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Part IV Research Contribution by CTAG Team

From the Editor's Bureau

The present edition of the International Journal of Transparency and Accountability in Governance focuses on the thematic area of governance or 'good governance.' The twin pillars of the good governance are transparency and accountability, which has been explored in this journal such as voice and accountability, control of corruption, government effectiveness, the rule of law among other such factors. Primarily, this issue has put forth the critical analysis of various agencies and its evaluation for its maintenance of transparency ranging from anti-corruption efforts in Nigeria, rule of law evaluation in China, evaluating global right to information ranking of India, assessing the political participation depending on the criminalisation of politics including commentary from an expert on highlighting the culture of secrecy in government institutions responding to RTI.

The first article, 'Nigeria Anti-Corruption Efforts and the need for Inter and Intra-agency Transparency and Restructuring: Issues and Perspectives' by Ekundayo O Babatunde and Mutiat Abdusalam La-kadri from Nigeria detailed the agencies working for a corruption-free country. The highlight of the article is the issue of the lack of cooperation between different agencies and the implementation of the laid down rules and regulations. A pathway has been delineated by providing the case study of Brazil's methodology of dealing with corruption, and the lessons from historical efforts of Nigeria while dealing with this phenomenon.

The second article, 'Theory and Practice of the Law-based Government Performance Evaluation in China' by Qiu Fomei from China explores the method to evaluate government performance in accordance with the rule of law. The author has conducted an evaluation study in the twenty-one cities of Guangdong Province of China. The main focus of the paper is to develop a performance-based index system for the evaluation to further the goals of transparency and governance in China.

The third article, 'Does Criminalisation of Politics Affect Political Participation?' by Vaishali Rawat from India explores the association between political participation and criminalisation of politics by focusing on the indicators such as voters' turn out, rate of contestation and so on. To analyse the dynamics of these indicators, data from Election Commission of India and Association for Democratic Reforms was utilised.

The fourth article, 'Critical Evaluation of Global RTI Ranking: Status of India's Status' is by M. Sridhar Acharyulu and Yashovardhan Azad, former Central Information Commissioners, India. In this article, authors have highlighted the flaws of right to information (RTI) ranking globally in response to sliding of India's ranking to the sixth position in the global index. According to the authors, the justification provided by the ranking organisations is inadequate for specific indicators. The article has outlined various indicators to situate their argument and has provided a detailed version of the first ten countries for their ranking.

The fifth article is an expert opinion on 'Has the Right to Information Regime Dismantled the Culture of Secrecy? A Critical Assessment' by Professor M.M Ansari, former Central Information Commissioner and member, UGC India. The author has emphasised on the culture of secrecy followed by many government institutions while responding to RTI, that is, the lack of voluntary disclosure of information. This inadequacy directly affects the principal mandate of having RTI as a tool for transparency and good governance.

Lastly, the article, 'Empirical Appraisal of Governance of Legal Aid Counsels in Courts in Delhi: A Grassroot Perspective' by Prof. Jeet Singh Mann, Centre for Transparency and Accountability in Governance - National Law University Delhi, has researched the governance of legal aid counsels in Delhi. The article outlines the issues of trust deficit in the structure of the free legal aid system, including the commitment and competency of legal aid counsels. The study has been conducted over eleven District Courts of Delhi and one Delhi High Court. The study had proposed recommendations to bridge the gap between entitled beneficiaries and the legal aid system.

Finally, CTAG is very grateful to all the authors who have contributed to this journal. We are thankful to our Vice-Chancellor, National Law University Delhi, for providing the support and his valuable time for this journal. I would like to express my appreciation to the Associate Editor, Dr.Teng Hongqing, Professor of Law and Assistant Dean, the South China University of Technology for his constructive suggestions for this journal.I would also like to thank the advisory board of editors, Prof. Zhang Guihong, Director- Law School, Beijing Normal University; Mr. Toby Mendel, President, Centre for Law and Democracy, Canada; Mr. Shailesh Gandhi, Former Central Information Commissioner, Mumbai and Prof. Yun Zhao, Henry Cheng Professor in International Law, Head, Department of Law, the University of Hong Kong for providing their inputs for the content of this journal. Last but not least, I acknowledge the efforts put in by the editorial committee for proofreading and editing for the journal's publication.

Prof. (Dr.)Jeet Singh Mann
Executive Editor, IJTAG
Centre for Transparency and Accountability in Governance

Nigeria Anti-Corruption Efforts and the Need for Inter and Intra-agency Transparency and Restructuring: Issues and Perspectives

Ekundayo O Babatunde and Mutiat Abdusalam La-kadri

Abstract

This study seeks to examine socio-cultural attitudes which condone corrupt behavior and institutional challenges.This topic is particularly important at this time in order to engineer institutional coordination and deter corruption in order to make a success of the whistle blowing policy, and other anti-corruption initiatives of the current President Muhammadu Buhari led administration. Although the administration has introduced some durable reforms to prevent corruption and recover looted funds, much is yet to be achieved.

Keywords: Anti-Corruption In Nigeria, Nigeria, And Corruption, Transparency In Anti-Corruption Agencies.

1. INTRODUCTION

In Nigeria, the prevailing corruption is historic as it dates as far back as post-independence era, resulting in the loss of more than 400 billion dollars between 1960 and1999[1] and over 182 billion dollars to Illicit Financial Flow (IFF) since 2005.[2] The diversion of public funds accounts for the prevailing infrastructure deficit, poverty, unemployment, underdevelopment, and the alarming level of insecurity in the country.[3]Although most studies on corruption focus on socio-political factors, the difficulty of achieving the desired success in combating the problem calls for a look at other probable issues including institutional factors and socio-cultural behavior of the people towards the phenomenon.

Corruption in Nigeria has become more intense since the return to a democratic dispensation in 1999. Nonetheless, the emergence of numerous anti-graft institutions from the anti-graft efforts of successive administrations, the Transparency International's Corruption Perception Index (CPI) has continuously ranked the nation among the most corrupt in the world. Since assumption of office in 2015, President Muhammadu Buhari led administration has been relentless and proactive in tackling corruption in Nigeria. Innovative policies including the Treasury Single Account (TSA)[4] which involves consolidation of all Government payment into a single account and the whistle blowing policy have been introduced.

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[1]UN Office on Drugs and Crime (2007), *Anti-Corruption Climate Change: it started in Nigeria*, speech by Antonio Maria Costa at 6th National Seminar on Economic Crime, Abuja, 13/11/2007.

[2]*Illicit Financial Flows to and from Developing Countries, Global Financial Integrity 2005- 2014.* http://www.gfintegrity.org/wp-content/uploads/2017/05/GFI-IFF-Report-2017_final.pdf last seen on 5/05/2018.

[3] Shuaib Olarewaju Moyosore, *Corruption in Nigeria: Causes, Effects and Probable Solutions*,1(8). Journal of Political Science and Leadership Research22-34 (2015).

[4]Williams A. Ahmed-Gamgum and Rose Williams Ahmed, 4(1) *The Bases and Challenges of Treasury Single Account (TSA) in Nigeria*, pp 1-9 (2018)

During the military era and the early years of democratic dispensation, the basic tenets of transparency and accountability like the rule of law were not followed, and corruption became the order of the day. It was at the assumption of office of President Muhammadu Buhari in 2015 that the nation began to fight the war on corruption with a requisite level of commitment and dedication.[5] In the history of Nigeria, this is the first time that corruption is being combated with the requisite level of political will. The anti-graft agencies carry-out their statutory duties without undue interference. Corrupt practices have been detected and challenged in various sectors, including the judiciary and within the national legislature. Many high ranked Nigerians including the Chief Justice of the Federation are currently on corruption trial, and the nation has recovered billions of naira both in liquid cash and assets from the anti-graft combat.[6] Despite the commitment of the present administration to combat corruption, the war on graft in the country is still restricted by institutional challenges.[7]It is also crucial to sensitise public culture and perception of corruption.Itwill also be necessary to review the punishment for corruption and adopt capital punishment where appropriate depending on the gravity of the allegation in order to achieve deterrence.[8]

Although the various efforts of the present administration are indeed progressive, the progression is far from reality because corruption is deeply rooted to the extent of becoming a ritual, culture, and way of life in the country. As such, it requires multi-dimensional measures in order to make the necessary progress. Also, the structure of the legal and institutional framework in response to the problem is crucial. Failure to adopt appropriate institutional arrangement and effect necessary reforms may undermine efforts to eliminate corruption. Duplication of anti-graft institutional and legal frameworks in Nigeria, without clear-cut separation of powers, duties, and obligations result in inter-agency squabbles and create room for further perpetration of corruption and manipulation of those bodies for political and personal gains. This necessitates an assessment of institutional challenges confronting efforts geared towards the elimination of corruption in Nigeria in order to proffer workable solutions that will curb the phenomenon to the barest minimum.

2. INSTITUTIONAL FRAMEWORKS FOR COMBATING CORRUPTION IN NIGERIA

[5]Aderemi Ojekunle, *Nigeria is making progress in the fight against corruption* (*Business Insider*, 12th March, 2018) https://www.pulse.ng/bi/politics/politics-nigeria-is-making-progress-in-the-fight-against-corruption/kwpbcs2 last seen on 30/03/2018.

[6] Stephen Onyeiwu and Allegheny College, *Nigeria's president Buhari failed to fix Nigeria's economy, but still has the edge this election* (*Quartz Africa*, 29/01/2019) https://qz.com/africa/1536012/nigerias-president-buhari-failed-to-fix-nigerias-economy-but-still-has-the-edge-this-election/ last seen on 16/05/2019.

[7]Key informant interviews, Abuja, 26/03/2014; focus group discussion, Abuja, 27/03/2014; Sotubo J, 'President's government most corrupt in history', Dino Melaye says, Pulse.ng. Available at http://pulse.ng/politics/goodluck-jonathan-president-s-government-most-corrupt-in-history-dino-melayesays-id3762443.html last seen on 08/05/2018.

[8]Salawu B, *Towards solving the problem of corruption in Nigeria: The ICPC under searchlight*.5(1). European Journal of Social Sciences, 83–92 (2008).

In Nigeria, numerous institutions can deal with corruption-related matters depending on the circumstances of each case. However, for the purpose of clarity in classifying Anti-Corruption Agencies (ACA), the Nigerian Inter-Agency Task Team (IATT) on the domestication of United Nations Convention Against Corruption (UNCAC) and the creation of National Strategy to Combat Corruption described ACA as including the Independent Corrupt Practices and Related Offences Commission (ICPC), Economic and Financial Crimes Commission (EFCC) and the Code of Conduct Bureau (CCB). These agencies fall within the World Bank description.The EFCC and ICPC are products of national obligations under the United Nations Convention Against Corruption (UNCAC) and the Financial Action Task Force, respectively (FATF).[9] The following are the various institutional frameworks for combating corruption in Nigeria.

2.1 Code of Conduct Bureau (CCB) and Code of Conduct Tribunal (CCT)

The Nigerian 1999 constitution specifies the **code of conduct for public officers[10],** which states the moral conduct of behavior and lists the instances where its violation will lead to corruption charges. To further achieve transparency and curb corruption in government agencies, a specialized office **Code of Conduct Bureau(CCB)**[11] was established to implement the Code of conduct of public officials by ensuring conformity and take action against them by referring to the **Code of Conduct Tribunal(CCT).**[12] The CCT is one of the most essential corruption combating institutions in the public sector as it has the power to take action against any political and public officials regardless of their position and authority.[13] This was seen in the trial of the Senate president among other cases, including the trial of Joshua Dariye.[14]

2.2 Independent Corrupt Practices and Related Offences Commission (ICPC)

The ICPC was established by the Corrupt Practices and Other Related Offences (ICPC) Act 2000, under the leadership of President Olusegun Obasanjo. Formation of the ICPC is a direct response to national obligations under the United Nations Convention Against Corruption (UNCAC) and is responsible for the prosecution of corrupt persons. The commission has the mandate to investigate and prosecute persons suspected to have committed corruption-related offences. To guarantee requisite independence for the agency to perform its duties, Section 3(10) (14) of the ICPC Act provides that in the exercise of its functions, the ICPC shall not be subject to the direction and control of any Government authority.

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[9]Adebanwi W &Obadare E, *When Corruption Fights Back: Democracy and Elite Interest in Nigeria's Anti-Corruption War*, 49(2). Journal of Modern African Studies 185–213 (2011).
[10]Constitution of the Federal Republic of Nigeria, Fifth schedule.
[11]Ibid at Third schedule.
[12]Ibid at Fifth schedule.
[13]Ibid at Section308.
[14]*Joshua ChibiDariye v. Code of Conduct Bureau &2 Ors (*Federal High Court, Abuja (2004).

The offences for which the commission will take action as specified under the enabling law are as follows:

a) Gratification by an official
b) Fraudulent Acquisition of Property
c) Fraudulent Receipt of Property
d) False Statement, Indirect Gratification, and Bribery
e) Use of Public Office for Gratification and Forfeiture of Gratification
f) Bribery and Concealment of property obtained via Gratification
g) Concealment of Property Acquired through Gratification and Forfeiture upon Prosecution.
h) Investigation of President or Governor

The ICPC is vested with extensive powers to act both on actual knowledge through facts or reasonable suspicion upon which the body may search, seize, investigate or inspect any person, records, agency, accounts or safety deposit box. Likewise, the officers of the commission are vested with the immunity of a police officer as granted under the police Act when investigating or prosecuting a corruption case. The Supreme court confirmed the legitimacy of the actions of the commission based on the authority derived from the Act in **AG Ondo State V A.G federation**[15] where it held that the ICPC was established under the ICPCA enacted by the National Assembly in the exercise of legislative powers conferred on it under the constitution.

On the other hand, specific provisions of the Act were held to be unconstitutional, particularly Section 35 of the ICPCA which grants the commission power to effect an indefinite arrest on a person until the person complies with the summons. This is inconsistent with the constitution, which requires that an arrested person must be charged to court within a reasonable time or released on bail.[16] Similarly, section 26(3) has been held to be unconstitutional as it conflicts with the provision on the separation of powers by specifying 90 days duration for the completion of prosecution of any matter.[17]

To aid the acquisition of skills and relevant human capacity building for the commission to ensure that there are competent hands in the war on corruption, the ICPC established the Anti-corruption Academy of Nigeria (ACAN). Establishment of the academy is part of the national obligation under the UNCAC as a global effort towards elimination of corruption. Also,the academy trains the members of staff of the commission and also sensitize the general public in order to create requisite awareness about the evils of corruption.

[15]Attorney General of Ondo State v. Attorney General of the Federation(SC 26/2006)[2007] NGSC 12 (2 March 2007).
[16]Supra 10 at Section 35.
[17]Ibid at Section 36(4).

2.3 The Economic and Financial Crimes Commission (EFCC)

This is an anti-graft body established under Act No.5 of 2002, later renamed as Economic and Financial Crimes (Establishment) Act of 2004 which deals with non-violent criminal and illicit acts carried out with the aim of accruing wealth illegally whether by an individual, group or organization in violation of economic activities of government and its administration. The Act specifies financial crimes as including fraud, drug trafficking, embezzlement, money laundering, bribery, looting and, oil bunkering, illegal mining, tax evasion other corrupt malpractices.[18] As granted by the EFCC Act, the commission has extensive powers including investigation of financial crimes, confiscation of proceeds of corruption and taking other steps necessary to implement the provisions of the Act. The commission has been commended for its tremendous achievements including successful recovery of the sum of 700 million nairas within one year, arrest, detention, and trial of several persons involving Advanced Fee Fraud and kidnappings, and trial and conviction of former Inspector General of Police Tafa Balogun.

The independence of the commission to act on corruption cases is hampered by the provision of the enabling Act which empowers the Attorney General of the Federation (AGF) to make rules and regulations as regards the duties, functions, and powers of the commission under the Act.[19] By this power, the AGF interfere with the independence of the commission over cases. There are allegations that the AGF often issue directives to interfere with the handling of high-profile cases by the commission. Thus, the AFG invoke its official powers for political ends.This implies that as an anti-corruption agency, the EFCC is itself corrupt.[20]

At the EFCC, there is a unit known as the Nigerian financial intelligence unit (NFIU), vested with the responsibility of collecting suspicious transaction reports (STRs) from financial and designated non-financial institutions, analysing and disseminating them to all relevant government agencies and other financial intelligence units all over the world.

In the performance of its duties, the EFCC established the Nigerian Financial and Intelligence Unit (NFIU) charged with the responsibility of investigating suspicious deals and collating reports. The commission also collaborates with certain other selected non-financial institutions for the analysis of reports and sending them to other agencies.[21]The EFCC is also responsible for identifying, tracing, freezing, confiscating, or seizing proceeds derived from terrorist activities.

2.4 Nigerian Police Force (NPF)

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[18] EFCC Act 2002, (Nigeria) S. 1.
[19]Ibid at S. 2.
[20]Raimi L, Suara IB &Fadipe AO, *Role of Economic and Financial Crimes Commission (EFCC) and Independent Corrupt Practices & Other Related Offences Commission (ICPC) at ensuring accountability and corporate governance in Nigeria.* (2013)3 (2). Journal of Business Administration and Education, 105–122.
[21] Supra 17.

The Nigerian police force was established by the Police Act, which also specifies the powers of the police to include the power to investigate and arrest persons for corruption under all anti-corruption laws.[22] The police can also commence legal actions to prosecute persons found guilty of corruption under any law and regulation, by reliance on the Police Act.[23] The police and other security agencies have an interrelated function as regards corruption.

However, the NPF lacks the necessary independence to function freely and effectively. This is because the actions and decisions are subject to the authorization of the President as provided by the relevant enabling laws.[24] Consequently, the various past military administrations which ruled in 1966, 1979, 1989 and 1999 perceived the NPF as an opponent body and thus neglected the force and failed to fully empower it as a national security body similar to what is obtainable in other countries.[25]Also, several security Agencies were created to whittle-down the duties of the NPF. The operation, organization, appointment, and deployment of the NPF were influenced by the executive arm and political office holders; thus, the public lost confidence in the body.[26] With the return of democratic rule in 1999, much did not change; this accounts for the disorientation, lack of capacity, and the inadequacies of the NPF till date.

2.5 The Public Complaints Commission (Ombudsman)

The Public Complaints Commission is a Government Agency established under the Public Complaints Commission Act to stem down corruption in the public sector among public officers. The commission is empowered to carry-out investigations where there are reasonable grounds that corrupt acts have been carried out, and make recommendations as to appropriate sanction. Among the suggestions which can be made is the prosecution of the corrupt public official. The commission is often confronted with enforcement challenges and operational challenges.[27]

2.6 Nigerian Extractive Industries Transparency Initiatives (NEITI)

The Nigerian Extractive Industries Transparency Initiative (NEITI) is an crucial Agency in the realization of Nigeria's zero tolerance for corruption. The NEITI is responsible for ensuring that all transactions and financial exchanges in the extractive industry are concluded transparently, to

[22]Police Act 2004 (Nigeria), S. 4 & 23.
[23] Ibid at S. 23.
[24]Supra 10.
[25]Socrates Mbamalu, *Botswana has the Best Police Force in Africa, Nigeria Ranked the Worst* (*Opinion Lifestyle*, 10/11/2017) https://thisisafrica.me/botswana-best-police-africa-nigeria-worst/ (last seen on 20/08/2019).
[26]Ann Ogbo*et al*, *Strategic Restructuring for Effective Police System in Nigeria* 4(3) Journal of Governance and Regulation 163-172 (2014).
[27]NnamdiIkpeze, *Fusion of Anti–Corruption Agencies in Nigeria: A Critical Appraisal*, AfeBabalola University: Journal of Sustainable Development Law and Policy (2013).

prevent corruption and facilitate development. It is a domestic version of the global initiative aimed at following due process and achieving transparency in payments by stakeholders within the Extractive Industries (EI). This is based on the premise that sustainable development can be attained through proper management of national resources, especially in resource-rich countries if the resources can be used for the common good of the citizens. Basically, NEITI seeks to enhance accountability and transparency within the EI, to stem down the tide of corruption and facilitate sustainable development.[28]

2.7 National Foods Drugs and Administration Control (NAFDAC)

The NAFDAC is the Government Agency charged with the responsibility of regularising the production and all dealings with drugs and consumables. It ensures that manufacturers of food, drug, and other related items produce standardized products. NAFDAC also regulates all importation of food, drugs, beverages, and cosmetic products to ensure that the qualities of such products comply with set standard. To eliminate substandard products, all forms of corrupt practices in the importation, manufacturing, and distribution of foods, beverages, drugs, and cosmetics products need to be dealt with.

2.8 Bureau of Public Procurement (BPP)

The primary role of the BPP is to ensure transparency and accountability in Government procurement. This is achieved by ensuring that due process and standardized regulation is complied within the process of issuance, performance, and delivery of procurement contracts.[29]

2.9 Technical Unit on Governance and Anticorruption Reforms (TUGAR)

TUGAR is a framework for co-ordinating the relations among anti-corruption Agencies. It is charged with the responsibility to synergizing all anti-graft agencies, institutions, and civil society organizations to prevent and combat corruption. TUGAR facilitates cooperation among all anti-graft agencies, civil society organizations, and international donor agencies to fight corruption. TUGAR also carries-out research to enhance government's accountability.[30]

3. DESIRABILITY OF MULTIPLE ANTI-GRAFT AGENCIES AND STRATEGIES

[28]Benjamin Amujiri, *Nigeria Extractive Industry Transparency Initiative (NEITI) and Civil Society: The Audit Issues and Challenges*, International Journal of Research in Arts and Social Sciences, 256-272. (2013).
[29] Samuel o. Olatunji, *Nigeria's Public Procurement Law-Puissant Issues and Projected Amendments* 6(6) Public Policy and Administration Research 73-82(2016).
[30] Bello-Imam, I.B, *The War Against Corruption in Nigeria: Problems and Prospects*, 20-25 (2nd Revised ed., College Press, Ibadan-Nigeria 2015).

