any relevant change in exchange rate or devaluation if revenues are generated in a currency other than that in which the loan is denominated. These agreements or different ways to control foreign exchange risk are required if this option is not accessible to the lenders.

Interest Rate Risk

Interest may be charged at three different rates: fixed, variable, and floating. Fixed-rate debt is joint in project financing. This helps to limit swings in the cost of infrastructure services by providing a predictable, or at least reasonably constant, payback profile over time. If lenders are unwilling to supply fixed-rate financing and no project partner is prepared to take on the risk, hedging or other arrangements may be required to mitigate the risk that interest rates would rise to the point where debt payment will become expensive for the project. The conflict between local and foreign currency debt is often a matter of balancing fixed-rate debt with foreign exchange rate risk or local currency debt with interest rate risk.

Devaluation

Any fall in the value of the local currency will need an increase in cash financing to ensure that returns are maintained; otherwise, the scope of repayment of existing dues to related lenders would be hampered.

Risk in Structured Project Finance & Impact of COVID-19

The availability of infrastructural facilities is critical for any country's overall growth. As a result, governments rely on creative arrangements like public-private partnerships to open up the infrastructure sector to the private sector and international investment. In an environment where banks and financial institutions have a limited risk appetite for funding private developers of infrastructure projects, and developers themselves struggle to reduce leverage, the government's role in maintaining project investment momentum through policy and regulatory interventions becomes critical. Project dispute risk must be reduced to help India's infrastructure industry in this environment. The project financing industry has suffered a blow due to significant corporations like IL & FS and DFHI defaulting on payment commitments in the NBFC sector in 2018-2019, and now the COVID-19 pandemic has been unprecedented. Its influence on economies throughout the world continues to be felt today. The pandemic impacts a wide range of businesses and sectors, with some being more severely affected than others. The influence of infrastructure firms may be determined throughout any of the following phases: development, building, and operation. Because of a labour shortage, financial constraints, and government-imposed construction shutdowns, the COVID-19 epidemic had a significant impact on highway building projects. The World Health Organization has designated the COVID-19 outbreak to be a public health emergency of worldwide significance due to the spread of the virus (WHO, 2020).

The impact of the coronavirus on the global economy has been devastating so far. After demonetisation, the infrastructure sector in India has faced severe setbacks, one after another. Many realty companies are on the verge of bankruptcy, and the COVID-19 pandemic has increased their troubles. COVID-19 has been declared a pandemic by WHO because of which the government authorities have imposed restrictions in terms of lockdowns and travel/movement of people. These restrictions have severe consequences on the under-construction and operational projects, causing delays, increasing costs, and affecting the operations of the plants. All building work has been paused due to the epidemic, and there is no infrastructure work feasible at this time. In several areas, assets that rely on user fees have seen a significant drop in demand, resulting in income losses for project sponsors. As a result, project risks have escalated, including default events, termination, bankruptcy, and government contract breaches, among others. Closures of projects have grown since 2019, as seen in Figure 1. It's no accident that every financial institution that tried to lend money on a project has failed.

This is because the project firm is usually a thinly financed special purpose entity, and lenders have little or no recourse against sponsors if the project underperforms. Infrastructure projects in India are infamous for cost overruns and delays, and they were set for even more pain as the coronavirus sweeps through the country. A significant disruption has occurred in the project development and financing markets due to the appearance of the COVID-19.

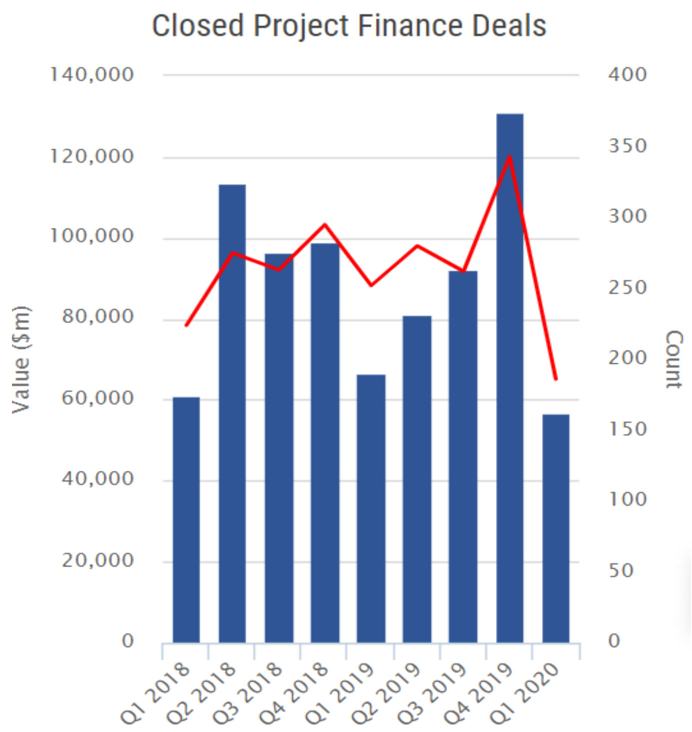

Figure 1. Closed project finance deals. Source: https://ijglobal.com/.