Institutional accountability and operational transparency in all public offices and by political office holders are at the heart of eliminating corruption. Studies have shown that the use of multiple anti-graft institutions that will adopt different operational strategies is quite effective for this purpose. This requires dividing the procedure for tackling corruption into stages that will incorporate both preventive and combative measures and assigning different institutions to handle similar tasks at different stages. From the legal perspective, the process of tackling corruption can be further divided into the monitoring, investigation, and sanctioning stages. Where an institution or all the stages handle, each of this stage are handled by one institution, resulting in an institutional monopoly.[31]

The hallmark is not just to avoid institutional monopoly but to adopt multiplicity of institutions in a manner that will promote healthy competition. Failure to properly structure the multiplicity of institutions may lead to unhealthy competition, an increased avenue for corruption, unnecessary duplication of expenses, and w2asteful spending. To successfully employ multiple anti-graft institutions, the competitive anti-grafts structure must be adopted to encourage competing institutions to intensify their efforts as a pre-condition to achievement of improved performance.[32]

The EFCC Act (2004) permits the commission to collaborate with other Government agencies, locally and internationally in fighting corruption. This may be in the form of obtaining data and information about persons suspected to have carried-out economic and financial crimes within or outside the country. State High Court and the Federal High court are vested with jurisdiction over matters before the EFCC. The Act, however, failed to state the extent of power to be exercised by an agency with which the EFCC is collaborating. The various multilateral instruments such as the UNCAC (2003), the African Union Convention on Preventing and Combating Corruption (AUCPCC) (2003); and the Economic Community of West African States (ECOWAS) Protocol (1975) to which Nigeria is a signatory require that member states put necessary structures in place to coordinate activities of anti-corruption agencies and ensure requisite collaboration among them. Nigeria has not been able to achieve this. Anti-corruption agencies must have set-out roles and duties, and they must also cooperate with other stake holders, including the media, Non-Governmental Organizations (NGOs) and international bodies like the World Bank and the African Union.

Although inter-agency collaboration is gradually being achieved, lack of proper co-ordination and the need for anti-corruption strategy remain unsolved problems. As a result of collaboration with the National Universities Commissions, the ICPC successfully aided the closing of 21 illegal

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[31] Mariana Mota Prado and Lindsey Carson, *Brazilian Anti-corruption legislation and its enforcement: Potential Lessons for Institutional Design* (International Research Initiative on Brazil and Africa (IRIBA) Working Paper,http://www.brazil4africa.org/wpcontent/uploads/publications/working_papers/IRIBA_WP09_Brazilian_Anti Corruption_Legislation_and_its_Enforcement.pdf (2014). last seen on 20/05/2018.

[32]Bardhan P, *Corruption and Development: AReview of Issues*, 35(3)Journal of Economic Literature, pp. 1320 (1997).

universities. The commission also collaborated with the Bureau of Public Procurement (BPP) TUGAR and the United Nations Development Programme to certify 69 corruption risk assessors.[33] In the area of public sensitization, the ICPC collaborates with Nigeria Union of Journalists, Nigeria Union of Teachers and the Teachers Registration Council to promote anti-corrupt practices against workers.[34] The whistleblowing policy drives collaborate with members of the public to reveal looter to the authority.[35] As much as these efforts are commendable, there is more to be done in the area of inter-agency collaboration.

4. RESTRUCTURING THE WORKINGS OF THE NIGERIAN ANTI-GRAFT INSTITUTIONS: LESSONS FROM BRAZIL

Similar to Nigeria, Brazil has a rich body of anti-corruption framework made of laws, policies, and institutions.[36] These laws criminalize all corrupt activitiesin the public sector, including all steps leading to illegal gratification. These also include laws and institutions put in place to promote transparency and accountability, preventing corruption through strict monitoring, dealing with allegations of corruption and inflicting necessary punishment to convicted individuals. These include the ombudsman and laws targeted at promoting freedom of information, avoiding conflict of interest, and monitoring Government procurement.[37]

4.1 Inter-Agency collaboration for oversight functions to prevent corruption

There are several institutions responsible for performing oversight function at the federal level, but this article focused on the operations of the Federal Audit Court (TCU) and the Office of Controller General (CGU). The TCU is made up of experts and highly skilled civil servants who mostly carry-out monotonous oversight functions including review of financial reports at all Government units and approval of policies that will affect civil-servants and reviewing conditions of service of civil servants and not necessarily take significant steps to detect avenues for corruption.[38] Although the

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[33]Abimbola Akosile, *Nigeria: Fresh Dimension to Fighting Unending Corruption* (*This Day, 28/03/*2013) https://allafrica.com/stories/201303280613.html Last Seen on 23/03/2018.

[34] Key informant interviews 26/03/2014, Abuja; Excerpts from end-of-year briefing by ICPC chairman, barrister EkpoNta, 20/12/2013.

[35]Fasakin A, *Non-Governmental Organisations and Corruption in Nigeria's Public Space*, International Conference on Corruption, Governance and Developmentin Nigeria; D Mohammed, MT Aluaigba& A Kabir, *Corruption, Governance and Development in Nigeria: Perspectives and Remedies. (ed)*

[36]Debevoise& Plimpton LLP, *Anti-corruption enforcement and policies in Brazil: changing times bring a host of developments*, (Lexology, 3/03/2018) https://www.lexology.com/library/detail.aspx?g=5260d916-3073-4840-9b9d-7c2660954999 last seen on 25/03/2018.

[37] Pope J, *Confronting Corruption: The Elements of a National Integrity System* (2000).

[38]SantisoCcaelos, *Eyes wide shut? The politics of Autonomous Audit Agencies in Emerging Economie*' (2007) (CIPPEC) available at http://www.takbook.com/doc/%D8%A7%D9%86%DA%AF%D9%84%DB%8C%D8%B3%DB%8C/%D9%85%D9%82%D8%A7%D9%84%D8%A7%D8%AA_%D8%A7%D9%86%DA%AF%D9%84%DB%8C%D8%B3%DB%8C_%D8%AD%D8%B3%D8%A7%D8%A8%D8%AF%D8%A7%D8%B1%DB%8C/%D9%85%D9%82%D8%A7%D9%84%D9%87_The_politics_of_autonomous_audit_agencies_in_emerging__economies__73_p.pdf last seen on 10/8/ 2017.

TCU enjoys operational independence, it relies on high-ranking political office holders who have the tendency and avenue to conceal politically related incriminating information.[39]The authority of the TCU is further whittled down by the power of the court to set-aside any administrative or civil sanction so imposed.

4.2 Inter-Agency collaboration for investigative functions in corruption cases

At the investigative stage, there are two principal institutions in charge of the investigation at the Federal level, namely the Federal Public Prosecutors Office (MPF) and the Federal Police (DPF). Usually, in criminal cases, these two Agencies collaborate to conduct investigations. Consequently, there has been an increased collaboration between both the agencies as well as with other agencies due to the rise in the rate of these investigations. Where necessary, these Agencies form Joint Task Force, for improved investigation and better access to evidence needed to institute legal action where necessary.[40]

The legality of criminal investigation solely conducted by the MPF was challenged before the Brazilian Supreme Court in 2008, and a bill was initiated to eliminate the investigative authority in 2013, although it never became law.

Nonetheless, the MPF has the sole authority to investigate civil cases concerned with the abuse of office and official misconduct and in so doing useful information for criminal action may be obtained. The investigative functions of the MPF become handy where the police have failed to act. According to the Attorney General for the Federation, matters like the Mensalao's case would have been at a deadlock in the absence of investigation conducted by the MPF.

Nigeria has so much to learn from institutional collaboration to obtain evidence as practiced in Brazil. Of particular importance is the fact that such collaboration enables the various institutions to carry-out well-investigated findings and obtain concrete proof before proceeding to effect the arrest and commencing court action. More so, institutional collaboration creates room for transparency, accountability, and prevents abuse of office. This will go a longway to promote the course of eliminating corruption in Nigeria. On the other hand, the institutional monopoly creates room for further corruption, as seen in the recent pattern of corruption cases involving the re-embezzlement of the recovered looted fund in Nigeria.

4.3 Inter-Agency collaboration in sanctioning corrupt individuals

Institutional collaboration is most difficult at the punishment stage because the Judiciary is usually the principal body charged with the responsibility of trying accused persons and imposing a

[39] Marcus Melo, *Brazil: Democracy and Corruption* (Legatum Institute Conference, 2014).
[40]Anderson C.J. and Tverdora Y.V, *Corruption, Political Allegiances, and Attitudes towards Government in Contemporary Democracies*,American Journal of Political Science, 91-109 (2003).

sanction, usually as prescribed by applicable law. However, the CGU and the TCU are empowered to impose administrative penalties outside the civil and criminal sanction vested in the hands of the court. Although the judiciary has the authority to revisit and review such administrative sanction. This imposes the limitation of institutional multiplicity applicable to legal sanctions.

However, recent anti-corruption reforms[41] are targeted at creating increased institutional diversification in the punishment of corruption cases. These reforms include alteration of the heavy burden of proof required in a typical criminal case to reduce the chances of releasing a corrupt person. Furthermore, corruption cases can also be commenced either through a criminal or civil action subject to the available evidence; this is in line with the global move to ease trial of corruption cases and recovery of proceeds of corruption. Where a civil action is instituted, a range of penalties may be imposed including removal from office, suspension of political rights and refund of embezzled sum.[42]

However, because much still depends on legal sanction by a court of competent jurisdiction in both civil and criminal cases, the speed of handling corruption case has been relatively slow as they are enlisted alongside other cases and exposed to the problem of court congestion. To solve this problem, increasing recourse is being made to administrative sanction by relevant bodies. In addition to the various administrative sanctions, Brazil enacted a law in 2010, known as the Clean Record Law (Lei da FichaLimpa), which prevents persons who have been formerly sentenced for crimes from running for political offices, being an electoral sanction imposable by the electoral courts. The electoral sanction which applies independently of criminal sanctions has so far banned more than 330 from participatory politics.[43]

Brazil has been quite proactive in improving the punishment for corruption. The idea of application of different forms of sanction in the form of civil, criminal, and administrative sanction is quite commendable. In a country like Nigeria, the electoral sanction will go a long way in preventing corrupt elements from holding important political offices. However, because corruption goes hand in hand with the business of politics in Nigeria, allegations of corruption have almost become a compliment. It is therefore important to have a law in place which seeks to prevent corrupt elements form partisan politics and thereby serve as deterrence to others.

5. Lessons from the past and present for anti-corruption war in Nigeria

Between 2009 and 2014, the lack of co-ordination and co-operation among anti-corruption institutions was conspicuous, and the inability to deal with corruption became evident. Lack of inter-

[41] Law No 8429 - Administrative Improbity Act1992, (Brazil).
[42]RogérioArantes, *The Brazilian "MinistérioPublico" and political corruption in Brazil*, Centre for Brazilian Studies, University of Oxford, Working Paper CBS-50 (2004).
[43] Sabina Panth, The FichaLimpa (Clean Record) *Campaign' the World BankBlog*, available at: http://blogs.worldbank.org/publicsphere/ficha-limpa-clean-recordcampaig last seen on 10/07/2017.

agency co-ordination was seen at the various stages, including investigation, trial, and sanctioning of offenders. In some cases, the corrupt officials were released with the least penalty.[44]

President Muhammadu Buhari administration has been progressive in the war on tackling corruption. Anti-graft policies introduced include the Treasury Single Account and the Bank Verification Number to eliminate avenue for paying government coffers into personal pockets and ghost accounts. Another important policy introduced by the administration is the Whistleblowing policy, which has made the success of the anti-graft war in other regions. The Buhari administration has recovered not less than N7.8bn, $278m and £27, 800 through the whistleblowers[45] but the 2015 Whistleblowers Protection Bill is yet to be passed into law.

Most laws are out-of-date as such the punishment prescribe does not commemorate with the offence. A review of the punishment for corruption will go a long way to discourage others from committing the same act. Failure to achieve deterrence implies that numerous cases may still unfold at the end of Buhari's administration. Though the TSA is a tool for deterrence, increasing the penalty for the offence will show the Government's seriousness and discourage the crime. Measures like naming and shaming as well as the prohibition of persons found guilty of corruption from par-taking in partisan politics.

There is also the dire need to tackle underlining socio-economic problems causing corruption such as poverty, unemployment provision of social amenities, and public access to socio-justice. Failure to reduce poverty has resulted in people turning to politics as a means of livelihood, without any intention to serve the people rather embezzle to live large and secure a future for their children. The intentions to embezzle money have also transformed Nigerian politics into a do or die affair and discouraged those with the capacity, intellect, and potentials to drive strategic policy changes. As such, every Nigerian with the intention to make positive changes and turn the nation around for good suddenly becomes thieves once they get the opportunity to hold power and access public funds.

A walk down the memory lane reveals that the culture of corruption in the country is traceable to the 1980s, immediately after the oil boom. The political class who were later joined by the bureaucratic elites began to flaunt proceeds of corruption and present themselves as belonging to a higher societal class better than the masses. The reckless abandon with which they publicize corruption and celebrated ill-gotten wealth gradually changed the mindset of the next generation that it is permissible to steal government funds. The dignity of labour, hard work, and the place for merit gradually melted away. The situation was worsened by the corollary of federal character

[44]Oladele K, *Political Corruption and Governance Problems in Nigeria: Understanding the Critical* I*ssues*. Sahara Reporters available at http://saharareporters.com/2014/03/19/political-corruptionand-governance-problems-nigeria-understanding-critical-issues-kayodelast seen on 08/10/2016.

[45]Chijioke Jannah, *Whistle-blowing: Buhari reveals amount recovered by Nigerian govt*, Dily Post (07/05/2018), available at http://dailypost.ng/2018/05/07/whistle-blowing-buhari-reveals-amount-recovered-nigerian-govt/last seen on 10/05/2018.

principle, quota system, and catchment area, which discouraged the Northern youths from working hard;instead, they rely on those policies which engendered inequality. It, therefore, follows that to eliminate the culture of corruption, the income of the political class must be reduced to the minimum wage rate of the public servants without undeserved allowances. The revelation by Senator Shehu Sani that Senators earn N750000 monthly salary, N13.5 million monthly as running cost and N200million as constituency allowance explains further why politics in Nigeria is a do or die affair.[46] To eradicate poverty in Nigeria, income regularization is a necessity.

6. RESTRUCTURING ANTI-CORRUPTION INSTITUTIONAL DESIGN IN NIGERIA

Nigeria, like Brazil, has a rich stock of anti-corruption laws and institutions. However, the outcome of the anti-corruption battle in the country is yet to yield encouraging outcome. Rather, corruption in Nigeria has grown in audacity and enormity. Institutional multiplicity, which has failed in solving the problem of corruption in Nigeria, has produced a desirable outcome in other regions. This study shows that Nigeria needs robust efforts targeted at institutional coordination to eliminate corruption.

A study of the Brazilian anti-corruption system shows how the advantage of multiple anti-corruption institutions can be effectively harnessed to eliminate corruption. Anti-graft system in Brazil permits the imposition of three types of punishment on a person found guilty of corruption: administrative, civil, and criminal. These penalties are imposed by different bodies, through different processes, and they can run both simultaneously and independently. This enables the processes to complement one another and fill in for any inadequacies of any one of them. The administrative sanction can facilitate the corruption cases where it takes a long time for judiciary action. The avenue for administrative sanction also prevents the situation whereby cases die-down in the course of turn-waiting as a result of court congestion, while the civil and administrative sanction facilitates recovery of corruption proceeds even where the accused person is deceased.

Further lessons can be learned from the Brazilian anti-corruption mechanisms, which have adopted proactive anti-corruption initiatives such as the National Strategy to Combat Corruption and Money Laundering (Estratégia Nacional de Combate a Corrupção e Lavagem de Dinheiro, ENCCLA), 2003. The initiative presents a coordinated front to combat corruption through the cooperation of the three arms of Government, the office of the public prosecutor, and civil society. The initiative recorded success and was extended in 2006.[47] This kind of stake-holders collaboration is important

[46]NiyiBello*et al, A Senator's Disclosure and Debate on Cost ofGovernance* (The Guardian, 14/03/2018) https://guardian.ng/politics/a-senators-disclosure-and-debate-on-cost-of-governance/ last seen on 10/04/2018.

[47]Mariana Prado, Lindsey Carson and Izabel Correa, *The Brazilian Clean Company Act: Using Institutional Multiplicity for Effective Punishment* (Osgoode Legal Studies Research Paper Series 2016) available at

to make a success of anti-corruption reform in Nigeria. This will prevent a particular arm of government from wielding excessive power capable of frustrating the anti-corruption process or using it as a tool for personal battles.

7. CONCLUSION AND RECOMMENDATIONS

Globally the result of anti-corruption combat through efforts of anti-corruption agencies has followed a particular pattern. Whereas countries with strong governance and well-structured institutional frame work have recorded success. However, in developing countries with weak governance, including Kenya, Malawi, Nigeria, Sierra Leone, Tanzania, Uganda, and a host of other African countries have not recorded much success.[48]

One of the prominent challenges of resolving corruption cases in Nigeria is the lack of national anti-corruption strategy and coordinated front to combat the phenomenon. This accounts for inter-agency squabbles and lack of institutional coordination and collaboration among anti-graft institutions. Though institutional multiplicity has worked in other regions, it has failed in Nigeria, while corruption has continued to grow in audacity and enormity. To make a success of the objective of the Buhari's administration to combat the phenomenon, it becomes important to understand why multiple anti-corruption institutions have not worked in Nigeria, to determine what is wrong and how to remedy it.

To successfully combat corruption in Nigeria, the following are the recommendations which need to be adopted:

a) There is an urgent need to improve the anti-corruption efforts of the present administration which must be backed by anti-corruption reform. The reform is necessary to specify the functions and stages of involvement of each anti-graft agency in fighting corruption. This will create a requisite separation of powers and checks and balances needed to drive inter-agency collaboration, avoid inter-agency squabbles, excessive power, and it's attendant's abuse of office.
b) The adoption of multiple institutions to combat corruption could be advantageous by creating an avenue for the adoption of multiple strategies and design, thereby covering all loopholes. The inter-agency collaboration will be a driver of success in investigating allegations of corruption, gathering tenable evidence, prosecution of sentences, and judgment enforcement in corruption cases. However, where the different institutions adopt individual strategy must be fine-tuned in line with the national objective.

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http://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1118&context=olsrpslast seen on 10/06/ 2017.

[48] Patrick Lumumba, *Corruption: The Bane of Africa* (Paper presented at SAPICS 33rd Annual Conference and Exhibition 26-28 June 2011, South Africa) available at http://www.eacc.go.ke/docs/Corruption%20the%20bane%20of%20Africa.pdf last seen on 10/06/2018.

c) The Principal-Agent model which permits the multiplicity of anti-grafts institutions is suitable where corruption is pervasive, although it may be costly to finance all the institutions. Nigeria already has multiple institutions in place, and all that will be required is to specify their functions, adopt suitable operational strategies, and structure their functioning in a manner that promotes healthy competition. Failure to specify the functions of each anti-graft agency accounts for the rivalry among these agencies which disrupt investigations and successful completion of cases. The agencies must be coordinated appropriately to understand the unified objective of tackling corruption in the country and enable them to work together to achieve the national goal. Steps towards such collaboration will include a review of the establishment acts of the various bodies to specify their respective functions and accommodate flexibility for collaborative purposes. In the course of handling cases, the agencies must be permitted to supply the necessary information for the investigation, cooperation to secure evidence and handing over such incriminating evidence to the appropriate bodies for prosecution as well as judgment enforcement.

d) Nigeria is in dire need of preventive anti-corruption mechanisms which can be derived through the functioning of institutions charged with investigative and monitoring functions. The whistle-blowing policy of the present administration through proactive is more combative than preventive. That is, though past acts of corruption and diversion of public funds have been detected, more severe ones are on-going and will only be detected in the future. Some siphoned funds cannot be totally recovered, and socio-economic havoc racked on the society almost linger-on forever. Obvious corrupt practices like budget padding, collection of constituency allowances without executing corresponding constituency projects and payment of security vote are still left unchecked. To reduce corruption to the barest minimum, the nation must effectively combine preventive and combative anti-graft measures through proper interagency collaboration. The operation of the various anti-graft institutions must be divided into stages, with different institutions assigned to perform a similar task at different levels. The multiple agencies can be structured in line with the pattern adopted in Brazil.

e) Another aspect of the fight against corruption, which needs to be improved in Nigeria is the mechanism of punishment. Application of multiple sanctioning involving criminal, civil, and administrative penalties will also go a long way to combat corruption in Nigeria. The criminal sanction should include commensurate jail term, the civil aspect should include forfeiture of assets and refund siphoned fund. While other traditional punishment systems like naming and shaming, and banning of persons convicted of corruption from holding political and public offices will also go a long way to drive deter the crime of corruption in the country. This will also change the mind-set of participating in politics with corrupt intention driven by the desire for private enrichment.

Institutional Implementation of Law-based Government Performance Evaluation Index System

Qiu Fomei

Abstract

The evaluation of the rule of law has become a topical issue among the Chinese legal community. The present article has explored the concept, namely, the Law-based Government Performance Evaluation, which is the performance evaluation of law-based government construction. Promoting the law-based government construction with government performance evaluation not only embodies the value rationality of the rule of law and government performance but also strengthens the checks and evaluation as a tool for promoting the law-based government construction. The article first answers why we need to evaluate the performance of the law-based government, and then introduces the Chinese characteristics of the rule of law evaluation. On this basis, the paper then builds a set of performance evaluation index system for the law-based government in the pursuit of social democracy and the guidance of public satisfaction.

The paper, based on the research project,has been applied to Guangdong Province of China. Through public sampling surveys, organizing expert reviews, and collecting objective data, it was proved that the performance evaluation index system of the law-based government is feasible and reasonable. In the real conditions, whether from the perspective of organizational management or public satisfaction, the evaluation is sufficient to promote the development of the rule of law in China. And it is an inevitable choice for China to have a government management innovation and modernization of social governance.

Keywords: Governance Performance; Law-based Government; The Rule of Law Evaluation; Index System; Public Satisfaction.

1. INTRODUCTION

The rule of law is the foundation of state governance and an important symbol for national modernization. Based on the upsurge of global reforms in the past ten years, many Chinese government documents[49] have stressed the importance of the rule of law evaluation to promote the development of the law-based government construction. Academia and local governments actively explore the evaluation of the rule of law construction and establishment of an indicator system for

[49] In 2013, the third central plenary session of the Communist Party of China put forward the establishment of scientific indicator system and evaluation criterion for the rule of law construction. At the forth central plenary session of 18th CPC committee in 2014, it was further emphasized that the effectiveness of constructing the rule of law should be an important performance evaluation indicator in measuring working performance of the leading bodies and leading cadres at all levels. In 2015, the CPC Central Committee and the State Council issued the Law-based Government Construction Implementation Summary (2015-2020). And it strengthened the performance evaluation and supervision and inspection, and the effectiveness of constructing the rule of law should be regarded as an important content and vital indicator to measure working performance of the leading bodies and leading cadres at all levels.

promoting it. According to the statistics,[50] two-thirds of the provincial governments in China have applied the relevant assessment and evaluation methods for the rule of law. Law-based government evaluation is the Chinese characteristic of the development model of the rule of law promoted by the Chinese government. The introduction of the concept of performance into the evaluation of the rule of law construction is a new and important research topic.

It is seen from the literature, that research in law-based government has grown in China. It has shifted from a system construction and index design to practical inspection and operation application. However, it still faces some practical issues, such as lack of value standard, a disorder of system orientation, limitation of functional configuration, data authenticity and lack of monitoring and unscientific and inoperable design of indicators and so on. The article utilizes the concept of 'performance evaluation' for the assessment of law-based government construction, that can be called as 'Law-based Government Performance Evaluation.' Promoting the law-based government construction with government performance evaluation not only embodies the value rationality of the rule of law and government performance but also strengthens the check and evaluation as a tool. It also aids in solving the practical issues mentioned above.

The research paper is structured as follows: firstly, Chinese practical characteristics of the rule of law evaluation is summarized. Secondly, it answers why there is a need to evaluate the performance of the law-based government. On this basis, a set of performance evaluation index system for the law-based government in the pursuit of social democracy and the guidance of public satisfaction is created. At the end of the paper, the author took Guangdong Province of China as an empirical research case for application of this index system. Through public sampling surveys, organizing expert reviews and collects objective data, the paper aims to prove that the performance evaluation index system of the law-based government is feasible and reasonable. This article provides a new 'Theoretical Increment' and 'Practice Test' for the law-based government in China and even the global campaign for the rule of law assessment. Further, it enhances the ability of warning, judging, and responding to the construction of the rule of law in China.

2. CHINESE PRACTICE AND CHARACTERISTICS OF THE RULE OF LAW EVALUATION[51]

In China, the first rule of law index was originated from Hong Kong in 2005.[52] In 2008, Yuhang (in Zhejiang Province of China) launched its first rule of law index in the mainland China and realized a significant breakthrough in the rule of law evaluation.[53] Thereafter, many cities in China such as

[50]According to the author's search for documents issued by the official websites of various provinces and municipalities in China.

[51]Refer to the author's paper. See ZQ He, FM Qiu. *Index System of Domestic Rule of Law Evaluation: Present Situation and Comment*, Journal of South China University of Technology (Social Science Edition)71, 78 (2016).

[52]See YT Dai. *Hongkong's rule of law index*. Global Law Review 46,55(2007).

[53]See HD Qian. *Experiment on Yuhang's rule of law index*. Chinese judiciary 60,65(2008).

Beijing, Shenzhen, Shanghai, Kunming have also tried to explore the scientific and effective ways to quantify the level of the rule of law and the law-based government. At present, the practice of the rule of law evaluation carried out all over the country is in full swing. Judging from the practice of assessment in different cities of China, we can find that the index systems of the rule of law evaluation in China can be divided into two categories: one is internal evaluation index system of administration according to the law, which is represented by *the Index System of Law-based Government Construction in Guangdong Province*. This indexing system mainly is constructed around the goal of a law-based government in a specific area. Another is the third-party evaluation index system, which is represented by *the Evaluation System of Public Satisfaction of the Law-based Government Performance in Guangdong Province*, which carries out an all-round quantitative evaluation on the level of the rule of law.

2.1 Rule of Law Evaluation Carried Out by the Chinese Government

In 2007, Xuancheng (Anhui Province of China) issued *the Notice of the People's Government of Xuancheng Municipality on Issuing the Examination Index System for Administration by Law of Xuancheng Municipality,*[54] which is the first published official document of the law-based government evaluation. In 2008-2009, the Legislative Affairs Office of the State Council had signed a cooperation agreement with the Hubei provincial government, the Shenzhen municipal government and the Chongqing municipal government to promote the construction of a government ruled by law and these three places have taken the lead in carrying out pilot work in China. By the end of 2008, Shenzhen promulgated China's first local law-based government construction index system in the form of local government regulations. It also became the nation's first law-based government to quantify evaluation system, making a start in China to explore and try to quantify and analyze the rule of law. So far, at least two-thirds of the Chinese local governments have introduced a law-based government construction index system. Following table 1[55] summarises the law-based government construction evaluation activities in different cities of China.

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[54]Government of Xuancheng Municipality，Anhui Province of China，*the Notice of the People's Government of Xuancheng Municipality on Issuing the Examination Index System for Administration by Law of Xuancheng Municipality,*http://www.xuancheng.gov.cn/openness/detail/content/ 5abafa3c20f7fe55d1bd10ae.html last seen on 22/03/2016.

[55] [55]Provincial Government of Guangdong Province，Guangdong Province of China, *The Law-based Government Construction Index System of Guangdong Province(Trial),*http://zwgk.gd.gov.cn/006939748/201304/t20130412_372116.html last seen on 23/05/2019. Provincial Government of Hubei Province, Hubei Province of China，*Notice of the Hubei Provincial Party Committee and the Hubei Provincial People's Government on Issuing the Index System for the Law-based Government Construction in HubeiProvince(Trial),* http://www.scio.gov.cn/xwfbh/gssxwfbh/xwfbh/hubei/Document/679004/679004.htm, last seen on 23/05/2019. Government of Shenzhen Municipality, Guangdong Province of China, *Decision of the Shenzhen Municipal People's Government of Shenzhen Municipality on the Establishment and Implementation of the Law-based Government Construction Index System of in Shenzhen (Trial)* , http://zwgk.gd.gov.cn/006939748/201304/t20130412_372116.html, last seen on 23/05/2019. Provincial Government of Jiangsu Province，Jiangsu Province of China, *The Law-based Government Construction Index System of Jiangsu Province,*//www.jsfzb.gov.cn/art/2015/1/19/art_33_46213.html last seen on 23/05/2019. Provincial

Table 1: Characteristics and Indicators Structure Source of Several Representative Local Law-based Government Construction Evaluation

Seq.	Name of evaluation	Nature of evaluation	Subject of evaluation	Method of evaluation	Indicators Structure and characteristics.
1.	The Index System for the Law-based Government Construction in Hubei Province	The top-down goal evaluation in the system	The Leading Group who Promote Administrative Work According to Law	Internal assessment and opinion polls (include representatives of the National People's Congress, CPPCC members, organ staff and ordinary citizens)	8 first-level indicators, 35second-level indicators and 160 third-level indicators. Level 1 indicators include: the definition of government functions and the allocation of organizational functions; system construction; administrative decision; law enforcement; administrative services; the prevention and resolution of social contradictions; administrative supervision; The construction of the capacity of administration according to law.
2.	The Law-based Government Construction Index System of Guangdong Province	The top-down goal evaluation in the system.	The Leading Group who Promote Administrative Work According to Law	Internal assessment and social commentary (Randomly selected 6146 party representatives, deputies and CPPCC members, as well as in the selection of 4800 households around the social evaluation) (2013)	8 first-level indicators, 40 second-level indicators, and 108 third-level indicators. Level 1 indicators include: system construction; Administrative decision; law enforcement; government information disclosure; the prevention and resolution of social contradictions; administrative supervision; the construction of the capacity of administration according to law; the protection of the administration according to law.
3.	The Law-based Government Construction Index System of Jiangsu Province	The top-down goal evaluation in the system	The Leading Group who Promote Administrative Work According to law	Combined with internal assessment and external reviews	7 first-level indicators, 29 second-level indicators and 124 third-level indicators; Level 1 indicators include: full compliance with the law; Improve the quality of system construction; administrative decisions

Government of Jilin Province，Jilin Province of China, *The Law-based Government Construction Index System of Jilin Province*, http://www.jl.gov.cn/zw/wj/jzf/201411/t20141118_4838711.htmllast seen on 23/05/2019.

					should be in accordance with law and scientific democracy; strictly regulate the fair and civil law enforcement; strengthen the power of constraints and supervision; protect and resolve social conflicts in accordance with law; improve protection of law in accordance with law.
4.	The Law- based Government Construction Index System of Shenzhen City	The top-down goal evaluation in the system	The Law-based Government Construction Leading Group in Shenzhen City	Combined with internal assessment and Legal expert evaluation. The latter in 2014, including NPC deputies, CPPCC members, lawyers, judges, administrative organs of legal staff and other legal experts, a total of 258 people	12 first-level indicators, 44 second-level indicators, and 225 third-level indicators. First-level indicators include :the legislative work of the rule of law for government; organization, responsibilities and the establishment of the rule of law; administrative decision to follow the rule of law; public finance management and government investment follow the rule of law; administrative approval to follow the rule of law; administrative punishment to follow the rule of law; administrative services follow the rule of law; the openness of government information follows the rule of law; administrative relief to follow the rule of law; administrative supervision follows the rule of law; the responsibility for administration follows the rule of law; improve the administrative organs of the staff according to the concept of law and ability.
5.	The Law-based Government Construction Index System of Jilin Province.	The top-down goal evaluation in system	Jilin Provincial Government	Combined with internal assessment evaluation and external commentary. Evaluation subject includes the organization of deputies to the	Nine systems and two mechanisms: the construction of the thinking system of the rule of law; the construction of the normative system of the system; the construction of administrative decision - making system; the construction of government affairs system; the

				National People's Congress, the CPPCC members, enterprises and institutions, the news media and the public, or commissioned specialized evaluation agencies to organize the implementation.	construction of administrative law enforcement system; the construction of administrative supervision system; comprehensive protection of the system construction; evaluation and assessment system construction; the Transformation of government function and the construction of innovation mechanism of administrative management.

The analysis shows that in the past few years, the Chinese rule of law construction and evaluation has been conducted mostly for the group who promote administrative work according to law. The internal rule of law examination organized by the Chinese government is actually an assessment of whether the work of relevant departments is in accordance with the law or not. The main characteristics of this internal assessment are:

a) The evaluation path is a top-down goal evaluation. The evaluation system of the rule of law in China is closely related to the evaluation subject. Specifically, the main body of the evaluation is the party committee and government of the higher level. For example, the provincial government examines the municipal governments. The design of the index system mainly focuses on the detailed decomposition of the requirements of the higher-level government documents, and simplification of the development of the rule of law into the specific workload or the implementation of the work.
b) The index system gives priority to a qualitative description and highlights the process of control. The evaluation systems in many provinces adopt qualitative evaluation methods, and less preference is given to quantitative indexes. Therefore, it does not exhibit the substantive differences between the objects being evaluated, and it focuses on the action taken by the government but does not assess the implementation of that action.
c) Internal subjective evaluation was the primary method in the early stage, and then internal examination and external evaluation were combined. At present, the index system of most provinces includes internal self-evaluation index and external evaluation index.

2.2 Rule of Law evaluation carried out by the third party

Due to its independence, openness, impartiality and professional and other natural advantages, the rule of law evaluation of the third party can effectively overcome the inherent drawbacks of self-evaluation and goal evaluation in the system. Therefore, in the past five years, the third-party assessment has developed rapidly and has become a component for the quantitative evaluation of the

rule of law in China. The independent formulation of the third-party evaluation index system and leading the implementation of the rule of law evaluation will become the trend of the times. There are many cases of evaluation of entrusted third party, such as Zhejiang Yuhang index, Hunan evaluation index system of the rule of law construction and Kunming comprehensive evaluation system of the rule of law and so on. The first case of independent third-party evaluation of the rule of law in China was the evaluation of the law-based government construction in 53 cities with local legislation in 2013, was carried out by China University of Political Science and Law's Legal Government Research Institute. The most influential practice and research are the Public Satisfaction of the Law-based Government Performance in Guangdong Province organized by a Research Center from the South China University of Technology, and so on. In conclusion, the evaluation process of the government for a period of ten years can be broadly divided into three stages: The first stage is to carry out their administrative assessment by the local government; the second stage is where the local government commissions a third party to implement the assessment; the third stage has a third party initiative to complete the entire assessment process.[56] This paper argues that Chinese rule of law evaluation has gradually entered into a stage of independent third party evaluation. With an independent third party as the main body of evaluation, an evaluation system should be constructed which combines both subjective and objective evaluation, along with expert review and public satisfaction evaluation. It can fully embody the specialty, credibility, and feasibility, and avoid the role conflict and information distortion of the internal evaluation in the system.

Table 2 Several Representative Systems outside the Third-Party Rule of Law Evaluation Characteristics and Index Structure[57]

Seq.	Name of evaluation	Nature of evaluation	Subject of evaluation	Method of evaluation	Index structure and characteristics
1	Evaluation of Law-based Government Performance Satisfaction in Guangdong Province	Independent third-party evaluation	Research Center for Rule of Law Evaluation, South China Technology University	The subject of the review is aimed at the 18-70 year old residentpopulation in the province; 24706effectivequestionnaires in 2015	10 indicators of satisfaction, including fair policy, fair law enforcement, open government affairs, government service attitude, service efficiency, clean government, market supervision, public order, and administration according to law.

[56] See HC Lin, *Advantages, Difficulties and Ways of Third Party Evaluation of Law-based Government Performance*, Journal of China University of Political Science and Law 25,32(2014).

[57]Research Institute of Law -based Government of University of Political Science and Law of China. *Evaluation Report of Law-based Government in China(2015)*,12(2015). JJ Yao &H Peng,*An Empirical Analysis of Shanghai 's Legal Evaluation*, Journal of Administrative Law 53,62(2015). Zhu Jingwen. *How do people evaluate justice? - Analysis of judicial indicators in the evaluation of the rule of law*, Applied Law of China107,121(2017).; HD Qian etc.,*the Rule of Law Evaluation and its Application in China*,China Social Sciences140, 160(2012).

2	Evaluation System of Chinese Government by Law	Independent third-party evaluation	Research Institute for Law-based Government, China University of Political Science and Law	Using data analysis, literature search, field trips and issuance of questionnaires, etc. (2015)	Objective evaluation of a total of eight first-level indicators, 26 second-level indicators, 72 three indicators; There are 10 problems in subjective evaluation of public satisfaction.
3	The Shanghai rule of law construction index system	Independent third-party evaluation	Shanghai Academy of Social Sciences	The subject of the review is the public, practicing lawyers, and legal professionals. 5877questionnaires were collected in 2014.	Four first-level indicators, 22 secondary indicators, 52 three indicators, the first level indicators include: democratic politics, the rule of law, justice, social governance
4	The Chinese rule of law evaluation	Independent third-party evaluation	Research Centre for Rule of Law Evaluation, Renmin University of China	Three sets of random sampling questionnaires (public questionnaire, expert questionnaire, and practitioner questionnaire) were used for subjective evaluation.	A total of 6 first level indicators, including the legal system, the rule of law implementation system, the rule of law supervision system, the rule of law guarantee system, inner party regulation system and the rule of law effect system, 20 two level indicators, 62 three level indicators and 166 four level indicators.
5	Yuhang quantitative assessment system of the rule of law (the Yuhang rule of law index)	Evaluation of the objectives within the system and commissione d third-party evaluation (late)	Zhejiang University, Law School	Government members, non-governmental organizations, professors, entrepreneurs, journalists, Yuhang District people (1003 people in 2007)	Including nine first-level indicators, 27 second-level indicators, and 77 third-level indicators, plus four levels (total indicators, district-level indicators, township indicators, rural community indicators) and nine public satisfaction indicators.

Table 2 shows the characteristics and index structure of the third-party rule of law under several representative systems. The literature analysis demonstrates that Chinese third-party rule of law evaluation is flourishing. Its main features are as follows:

a) It is based on quantitative indicators. The index system designed by the third-party organization is mainly based on quantifiable content and less use of qualitative evaluation methods.

b) The index system is made known to the public and more verifiable. "Whether the evaluation system and evaluation results can be known to the public is a yardstick to test and evaluate the scientific evaluation system. And the scientific evaluation system should be open, rather

than enclosed in the administrative system of self-appreciation."[58]Xia Liyang said.

c) Degree of public participation in the evaluation process is higher. Third party evaluation is mainly carried out by the academic institutions independently, and increase the public commentary, focusing on the public satisfaction survey, which reflects the democracy and the rule of law.

d) The third-party evaluation usually takes the value of the Chinese rule of law (such as fair and justice, democratic science, equality, harmony and so on) as evaluation route, specifically pointing to legislation, administration, justice, law abiding and so on. Although the standard and statistical calibreare different, overall results published by major colleges and universities are similar.

2.3 A brief analysis of China's Rule of Law evaluation movement

As a means to promote the rule of law practice, the Chinese rule of law evaluation complies with the global index movement trends. Since the reform and opening up policy was carried out 40 years ago,[59] research on the Chinese rule of law has made significant progress. The research and practice of the rule of law evaluation have developed rapidly, with unique Chinese characteristics and a strong impetus to push and force self-reflection and further development of the rule of law construction in various places. It plays an important role as the "detector" and "booster" for the Chinese rule of law construction. Specifically, the existing practice of the rule of law evaluation in China is mainly concerned with 'what has been done in the construction of the rule of law' rather than 'what should be done.'The practice of Evaluation System from Different Schools and Organizations still faces many practical problems, such as lack of value standard, a disorder of system orientation, limitation of functional configuration, data authenticity and lack of monitoring and unscientific and inoperable design of indicators, and so on. Therefore, it is necessary to introduce performance evaluation and pursuit of performance-based government under the rule of law.

The rule of law evaluation in China should be based on the modern value of the Chinese rule of law (such as fair and justice, democratic science, equality, harmony and so on), combined with the government's rule of law functions. We can put an independent third party as the main evaluation subject and expert evaluation, and add public satisfaction evaluation as the main content of the evaluation. Thus, constructing a combination of subjective and objective evaluation of the index system will be the best scheme. At the same time, in the process of index system designing, we should pay attention to the indicators like quantification and enhance the internal relevance and logic. In addition, strengthening the result-oriented pursuit of goal realization and social satisfaction

[58]LY Xia,*Strategic Rationality and Construction of Rule of Law Evaluation System*, Journal of Zhejiang University71,74 (2013).

[59] China implemented the reform and opening-up policy in 1978.

and improving the scientific and objective indicators of measurement is necessary, so that the evaluation index system more reliability and validity.

3. CONNOTATION AND SIGNIFICANCE OF A LAW-BASED GOVERNMENT PERFORMANCE EVALUATION

3.1 The connotation of a Law-based Government Performance Evaluation

The performance of a law-based government refers to the conduct of a government and its departments to perform the functions of the rule of law. These functions include the ability and effect of law-based government construction[60] and the economic and social benefits of the law-based government. It is a relatively complex concept with the quantifiable job performance of the law-based government construction and non-quantifiable level of the rule of law development. The '4E' standard[61] and technical method from performance evaluation were introduced for comprehensive measurement and analysis on the investment, output, and effect of the law-based government construction in a country and region. Also, it examines the economy, efficiency, effectiveness, and fairness of the government's implementation of the rule of law.[62]

In other words, it refers to what the government has done for the functioning of the rule of law (output), the effect (outcome) and the realization of the citizen satisfaction (satisfaction). The essence of it is to reflect on whether the government has implemented the rule of law in practice or how to practice the procedure of the rule of law.[63] As a tool of governmental governance, the performance evaluation of a law-based government involves the increment of implementation of the rule of law in a certain period. It is not only a measurement of construction level of a law-based government but also a test for measuring the goal of realizing the degree of the law-based government construction. The performance evaluation of a law-based government points first towards the rule of law and government's implementation capacity, and then strengthens the result and public satisfaction orientation. From a technical point of view, the performance evaluation of the government ruled by law faces several core issues. For instance, is there a need to evaluate it? Who evaluates it? Evaluated by whom? What needs to be evaluated? How to evaluate, and so on.