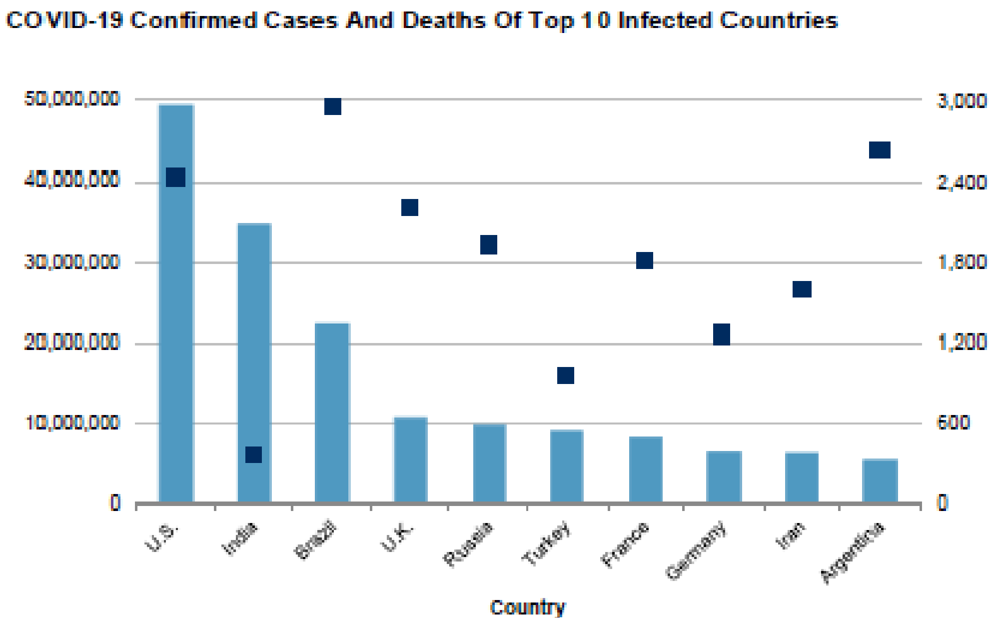

Figure 2. COVID cases data. Source: https://www.spglobal.com.

As per data referred to in Figure 2, the total number of confirmed COVID-19 cases has topped 267 million globally, with a mortality toll of 5.2 million and India had the highest number of cases next to the US. Time overruns hit as many as 525 infrastructure projects. As many as 470 infrastructure projects, each worth Rs 150 crore or more, were hit by cost overruns of over Rs 4.38 Trillion due to delays, according to the Ministry of Statistics (Ministry of Statistics, 2021). The COVID-19 induced risk in project financing for infrastructure development includes many events and incidences that can be listed as follows:

Lockdown

India launched a statewide lockdown on March 24, 2020, causing a surge of terror in the veins of several nations as a result of the dangerous COVID-19 virus spreading across the country (Irudaya, Sivakumar, & Srinivasan, 2020). Even when firms were able to get loan approval, the lockout brought attention to the difficulty of putting the loans into effect. As a result of social distancing protocols, a reduced number of available officials, and office closures regularly, getting documents stamped and notarized, obtaining approvals from government authorities, and other requirements such as the physical presence of parties and the registration of documents, among other things, have become more challenging to accomplish.

Delayed or Interruption of Construction or Operations

Supply chain interruptions occur on top of delays caused by the availability of cranes or other construction equipment and the risk of labour availability at project sites due to the impact of COVID-19 on the construction industry. If a project does not reach completion by a specific date, it is often considered a default event.

Events of Default

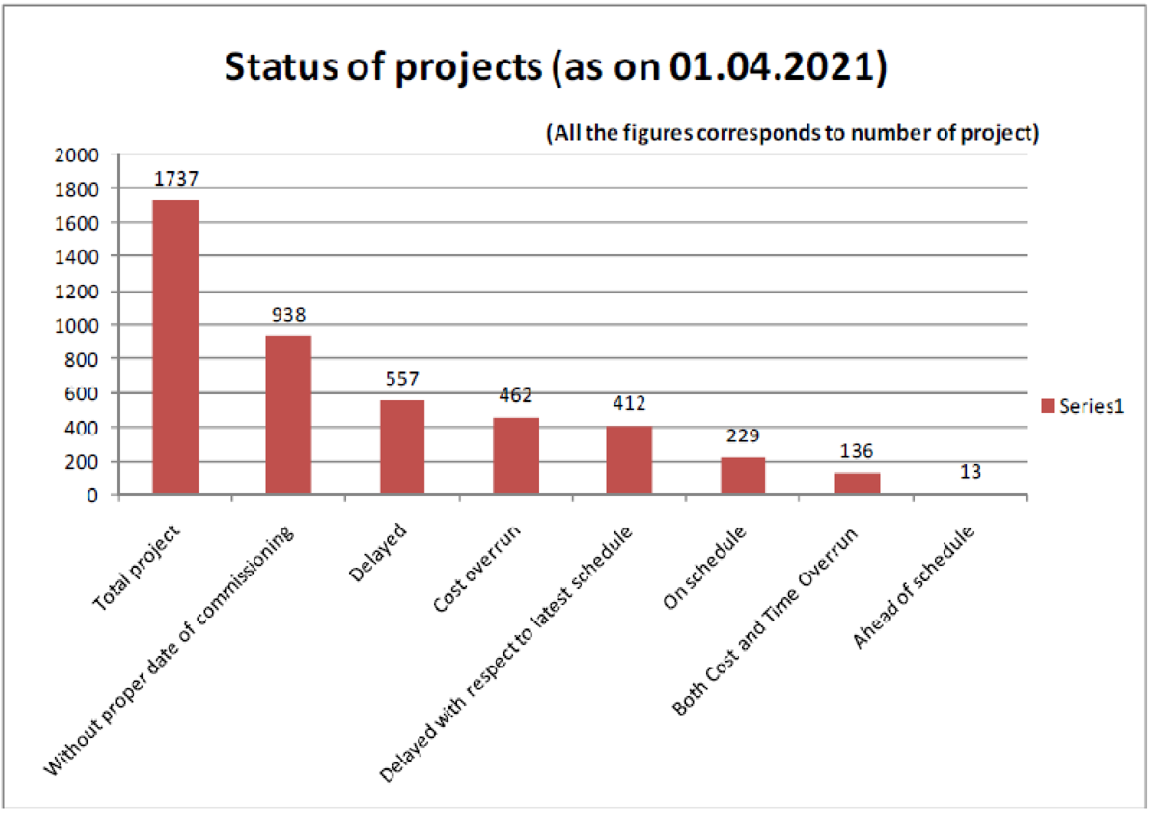

Figure 3. Project status during COVID-19. Source: Ministry of Statistics.

According to standard practice, the facility agreement specifies specific events that allow lenders the authority to terminate the facility and accelerate any existing debts if any of these occurrences occur. “Occurrences of default” are a term used to describe these types of events. This may result in bankruptcy or the filing of a distress case. According to the Ministry of Statistics Report referred in Figure 3, of the 1,737 projects evaluated, 13 were completed ahead of schedule, 229 were completed on time, 557 were delayed, 462 reported cost overrun, and 136 said both time and cost overrun in comparison with the projects’ original implementation schedules. Out of 557 delayed projects, 114 (18.99%) have a delay of 1 to 12 months, 131 (23.48%) have a delay of 13 to 24 months, 190 (33.51%) projects have a delay of 25 to 60 months, and 122 (20.61%) projects have a delay of 61 months or more.

Force Majeure

A frequent aspect of most commercial contracts, particularly those that constitute the foundation of project finance, is the idea of “force majeure”. For example, a force majeure clause forbids one party from performing contractual commitments in the case of an incident that the parties were unable to foresee or control. Since a force majeure event has occurred, the non-performing party is no longer liable for any non-performance or delay in performance (Januarita & Sumiyati, 2020). Many contracts make no explicit mention of such words, while arrangements that do mention them often employ general terminology without providing any definitions for them. Many things remain unanswered, and there will no sure be a great deal of dispute among the contracting parties due to this. The Ministry of Finance, GOI, as of 19 February 2020 issued a notification stipulating that

> coronavirus is to be assessed as natural calamity and force majeure clause to be invoked, wherever necessary, following the due procedure of law, further, such clause does not essentially terminate the contract, but only suspends performance for the duration of the force majeure. The firm is requisitioned to provide notice of force majeure as soon as it occurs; the same cannot be claimed ex-post facto, also, in case the performance in whole or in part is prevented by any such reason for a period extending ninety days. The contract may be terminated at the instance of either party and without any financial repercussion. (Ministry of Finance, 2020)

Impact on Loan Agreements

Loan arrangements, in addition to asset-related contracts, may now be impacted. This might occur as a result of the borrower’s financial circumstances worsening. In theory, if a borrower’s financial status deteriorates sufficiently or the value of the loan collateral declines significantly, the lender has the legal authority to cancel the loan. As a result, there was a financial risk of contract cancellation.

Cost Overrun

Cost estimates for a project are calculated based on current market conditions. Therefore, if there is a delay, the costs of raw materials will rise due to inflation, increasing the cost of living. Furthermore, since the initiative is still in its infancy, there will undoubtedly be some overhead expenses that must be covered. Furthermore, a prolonged delay may result in the depreciation of project assets, resulting in cost overruns for repair and replacement efforts.

Rising Price of Oil

One of the most noticeable negative consequences of the epidemic has been the steep drop in oil prices due to the steep reduction in demand for crude oil products throughout the world. With oil prices at an all-time low of

US$25 a barrel, countries are being forced into potentially enormous budget deficits, with some advanced economies on the verge of entering a recession (Deloitte, 2020). This mechanically impacts the project cost at large.

Dispute Risk

Time and expense overruns in projects result in litigation and arbitration proceedings. A good example is the Mumbai Monorail, which has been embroiled in legal battles and arbitration between the contractor and the authority over the project's price tag from its inception (Larsen and Toubro Limited Scomi Engineering BHD vs. Mumbai Metropolitan Region Development, 2018).

Structured Project Finance: Legal Reforms

The promotion of infrastructure remains a key focus of the Indian government as the country suffers from chronic under-investment in this respect.

Direct Reliefs

The Ministry of Road Transport and Highways (MoRTH) issued an order on March 25, 2020, directing the National Highways Authority of India (NHAI) to take action following the MHA order (including suspending tolling operations on toll plazas), and adding that the current situation could be considered "force majeure" under the concession agreements NHAI has with the developers (Sadhu, Jain, & Banerjee, 2020).