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[60]Law-based government construction in China has Chinese characteristics, because the development of Chinese rule of law is guided by legislation. Specifically, law-based government construction means restrict public power through the form of legislation and the state administrative power derived from the people's authorization is kept in the cage.

[61]In terms of content, "performance" is aimed at the input, output and effect of a law-based government construction. It involves the "increment" of the government action in a certain period of time, usually measured by the "4E" standard. Through practice tests, the 4E index, namely Economy、Efficiency、Effectiveness and Equity, has become the best starting point of the analysis performance. See YF Lu, *Performance of Local Rule of Law and its Evaluation Mechanism.* Academia 31,43 (2017).

[62] Further understanding of the concept of law-based government performance evaluation can refer to the author's paper. See FH Zheng & FM Qiu. *Performance Evaluation of the Law-based Government: Target Positioning and Index System*, Political Science Research 67,79 (2016).

[63] YF Lu. *Content and Index Design of Performance Evaluation of the Law-based Government*, Journal of Gansu Political Science and Law Institute134,146 (2016).

3.2 The Significance of a Law-based Government Performance Evaluation[64]

As long as there are organizations, there are management and evaluation. Based on the coupling of value rationality and instrumental rationality, promoting the construction by evaluation presents value rationality of public participation and legal justice, and strengthens the instrumental rationality of evaluation as the goal drivers. Specifically, there are three reasons for the performance evaluation of a law-based government:

Firstly, it has the function of correcting deviation and error. The performance evaluation of a law-based government is essentially instrumental, which has a natural affinity and compatibility with the Chinese government's model of promoting the construction of the rule of law. Because the core function of evaluating the technical side is to find out the problems existing in the rule of law operation of government and society and corrects the part wrong direction of the construction of the rule of law. Therefore, evaluation has become a methodology to find problems in the law-based government. China is a country with the rapid development of the rule of law in recent years. Therefore, to promote the construction of the rule of law requires an objective and quantitative evaluation criterion to detect and measure the level of the construction of the rule of law.

Secondly, it has the function of promoting construction. Promoting construction by evaluation is the traditional experience of China's construction. In China, the goal setting, path direction, and rhythm of the rule of law are difficult to generate automatically, and they depend on the promotion tools and methods. The evaluation provides guidance, motivation, correction, supervision, and reflection functions to meet this requirement. The construction of a set of indicators system is the key node to play its role in promoting construction, which to a certain extent determines the scientificity of evaluation and the degree to which the objectives are achieved. Therefore, the design of the evaluation scheme should take into account the realization of value objectives, result orientation and process control at the technical level to meet the needs of rule of law construction at different stages, different nodes and different dimensionsin order to become a 'driving window' and 'information disc' of party committee and government superiorsandareference of society and enterprises in judging the rule of law environment of business.

Thirdly, it has the function of promoting democracy. In terms of value orientation, performance evaluation emphasizes the construction of a public satisfaction-oriented government wthe legal values of equality, order, efficiency, and justice, which can help guide the government and society to form democratic ideas. In terms of evaluation methods, we introduce public participation and social evaluation, that is, public satisfaction measurement, which will be different from the government's evaluation. The goal behind this concept is that public participation will provide supervision, openness, and transparency for performance reporting. Therefore, it helps to cultivate the public's

[64] Refer to the author's paper. See FH Zheng and FM Qiu. *The Relationship between the Law-based Government and the Law-based Society under the Perspective of Harmonious Co-Construction.* Law-based Society 7, 15(2017).

subjective consciousness and the concept of rights and obligations but also limits the power of the government. In addition, as a "coercive" mechanism to standardize and legalize government and public policies, it can also promote cooperation between government and citizens, and guide society to a path of transparent and good governance.

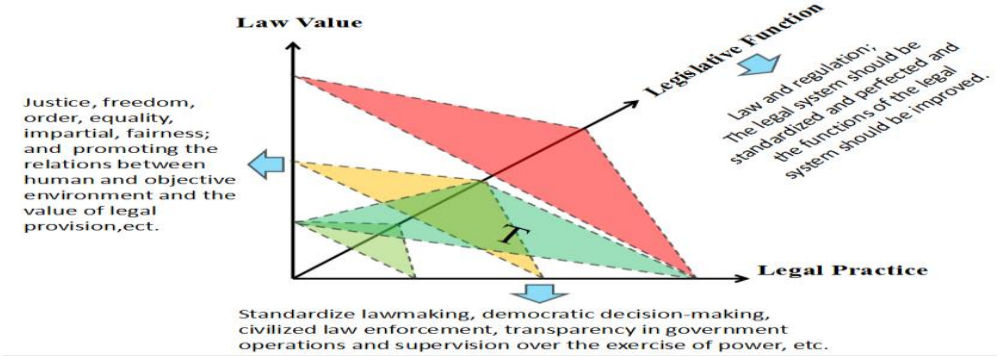
4. MEHODOLOGY: INDEX SYSTEM OF LAW-BASED GOVERNMENT PERFORMANCE EVALUATION

4.1 The concept of evaluation and method of designing index

Index system decides the scientificity of the assessment.Because the design of the index system affects whether the orientation of the construction objectives is correct, whether the selection of the evaluation methods is scientific, and whether the evaluation results are close to the facts, and so on. The performance evaluation of the law-based government is different from the targetevaluation of the law-based government. Evaluation dimension and the first-level index should correspond to the content, serve to the purpose, reflect the connotation of government performance, and consider technical feasibility.

Before the abstract "law-based government" concept is operationalized and transformed into an observable specific indicator, the structural dimension and evaluation concept of law-based government need to be clarified.Among them, the core concept that needs to be clearly explained is the rule of law.The connotation of the modern rule of law refers to three aspects (value principle, formality function and practicing spirit)[65], and requires the rule of good law, universal law-abiding, administrative power restraining and safeguard democracy. Therefore, the value of law, legislative functionality, and legal practice can be three dimensions of the rule of law evaluation. They can also be the analysis framework of a law-based government performance evaluation content.

Figure1 : Analysis on Content of Law-Based Government Performance Evaluation (VFP)[66]



As illustrated in figure 1, in the three-dimension coordinate axis, the quality dimension points to the core content of evaluation, and the quantity dimension present the differences in extent. Any point

[65]See ZMXu. *Ideal picture of world system and Chinese law.* Forum on Politics and Law 7,10(2006).
[66] Made by the author.

from this three-dimension coordinate axis can form up a plane which could represent a specific assessment content or index system.

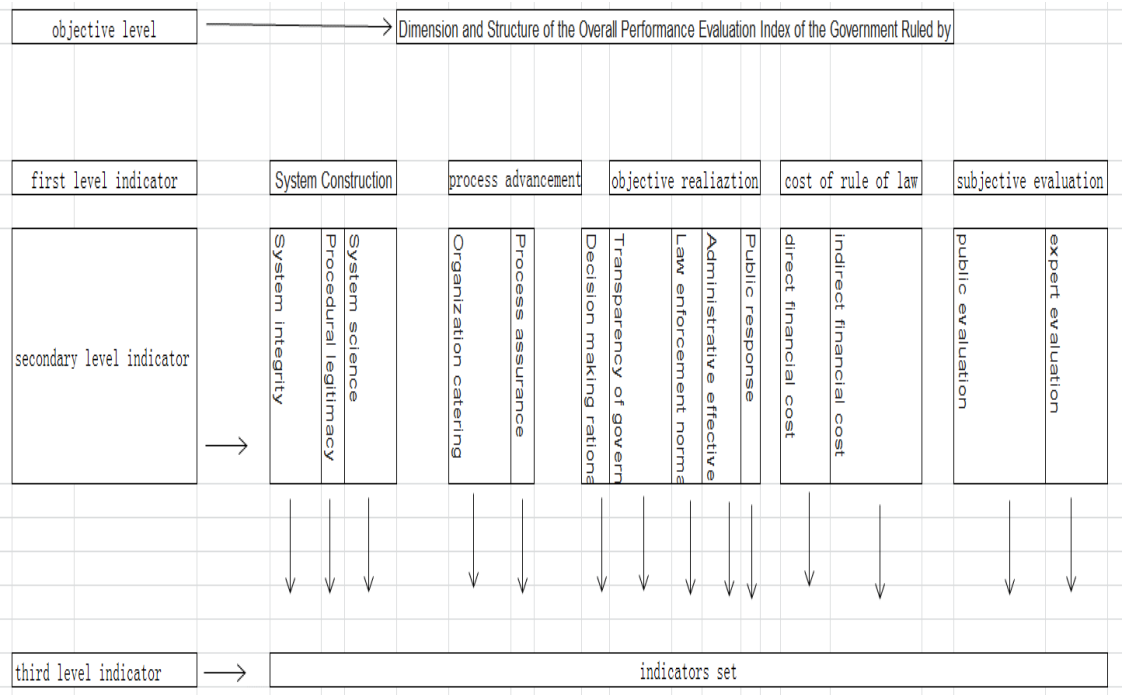
Firstly, the value of the law is based on the relations between human and law; that is, it is the satisfaction and legalization of the human needs of law.[67] It contains justice, freedom, order, equality, impartiality, fairness, and it promotes the relations between human and objective environment and the value of legal provision. Secondly, the legal system in the legislative function includes law and regulation. The former refers to national law and legislation while the latter contains regulations and normative documents enacted and promulgated by the administration. The dimension of the legislative function requires that the legal system should be standardized and perfected in the process of construction of the rule of law, and the functions of the legal system should be improved. In short, a legal system should be established, which is reasonable in value, complete in form, and perfect in function.

Last, the legal practice can be seen as a dynamic process of the rule of law. The government functions on practicing the rule of law involve a standardize lawmaking, democratic decision-making, civilized law enforcement, transparency in government operations, and supervision over the exercise of power, etc. Legal practice requires that the national lawmaking and government enactment of rules and regulations shall comply with the legally prescribed scope of authority and procedure. It implies that government agencies shall perform the law-based administration strictly, and the society shall universally abide by the law, safeguard and advocate the law.

Thus, all the rules and regulations are enforced effectively. Above concepts logically deconstruct the construction path of evaluation index system of law-based government. Comparing to the public administrative index system in Taiwan region,[68]our assessment content contains more on legal practice (government function on rule by law), and it also focuses on the achievement of the legislative function but shows less attention on law value (See figure 1, the T plane with a lighter color).[69]

Figure 2: The Law-Based Government Performance Evaluation Index Dimension and Structure[70]

[67] See ZY Zhuo, *The Value of Law*, Law Press, 45(2006).
[68]In 2008, the "Research and Development Assessment Committee of the Administrative Academy of Administration" in Taiwan entrusted "Taiwan Public Governance Research Center" with the study of putting forward the "Taiwan Public Governance Index System".
[69]See FH Zheng & FM Qiu. *Performance Evaluation of the Law-based Government: Target Positioning and Index System*, Political Science Research 67,79(2016).
[70]Made by the author.



In this article, the dimensions of evaluation are defined as system construction, process advancement, target realization, and the rule of law cost. The first-level indicators include subjective evaluation and objective evaluation. And subjective evaluation includes public satisfaction evaluation and expert scoring evaluation. The structure and dimensions of the indicators are shown in Figure 2.

For the secondary indicators, the system construction points to all levels of government (departments) to set up rules and regulations stipulation (Systematisms, legality, scientificity, etc.), divided into three indexes (complete legislative system, legal, legislative procedure and scientificity of law and regulation content). The process advancement aims to the organization and management of resource guarantee, corresponding to the organizational support and process support (two secondary indicators). The goal realization reflects the output and effect of the government's construction of the rule of law, that is, the degree of realization of the relevant objectives, determination of the rationality of decision-making, government transparency, law enforcement, administrative effectiveness, and public responsiveness. The rule of law cost is the internal requirements of performance evaluation, corresponding to the government to fulfil the functions and responsibilities of the rule of law and its resulting costs and social costs, including the direct and indirect costs. In the subjective evaluation, considering the evaluation involved in the content professionalism, as well as the immature of public opinion polls under realistic conditions, we can use the expert review and satisfaction evaluation to reduce the system error.

The three-level indicator corresponding to the secondary index, and the sub-index weight depends on the index quantity and the importance of the index. In particular, for the alternative three indicators, the selection principle is: firstly, reflecting on the concept that utilizing the performance

evaluation as the key indicators evaluation, overcoming the complex defects in index system of the internal evaluation, requiring easy operation and reducing costs. Secondly, each secondary indicator at least corresponds to a three-level indicatorto ensure that the secondary indicators of the connotation of the comprehensive and effective, and the evaluation objectives to be fully implemented. Thirdly, the indicators should have stable and reliable data sources to ensure the feasibility of the evaluation and the credibility of the results. Fourthly, the subjective and objective indicators should complement and prove each other. Relatively speaking, public satisfaction focuses on the complementation of the objective evaluation index. The expert evaluation (professional judgment) strengthens the mutual evaluation of the objective evaluation index because the content which the public can evaluateis not necessary to be evaluated bythe expert.

4.2 Index System and Weight Assignment Method

This article uses the innovative method of expert consulting investigation in the selection of indicators and the assignment for index weight. In this approach, firstly, the author selected the primaries of the presupposition indexes, and then used the expert questionnaire survey to get the relative importance score of the index in one time and changed the pairwise comparison to single comparison, and then the weighting coefficient is determined. Correspondingly, simplified analysis process of the index's relativity and degree of membership and reduced preset condition can be seen as a special case of the analytic hierarchy process.

In 2017, the author had conducted an expert consultation and demonstration again on the index system and its weight,whichwas established and conducted an expert demonstration for the first timein 2016. The author had interviewed many people familiar with the rule of law and their evaluation theories and practical workers, which were divided into theoretical research experts, legal practitioners (judges / prosecutors / lawyers, etc.), party government officials and social personages (including NPC deputies, CPPCC members, entrepreneurs and the general public). 200 valid questionnaires were collected from the actual survey. According to statistic result of the valid recycled questionnaires, the respondents generally agree that a law-based government performance evaluation should be composed of two parts: objective evaluation and subjective evaluation, and weight of the two is 35.7% and 65.3% respectively. Then the author compared the subjective evaluation weight in the internal evaluation system of law-based government, and the factors such as limited public awareness and so on. The final scheme determines that the weights of objective evaluation and subjective evaluation are 40% and 60% respectively, of which subjective evaluation is divided into 20% of public evaluation and 20% of the expert evaluation.

Therefore, the author constructed a set of index system of a law-based government performance evaluation, including 5 first level indicators, 14 two-level indexes, and 42 three level indexes, as shown in Table 3.[71] It is worth noting that the government performance evaluation aims to see the

[71]The questionnaire makes alternative indicators to 5 scale, and evaluation of the importance will be given by

increment and balances stock, so index scoring criteria should fully reflect the evaluation cycle due to the evaluation object act as a result of the amount of change.

Table 3: Law-based Government Performance Evaluation Index System（Weight: %）

Primary Indicators	Secondary Indicators	Third-grade Indicators		
Indicator name	Indicator name	Objective indicators (40%)	Subjective indicators (60%)	
		Indicator name	Expert review (30%)	Public satisfaction (30%)
			Indicator name	Indicator name
Legal construction (16.0)	1.Legal system (5.0)	1.Completion of number of laws and regulations clearance (3.0)	1. Complete legislative system (2.0)	--
	2.Legislative proceedings (5.0)	--	2. Legal legislative procedure (2.0)	1.Public legislative participation satisfaction (3.0)
	3.Laws and regulations content (6.0)	--	3. Scientificity of law and regulation content (3.0)	2.Justification satisfaction on regulation and policy (3.0)
Process advance (10.0)	4.organization's indemnification (5.0)	2.Complete organization setup (4.0)	4. Relevant measures effectiveness (1.0)	
	5.Legal literacy of civil servants (2.0)		5. Legal literacy of civil servants (2.0)	3.Civil servants' law-abiding sense satisfaction (3.0)
Target realization (52.0)	6.Government functions fulfilment (19.0)	3. Per capital GDP growth rate (3.0)	6. Standard implementation of administrative examination and	4.Public income satisfaction (1.0)
		4.Production safety accidental death toll (3.0)		5.Market supervision satisfaction (1.5)

the candidate. The primary and secondary indicators adopt percentile system, third-grade indicators applies for the likert 5 scale. Indicator weight calculation is from top to bottom, in which the primary index weight shall be first calculated. Taking into account the differences in the professional judgment on different objects, the weighted average is used. If the judgment weights of experts, scholars, government officials, legal practitioners, entrepreneurs and the general public are assigned to 5,4,3,2,1,then the weighted average value calculation formula of the primary index importance is $w_i = \sum_{j=1}^{n} a_{ij} \overline{x_{ij}}$ (i=1,…,5) , where a_{ij} is the weight of the judgment of this indicator for category j consultants (j=1,…,5 corresponds to the above five categories of consultants, namely $a_{i1} = 5$, $a_{i2} = 4$,^) , $\overline{x_{ij}}$ is arithmetic mean of importance evaluation on this indicator for category j consultants.On the basis of this, the weight of each subordinate index shall be calculated in weighted average by the superior indicator weight and the importance of indicators in the same level, $t_{ik} = \frac{w_{ik}}{\sum_{i=1}^{m} w_{ik}} \times t_{i,k-1}$, In this, t_{ik} is the weight coefficient of the i_{th} indicator in the level k (k=2,3), w_{ik} is the weighted mean of the importance evaluation of the indicator, $t_{i,k-1}$ is the weight coefficient of the superior indicator of the indicator ,m is the maximum ordinal of the same level. Take "system integrity" as an example, measure the weight coefficient of the upper level indicator "system construction" $t_{11} = 18.1\%$, the relative importance evaluation weighted average value for it and the other, in the same level, two indicators are $w_{12} = 45.2$、$w_{22} = 26.7$ and $w_{32} = 28.1$(total 100 points), substituted into the formula to calculate the weight coefficient of the three, which are $t_{12} = 8.1\%$、$t_{22} = 4.8\%$、$t_{32} = 5.1\%$.

		5."Three wastes" emissions and governance rate (3.0)	approval (2.0)	6.Environment protection satisfaction (1.0)
		6.The incidence of criminal cases (3.0)		7.Social security satisfaction (1.5)
	7.Major administrative decision (8.0)	7.Major people 's livelihood decision and consultation hearing rate (4.0)	7.Significant decision-making adequacy (1.0)	8.Government scientific decision satisfaction (1.5)
				9.Government democratic decision satisfaction (1.5)
	8.Constitutional law enforcement (6.5)	8. Legal violation accountability rate (4.0)	8. comprehensiveimplement of law and regulation (1.0)	10.Satisfaction on the justification of law enforcement (1.5)
	9.Administrative power conduct (11.0)	9. Government website performance index (4.5)	9.Information openness (2.0)	11.Government affairs openness satisfaction (1.5)
			10.The effectiveness of administrative supervision (2.0)	12.Executive power supervision satisfaction (1.0)
	10.Protection of people 's rights and interests (7.5)	10. Administrative litigation winning rate (4.5)	11.Effectiveness of administrative relief (1.0)	13.Anti-corruption satisfaction (1.0)
				14.Government integrity satisfaction (1.0)
The rule of law cost (8.0)	11.Direct financial costs (4.0)	11. General public service expenditure ratio of fiscal expenditure (4.0)	--	--
	12. Indirect financial costs (4.0)		12.Social stability maintenance costs (2.0)	15.Government service efficiency satisfaction (2.0)
Result satisfaction (14.0)	13.Expert overall review (7.0)	--	13. Construction effect of law-based government (5.0)	16.law-based administration satisfaction (2.0)
	14.Public overall satisfaction (7.0)	--	14. Overall evaluation of law-based government (4.0)	17.Overall government performance satisfaction (3.0)

5. CASE STUDY: EMPIRICAL APPLICATION OF LAW-BASED GOVERNMENT PERFORMANCE EVALUATION—TAKING GUANGDONG PROVINCE OF CHINA IN 2017 AS AN EXAMPLE

5.1Reasons for choosing the Guangdong Province of China as a case study

Through public sampling surveys, organizing expert reviews and collected objective data, the author aims to prove that the performance evaluation index system of the law-based government is feasible and reasonable. The rationale to choose Guangdong Province of China as an empirical research case for application of index system are as follows: First, Guangdong Province is one of the largest provinces with significant influence in China, and the economic development has been in the forefront of the country in the past 30 years. It is a typical case of economic development by driving

the creation of the rule of law. However, Guangdong Province is not a national political center or a special administrative region. Its economic development and the construction of the government under the rule of law were combined with the actual local situation. It does not depend entirely on the specific administrative resources, market resources, and natural resources. Secondly, from the typical structure, Guangdong Province has jurisdiction over 21 prefectures and cities, and the level of economic and social development, the degree of internationalization and openness, and the structure of population resources are not the same. Third, from the data availability, compared with other provinces in China, Guangdong Province has a higher level of information disclosure, transparent government, and public participation.[72] The index data is easy to collect and obtain, so it is easy to carry out a social investigation.

5.2 Basic data source and sample structure

Primarily, the public satisfaction survey was conducted, and it covered all areas under two-level government jurisdiction of Guangdong Province. The object of the investigation and evaluation is the performance of the law-based government construction in the whole year of 2017. According to the evaluation cycle, the evaluation time should be set at the beginning of 2018.So, the survey was conducted from January 2018 to February 2018. The subjects were the permanent residents of 18-70 years old, mainly using fixed-point interception methods, with the quota of sex, age, and household registration. The 10 scaleswere used in the questionnaire. 21,122 qualified questionnaires were collected in the whole province, and the qualified rate was 96%. After that, SPSS software was used to input the data, and the sample structure was compared with the overall structure of the local resident population. Secondly, the experts reviewing the surveys were legal theory experts, legal practice experts (such as professors, judges, prosecutors, lawyers, company law, arbitrators, etc.), party and government officials and other professionals (the rule of law news media, entrepreneurs, etc.). The time of the survey was from March 2018 to April 2018. A total of 200 questionnaires were collected. Finally, the objective index data was obtained from official statistics sources from web searching and third-party organizations.