Resolution of Stressed Assets

The Insolvency and Bankruptcy Code (IBC) was implemented to make it easier for banks to resolve non-performing assets (NPAs) (some portion of which was on account of exposure to stressed infrastructure assets developed over the past decade). This policy established a robust mechanism supported by law, and it helped banks alleviate stress while gradually restoring their desire for new loans. Although the current resolution procedure under the Insolvency and Bankruptcy Code, the National Creditors' Litigation Tribunal (NCLT), has absorbed most older methods, numerous restructuring programmes have been implemented gradually, with variable degrees of success. The Reserve Bank of India (RBI) has issued guidelines to encourage the sale of stressed assets to Securitisation or Reconstruction Companies (SCs, RCs) at a time when the projects are revivable and have a realisable value, thereby creating a support system for stressed asset management with a greater emphasis on asset reconstruction rather than asset stripping (Agarwal, Das, Jacob, & Mohapatra, 2020).

Viability Gap Funding (VGF)

The Viability Gap Funding (VGF) approach is a government grant programme that supports infrastructure projects that are economically justifiable but not financially feasible. This award is granted as a capital subsidy to attract private firms since it mitigates the shortage of money necessary to begin such initiatives containing significant financial risk. The Government of India created this plan in 2004 to fund specific PPP-based initiatives. The grant amount is typically 20% of the overall capital cost of the project; however, if the sponsoring statutory body gives further assistance beyond the VGF amount, it will be limited to another 20% of the total project cost. The funding is made available throughout the project's building phase if the private firm makes the appropriate equity commitment. The government announced the redesigned VGF Scheme on November 11, 2020, with roughly Rs 8,100 crore (PTI, 2021a).

One-Time Restructuring

The Reserve Bank of India has allowed regulated financial institutions to restructure some qualified debt without this asset classification downgrade occurring. This relief is only available for a short time and only for debtors who are experiencing financial hardship "because of the COVID-19 epidemic" and whose debt accounts were otherwise classed as "standard" as of March 1, 2020 (Sinha, 2020).

Infrastructure Investment Trusts (InvITs)

Setting up and establishing Infrastructure Investment Trusts (InvITs), among the many avenues for financing large-scale infrastructure investments, such as mergers and acquisitions, private equity investments, and capital raising, has begun to gain traction with infrastructure developers, including public sector undertakings, to enable them to monetise their assets and undertake further infrastructure development under Securities and Exchange Board of India (Infrastructure Investment Trusts) Regulations, 2014 (the "SEBI InvIT Regulations") (Chattopadhyay, 2021).

SEBI has established a regulatory framework for issuing green bonds in India in May 2017, reflected in the country's total allocation of green bonds. India is rated 11th in the world and is responsible for 33% of all Certified Climate Bonds issued in developing markets (Climate Bonds Initiative, 2020).

Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InvITs) are two future capital market structures for sustainable finance that can transfer green and sustainable assets to institutional investors, such as energy-efficient buildings and renewable energy projects, and mass transportation systems. Among the many ways to fund large-scale infrastructure investments, including mergers and acquisitions, private equity investments, and capital raising, infrastructure developers are increasingly turning to infrastructure investment trusts (InvITs) to help them monetise their assets and continue infrastructure development.

National Investment and Infrastructure Fund

The National Infrastructure Investment Fund (NIIF) might offer long-term funding, operate as a platform for recruiting private money, and provide novel financing techniques to speed up infrastructure construction (Halland et al., 2021). This bank may be established to accomplish three primary goals. First, supply infrastructure projects with long-term and flexible finance corresponding to the project's duration needs. Second, serve as a platform for gathering surplus global debt money from private investors. Third, provide novel financial solutions to the market that decrease risk and increase return profiles.

Reforms in Budget 2021

In light of COVID-19, India's Finance Minister has made several announcements outlining the government's economic stimulus plan. Many initiatives have been unveiled on the infrastructure front, all of which are intended to propel the economy into a new growth path (Ministry of Finance, 2021) According to Arindam Guha, Partner, Deloitte India's Government and Public Services Leader, new roadway projects have been announced in addition to a 34% increase in capital spending. In 2021-2022, the government has committed Rs 5.54 lakhs to infrastructure, compared to Rs 4.39 lakhs in 2020-21 (RE), a 26% increase (PTI, 2021b). Relief on TDS for dividends on REITs and InvITs was also included in the Finance Act of 2021, stimulating investment in these products.

Insolvency Law Reforms

The Insolvency and Bankruptcy Code, 2016 (IBC) has been revised to make it illegal to terminate or suspend agreements about government-granted rights (such as concessions and licences) due to bankruptcy during the moratorium period, as long as all payments are current. This is meant to safeguard lenders to corporations developing projects with government assistance (since the conditions of such service often enable the government to terminate if the company becomes insolvent) and telecom companies.

Another significant modification grants successful resolution applicants protection from criminal action brought against the corporate debtor after adopting a resolution plan.

There have also been further improvements, such as:

- Regulations established to exclude some COVID-19-related debt from the imposition of bankruptcy procedures under the Insolvency and Bankruptcy Code, 2016;
- The rules for the start of new insolvency proceedings for defaults may be deferred for a period of up to one year if the bankruptcy continues;
- The default threshold for initiating bankruptcy proceedings being raised from 100,000 rupees to a total of 10 million rupees (with effect from 27 March 2020).

Basel III

Basel III has already started to alter the structure of project finance arrangements with a new regulatory system that forces banks to retain more liquid assets and rely less on short-term borrowing, reducing their lending capabilities. More expensive loan portfolios will likely cause some participants out of the project financing sector. Basel III implementation has begun in India in stages, with full implementation projected to be completed by the first of January 2022, even though it is widely anticipated that the adoption of Basel III would result in higher lending rates.