5.3 Results and characteristics of Law-based Government Performance Evaluation in Guangdong Province in 2017

Results of a Law-based Government Performance Evaluation of 21 Cities in Guangdong Province in 2017 are shown in table 4.In 2017, the comprehensive score of the law-based governments in Guangdong Province was 78.51 percent. The range of weighted average for 21 cities, as can be seen in Table 4, is 11.21 percent. The overall level of the law-based governments in Guangdong Province is good. The results of the 2017 evaluation are basically in line with the expected time of the basic rule of law established by the central government in 2020.

[72]This view is supported by the Chinese government's transparency index published annually by the Chinese Academy of social sciences.

Table 4: Results of Law-based Government Performance Evaluation of 21 Cities in Guangdong Province[73]

Ranking	Cities	Weighted Average	Public Satisfaction(30%)	Expert Review (30%)	Objective Indicator (40%)	Legal Construction(16%)	Process Advance (10%)	Target Realization(52%)	Rule of Law Cost (8%)	Result Satisfaction(14%)
1	Guangzhou	83.80	76.09	91.58	83.75	86.99	93.76	79.51	97.62	81.04
2	Shenzhen	83.50	75.63	91.04	83.75	85.46	93.38	79.92	96.01	80.39
3	Zhuhai	81.98	73.14	90.13	82.50	84.70	93.00	78.25	91.70	79.29
4	Foshan	80.24	72.89	86.24	81.25	82.92	91.93	76.25	92.70	76.52
5	Dongguan	79.74	72.55	84.92	81.25	81.73	90.73	76.06	92.03	76.24
6	Zhongshan	79.50	72.82	85.52	80.00	83.35	91.80	74.75	92.39	76.64
7	Jiangmen	79.44	71.85	84.60	81.25	78.37	88.94	77.07	92.30	75.36
8	Qingyuan	79.08	71.04	84.22	81.25	79.07	90.99	76.54	88.24	74.80
9	Zhaoqing	78.96	71.43	81.76	82.50	79.89	90.83	77.56	89.71	75.64
10	Huizhou	78.60	70.36	84.97	80.00	78.68	90.29	75.64	90.56	74.29
11	Shaoguan	78.47	69.75	85.15	80.00	79.25	89.19	75.18	90.51	75.28
12	Shantou	78.41	70.07	84.63	80.00	78.09	88.23	75.00	88.34	71.64
13	Heyuan	78.29	71.43	84.53	78.75	78.41	91.02	74.65	91.08	75.26
14	Zhanjiang	78.12	71.38	84.03	78.75	79.19	89.55	74.66	88.99	75.41
15	Yangjiang	77.84	70.07	84.40	78.75	79.08	88.73	73.84	90.50	76.25
16	Maoming	77.97	71.38	80.18	81.25	78.13	88.00	76.03	88.80	71.66
17	Chaozhou	76.93	70.60	77.51	81.25	76.47	87.34	75.30	87.85	69.82
18	Meizhou	75.55	66.60	78.58	80.00	75.62	84.39	74.02	85.51	69.11
19	Shanwei	75.52	66.65	78.42	80.00	75.00	85.94	74.59	81.15	68.90
20	Yunfu	74.12	68.61	75.12	77.50	76.17	85.88	72.68	83.09	70.74
21	Jieyang	72.59	66.21	75.76	75.00	73.91	84.87	69.75	83.05	66.89
Cities Average		78.51	70.98	83.49	80.42	79.55	89.47	75.58	89.62	74.34
Range		11.21	9.88	16.45	8.75	13.08	9.37	10.17	16.47	14.14
STDEVA		2.71	2.58	4.58	2.03	3.50	2.72	2.25	4.04	3.80
Coefficient of Variation		0.03	0.04	0.05	0.03	0.04	0.03	0.03	0.05	0.05

5.4 Analysis

The results of the evaluation show the following characteristics:

Firstly, for urban comparison, the gap between regions has gradually narrowed that the difference between the highest score city and the lowest score city is 11.21 points (in 2016 was 20.12 points). But it is still uneven, and the discrete coefficient is 0.03. The correlation relationship between law-based government's performance and the GDP were analysed with SPSS. The results showed that the Pearson correlation coefficient between the law-based government's government performance and GDP was 0.715, which showed that the law-based government's performance and the level of regional economic development had a strong positive correlation. This displays that the construction of the rule of law is uneven, and the regional difference is obvious. The effect of the construction of the rule of law in the reformed pilot cities is remarkable, and the economic level and the reform measures affect the performance level of the law-based government.

[73]The evaluation results are not applicable to international comparison, but can only be used as a reference, because of the localization and difference of evaluation methods and evaluation index system. We try our best to make the evaluation result close to the actual situation, but it is still limited by the publicity of evaluation data, the limitations of evaluation methods, the natural defects of investigation methods and so on.

Secondly, according to the evaluation dimensions, the score of "legal construction" (79.55), "goal realization" (75.58) and "result satisfaction" (74.34) was lower as compared to the score of "process advance" (89.47) and "rule of law cost" (89.62). It shows that the construction of law-based government is outstanding in the aspects of organizational guarantee and the rule of law construction. But the contrast between 21 Cities in Guangdong Province is large. And the satisfaction degree of government legislation and government decision-making is lower.

Thirdly, the score ofpublic satisfaction (70.98) is significantly lower than the expert evaluation (83.49) and objective index score (80.42) in 2017. Since the objective index data came from official statistics, the difference in scores is reasonable. It is to be noticed that the low score ofpublic satisfaction shows that the public expectation of the law-based government is higher than the effect of the law-based government construction.

6. CONCLUSION

A law-based government evaluation serves for the construction of a law-based government and is an important part of a basic strategy of the Chinese rule of law. This paper applies the performance evaluation into the evaluation of the law-based government construction and deriving a new concept—a Law-based Government Performance Evaluation. In consideration of some problems existing in official internal target, evaluation author took it as a special case of analytical hierarchy process and created a set of performance evaluation index system for the law-based government. It includes 5 first-level indexes, 14 second-level indexes, and 42 third-level indexes, which covers legal construction, process advance, goal realization, the rule of law cost and result satisfaction. An empirical investigation of Guangdong Province of China shows that the scheme has wide adaptability, operability, and scientific basis. But any evaluation is essentially subjective evaluation or academic point of view of a school.[74] The evaluation has its natural limitations, and it is necessary to rely on the resources of the rule of law, such as the specific country or region political system, the rule of law evolution model and democracy, so as to achieve the scientific evaluation of the rule of law.[75]The effective way to facilitate the development of the rule of law through evaluation is to open the evaluation rights instead of monopolizing the result of an evaluation. The governmental information should be publicized as much as it can in extensiveness and depth to realize the organic unity of internal evaluation and external evaluation. Besides, the result orientation and public satisfaction orientation should be enhanced to increase public participation. In the internal evaluation of the system, the rights of organizing evaluation should be unified, social evaluation should be introduced, and the implementation power should be externalized. In the external evaluation, the position of the third parties should be fostered, open up information, and promote independent third-party evaluation.

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[74] Raymond A. Bauer. *Social Indicators*. Cambridge: MIT Press, 28(1967).
[75]See HD Qian etc.*The Rule of Law Evaluation and its Application in China*, China Social Sciences140, 160(2012).

Does Criminalization of Politics Affect Political Participation?

Vaishali Rawat

Abstract

This research paper has tried to explore the relationship between the criminalisation of politics and political participation. The researcher used secondary data from the Election Commission of India (ECI) and Association for Democratic Reforms (ADR) to study the correlation between the criminalisation of politics and political participation. The paper hypothesized that as the criminalization of politics is directly proportional to the electoral participation such as voters' turnout, more vote polling on NOTA and so on. Based on the data, the researcher concluded that there is no direct correlation between the criminalization of politics and political participation, unlike in other developing countries such as Mexico, Colombia, and Nigeria.

Keywords: The Criminalization Of Politics, Political Participation, Electoral Participation.

1. INTRODUCTION

Indian democracy is often hailed as a success, defying considerable odds, and challenging many existing theories that stipulate pre-conditions for democracy like industrialisation, a developed economy, ethnic and/or linguistic homogeneity, highly developed civic culture, etc.[76] The British may have introduced some limited version of electoral politics in India; however, as noted historian Sumit Sarkar points out, Indians were responsible for shaping their version of democracy, which was quite distinct from what the British had in their mind for India, especially with the combination of full adult franchise, multi-party system, secularism, and federalism.[77]

One of India's tallest nationalist leaders also considered the chief architect of post-independence Indian democracy, Jawaharlal Nehru,was quoted in1958 as saying:[78]

> *Democracy and socialism are a mean to an end, not the end itself. We talk about the good of society. Is this something apart from, and transcending, the good of the individuals composing it? If the individual is ignored and sacrificed for what is considered the good of the society, is that the right objective to have?*
>
> *It was agreed that the individual should not be sacrificed and indeed that real social progress will come only when an opportunity is given to the individual to develop, provided 'the individual' is not a selected group but comprises the whole community.*[79]

In the same tradition, social scientist and political philosopher, David Beetham have defined democracy as a means to achieve 'autonomy.' Autonomy is the condition in which an individual can

[76] *The Success of India's Democracy*, 1 (A. Kohli, 1st ed., 2001).
[77] *Ibid, at 5*
[78] R. Guha, *Patriots and Partisans*, 138 (1st ed., 2013).
[79] *Problems of Peace and Socialism*, 1 World Marxist Review, 40 (1958), available at https://searchworks.stanford.edu/view/391293last seen on 25/03/2018.

determine the priorities for his/her personal life and share in decisions about priorities for the collectivity on equal standing with others. He further adds that in a democratic setting, 'autonomy' has more to do with an individual's right to participate in the collective decision-making process as an equal.[80]

The Constitution of India under Article 325 (read with Representation of the Peoples Act, 1951) and 326 guarantees Indian citizens, political equality, equal right to participate in political activities and the right to vote, respectively. In a representative democracy, citizens can participate in decision-making by voting for candidates of their choice. This makes political participation and elections the most fundamental and defining features of democracy, though there are other important aspects such as civil rights, free press, independence of the judiciary, etc.[81]

Over the decades, democracy in India has deepened and probably become more widespread as new kinds of voices have emerged, and hitherto marginalised sections of society have used democratic processes to acquire political power. Nevertheless, at the same time, the criminalisation of politics has become rampant. The scale and extent of its growth have caused the Supreme Court to intervene on multiple occasions, including delivering a landmark verdict in *Union of India v. Association for Democratic Reforms (2002)*, mandating candidates to declare their criminal records, if any, besides their assets and those of their immediate relatives, in their pre-election affidavits to the Election Commission of India.[82] In a yet another historic judgment in *Manoj Narula v. Union of India (2014)*, the Supreme Court, observed that criminalisation in politics is an "anathema" to the sacredness of democracy and advised the Prime Minister or Chief Ministers of states, not to induct charge-sheeted persons facing trial for offences involving moral turpitude as Ministers.[83]

The reports released by Association for Democratic Reforms (ADR) (year), exhibits the intensity of criminalisation in India's policy sphere. If we look at the national legislature, in the 14th Lok Sabha (2004-09), 24% of MPs were facing criminal cases, out of which, 11% were facing serious criminal cases (such as murder, kidnapping, rioting, dacoity, forgery, etc.), this percentage increased to 30% and 14%, respectively, in the 15thLok Sabha (2009-14), further escalating to 34% and 22% in the 16th Lok Sabha (2014-19).[84] The situation gets worse when we scrutinise state legislatures, as certain states like Jharkhand and Bihar have witnessed intense criminalisation with 73% and 58% MLAs possessing criminal records in past assemblies.[85]

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[80] D. Beetham, *Liberal democracy and the limits of democratisation*, Special Issue Political Studies, 40, 53 (1992), https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1467-9248.1992.tb01811.xlast seen on 25/03/2018.

[81]R.A. Pastor, *Mediating Elections*, 9 Journal of Democracy, 154, 163 (1998), available at https://muse.jhu.edu/article/16868last seen on 27/03/2018.

[82] Union of India v. Association for Democratic Reforms, (2002) 5 SCC 294.

[83]ManojNarula v. Union of India, (2014) 9 SCC 1.

[84]Election watch, ADR Reports on Lok Sabha 2014 & 2009, available athttps://adrindia.org/research-and-report/election-watch last seen on 20/08/2019.

[85]Analysis of Background Details of Bihar mlas& Candidates – 2010, ADR Reports on State Assemblies of Jharkhand (2009) and Bihar (2010), available at https://adrindia.org/research-and-reports/state-

The studies show that criminalisation has a direct impact on political participation, including the voting behaviour of individuals.SandraGutierrez argues that the level of criminal violence dramatically impacts – (1) citizens' decision to participate politically, (2) their forms of participation, and (3) the logic of their vote choice, based on her research in Mexico. She further adds that those who decide to take part in the electoral process consider their evaluations of security when deciding to punish or reward the incumbent government. Thereby concluding that, in situations where voters face violence, they are generally pushed away from electoral politics.[86]

With the growing phenomena of criminalisation of politics, prominent lawbreakers are increasingly turning into elected lawmakers. This poses a severe threat to public order, public safety, the rule of law besides compromising the quality of governance, as the ability of the criminals turned politicians to orchestrate violence may well be enhanced now that they enjoy the state protection and have state machinery (like the police) in their own hands. This nexus of criminality and politics could negatively impact public perceptions about democracy and the value of elections, leading to voter apathy or disenchantment.[87]

Against this background, the researcher has used secondary data from the Election Commission of India (ECI) and Association for Democratic Reforms (ADR) to study the correlation between the criminalisation of politics and political participation. Contrary to expectations, and research reports from other developing nations like Latin America and Africa, in the Indian context, there seems to be little or no correlation between the criminalisation of politics and political participation. This surprising conclusion is based on a multimodal examination of data from 15th and 16th Lok Sabha elections as well as by analysing trends in recent Vidhan Sabha elections. This conclusion points out that there is an urgent need for further research on why the Indian electoral data is showing such trends. Possible hypotheses to explain this anomaly could be framed around how essential the electoral process is for Indian voters, in the absence of a sufficiently wide civic culture, to articulate their concerns. This may be causing voters to overlook the criminal antecedents of candidates.

2. ROLE OF POLITICAL PARTICIPATION IN A DEMOCRACY

The theoretical strength of democracy over other regimes is grounded in its strong commitments to political equality, political participation, and individual liberty.[88] At a basic level, political

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assemblies/jharkhand/criminal-financial-background-mlas-and-candidates-assembly-election-2009 and https://adrindia.org/research-and-reports/state-assemblies/bihar/analysis-bihar-2010-state-assembly-elections (last seen on 20/08/2019)

[86] S.J.L. Gutierrez, *Citizens in Fear: Political Participation and Voting Behavior in the Midst of Violence*, 2012, Retrievedfromhttps://dukespace.lib.duke.edu/dspace/bitstream/handle/10161/9038/LeyGutierrez_duke_0066D_12531.pdf?sequence=1&isAllowed=y (last seen on 20/08/2019)

[87] T. Besley,*Political Selection*, 19 Journal of Economic Perspectives, 43, 50 (2005), available athttp://www1.worldbank.org/publicsector/anticorrupt/feb06course/besleyPoliticalSelection.pdf last seen on 27/02/2018.

[88] P. Pravin & B. Saunders, *The Ethics of Political Participation: Engagement and Democracy in the 21st Century*, 24 Res Publica, 3, 3 (2018), available athttps://link.springer.com/content/pdf/10.1007%2Fs11158-017-9389-7.pdflast seen on 27/02/2018.

participation can be defined as citizens' activities aimed at influencing political decisions.[89] In functioning democracies, citizens participate in multiple ways, not just in decision-making processes by voting or giving suggestions, but also through political activism, and generating political consciousness through organizing or joining demonstrations/protests/rallies, signing petitions, filing RTIs, petitioning public officials, moving court, boycotting, posting blogs, volunteering, performing plays, campaigning, fundraising, donating to a political cause etc. However, the truth remains that the scope of political participation available to citizens, in a democracy, is unparalleled.

For classical thinkers like J. S. Mill and Jean-Jacques Rousseau, participation has far broader functions and is central to the establishment and maintenance of a democratic polity, the latter being regarded not just as a set of national representative institutions but as a participatory society.[90] The French political scientist, Alexis de Tocqueville believed that the more people participate in a democracy, the more democratic it becomes.[91]Carole Pateman, a leading political theorist, suggests that "the representative institutions as they exist today are not sufficient for democracy; for maximum participation by all the people at that level socialisation, or 'social training', for democracy must take place in other spheres in order that the necessary individual attitudes and psychological qualities can be developed. This development takes place through the process of participation itself. The principal function of participation is, therefore, an educative one, educative in the very widest sense, including both the psychological aspect and the gaining of practice in democratic skills and procedures. Subsidiary hypothesis about participation is that it has an integrative effect and that it aids the acceptance of collective decisions".[92]

The most powerful and direct form of political participation is to vote in an election to choose ones, political representatives. For many, it could be the only means to express oneself and be heard, as voting is substantive in nature and has the ability to cause some real change; probably this could be the reason why it is taken very seriously. Another reason could be, as reported by a recent survey by the Delhi-based Centre for the Study of Developing Societies (CSDS), that Indians vote during elections because "they see democracy as an act of faith and election as a festival of democracy, as a ritual of belief in a great institution."[93]

The long-term ethnographic research found that similar sentiments resonated with the rural population in India. The study revealed that "the poorest and the most socially disadvantaged sections of society voted due to the sacrosanct place elections have come to occupy in modern Indian

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[89] J.W. Deth, *Studying Political Participation: Towards A Theory Of Everything*, the University of Mannheim, 4 (2001), available at https://ub-madoc.bib.uni-mannheim.de/10252/ last seen on 27/02/2018.
[90] C. Pateman, *Participation and Democratic Theory*, 20 (1st ed., 1976).
[91] R.J. Dalton, Is citizen participation actually good for democracy?, LSE British Politics and `Policy, available at http://blogs.lse.ac.uk/politicsandpolicy/is-citizen-participation-actually-good-for-democracy/last seen on 31/03/2018.
[92] C. Pateman, *Participation and Democratic Theory*, 41 (1st ed., 1976).
[93] S. Visvanathan, *AFestival of Democracy: Whatever the result Indians view Elections as a Ritual of Celebration*, Mail Today (08/12/2013), available at http://www.dailymail.co.uk/indiahome/article-2520018/A-festival-democracy-Whatever-result-Indians-view-elections-ritual-celebration.htmllast seen on 02/04/2018.

public life." It also found that they were no less enthusiastic supporters of democracy and the electoral process than the rest.

Notwithstanding impressions to the contrary, voting carried on with great enthusiasm and with a reasonably impressive voter turnout despite it not being mandatory and at times, requiring arduous journeys over difficult terrain to reach the polling station.[94]Also, for many of these people, "living in semi-forgotten corners of the nation, well outside the India that is purportedly "shining," the opportunity to prove one's membership of the nation and confirm one's status as a citizen was acutely felt. The ability to register one's existence through such a physical presence of one's body (and vote) at the ballot box was the ultimate validation of one's identity as a citizen, above everything else".[95] Political participation by citizens, actively and in large numbers, is a necessary precondition for the proper functioning of democracy, as citizens demand transparency and accountability, and pressurise the government to be more representative of the composition of society. Therefore, any degrading impact of factors like the criminalisation of politics on political participation will have serious ramifications for democracy as a whole.

3. HISTORY OF CRIMINALISATION OF POLITICS IN INDIA

The interplay between crime and politics has deep historical roots in India, although there has been a qualitative shift in the nature of their engagement over time. In the immediate post-independence period, politicians often relied on criminal elements, a phenomenon that changed by the late 1970s and early 1980s when criminals started contesting elections themselves. This move, from the periphery to center stage, came in the background of a changing electoral environment in which uncertainty and competition had both intensified.[96]

Political parties embraced and promoted such criminal candidates drawn to their deep pockets, and their command over other local enforcers ("bahubalis") as the cost of elections had exploded and party organisations had atrophied. Election costs had risen considerably over the years, thanks to the ballooning size of the population and the increase in competitiveness of elections. The resource crunch had compelled all political parties to innovate in their desperate search for financial "rents."[97]As a result, parties increasingly started placing a premium on candidates who could bring resources into the party instead of draining limited party coffers. Criminal candidates who were mostly well-endowed, thanks to the black money that they generated through unlawful activities and illegal networks, were not just able to self-finance their campaign but were also in a position to pay their respective political parties, in return for the party ticket, thereby subsidising lesser-

[94] M. Banerjee, *Sacred Elections*, 42 Economic and Political Weekly, 1556, 1556 (2007), available at http://www.jstor.org/stable/4419523last seen on 27/02/2018.
[95] Ibid, at 1560.
[96] M. Vaishnav, *When Crime Pays: Money and Muscle in Indian Politics*, 18 (1st ed., 2017).
[97] Ibid, at 9.

endowed candidates. This became a significant reason behind the subsequent augmentation of criminalisation in politics.[98]

Criminal candidates were again a preferred choice for political parties when it came to campaign cash, as candidates willing to break the law have a distinct advantage: they both have access to liquid forms of finance and are willing to deploy them in the service of politics. Loopholes ridden campaign finance laws have been no match for the torrent of undocumented cash (black money) that those with criminal ties can marshal.