Creation of Bad Bank

The creation of a Bad Bank can go a long way in solving liquidity and NPA issues of the banking sector. Every industry, especially banking, is rife with risk. Due to a plethora of causes like a continuous global economic recession aggravated by COVID-19, delayed infrastructure projects with cost overruns, unreasonable delays in gaining different permits, land acquisition challenges, and so on, stressed assets of Indian banks have been rising. To address this issue, the development of a “bad bank” is a crucial statement in the Union Budget for 2021-2022 to better manage the problem of non-performing assets in the financial services ecosystem. To handle the stressed debt of 2.25 lakh crore in the banking industry, Asset Reconstruction Company (ARC) and Asset Management Company (AMC) would be created. Under the Companies Act 2013, a National Asset Reconstruction Company Limited (NARCL) and an India Debt Resolution Company Limited (IDRCL) have already been established. These entities can house all of the bad loans from all of the banks, relieving commercial banks of their “stressed assets” and enabling them to concentrate on restarting regular banking activities, particularly lending.

Setting up Development Financial Institution

India’s Funding Minister highlighted the government’s intentions to create a Development Financial Institution (DFI) to improve infrastructure finance in her recent budget address, National Bank for Financing Infrastructure and Development Act 2021, under its objectives, which claims to develop institution with:

> the financial objective to lend or invest, directly or indirectly, and seek to attract investment from private sector investors and institutional investors, in infrastructure projects located in India, or partly in India and partly outside India, to foster sustainable economic development in India.

The Act's goal is to establish the National Bank for Financing Infrastructure and Development (NaBFID) for infrastructure financing, including expanding the current infrastructure funding market. The DFI will assist in developing markets for interest rate derivatives, credit derivatives, currency derivatives, and other innovative financial products that may be needed to finance infrastructure. Establishing a credible framework that attracts equity investments from domestic and global institutional investors and debt investments, including green finance, from investors, all of which would be aligned to their risk appetite and asset-liability profile, would be one of the financing objectives for the Indian infrastructure sector.

Banks and specialised Non-Banking Financial Firms (NBFCs) will have to take the lead in financing greenfield infrastructure projects since the DFI will need to be complemented by existing project finance vehicles.

Foreign Direct Investment & External Commercial Borrowing

Corporates, developers of integrated townships, Special Economic Zones (SEZs), and Non-Banking Financial Companies (NBFCs) involved in infrastructure development have benefited from the government's External Commercial Borrowing (ECB) policy. For infrastructure funding, the foreign fund market is a desirable choice. Foreign Direct Investment (FDI) restrictions were formerly in place, particularly in the infrastructure sector and long-term finance. Currently, 100% FDI is permitted in infrastructure building and maintenance. Depending on the individual infrastructure project, there are two FDI routes: automatic and government (approval route). No government approval or regulatory authority permit is required; however, specific requirements must be met later, and the government body will approve if they are completed. According to the unified FDI policy, greenfield and brownfield airport building, township and housing project construction, industrial parks, and special economic zones are eligible for 100% automatic FDI in 2020. Even though 100% FDI is permitted in certain areas, government clearance is required after a specific proportion. For example, in communications infrastructure funding, automatic financing is permitted up to 49%, beyond which government permission is required. As a result, FDI standards have been changed to encourage finance.

External Commercial Borrowing (ECB) means debt lending by an entity outside India to an Indian resident. Reserve Bank of India regulates ECB. RBI came up with an updated notification to relax the norms in ECB. These norms were set to get long term financing in this sector via ECB.

National Monetization Pipeline

The Finance Ministry announced the launch of a national monetization pipeline, which would allow for almost 111 lakh crore investment, paving the way for numerous infrastructure projects (Rangarajan & Srivastava, 2020). The NITI Aayog's national monetization pipeline restricts which the government covers industries and leaves the remainder to the private sector. The expansion of India's infrastructure sector is essential for the country's economic momentum to be sustained. To accelerate infrastructure development, current policies have placed a strong emphasis on the National Infrastructure Pipeline, which has seen an unprecedented increase in capital expenditure allocation for FY 2021-2022 by 34.5% to INR 5.5 lakh crore, representing a 34.5% increase from the previous year (Forxmandal Foundation, 2021).

The National Monetization Pipeline (NMP) is reserved for important infrastructure projects such as roads, transportation, highways, and ports, and it operates on three basic concepts.

- The first is to emphasise previously existing assets, minimise any new purchases, and leverage current underutilised assets to attract finance. The proceeds from the sale of such outdated assets will be utilised to purchase new assets.
- Second, only the rights included in such assets should be monetized, not the ownership, to prevent public ownership from sliding into the hands of private actors. Meaning that the assets will remain the government's property after the project's conclusion, and private actors will only be allowed access to the assets for monetization during the project duration.
- Finally, projects will be allocated via a competitive bidding procedure and controlled by contracts. Both parties must adhere to important norms and indications to sail through the collaboration and finish the projects.