In some cases, money comes from illicit, rent-seeking business activities; in others, it comes from deep-rooted patronage networks or simple extortion. Either way, parties value "muscle" because of the money that comes along with it.[99]

4. EXPLORING THE RELATIONSHIP BETWEEN THE CRIMINALISATION OF POLITICS AND POLITICAL PARTICIPATION

This study aims to analyse whether the entry of candidates with criminal antecedents into politics, mainly by winning elections have an impact on the level of political participation of citizens. As things stand, there is surprisingly little literature exploring this relationship more so in the Indian context. To supplement this sparse literature, the researcher has looked at some representative cases from other countries. A vast majority of studies from Latin America (Mexico, Colombia) and Africa (Nigeria) commonly show that criminal violence has an adverse effect on electoral participation.

In Mexico, according to Trelles and Carreras (2012), first, "criminal violence has a negative impact on voter turnout because it increases the number of disenchanted and apathetic citizens, and second, higher levels of criminal violence have a negative impact on electoral participation by increasing the level of perceived insecurity during the electoral process".[100] In another study based in Mexico, it was found by Ley (2017) that "organised crime-related violence has critical electoral consequences. It showed that the strategic use of violence by organised crime groups during electoral campaigns demobilises voters at large and regions where criminal organisations attempted to influence elections and politics by targeting government officials and party candidates exhibited significantly lower levels of electoral participation. Consistently, at the individual level, results reveal that voters living in regions where organised crime engaged in high-profile violence were more cautious when deciding whether to vote or not".[101]

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[98] Ibid.
[99] Ibid, at 19 to 20.
[100] A. Trelles& M. Carreras, *Bullets and Votes: Violence and Electoral Participation in Mexico*, 4 Journal of Politics in Latin America, 89, 99 (2012), available at https://journals.sub.uni-hamburg.de/giga/jpla/article/view/541/539last seen on 27/03/2018.
[101] S. Ley, *To Vote or Not to Vote: How Criminal Violence Shapes Electoral Participation*, 61 Journal of Conflict Resolution, 1, 1(2017), available at http://journals.sagepub.com/doi/full/10.1177/0022002717708600, last seen on 27/03/2018.

Likewise, in Nigeria, Bratton (2008) found that the violence had a negative effect on electoral participation, and the "experience of the threat of violence" had the most powerful effect on voter turnout.[102] This was also found in research done by Collier and Vicente (2008), who argued that voter intimidation is effective in reducing voter turnout.[103]Even from Columbia, García reported similar findings as above and further found that voter turnout tends to be lower in violent municipalities.[104]

The findings in the above-mentioned studies can be extrapolated to the Indian case to argue that since criminal violence has an adverse effect on electoral participation; entry of criminal elements like "bahubalis" (strongmen) into politics will heighten the probability of criminal violence with a surge in violent crimes, thereby having a detrimental impact on political participation of the electorate.Subsequently, the researcher will be presenting data from two General Elections to Lok Sabha (2009 & 2014) to test if the above hypothesis is true - that criminalisation of politics should lead to lower political participation.

5. METHODOLOGY

First, the researcher has classified parliamentary constituencies based on the criminal antecedents of MPs into three categories: (1) Constituencies where the elected MP is facing any serious criminal charges such as murder, kidnapping, robbery, violence against women, etc. (2) Constituencies where elected MP is facing any criminal charge but not serious sections of the Indian Penal Code (IPC) and (3) Constituencies where the elected MP is not facing any criminal charge. Second, the researcher has chosen four indicators of political participation based on the availability of data with the ECI:

a) Voter turnout,
b) The rate of contestation,
c) The margin of votes between winner and runner-up, and
d) Votes polled to NOTA

Finally, the researcher has contrasted them to create tables for both General Elections to Lok Sabha 2009 & 2014, for further analysis.

5.1 Data sources

The Statistical data and Reports of Election Commission of India (ECI) and the Association for Democratic Reforms (ADR).The Election Commission of India (ECI) has been publishing statistical reports of General Elections to Lok Sabha, right from the first General elections in 1951. These reports contain details of voter turnout, number of contesting candidates, winning margins, votes

[102] M. Bratton, *Vote Buying and Violence in Nigerian Election Campaigns*, 27 Electoral Studies, 621, 626 (2008), available athttps://www.sciencedirect.com/science/article/pii/S0261379408000589, last seen on 27/03/2018.
[103] P. Collier & Vicente P.C., *Votes and Violence: Evidence from a Field Experiment in Nigeria*, Centre for the Study of African Economies, Working Paper, University of Oxford, (2008).
[104] M. García, *Political Violence and Electoral Democracy in Colombia. Participation and Voting Behavior in Violent Contexts*, Doctoral Dissertation, University of Pittsburgh, 2009.

polled for NOTA (starting Lok Sabha 2014), etc. and have been placed in the public domain by the ECI on its website.

Since the landmark judgment of the Supreme Court of India, in 2003, which made it mandatory for all contesting candidates to disclose their criminal, financial and educational background by filing an affidavit, prior to the polls, with the Election Commission, ADR, along with the National Election Watch (NEW) has been collecting and collating this data, and generating detailed reports (using ews.myneta.info[105]) analysing the backgrounds of these candidates. It has conducted Election Watches for the Lok Sabha Elections 2004, 2009 and 2014, and almost all State Assembly Elections post-2003 (in the country) with the objective of helping the electorate make an informed choice and increasing the transparency and accountability in the political and electoral system of the country.[106]

5.2 Analysis

5.2.1 Does the Criminalisation of Politics have an Impact on Political Participation?

The answer to this question depends on two aspects, the impact of criminalisation of politics on voter turnout and the impact of criminalisation of politics on political contestation.

According to Robert Dahl, a distinguished American political scientist, "democracy is based on two essential elements: political participation and political contestation." Political participation refers to "the chance of all citizens to have a meaningful impact on the selection of both personnel and policies, while political contestation concerns the supply side of politics: there has to be an equally meaningful competition of candidates for public office and policy solutions. These two elements define the essence of modern democracy".[107]

5.2.2 Does Criminalisation of Politics, including Serious Criminality, has an Impact on Voter Turnout?

A key marker of political participation in a democracy is voter turnout, which captures the willingness of the elector to cast his/her vote. If we look at the average voter turnout for any of the two General Elections (2009 or 2014), we do not see much difference across the three categories in which constituencies have been classified. Although average voter turnout has increased in the range of 8.02% to 10.03% between GE 2009 and GE 2014, growth in average voter turnout for all the three categories remains consistent. This could imply that criminal antecedents of MPs are hardly a factor considered by the elector turning out to vote during parliamentary elections. However, there are three possibilities; there is a lack of information, or there is a sense of apathy or, as Milan

[105] A web application used for data entry and analysis by ADR since 2009.
[106] What we do, ADR India, available at https://adrindia.org/about-adr/what-we-do, last seen on 02/04/2018.
[107] J. Borchert, *Political Professionalism and Representative Democracy: Common History, Irresolvable Linkage and Inherent Tensions*, 267, 267 in *The Ashgate Research Companion to the Politics of Democratization in Europe* (K. Palonen, T. Pulkkinen, J.M. Rosales, 2nd ed., 2016).

Vaishnav points out, voters could have rational reasons for supporting such candidates with criminal reputation.[108]

The popular appeal of political strongmen should not be surprising, according to Vaishnav, given the widely known struggles of the Indian state to catch up with the aspirations brought about by the democratic, economic, and social changes the country has experienced in recent decades. When the state is either unable or unwilling to fulfill its core obligations vis-à-vis its citizenry, often resulting in governance deficit, the latter will naturally begin looking for alternatives like criminal politicians.[109] In the absence of credible governance, ordinary Indians seek out for representatives who will look out for their interests, even if they short circuit the official system to get things done. Thus, the criminal-corrupt politician becomes "the crutch that helps the poor to navigate a system that gives them so little access" in the first place.[110]

The assertion above is re-affirmed by the fact that in 36th parliamentary constituencies where elected MPs have been facing serious criminal charges from the last two consecutive elections, voter turnout was on an average 66.23%, which was higher than the national average of 62.32% during the same period. Red alert constituencies are those where more than three candidates have criminal cases against them, while non-red alert constituencies are those where three or less than three candidates have criminal cases against them.

Table 1: Voter Turnout in Constituencies Classified based on the Criminal Antecedents of MPs

Type of constituency	General Elections to Lok Sabha, 2014		General Elections to Lok Sabha, 2009	
	Total no. of Constituencies	Voter Turnout (Avg.)	Total no. of Constituencies	Voter Turnout (Avg.)
Elected MP facing any serious criminal charge	113	64.63%	76	56.59%
Elected MP facing any criminal charge (but not serious IPCs)	73	65.29%	86	55.26%
Elected MP not facing any criminal charge	357	67.28%	381	59.26%
Total	**543**	**66.44%**	**543**	**58.21%**

Source: ADR reports of General Elections, 2009 & 2014 and ECI's website

During GE 2009, voter turnout in 183 red alert constituencies and 360 non-red alert constituencies was almost the same. Similarly, even during GE 2014, there was hardly a difference of 4.34% in the average voter turnout between these constituencies.

[108] M. Vaishnav, *When Crime Pays: Money and Muscle in Indian Politics*, 21 (1st ed., 2017).
[109] Ibid.
[110] Ibid, at 51.

Perhaps this could imply multiple things; first, the decision of an Indian citizen to cast a vote is barely influenced by the number of criminal candidates contesting from his/her constituency, and second, tainted candidates are not viewed scornfully or contemptuously in certain parts of the country.Explaining this phenomena, Vaishnav writes that in places where the rule of law is weak (like red alert constituencies), and social divisions are highly salient, politicians can often use their criminality as a badge of honour – a signal of their credibility to protect the interest of their community and its allies, casting themselves as modern Robin Hoods operating in a polarised society. The allure of politicians with criminal reputations is, thus, a by-product of the institutional failings of Indian democracy to meet the needs of its citizenry in between elections.[111]

Table 2: Voter Turnout in Red Alert and Non-Red Alert Constituencies

Type of constituency	General Elections to Lok Sabha, 2014		General Elections to Lok Sabha, 200	
	Total no. of constituencies	Voter Turnout (Avg.)	Total no. of constituencies	Voter Turnout (Avg.)
Red Alert constituencies	245	64.11%	183	58.18%
Non-Red Alert constituencies	298	68.45%	360	58.209%
Total	**543**	**66.44%**	**543**	**58.21%**

Source: ADR Reports of general elections 2014 and ECI's website

Moving further, voter turnout in states during current Vidhan Sabha elections have been contrasted with the criminalization in respective legislative assemblies. There are two tables given below, the first one shows, top five (current) legislative assemblies with the highest serious criminalization along with their voter turnout and their rank out of 30 state legislatures (excluding Telangana), while second one shows top five (current) legislative assemblies with the lowest serious criminalization along with their voter turnout.

According to both the tables, there is no clear trend to be seen; it's not as if all top five states with the highest serious criminalisation in legislative assemblies have lowest voter turnout or vice versa. Therefore, in the Indian case, it is hard to draw a direct correlation between criminalisation in politics and reduced voter turnouts. However, further research is required to establish why India is showing this trend.

[111] Ibid, at 20.

Table 3: Voter Turnout in Top Five Current Vidhan Sabhas with Highest Serious Criminalization

Current Legislative Assemblies with highest serious criminalization	% of MLAs who have declared serious criminal cases	% of MLAs who have declared criminal cases (including all IPCs)	Voter Turnout in respective Assembly elections (Avg.)	Ranking based on voter turnout in the current state assembly elections
Jharkhand, 2014	51%	64%	66.53%	25th/30
Bihar, 2015	40%	58%	56.91%	30th/30
Maharashtra, 2014	40%	57%	63.38%	28th/30
West Bengal, 2016	32%	36%	82.66%	9th/30
Odisha, 2014	28%	34%	73.8%	19th/30

*Telangana, 2014 is also amongst the top five states assemblies with highest serious criminalization, but ECI has not published its voter turnout data separately for current Legislative Assembly.
Source: ADR Reports on State Legislative Assemblies and ECI's Reports.

Table 4: Voter Turnout in Top Five Current VidhanSabhas with Lowest Serious Criminalization

Current Legislative Assemblies with lowest serious criminalization	% of MLAs who have declared serious criminal cases	% of MLAs who have declared criminal cases (including all IPCs)	Voter Turnout in respective Assembly elections (Avg.)	Ranking based on voter turnout in the current state assembly election
Mizoram, 2013	0%	0%	83.41%	8th/30
Meghalaya, 2013	0%	2%	87.97%	3rd/30
Nagaland, 2013	0%	2%	91.62%	2nd/30
Sikkim, 2014	0%	3%	83.65%	7th/30
Jammu & Kashmir, 2014	2%	6%	65.91%	26th/30

Source: ADR Reports on State Legislative Assemblies and ECI's Reports.

5.2.3 Does Criminalization of Politics, Including Serious Criminality, has an Impact on Political Contestation?

Political contestation is an extended form of political participation, which refers to the opportunity that citizens have to compete for public office through periodic free and fair elections. It will be measured here, in terms of rate of contestation per 100,000 electors (avg.), percentage margin between winner and runner-up, and percentage votes to NOTA out of the total votespolled.In India, all citizens have a statutory right to contest elections; however, the competition gets restricted due to the increasing role of muscle and money power. In constituencies where criminals or dangerous criminals are contesting or are sitting MPs, the rate of contestation is expected to be lower, given the several instances in the past where such criminal candidates/MPs have been found involved (or

are strongly suspected to be involved) in the murder or killing of their political rivals. In such a situation, contesting against such criminal candidates is considered life-threatening.

From the current and past Lok Sabhas, some such history-sheeters are Ateeq Ahmed, former MP from Phulpur, who was found involved in gunning down BSP MLA Raju Pal; Pappu Yadav, current MP from Madhepura, who was awarded a life sentence for the murder of CPI-M MLA Ajit Sarkar; Mohammed Shahabuddin, former MP from Siwan, who was accused of killing many political rivals including former President of the Jawaharlal Nehru University Students Union and Shahabuddin's political rival, Chandrashekhar Prasad etc.[112]However, contrary to expectations, it is observed that the rate of contestation is slightly higher in constituencies with elected MPs as dangerous criminals. Nevertheless, this is of no prime significance because the difference in the rate of contestation per 100,000 electors across three classified categories is too minuscule to be noted. Besides, there is no specific trend commonly prevalent.

Table 5: Rate of contestation in constituencies classified based on criminal antecedents of MPs

Type of constituency	General Elections to Lok Sabha, 2014		General Elections to Lok Sabha, 2009	
	Total no. of constituencies	The rate of contestation per 100,000 electors (Avg.)	Total no. of constituencies	The rate of contestation per 100,000 electors (Avg.)
Elected MP facing a serious criminal charge	113	1.16	76	1.19
Elected MP facing a criminal charge (but not serious IPCs)	73	0.98	86	1.26
Elected MP not facing any criminal charge	357	1.01	381	1.16
Total	***543***	**1.04**	***543***	**1.18**

Source: ADR Reports of general elections, 2009 & 2014 and ECI's website

The percentage margin between winner and runner-up is a good indicator of the kind of support or popularity criminal or non-criminal MPs enjoy. In the tables below, the percentage difference in votes gained by the winners and the runner-up candidates has been calculated to reflect better the magnitude of the difference in votes obtained per constituency considering the fact that population varies across the constituencies and may have an impact on the margin. Nonetheless, there is no significant difference in margins as observed, and the trend lacks consistency over two General Elections.

[112] Ibid, at 4-7.

Table 6: Margin of votes between the winner and runner-up in constituencies with MPs having criminal antecedents

Type of constituency	General Elections to Lok Sabha, 2014			General Elections to Lok Sabha, 2009		
	Total no. of constituencies	The margin of votes between winner and runner-up (Avg)	% Margin between winner and runner-up out of total valid votes polled (Avg)	Total no. of constituencies	The margin of votes between winner and runner-up (Avg)	% Margin between winner and runner-up out of total valid votes polled (Avg)
Elected MP facing a serious criminal charge	113	1,71,927	17.01%	76	65,191	8.28%
Elected MP facing a criminal charge (but not serious IPCs)	73	1,49,745	14.97%	86	69,009	9.12%
Elected MP not facing any criminal charge	357	1,51,608	15.01%	381	76,462	9.97%
Total	**543**	**1,55,586**	**15.42%**	**543**	**73,704**	**9.59%**

Source: ADR Reports of general elections, 2009 & 2014 and ECI's website

None of the above (NOTA) option was provided primarily with the objective of enabling electors who do not wish to vote for any of the contesting candidates to exercise their right not to vote for any candidate without violation of the secrecy of their decision.[113] It was introduced for the first time in EVMs during five state assembly elections in late 2013, following the Supreme Court directive in the *People's Union for Civil Liberties v. Union of India judgment (2013)*, where the Court ruled:[114]

> *Democracy is all about choice. This choice can be better expressed by giving the voters an opportunity to verbalise themselves unreservedly and by imposing least restrictions on their ability to make such a choice. By providing the NOTA button in the EVMs, it will accelerate the effective political participation in the present state of a democratic system and the voters, in fact, will be empowered. We are of the considered view that in bringing out this right to cast the negative vote at a time when electioneering is in full swing, it will foster the purity of the electoral process and also fulfill one of its objectives, namely, wide participation of people.*

[113] *Press Note*, Election Commission of India, available at http://eci.nic.in/eci_main1/current/PN58_18092015.pdflast seen on 01/04/2018.
[114] People's Union for Civil Liberties v. Union of India judgment (2013) 10 SCC 1.

However, NOTA in India does not outrightly provide for a 'right to reject' as the candidates with the maximum votes still win the election irrespective of the number of NOTA votes polled. Nevertheless, NOTA can still capture voter disenchantment and disillusionment with the existing political system, including growing criminalisation of politics; therefore, it has been considered for this analysis.

It is typically expected that votes polled to NOTA will be higher in constituencies with MPs facing criminal charges, especially of serious nature. However, the data shows results on the contrary. In General Elections to the Lok Sabha, 2014, NOTA has secured least percentage of votes in constituencies with MPs facing serious criminal charges, while it has secured the highest percentage in constituencies with MPs not facing any criminal charges. Nevertheless, nothing more can be made out of it as the data is only available for last Lok Sabha.

Table 7: Votes Polled to NOTA in Constituencies Classified based on Criminal Antecedents of MPs

Type of constituency	General Elections to Lok Sabha, 2014		
	Votes to NOTA (Avg.)	NOTA per 100,000 voters (Avg.)	% votes to NOTA out of total votes polled
Elected MP facing a serious criminal charge	10,225.08	1029.32	1%
Elected MP facing a criminal charge (but not serious IPCs)	11,006	1142.38	1.09%
Elected MP not facing any criminal charge	11,327.93	1135.45	1.11%
Grand Total	**11,055.14**	**1,114.29**	**1.08%**

*NOTA button was not an option during General Elections to Lok Sabha, 2009

**NOTA is not taken into account for calculating the total valid votes

Source: ADR Reports of general elections, 2014 and ECI's website.

6 CONCLUSION

It is evident from the above analysis that in the Indian context, there is no direct correlation between the criminalization of politics and political participation. The data on both variables from the General Elections to Lok Sabha 2009 & 2014 and recent assembly elections do not conform to any statistical distribution. Thus, in the absence of any particular trend, the given hypothesis, criminalization of politics should lead to lower political participation, stands void.

The possibility of other factors influencing political participation of citizens like ignorance, indifference, intimidation, fear, or coercion, which are plausible given the criminal background of MPs, has not been explored due to the difficulty in ascertaining them. Nevertheless, with access to more fine-grained data, these can become the site of inquiry for future studies in this domain. Some

suggestions for why such a trend is observed have been discussed above like voters having a rational incentive to back politicians with criminal reputations. As such, politicians are capable of going to great lengths to do what it is necessary to secure their constituents' interests, especially in a situation where the Indian state has failed to deliver.[115] However, the data presented in the present study underscores the need for further research and analysis in this area.

[115]Supra 108.

Critical Evaluation of Global RTI Ranking: Status of India's RTI

M. Sridhar Acharyulu & Yashovardhan Azad

Abstract

The present article critically evaluates the RTI ranking globally provided by the Access Info Europe and Centre for Law and Democracy. The article compares RTI ranking and their basis as provided by the report of various countries highlighting the discrepancies in the ranking system. The emphasis is on status of India's ranking which had slipped from its higher previous spot of second to the sixth position citing reasons for the wrongful ranking. In the end, the new table of ranking had been prepared by examining the indicators for standing the rank of India's RTI.

Keywords: Global RTI Ranking, India RTI, A Critique OfRTI Ranking.

1. INTRODUCTION

1.1 123 Nations and 150 Marks

Recently it was reported that India's ranking in the significance of the RTI Act was slipped into 6th rank.[116] The media commented that 'all is not well with the Right to Information Act in India.' It was claimed to be the study of the rating of 123 countries with a functional rating of access to information laws of these countries. It was made to slip from 5th rank in 2017 to sixth this year. India was number two in 2011 when the *Access Info Europe* and *Centre for Law and Democracy* started ranking the access laws of the world. They use a 150-point scale to indicate the strengths and weaknesses of freedom of information laws around the world[117]. This score is based on 61 indicators classified under seven heads- right to access, scope, requesting procedure, exceptions and refusals, appeals, sanctions and protections, and promotional measures. India was number 2 in 2011, 2012, and 2013. Thereafter, reportedly, India slipped down to present 6th rank with 128/150, behind Afghanistan (1-139), Mexico (2-136), Serbia (3-135), Sri Lanka (4-131), and Slovenia (5-129).

Table 1: The Sliding Down of India's RTI Act

Year	Rank 1	2	3	4	5	6
2011	Serbia 135	**India 130**	Slovenia 130			
2012	Serbia 135	**India 130**	Slovenia 130			
2013	Serbia 135	**India 130**	Slovenia 130			
2014	Serbia 135	Slovenia 129	**India 128**			
2015	Not available					
2016	Mexico 136	Serbia 135	Slovenia 129	**India**	Sri Lanka	

[116]Rumu Banerjee, RTI Rank: India slips a spot to no 6, The times of India(12/10/18), available at https://timesofindia.indiatimes.com/india/rti-rank-india-slips-a-spot-to-no-6/articleshow/66172060.cms last seen on 20/08/19.

[117]Global right to Information Rating App, The RTI Rating, available at https://www.rti-rating.org/ last seen on 20/08/19.

				128	122	
2017	Mexico 136	Serbia 135	Sri Lanka 131	Slovenia 129	**India 128**	
2018	Afghanistan 139	Mexico 136	Serbia 135	Sri Lanka 131	Slovenia 129	**India128**

According to the report, India performed worst under the section "Sanctions and Protections", scoring just above 60 percent points, whereas it failed to match up to the expectations in five of the sections including scope of the RTI Act, requesting procedures, exceptions and refusals and measures taken to promote the Act, scoring just above 80 percent points. The report reveals that one of the biggest problems facing India's RTI Act is the fact that it offers no protection to officials (from sanctions) who "release information that shows wrongdoing," thus keeping them open to punitive actions for upholding the Act. Though there's a system in place to redress the problem of public authorities who systematically fail to disclose information or underperform (either through imposing sanctions on them or requiring remedial actions of them), the "sanctions provided in the law are against officials and not authorities." Besides, that an information commission can only "recommend steps to the public authorities to promote conformity with the law" further weakens the information commissioner, the report highlights. Among other problems facing India's RTI act is blanket exceptions in Schedule 2 for various security, intelligence, research, and economic institutes, the report points out. As a remedy, the global RTI agency suggests that "instead of such broad and sweeping exclusions, these interests should be protected by individual and harm-tested exceptions…""The Indian legal framework also does not allow access to information held by private entities which perform a public function, and several of the law's exclusions, including for information received in confidence from a foreign government, cabinet papers, and parliamentary privilege, are also problematic," Report says.[118]

1.2 Imaginary Reasons

The media attributed several irrelevant reasons for the 'fall,' which were never formed part of the criteria for scoring by the rating agency. According to a survey of information from the annual reports of the state information commissions (SICs) and the Central Information Commission (CIC), there are myriad reasons for this poor show. According to Transparency International India, which carried out the survey, the total number of RTI pleas received during 2005-16 were 2,43,94,951 and during the same period, the number of second appeals filed to the CIC was 18.5 lakh.[119] The vacancies are staggering throughout many of the state info commissions. Over 30 per cent, or 48 out

[118]Hassan M Kamal, India slips to sixth position in global RTI rating; failure to protect officials who provide information biggest challenge, Firstpost, (12/10/18), available athttps://www.firstpost.com/india/india-slips-to-sixth-position-in-global-rti-rating-failure-to-protect-officials-who-provide-information-biggest-challenge-5366811.html last seen on 20/08/19.

[119]Praveen Shekhar, 13 Years of RTI: Why India needs to worry about its slipping international ranking (15/10/18), available at https://www.dailyo.in/politics/rti-act-right-to-information-transparency-global-rank-access-info-europe-and-the-centre-for-law-and-democracy/story/1/27228.html last seen on 20/08/19.

of 156 whole posts are vacant throughout the state info commissions (SICs) and the CIC. Solely 12 states have stuffed all posts – of state chief info commissioners and data commissioners – of their fee, resulting in no emptiness.[120]Ramanath Jha of TII says the affirmative will of the Government is required.[121]

Media imagined its reasons like vacancies, lack of political will, frivolous applications,and so on which ever came to its imagination. One media organization guessed that fall in the rank would be a political issue also in the coming election months. Some others talked about recently proposed amendments. Some other agency added political *masala* to say it slipped down in that political regime and further in another regime.

The following tables show the rankings of Afghanistan and India:[122]

No. 1 Afghanistan & No.6 India compared:

Table 2: *Afghanistan*

Section	Points	Max score
Right of access	5	6
Scope	30	30
Requesting procedures	28	30
Exceptions & refusal	30	30
Appeals	26	30
Sanctions & protections	6	8
Promotional measures	14	16
	∑ = 139	∑ = 150

Table 3: *India*

Section	Points	Max score
Right of access	5	6
Scope	25	30
Requesting procedures	25	30
Exceptions & refusal	26	30
Appeals	29	30
Sanctions & protections	5	8
Promotional measures	13	16
	∑= 128	∑ = 150

1.3 Why Afghanistan Tops the List?

The authors studied the indicators developed by RTI rating agency, article/sections of various laws which were assessed, their interpretation and impact on working to find out how far the scoring, rating, and ranking could be justified. It has used the texts of the law mentioned and considered by the agency. The following table developed with the material provided by the rating agency for both Afghanistan and India.

[120]RTI Rank: India slips a spot to no 6,Desitrending news from India, Pakistan and Bangladesh, available at https://www.desitrending.com/2018/10/11/rti-rank-india-slips-a-spot-to-no-6/ last seen on 20/08/19.
[121]Rumu Banerjee, RTI Rank: India slips a spot to no 6, The times of India(12/10/18), available at https://timesofindia.indiatimes.com/india/rti-rank-india-slips-a-spot-to-no-6/articleshow/66172060.cms last seen on 20/08/19.
[122]Afghanistan,Global Right to Information Rating, available athttps://www.rti-rating.org/country-data/Afghanistan/and India Global Right to Information Rating, available athttps://www.rti-rating.org/country-data/India/ last seen on 20/08/19.

Table 4. Rating based on following Criteria in India and Afghanistan

S.No.	Criterion	India	Max	Ind	Afg	Remarks
I Right of Access						
1	Constitutional/fundamental right of access to information.	RTI as fundamental right(FR) under Constitution by SC	2	2	2	
2	The presumption in favour of access	Supreme Court decision states that equal weightage must be given to secrecy	2	**1** ***+ 1***	**2**	The act is well drafted. Not an issue of law, it's an observation of the Supreme Court in a case. S 8(2) and s 22 gives overriding effect. **Wrong rating**.
3	A specific statement of principles calling for a broad interpretation of the RTI law	Preamble of Constitution	2	**2**	**2**	
II SCOPE						
4	Non-citizens also can file request	Only citizens	2	1	2	This is a deficiency
5	RTI applies to all material held by Govt	Yes, S 2(f)	4	4	4	
6	Ask for info and documents	Yes,	2	2	2	
7	Executive branch with no bodies or classes of information excluded	J & K excluded and 18 Org exempted	8	5 ***+2***	8	J & K Exception does not mean that they don't have RTI. Though Exemption of some organizations is not justified, HR and Corruption provisos **ignored. Wrong rating**.
8	Applies to legislature	Yes	4	4	4	
9	Applies to judiciary	Yes	4	4	4	
10	State owned Enterprises also	Yes S 2(h)	2	2	2	
11	Extends to constitutional bodies like CEC CIC etc	Yes	2	2	2	
12	Private bodies performing public duties	2(f)	2	1	2	Serious problem in India
III REQUESTING PROCEDURES						
13	No reasons required to be given	Yes 6(2)	2	2	2	
14	Requesters can give only info wanted	Yes 6(2)	2	2	2	
15	Simple procedure of request	Yes 6(1)	2	2	2	
16	Public officials should help/	Yes 5(3)	2	2	2	

	assist					
17	Assist persons requiring special needs	Yes 6(1)	2	2	2	
18	Receipt to requester	Yes	2	2	2	
19	Transfer of RTI if info is with other PA	Yes 6(3)	2	2	2	
20	Requester's choice to be complied	Yes 7(9)	2	2	2	
21	Respond as soon as possible	Yes 7(1)	2	2	2	
22	Time lines (20 days) or less	30 days	2	**1** ***+1***	**2**	India Mexico and Sri Lanka have the same clauses, but how I, SL were given one less?
23	Requesters to be notified with extensions of 20 days or less	no extensions no mention	2	2	2	
24	Free to file requests	Rs 10 fee, free for BPL	2	**1**	2	Rs 10 fee, with many practical problems
25	Clear rules for copying charges	Rules say not to exceed copying cost	2	2	2	
26	Free for some weaker sections	No copying fee for BPL	2	2	0	India excels over Afghanistan, **ignored.**
27	There are no limitations on or charges for reuse of information received from public bodies, except where a third party (which is not a public authority) holds legally-protected copyright over the information.	No mention But it is not denial. India deserves two points on this count.	2	**0** ***+2***	2	Reuse is not prohibited hence cannot be treated as a limitation. India deserves two marks on this count. Judicial orders say that information obtained under RTI can be used as evidence. **Ignored**
		IV EXCEPTIONS				
28	Secret Law trumped by RTI	Yes	4	4	4	
29	Exception consistent with international standards	Yes	10	**10**	**10**	Harm test applies to all exceptions 8(2) it is a wrong calculation
30	A harm test applies to all exceptions, so that it is only where disclosure poses a risk of actual harm to a protected interest that it may be refused.	Info received in confidence from foreign countries, cabinet papers, privileges are not subject to harm test	4	1 ***+3***	4	Harm test applies to all exceptions 8(2) it is a wrong calculation Access to Parliament exemption also applies to all exceptions. **Rating agency ignored them**.
31	Public interest override	8(2)	4	4	4	
32	The info must be released as	8(3) Sunset	2	**1**	**2**	It is inherent

	soon as exception ceases	clauses do not apply to all exceptions		*+1*		within provisos. Should have been 2
33	Clear procedure to consult III party	11(1)	2	2	2	
34	Severability clause	S 10	2	2	2	
35	Refusal with reasons by CPIO	S 7(8)	2	2	2	
36	Simple Internal free first appeal	S 19	2	2	2	
		V APPEALS				
37	External appeal to Independent body	S 19(7)	2	**2**	**1**	India excels over Afg
38	IC appointed without political interference	S 12	2	2	2	
39	The budget approved by parliament Financial independence secured	S 13	2	2	1	India excels over Afg
40	Politically connected are prohibited	12(5)	2	2	1	
41	Independent power to review & inspect classified documents etc	18(3)	2	2	2	
42	Decisions are binding	19(7)	2	2	2	
43	Appropriate remedy and to order declassification	19(8)(a)	2	2	2	
44	Requesters have the right to lodge a judicial appeal	Constitution provided judicial review	2	2	2	
45	Appeal to IC is without fee		2	2	2	
46	Admn silence, refusal, incomplete info can be grounds for appeal	18(1) complaint 19(3) appeal	4	4	4	
47	Clear procedures & timelines	No time lines	2	1	2	Time line for II appeal is a must
48	The burden of proof on Govt	Yes 19(5)	2	2	1	
49	IC power to impose structural measures	19(8) and 25	2	2	2	
50	Sanctions be imposed if wilfully not given	20	2	2	2	
		VI SANCTIONS AND PROSECUTIONS				
51	Sanctions against officials & authorities	s20 no action against authorities	2	**1**	**0**	India is one step ahead over Afghanistan
52	Legal immunity for actions of IC	Yes s 21	2	2	2	
53	Legal protection to that release information in good faith	No such protections	2	0 ***+2***	2	Section 21 covers it, **wrong to ignore**
		VII PROMOTIONAL MEASURES				
54	PA to appoint dedicated officers		2	2	2	
55	Responsibility to promote RTI	S 26. It says may be given to IC or Govt.	2	**1**	**2**	

56	Raise public awareness - guides	26(2)	2	2	2	
57	Minimum standards for maintenance of records	No mention	2	**0** ***+1***	**2**	
58	PA s required to update records	Yes	2	**2**	**1**	
59	Training for officials should be put in place	26(1)(D)	2	2	2	
60	PA to Report annually	25(2)	2	2	2	
61	IC to report annually	25(1)& (4)	2	2	2	

1.4 Unreasonable Markings

Out of 61 rating indicators, the marking on criterion numbers 2, 7, 22, 24, 26, 27, 30, 32, 47, 51, 53, and 57 is analysed. Other than the mentioned 12 criteria, all other markings, as far as India is concerned, found reasonable and correct. Rating agency failed to apply its own standard properly and reduced the marks unreasonably in these dozen criteria. Following is the reasoning:

1.4.1 Indicator 2: *The legal framework creates a specific presumption in favour of access to all information held by public authorities, subject only to limited exceptions*: The Right to Information law of 2005 signals a radical shift in our governance culture and permanently impacts all agencies of the state. The RTI Act has reversed the rule and exception equilibrium from 'secrecy is rule and disclosure an exception" to "disclosure is a rule and secrecy an exception.' The effective implementation of this law depends on three fundamental shifts: from the prevailing culture of secrecy to a new culture of openness. There is a presumption in favour of access to all records except exempted under Section 8 and 9 of the RTI Act. Section 8(2) and Section 22 gives an overriding effect to RTI over the Official Secrets Act 1923. The RTI rating agency ignored these two provisions and quoted a statement of the Supreme Court without even giving a citation. Reducing one mark on this count is not correct. ***India should have been given this one mark.***[123]

1.4.2 Indicator 7: *The right of access applies to the executive branch with no bodies or classes of information excluded. This includes executive (cabinet) and administration including all ministries, departments, local government, public schools, public health care bodies, the police, the armed forces, security services, and bodies owned or controlled by the above:* The Afghanistan RTI covers every public authority and also the body that performs public functions. This remains a weak aspect of Indian RTI, as it did not spell specifically that aspect in its definition under Section 2(h), which made it most litigated provision of the law. For instance, the BCCI is fighting tooth and nail not to come under RTI, saying it is not a public body. In this count, India was given 5 out of 8, while all four countries above scored full. Sri Lanka got 7 of 8 because it was not clear whether all bodies created public bodies are under RTI. Agency considers jurisdictional exclusion of Jammu and Kashmir and exempting 18 organisations

[123]"Paramountcy of the democratic ideal" implies this. However, a recent Supreme Court decision states that equal weightage must be given to secrecy, which muddles the issue.

under Section 24,which reduced three marks. Exclusion of J & K does not mean that such a state doesn't have RTI at all. It has separate legislation guaranteeing and enforcing RTI Act in 2009.[124] Though exemption of some organizations is provided by law, provisos to that broader exemption on the grounds of human rights violation and corruption were ignored by the rating agency. Hence reducing marks for India on this count is not reasonable and should have been given 7 out of 8.***Two marks are cut unreasonably.***[125]

1.4.3 Indicator 22:*There are clear and reasonable maximum timelines (20 working days or less) for responding to requests, regardless of the manner of satisfying the request (including through publication):* India and Mexico was given only one point out of 2 though their RTI Act says that requested information should be given as soon as possible, with maximum limit of 30 days. Rating agency gave a full score to Afghanistan, which also said the information should be given 'as soon as possible' without mentioning any maximum limit. Sri Lanka's law says the information should be given as expeditiously as possible but prescribed two spells of 14 days.***One mark was unreasonably cut from both India and Sri Lanka.***[126]

1.4.4 Indicator 24: *It is free to file requests:* Prescribing fee of Rs 10 cost India one mark on the point of free access, which is reasonable. All five countries with 1 to 5 ranks scored 2 of 2. Sri Lanka prescribed that public authorities can levy reasonable fee, still gets 2 marks. Not reasonable. ***Sri Lanka score should have been one less on this count.***[127]

1.4.5 Indicator 26: *There are fee waivers for impecunious requesters:* India was rightly given 2 of 2 for protecting requestors below the poverty line.[128]

1.4.6 Indicator 27*: There are no limitations on or charges for reuse of information received from public bodies, except where a third party (which is not a public authority) holds legally-protected copyright over the information.* Also, judicial orders say that information obtained under RTI can be used as evidence.[129]***India rightfully deserves two marks on this count.***

1.4.7 Indicator 30: *A harm test applies to all exceptions so that it is only where disclosure poses a risk of actual harm to a protected interest that it may be refused:* Afghanistan was given 4 of 4 marks for equally applying harm test to all clauses of exemption. India was given only one mark. It is unreasonable because Section 8(2) applies harm test to all exceptions mentioned in S 8(1) comparatively.

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[124]The Government of Jammu and Kashmir tabled The Jammu and Kashmir Right to Information Bill, 2009 (the Bill) in the J&K Legislative Assembly on 7th March 2009. The Bill contains provisions that are similar to The Right to Information Act, 2005. Available at www.humanrightsinitiative.org/content/state-level-rti-jammu-and-kashmirlast seen on 20/08/19.

[125]S. 1(2) and Schedule 2, Right to Information Act, 2005.

[126]S.7 (1), Right to Information Act, 2005 and S. 25(1), Right to Information Act, 2016 (Sri Lanka).

[127]S. 14, Right to Information Act, 2016 (Sri Lanka).

[128]S. 5, Right to Information Act, 2005.

[129]Shri MukeshSahni v. Ministry of Home Affairs, Appeal No. CIC/SS/A/2009/000206 dated 30-12-2009 (CIC, 13/7/2010).

Additionally, there is another common exemption prescribed at the end of S 8(1) saying what is to be given to legislature cannot be denied to any other person. These two points should have made India to gain 3 more marks. ***India's score was cut by 3 points unreasonably.***

However, the reviewer of the rating agency commented on Slovenia as follows: It needs to be added that harm test is actually applied to the exemption on classified data (Art. 6/1/1) because it refers to the Classified Information Act. This Act prescribes formal and substantive criteria to mark information as classified. The substantive criterion is given only if it is obvious that harm could be caused to certain protected state interest by releasing information. Harm test is therefore prescribed in the Classified Information Act. Also, exemption on natural or cultural value (Art. 6/1/10) according to the Nature Conservation Act and Ministerial Decree is only applied if it is reasonably expected that the release of the information would cause illegitimate use of natural values or increased observations.[130]This shows that the points given to Slovenia are unreasonable.

1.4.8 Indicator 32: *Information must be released as soon as an exception ceases to apply (for example, after a contract tender process decision has been taken):* The law contains a clause stating that exceptions to protect public interests do not apply to information which is over 20 years old. Afghanistan and Mexico provided for that and scored 2 of 2. India has extended Sunset clause 8(3) only to three exceptions in 8(1) and thus lost one point, hence it is not an unreasonable marking.[131]

1.4.9 Indicator 47: *Clear procedures, including timelines, are in place for dealing with external appeals:* India did not fix any time limit for second appeals to be decided by external independent agency, i.e., Information Commissioner, and thus lost one point, while Afghanistan, Mexico, Serbia, Sri Lanka, and Slovenia prescribed time limit. It's a reasonable marking. Slovenia has elaborated this point: "… Art. 21 and 27 of the Access to Public Information Act refers to the General Administrative Procedure Act, which regulates the appellate procedure in detail (besides 124 general provisions that apply to both first and second instance bodies, at least 31 articles regulate the appellate procedure). Article 256 of the General Administrative Procedure Act stipulates that the appellate body must issue and serve the decision as soon as possible, but no later than in 2 months from receiving a complete appeal".[132] (Comment of a reviewer of the rating agency)

1.4.10 Indicator 51:*There is a system for redressing the problem of public authorities which systematically fail to disclose information or underperform (either through imposing sanctions on them or requiring remedial actions of them):* There is a system for redressing the problem of public authorities which systematically fail to disclose information or underperform (either through imposing sanctions on them or requiring remedial actions of them) in Afghanistan which fetched it 2 marks out of 2, while India got only one. Indian RTI Act has S 19(8)(a) and 20(2) and 25(5), but the sanctions provided in

[130]Article 6, Access to Public Information Act, 2003 (Slovenia).
[131]Supra 138 at Section 8(3).
[132]Supra 130 at Article 21 and 27.

the law are against officials and not authorities. The information commissions can only recommend steps to the public authorities to promote conformity with the law. This is a serious weakness of Indian RTI. Sri Lanka also suffered this weakness and got no marks, while India scored at least one mark. But the issue here is that rating agency noticed that Afghanistan does not mention anything on this criterion but still gave full marks 2 out of 2. **This is not a*reasonable marking for Afghanistan. There should be a reduction of 2 Marks from Afghanistan's score.***

1.4.11 Indicator 53:*There are legal protections against imposing sanctions on those who, in good faith, release information which discloses wrongdoing (i.e.,whistleblowers):* Rating agency mentioned that in India there are no such protections, while Afghanistan, Serbia had. Agency has totally ignored Section 21 of Indian RTI Act, which says: "*No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act or any rule made thereunder.*" This has given immunity to all persons who give information under this Act, such as CPIOs, Appellate Authorities and deemed CPIOs also. Next class of persons needing protection is whistle blowers. The rating agency mentioned: "*A bill is currently in Parliament (as of Sept 2011), but at the time of review there was no such protection*". The agency did not notice that Parliament passed whistle Blowers Protection.[133] ***On this count, depriving India 2 out of 2 is unreasonable.*** However, India does not consider information seeker under RTI as whistle blower under unimplemented Whistle Blowers Act.[134]

1.4.12 Indicator 57: *A system is in place whereby minimum standards regarding the management of records are set and applied:* The criterion is that "a system is in place whereby minimum standards regarding the management of records are set and applied." The rating agency ignored that India has "Public Records Act, 1993" that deals with systematic maintenance of the records in the office. Section 4 also mentions the need for proper categorization of records, and mandatory. Though the Public Records Act is not implemented properly and not supported by similar legislations in most states, the existence of law cannot be ignored. ***Hence giving 'zero' on this count to India is unreasonable, as it should have got 1 of 2 reasonably.***[135] From this analysis, the following tables emerge: Table 5, Table 6 & Table 7.