The NMP operates in what ways and how it is used to fund such projects is now being explained in more detail. The National Monetization Pipeline can operate under two models (Press Information Bureau, 2019):

- The first is a direct contractual approach, in which private players can contract with the government to take on a project (hired after a competitive bidding process), in which the asset is transferred to the private player along with payments; and
- The second is an indirect contractual approach. Private players can contract with the government to take on a project (hired after a competitive bidding process), in which the asset is transferred to the private player.

For the second type, structured finance is used to generate funds invested in infrastructure projects by giving preferential treatment to a group of investors in exchange for their ownership rights to assets.

In another technique, long-term licencing or leasing is used. A private firm already has the right to provide services in the infrastructure sector but needs further expenditure to keep such services up and running. In such a case, the public sector may lease such property to form a partnership with the private sector to administer the project or provide the project's services. NMP is producing tremendous possibilities for private players since the key sectors need investment, and the services supplied by private players may help accelerate growth in the infrastructure sectors. NMP is creating tremendous opportunities for private companies. The incentives given by the government, which include not only the provision of subsidies but also the provision of chances to collect funds from the general public and other investors, will increase flexibility, hence boosting efficiency in the construction of crucial infrastructure.

Special Purpose Acquisition Companies

Special Purpose Acquisition Companies (SPAC) is a well-recognised concept in western countries (Kothari, India, & Ved, 2021). SEBI recently formed an Expert Group to assess the feasibility of SPACs in India, and the International Financial Services Center Authority (IFSCA) recently issued IFSCA (Issuance and Listing of Securities) Regulations, 2021, which establishes a regulatory framework for SPAC listing within its jurisdiction. SPACs are founded to raise money via an Initial Public Offering (IPO) to identify and merge with a target business using the proceeds (Norrby & Åslund, 2021). Domestic enterprises have been able to obtain funds from foreign investors more lately via novel investment structures such as special purpose acquisition companies (SPACs).

Securitisation Reforms

Due to prompt government initiatives, securitisation transactions and the structured finance sector have recovered from the COVID-19 slowdown. India's infrastructure dreams are pinned on developing a thriving corporate lending market. In a well-functioning financial market, prudently designed securitisation transactions may be an essential facilitator since they enhance risk distribution and liquidity for lenders when originating new loan exposures. The Reserve Bank of India (RBI) has issued separate master directions (Master Direction Reserve Bank of India (Securitization of Standard Assets) Directions, 2021) on the transfer of loan exposures and securitization of standard assets to improve the securitisation market. These master directives were released after taking public feedback on draught guidelines published on June 8, 2020 (Ray, 2021).

Credit Risk Management Reforms

Banks have changed their risk management architecture in various ways at the request of the RBI, including the use of proactive credit monitoring systems. Some of the most successful risk-mitigation tools include Special Mention Accounts (early warning systems) and the Central Repository of Information on Large Credits (CRILC), as well as the Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI) (Rao, 2021).

Conclusion

According to the Ministry of Statistics study referenced above, cost and time overruns may be linked in large part to the state-wide lockdown caused by the COVID-19 epidemic, which has posed a significant impediment to the realisation of infrastructure projects in the last several months. Time and expense overruns in projects result in litigation and arbitration proceedings. To establish an efficient infrastructure market, risk transfer methods must be smoother. Identifying and recognising risks, distributing them to the particular stakeholder best suited to reduce them, and establishing suitable legislative and regulatory frameworks to minimise the effect on investment choices are all part of infrastructure finance. With significant improvements in policy indicators in the World Bank's Ease of Doing Business Survey, India is already a desirable investment location for international institutional investors. Vigorous implementation of these ongoing policy initiatives will assure a steady flow of funding for infrastructure projects.

A "default" in the project lending market would have significant consequences for the Infrastructure asset's financing. As a result, it is critical for regulators and the market as a whole to establish a solid subordinated debt market that will operate as a shock absorber' or a cushion to manage regular externality susceptibilities. It can be said that the Government of India have responded well to the need for housing and made a level playing field for structured finance innovations for the development of a robust project finance market in India.

References

Agarwal, A. K., Das, A., Jacob, J., & Mohapatra, S. (2020). Introduction to the special issue on "financial distress, bankruptcy, and corporate finance". *Vikalpa, 45*(2), 61-68.

Akhtar, S., Niazi, M. H., & Khan, M. M. (2020). Cascading effect of COVID 19 on Indian economy. *International Journal of Advanced Science and Technology, 29*(9s), 4563-4573.

Attarwala, A. A., & Balasubramaniam, C. S. (June 2020). The rise and fall of non-banking financial companies in India and emerging challenges. In *International Conference on Technology and Business Management* (Vol. 12, p. 14). Los Angeles, California, United States of America.

Bain, R. (June 2009). Review of lessons from completed PPP projects financed by the EIB. *EIB.* Retrieved from http://www.robbain.com/Review

Ball, R. (2001). Infrastructure requirements for an economically efficient system of public financial reporting and disclosure. *Brookings-Wharton Papers on Financial Services, 2001*(1), 127-169.

Basel Committee on Banking Supervision. (2009). *The Joint Forum: Report on special purpose entities.* Retrieved from https://www.bis.org/publ/joint23.pdf

Beckett-Camarata, J. (2020). *Public-private partnerships, capital infrastructure project investments and infrastructure finance: Public policy for the 21st century.* Bingley: Emerald Group Publishing.

Chattopadhyay, C. I. (2021). *WIRC Bulletin.* Retrieved 21 February 2021, from https://www.icmai-wirc.in/bulletins/12-2021.pdf

Chaudhuri, S. (2011). Impact of privatisation on performance of airport infrastructure projects in India: A preliminary study. *International Journal of Aviation Management, 1*(1-2), 40-57.

Crescenzi, R., & Rodríguez-Pose, A. (2012). Infrastructure and regional growth in the European Union. *Papers in Regional Science, 91*(3), 487-513.

Climate Bonds Initiative. (2021). Sustainable debt market summary H1 2021. London. Retrieved from https://www.climatebonds.net/files/reports/cbi_susdebtsum_h12021_02b.pdf

Deloitte. (2020). Price forecast oil, gas & chemicals. Canada. Retrieved from https://www2.deloitte.com/content/dam/Deloitte/ca/Documents/REA/ca-en-e&r-oil-gas-price-forecast-Q3-report-aoda.pdf

Forxmandal Foundation. (2021). Public procurement reforms: Light at the end of the tunnel. Retrieved from https://www.foxmandal.in/public-procurement-reforms-light-at-the-end-of-the-tunnel/

Globular Inc. (2021). *CCI INDIA|cciindia.org|CCI Councils.* Retrieved 15 December 2021, from https://www.cciindia.org/infra.html

Goyal, A. (2020). Post COVID-19: Recovering and sustaining India's growth. *Indian Economic Review, 55*(1), 161-181.

Grimsey, D., & Lewis, M. K. (2002). Evaluating the risks of public private partnerships for infrastructure projects. *International Journal of Project Management, 20*(2), 107-118.

Gupta, J. P., & Sravat, A. K. (1998). Development and project financing of private power projects in developing countries: A case study of India. *International Journal of Project Management, 16*(2), 99-105.

Halland, H., Dixon, A., In, S. Y., Monk, A., & Sharma, R. (2021). Mobilising institutional investor capital for climate-aligned development. Retrieved 21 February 2021, from https://www.oecd-ilibrary.org/finance-and-investment/mobilising-institutional-investor-capital-for-climate-aligned-development_e72d7e89-en

Hemant Sahai, A. (2013). The financing of infrastructure projects. Retrieved 19 June 2021, from https://www.livemint.com/Opinion/9ZuQTD15272Q2muI3yg8UM/The-financing-of-infrastructure-projects.html

India, P. (2021). Cabinet approves revamped VGF scheme with outlay of Rs 8,100 crore. Retrieved 11 May 2021, from https://www.business-standard.com/article/economy-policy/cabinet-approves-revamped-vgf-scheme-with-outlay-of-rs-8-100-crore-120111101376_1.html

Irudaya, R, S., Sivakumar, P., & Srinivasan, A. (2020). The COVID-19 pandemic and internal labour migration in India: A "crisis of mobility". *Ind. J. Labour Econ., 63*, 1021-1039.

Januarita, R., & Sumiyati, Y. (2020). Legal risk management: Can the COVID-19 pandemic be included as a force majeure clause in a contract? *International Journal of Law and Management, 63*(2), 219-238.

Kothari, D., India, K. N. A. V., & Ved, U. (2021). Mergers and acquisitions: A new mantra for growth during challenging times in India. *International Tax Review,* 6/7.

Kundu, A. (2001). Urban development, infrastructure financing and emerging system of governance in India: A perspective. *Discussion Paper, No. 48.*

Larsen & Toubro Limited & Anr. Vs. Mumbai Metropolitan Regional Development Authority (Supreme Court of India). (2018).

Lahiri, S., & Sinha, M., (2021). A study of the socio-economic implications of the COVID-19 pandemic. *Australasian Accounting, Business and Finance Journal, 15*(1), 51-69.

Marhewka, D. (2020). 7 bankability of project contracts: Requirements of the lender. In *Green banking* (pp. 223-252). Berlin: De Gruyter Oldenbourg.

Ministry of Statistics. (April 2021). *425th Flash Report on Central Sector Projects (Rs.150 Crore and Above)*. New Delhi: Ministry of Statistics and Programme Implementation Infrastructure and Project Monitoring Division. Retrieved from http://www.cspm.gov.in/english/flr/FR_Apr_2021.pdf

Ministry of Finance. (2020). *Force Majeure Clause (FMC)*. Government of India.

Ministry of Finance. (2021). *Economic Survey 2020-21 Volume II*. New Delhi: Ministry of Finance, Department of Economic Affairs, Government of India. Retrieved from https://www.indiabudget.gov.in/budget2021-22/economicsurvey/doc/echapter_vol2.pdf

MUDS Management. (2020). IL & FS case: "Unveiling the curtains". *MUDS*. Retrieved 14 October 2021, from https://muds.co.in/ilfs-case-unveiling-curtains/

Nguyen, P. T., & Nguyen, P. C. (2020). Risk management in engineering and construction. *Engineering, Technology & Applied Science Research, 10*(1), 5237-5241.

Norrby, C., & Åslund, S. (2021). The role of venture capital in innovation systems—A case study comparing the possible risks and rewards for Volvo group venture capital between initiating investments in China, India, Japan, Singapore, South Korea, and Taiwan (Master's thesis, Chalmers University of Technology, 2021).

Nwandem, O. (2015). Securitisation and SPV: A critical assessment of the Asset Management Corporation of Nigeria (AMCON). *SSRN 2592924*.

Pai, C., Bhaskar, A., & Rawoot, V. (2020). Investigating the dynamics of COVID-19 pandemic in India under lockdown. *Chaos, Solitons & Fractals, 138*, 109988.

Pethe, A., & Ghodke, M. (2002). Towards bank financing of urban infrastructure. Paper presented at the *Bank Economists' Conference*. Kolkata, January 14-16.

Pinto, J. F. M. (2013). A theoretical and empirical analysis of structured finance (Doctoral dissertation, Universidade do Porto, Portugal, 2013).

Planning Commission. (2006). Towards faster and more inclusive growth: An approach to the 11th Five Year Plan.

Pradhan, S., Ghose, D., & Shabbiruddin. (2020). Present and future impact of COVID-19 in the renewable energy sector: A case study on India. In *Energy sources, Part A: Recovery, utilization, and environmental effects* (pp. 1-11). Retrieved from https://doi.org/10.1080/15567036.2020.1801902

Press Information Bureau. (2021). Finance Minister launches the National Monetisation Pipeline. Retrieved from https://pib.gov.in/PressReleseDetail.aspx?PRID=1748297

PTI. (2018). India needs $4.5 trillion by 2040 to develop Infra: Eco survey. Retrieved 11 June 2021, from https://economictimes.indiatimes.com/news/economy/infrastructure/india-needs-4-5-trillion-by-2040-to-develop-infra-eco-survey/articleshow/62694945.cms?from=mdr

PTI. (2021a). Four industrial smart cities being developed under DMIC: Commerce Ministry. *The Economics Times*. Retrieved 29 November 2021, from https://economictimes.indiatimes.com/news/economy/infrastructure/four-industrial-smart-cities-being-developed-under-dmic-commerce-ministry/articleshow/87929718.cms?from=mdr

PTI. (2021b). Capital expenditure hiked 34.5% to Rs 5.54 lakh cr in FY'22 to push growth. *The Hindu Business Line*. Retrieved 20 November 2021, from https://www.thehindubusinessline.com/economy/budget/capital-expenditure-hiked-345-to-rs-554-lakh-cr-in-fy22-to-push-growth/article33714499.ece

Rangarajan, C., & Srivastava, D. K. (2020). India's growth prospects and policy options: Emerging from the pandemic's shadow. *Indian Public Policy Review, 1*(1), 1-18. Retrieved 7 March 2021, from https://ippr.in/index.php/ippr/article/download/5/3

Rao, K. (2021). Mitigating risks in infra finance. *The Hindu Business Line*. Retrieved 18 November 2021, from https://www.thehindubusinessline.com/opinion/mitigating-risks-in-infra-finance/article37113799.ece

Ray, A. (2021). RBI revamps loan transfer and securitisation rules. *The Economic Times*. Retrieved 23 October 2021, from https://economictimes.indiatimes.com/news/economy/policy/rbi-revamps-loan-transfer-and-securitisation-rules/articleshow/86483409.cms

Reserve Bank of India. Master Direction Reserve Bank of India (Securitization of Standard Assets) Directions, 2021. (2021). New Delhi.

Sadhu, S., Jain, Y., & Banerjee, T. (2020). *Ministry of Road Transport & Highways|India Corporate Law*. Retrieved 19 February 2021, from https://corporate.cyrilamarchandblogs.com/tag/ministry-of-road-transport-highways/

Savant, M. S., & Dhaigude, R. (2020). Predicting NPA's in the Indian banking sector and a bad bank solution. *Psychology and Education Journal, 57*(9), 3548-3551. Retrieved 7 March 2021, from http://psychologyandeducation.net/pae/index.php/pae/article/download/1415/1191

Sinha, S. (2020). *Micro, Small and Medium Enterprises (MSME) sector—restructuring of advances* (4th ed.). Reserve Bank of India. Retrieved 12 August 2021, from https://rbidocs.rbi.org.in/rdocs/notification/PDFs/NT17996B01058D314E1FA0CD74067DE933AD.PDF

Stern, J., & Holder, S. (1999). Regulatory governance: Criteria for assessing the performance of regulatory systems: An application to infrastructure industries in the developing countries of Asia. *Utilities Policy, 8*(1), 33-50.

Taneja, G. (2006). Steady hands at the helm. *Business Today—Budget Special.*

Ullah, F., Qayyum, S., Thaheem, M. J., Al-Turjman, F., & Sepasgozar, S. M. (2021). Risk management in sustainable smart cities governance: A TOE framework. *Technological Forecasting and Social Change, 167*, 120743, Retrieved 3 March 2021, from https://www.researchgate.net/publication/350088927_Risk_management_in_sustainable_smart_cities_governance_A_TOE_framework

Vickers, J., & Yarrow, G. (1991). Economic perspectives on privatization. *Journal of Economic Perspectives, 5*(2), 111-132.

WHO. (2020). COVID-19 Public Health Emergency of International Concern (PHEIC) global research and innovation forum. *Who.int*. Retrieved 8 August 2021, from https://www.who.int/publications/m/item/covid-19-public-health-emergency-of-international-concern-(pheic)-global-research-and-innovation-forum#:~:text=On%2030%20January%202020%20following,of%20International%20Concern%20(PHEIC)

Yoshimatsu, H. (2021). Purposeful commitment to infrastructure investment in Asia. In *Japan's Asian diplomacy* (pp. 87-118). Singapore: Palgrave Macmillan.