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[133]The Act was approved by the Cabinet of India as part of a drive to eliminate corruption in the country's bureaucracy and passed by the Lok Sabha on 27 December 2011. The Bill was passed by Rajya Sabha on 21 February 2014 and received the President's assent on 9 May 2014. Available at http://www.prsindia.org/uploads/media/Public%20Disclosure/whistle%20blower%20as%20passed%20by%20LS.pdf," last seen on 20/08/19.
Indian *Parliament passes Whistleblowers Protection Bill 2011". IANS. news.biharprabha.com*,last seen on 20/08/19.
[134]Whistle Blowers Protection Act, 2014.
[135]Supra 125 at S. 4.

Table 5: Reasonable/Unreasonable Ranking in India and other Countries

No	Indicator No.	Broad Criterion	India's score	Reasonable Unreasonable	Add India	Unreasonable of other states
1	2	1.Right to access	1	Unreasonable	**+1**	**-**
2	7	2.Scope	5	Unreasonable	**+ 2**	**-**
3	22	3.Required Procedure	1	Unreasonable	**+ 1**	**+ 1 to Sri Lanka**
4	24	„	1	Reasonable	**-**	
5	26	„	2	Reasonable	**-**	**- 1 Sri Lanka**
6	27	„	0	Unreasonable	**+ 2**	
7	30	4.Exceptions	1	Unreasonable	**+ 3**	**-4 Slovenia**
8	32	„	1	Reasonable		**-**
9	47	5.Appeal	1			**-**
10	51	6.Sanctions	1	Reasonable		**-2 Afghan**
11	53	6.Sanctions	0	Unreasonable	**+ 2**	**-**
12	57	7.Promotion	0	Unreasonable	**+ 1**	**-**

Table 6: Ranking of Six Nations as per RTI Rating Agency & India's Entitlement

No	Criterion	Maximum Score	Afghanistan	Mexico	Serbia	Sri Lanka	Slovenia	India	Entitlement of India
		150	**139**	**136**	**135**	**131**	**129**	**128**	
1	*Right to Access*	6	5	6	5	6	3	5	+1
2	*Scope*	30	30	30	30	28	30	25	+2
3	*Requesting procedures*	30	28	28	22	26	26	25	+3
4	*Exceptions Refusals*	30	30	28	26	23	25	26	+3
5	*Appeals*	30	26	26	29	29	28	29	0
6	*Sanctions/ Protections*	8	6	4	7	4	4	5	+2
7	*Promotional*	16	14	14	16	16	13	14	+1
			-2				-4		
			137				**125**		**140**

Table 7: The Ranking by RTI Ranking Agency and Revision after the Analysis

Wrong Ranking	Nation	Wrong Score	After Revision	Revised Score	Revised Rank
1	Afghanistan	139	**India**	**140**	**1**
2	Mexico	136	Afghanistan	137	2
3	Serbia	135	Mexico	136	3
4	Sri Lanka	131	Serbia	135	4
5	Slovenia	129	Sri Lanka	131	5
6	India	128	Albania	127	6
7	Albania	127	Croatia	126	7
8	Croatia	126	Slovenia	125	8
9	Liberia	124	Liberia	124	9
10	El Salvador	122	El Salvador	122	10

2. CONCLUSION

The analysis illustrates the hypothesis of this article, that is,flawed reasoning behind the global RTI ranking by providing the justifications for the indicators that had been discussed. The twelve indicators, that is, 2, 7, 22, 24, 26, 27, 30, 32, 47, 51, 53 and 57 which have been taken as parameters whereby unjustified deduction of marks had been made in India and other countries. The scoring of ranking agency based ontheright to access, scope, requesting procedures, exceptions refusals, appeals, sanctions/protections and promotional had been provided with a clear direction of justified and unjustified scoring. Indian RTI Act, 2005 should get 12 points which take India to *Numero Uno* with 140, not just in 2018 but ever since the Centre for Law and Democracy started rating Global RTI legislative regimes from 2011.

Has the Right to Information Regime Dismantled the Culture of Secrecy? A Critical Assessment

Prof. M M Ansari

Abstract

The commentary explores the state of RTI Act in India from the angle of a culture of secrecy present in government institutions. Professor Ansari has given a critical assessment of how obligations under the RTI Act is selectively executed. He opines that most of the major institutions don't abide by the rule of voluntary disclosure. Further, he questions public/government institutions like political parties and investigative agencies which are kept outside the purview of RTI Act.

Keywords: The Right To Information, Critical Assessment Of RTI, RTI Act.

1. INTRODUCTION

The successive Central governments have made an oft-repeated commitment to promoting transparency and participatory decision-making process to contain the scourge of corruption in public life. The instrument of Right to Information (RTI) Act is used for promoting a free flow of information to ensure transparency and accountability in the functioning of the government and to enable the citizens to make informed decisions to realize their aspirations. However, the evidence presented on the occasion of the 12th Annual Convention of the Central Information Commission (CIC) and the outcomes of deliberation on the issue of mandatory disclosures are contrary to the above claims made by the government.

1.1 Status of Voluntary Disclosure under section 4 of the RTI Act

The government's responses to various RTI applications submitted to all the central ministries have revealed that social media is aggressively used to popularize the performance of the government. And, a considerable amount of money is spent, as mentioned below, on the hiring of consultants and advertisement. It could have been avoided had there been a desirable effort to voluntarily put all the relevant details of the government's activities and its achievements in the public domain. There is considerable laxity in mandatory disclosure of information under section 4 of the RTI Act by almost all the central ministries, which is why a large number of RTI appeals and complaints are filed with the CIC, resulting in the bulging size of pending cases for disposal. And, by the time information is wholly or partly disclosed as per CIC's direction, it loses its relevance and utility. All this was revealed during the interface between major stakeholders, namely RTI activists, public information officers of the government departments and the information commissioners of the Centre and the states. These revelations pose a question: Is the functioning of the Central government duly transparent as it claims or it is hiding more than what is revealed to the public through social media and advertisements?

The Department of Personnel and Training (DoPT) directed *inter alia* all the ministries, vide in its order dated April 15, 2013, to i) appoint a Nodal Officer who should be responsible for overseeing the compliance of voluntarily disclosures under Section 4 of the Act; and, ii) ensure that every public

authority gets 'transparency audit' done by a third party. In this context, the CIC was mandated to check and conduct 'disclosure audit randomly.' Neither have the concerned public authorities complied with requirements as stipulated in the said office order nor have the DoPT and the CIC taken pains to promote openness in the functioning of the government. As a result, the operation of the government is shrouded in secrecy, as observed by the Institute of Secretariat Training and Management (ISTM), DoPT.

The ISTM audit demonstrates that most government departments do not comply with Section 4 of the Act. In the digital age, neither are the websites properly constructed nor are the information and data regularly revised and updated. Clearly, the RTI Act has not been implemented in letter and spirit, which is why the number of RTI appeals and complaints with the CIC is growing. Not only has the cost of processing and disposal of an RTI application been high and rising, but the people are also deprived of the opportunity of making informed decisions on matters of personal and professional development. Information that should be in the public domain is not, which hints at the perpetuation of 'the culture of secrecy' by the bureaucracy and the political leadership.

The study done by the ISTM, presented at the conference, shows that a huge amount of vital information is not displayed on the official websites of the different ministries/government departments. The missing information falls in the following categories:

a) Decision-making process, a delegation of powers, duties, and responsibilities of officials and the system of compensation paid to them;
b) Minutes of meetings of various committees and boards, details of the relevant Acts, rules, instruments, manuals, office orders, custodians of different categories of documents held by the organisation;
c) RTI applications and appeals received and their responses, details of Public Information Officers, FAA, Nodal Officer and other facilities available to citizens for obtaining information;
d) Details of domestic and foreign visits undertaken by the senior officials;
e) Details of mechanism to redress grievances of affected persons, mainly employees, clients, and customers;
f) Discretionary and Non-discretionary Grants and details of the beneficiaries of subsidy; and,
g) Details about Public-Private Partnerships and outcomes of such ventures.

It is not surprising, therefore, that citizens have to file RTI applications for information which should have been in the public domain. Consider the following responses to RTI applications:

a) Reserve Bank of India has recently disclosed that an amount of INR 2.28 lakh crore has been written off as the non-performing asset, over the last decade. And, in the last six

months more than INR 55,356 crore was written off by the Public Sector Banks.[136] The beneficiary institutions or individuals are, however, not identified. In the RTI regime, such a huge cost burden on the present generation should have been voluntarily disclosed to the public, but the government did not reveal it till asked for;

b) Railway Board has refused to share the details of losses in the last five years. Should it not be known to the public?[137]

c) The aspirant students are misled by the higher education institutions as UGC/AICTE do not widely publicize the approved courses of studies offered by different institutions:[138]

d) As many as 69 MPs of Lok Sabha did not comply with the requirement of disclosing their assets and liabilities;[139]

e) Record of India's complaints to UNSC on Kashmir has been denied while the relevant documents are available in reports/ books by the experts on India-Pakistan relations.[140]

f) NN Vohra Committee Report, 1983, on the nexus between politicians and criminals have been disclosed, but its annexures have been withheld as missing or untraceable;[141]

g) Special Investigation Team's closer report on 1984 riots has been withheld to discourage scrutiny of a fair investigation.[142]

h) The MCD denies details of the encroachment of land on one pretext or the other.[143]

i) RTI query reveals that the Modi government has spent INR 4343 crore on publicity. Besides, more than INR two crore is spent every month on Twitter and Facebook, which are handled by professionals.[144]

This demonstrates that the intention of the political leadership and bureaucracy is not to voluntarily disclose information until it is asked for. In many cases, information seekers have been harassed, or

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[136] G. Mathew, *PSU banks write off Rs 55,356 crore in six months*, The Indian Express, available at https://indianexpress.com/article/business/banking-and-finance/psu-banks-write-off-rs-55356-crore-in-six-months-bad-debt-4966594/last seen on 22/06/2018.

[137]R.Banerjee, *CIC orders Railway Board to provide Information to RTI Applicant*, The Times of India, available athttps://timesofindia.indiatimes.com/india/cic-orders-railway-board-to-provide-information-to-rti-applicant/articleshow/61713561.cmslast seen 22/06/2018.

[138]*Cloud on distance BTech degrees*, The Telegraph, available at https://www.telegraphindia.com/india/cloud-on-distance-btech-degrees-184695 last seen on 22/06/2018.

[139]*69 MPs fail to declare assets to I-T dept*, The Economic Times, available at https://economictimes.indiatimes.com/news/politics-and-nation/69-mps-fail-to-declare-assets-to-i-t-dept/videoshow/61506470.cmslast seen 22/06/2018.

[140] Records related to Indian complaint to UNSC on Kashmir secret: CIC, The Economic Times, available at, https://economictimes.indiatimes.com/news/politics-and-nation/records-related-to-indian-complaint-to-unsc-on-kashmir-secret-cic/articleshow/61529933.cmslast seen 22/06/2018.

[141] M .M Ansari, *Is the Modi Government Hiding More Than What It Is Revealing With the RTI Act?*, The Wire ,available at https://thewire.in/featured/modi-government-hiding-revealing-rti-actlast seen 22/06/2018.

[142]*SS News, October 31, 2017.*

[143]*Economic Times, November 14, 2017.*

[144]PTI, *Modi govt spent ₹4,343 crore on publicity, reveals RTI query*, The Hindu, available at http://www.thehindu.com/news/national/modi-govt-spent-4343-crore-on-publicity-reveals-rti-query/article23883547.ecelast seen on 22/06/2018.

information has been denied without citing reasonable grounds. The information panel has also not been able to secure justice for the information seekers.

1.2 Educational qualifications

These are not secret documents as the degree/diploma awarding institutions display the score of marks/grades on the notice boards and during annual convocations. Yet, a few institutions have chosen to disallow access to education results of individuals in high places, including the Prime Minister. Many people have acquired degrees through fraudulent methods. Delhi law minister Jitender Singh Tomar, associated with the *Aam Aadmi Party* (AAP) had to resign after being arrested for allegedly using fake degrees to enroll as an advocate.[145] Educational institutions must, therefore, function transparently rather than encouraging malpractices in admissions and examinations.

1.3 Funding of political parties

A strong political will is a must for containing the scourge of corruption in public life. The CIC has already declared that all political parties are a public authority to be covered under the ambit of the RTI Act so that the sources and methods of their funding could be duly identified and accounted for. However, political parties have connived to evade disclosure of over 80% of the collection of funds, which in effect becomes a source of influencing political decision to favour the donors at the costs of the innocent majority of citizens and the national interests. Elected members of parliament, as mentioned above, do not disclose their assets and liability. Such disclosure by the then transport minister of Kerala, Thomas Chandy, had led to his resignation for an accumulation of disproportionate incomes.

1.4 Exclusion of Central Bureau Investigation (CBI) from the ambit of RTI

When a large number of corruption cases were exposed during the RTI regime beginning from 2005, and the information literate civil society questioned CBI's credibility in matters of the fair and objective investigation, the then government considered it expedient to exclude CBI from the ambit of RTI. The vested groups across the political parties provided tacit support based on which the government acted fast to exclude CBI in 2011 from the purview of RTI so that the corrupt officials and political leaders could be protected. The political leadership that stalled the functioning of the Parliament, mainly on issues of rampant corruption, did not vehemently opposed the Government's move for shielding CBI from disclosure of information, which was responsible for investigating

[145] R Nanda, *Delhi Law Minister JitenderTomar arrested; charged with getting jobs on fake degree, cheating, forgery*, News 18, available at https://www.news18.com/news/politics/delhi-minister-jitender-tomar-arrested-on-charges-of-cheating-forgery-getting-jobs-on-fake-law-degree-1003707.html last seen on 22/06/2018.

corruption cases against the senior members of different political parties and other officials facing charges under the cases of disproportionate incomes.

The Centre issued notification dated June 9, 2011, whereby CBI was included in the second Schedule to claim absolute secrecy or exemption from disclosure of information under RTI Act, without the sanction of the law or approval of the Parliament. The government's move was intended to curb transparency and accountability from the investigations of several corruption cases against high ranking Government officers. Access to information relating to corruption is critical to containing the scourge of corruption. Based on openness in the functioning of the government departments, a transparent investigation of an alleged corrupt case is imperative, which is why CBI was initially covered under the scope and coverage of RTI to ascertain moral culpability of public servants.

What has surprised all the proponents of RTI is that any credible body made no such recommendation like the Central Information Commission (CIC), which is mandated to recommend a slew of measures for effective implementation of RTI. For instance, under section 25(1) (g), CIC is required to include in its Annual Report the list of *"recommendations for reform, including recommendations in respect of the particular public authorities, for the development, improvement, modernization, reform or amendment to this Act or other legislation or common law or any other matter relevant for operationalising the right to access information."* CIC has never made any such recommendation to keep CBI out of the purview of RTI Act. The government decision is, therefore viewed as arbitrary and untenable under the law.

This author, as a Central Information Commissioner, has had to examine several complaints and appeals against CBI that were filed before CIC for disclosure of certain information. In a large number of cases where investigation process was in progress, CBI's decision to claim exemption from disclosure of the information sought was allowed and upheld, u/s 8(1)(h) of the Act, which stipulates that there shall be no obligation to give any citizen *"information which would impede the process of investigation or apprehension or prosecution of offenders".* Under this provision, CBI enjoyed total protection from disclosure of information. Likewise, disclosures of 'personal' or 'third party' information are also protected. There was, therefore, no justification to exclude CBI from the ambit of RTI. The government that boasted its image for the passage of the RTI Act also became responsible for crippling it to protect the politicians of all hues.

Interestingly, all the matters of alleged corruption in public life that are conclusively investigated, CBI filed a 'Closure Report' before the competent authority. In such cases, CIC has duly allowed full or partial disclosure of information after due application of the principle of severability as per section 10(1) of the Act, along with the exemptions available u/s 8 of the Act. It is in such instances that CBI has felt the heat when access to 'closer report' is allowed for scrutinizing the process of professional investigation of cases. In several cases, the competent authorities like the Judiciary have

questioned the accountability of CBI based on lack of objectivity or fairness of investigation processes. The details of umpteen cases are in the public domain to prove this point.

The fact is that CBI cracks less than one-third cases while in the remaining cases the accused persons go scot-free for different reasons, namely, lack of required evidence, lack of professionalism in the conduct of relevant inquiries and connivance between investigating officials and alleged culprits. At times, CBI's investigations hide more than what they reveal about the widespread corruption in public life.

Earlier, a close nexus between the accused persons and the officials of the CBI, who investigated the cases in which the alleged culprits were implicated, was revealed by the disclosure of CBI's Director's diary. The culture of secrecy breeds corruption and provides a shield for corrupt persons and can be dismantled through the effective use of RTI. However, CBI's investigation process is currently out of the purview of the Act even though there is no evidence to demonstrate that implementation of RTI has had in any way interfered in the efficient functioning of CBI.

To improve overall governance in the functioning of public authorities, it is imperative to put a brake on corruption. Transparency and accountability of anti-corruption bodies, like CBI, are therefore critical to the task of creating a corruption-free society and for promoting democratic governance. Surprisingly, on such important matter relating to an arbitrary decision of the then Central government, the Supreme Court has taken unduly a longer time to deliver its Judgment. And, the present government has neither reversed the unlawful decision of earlier government nor pressed for an early judgment by the Court.

While government departments do not disclose mandatory information even when asked for under the provisions of the RTI Act, political parties are reluctant to reveal the sources of funds, which is the root cause of corruption. The purpose of the RTI legislation is thus defeated. The CIC is unfortunately ineffective in enforcing the implementation of various provisions of the Act, as it hesitantly and reluctantly uses its powers to impose mandatory penalty of INR 25,000 on the information provider and/or awards compensation to information seekers under Sections 20(1) and 19(8) (b) of the Act, respectively. Unfortunately, no one questions the lack of responsiveness of public authorities to comply with the requirements of the RTI regime. Instead, the information seekers are harassed, humiliated, and even eliminated for alleged vexatious applications for information.

Transparency is a critical element of good governance and a vibrant democracy. The CIC, which is responsible for enforcing the provision of the Act, may do well to salvage the RTI legislation from the clutches of bureaucracy that hides more than what it reveals.

Empirical Appraisal of Governance of Legal Aid Counsels in Courts in Delhi: A Grassroot Perspective

Prof. (Dr.) Jeet Singh Mann

Abstract

There is no dearth of statutory recognition to the right of free legal aid in India. Legal aid services provided by the Legal Aid Counsels (LACs) are free of any charges. But it has been observed that a sheer amount of trust deficit prevails among the underprivileged people to avail the services so much so that, they now prefer private legal practitioners. Based on empirical evidences, drawn from the field study, in 11 District Courts and Delhi High Court, conducted by the author, this research paper demonstrates that the declining trust of legal aid beneficiaries towards free legal aid is linked to the various factors inherent in the functioning of legal aid system. The paper also suggests measures for transforming the legal aid system into a more efficient and accountable one, by applying inferences from the field study.*

Keywords: Legal Aid Counsels, Free Legal Aid Services, Governance Of Legal Aid Counsels

1. INTRODUCTION

"*…the poor and the illiterate should be able to approach the Courts, and their ignorance and poverty should not be an impediment in the way of their obtaining Justice from the Courts.*"

--- Justice P.N.Bhagwati

The above statement by Justice Bhagwati resonates with the essence and spirit of the free legal aid system in India. There is no dearth of statutory instruments in the form of the Constitution of India and the Legal Services Authorities Act, 1987 and other subordinate legislation for empowering people to have access to courts through the instruments of Legal Aid Services System (LASS) across the nation. The LASS provides for informal process and free access to free legal aid services in various forms to the specified beneficiaries. The Central Government and State Governments have been allocating hundreds of crores of rupees to the legal aid services in India. However, the ground realities depict a shoddy picture of the legal aid programme. People do not trust the services of Legal Aid Counsels (LACs) provided under the programme due to various contributing factors, which has also been acknowledged by the higher judiciary of India in a catena of cases.[146]

One of the reasons for the above mention disbelief among beneficiaries is low quality of services, which results in a lack of trust over the services by the beneficiaries of free legal aid services. In order to weigh in this skeptical nature (lack of trust) among the beneficiaries, an empirical study was

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*Empirical Research under UGC Research Award in Law 2014-2016: Topic: "Impact analysis of competency and Commitment of Legal Aid Counsels on the quality of Services in Delhi" conducted between 2015-2016.

[146]RamchandraNivruttiMulak v. The State of Maharashtra, Criminal Appeal no. 487 of 2000 Bombay HC (26/6/2008).

carried out by the author. The study evaluated professional skills such as arguments, articulation, and drafting skills of the LACs for delivering legal aid services. Further, the study has also taken into account some parameters concerning the commitments of the LACs toward the mandate of legal aid services system. The evaluation of the legal aid system has been completed by assessing the competency and commitments of LACs. The feedbacks have been taken from the interested stakeholders such as judicial officers dealing with legal aid cases, the beneficiaries of the legal aid services, the regulators of the legal aid services, and women respondents, who were entitled to free legal aid services but opted for the paid services of private lawyers.

Firstly, the paper illustrates the issues faced by free legal aid beneficiaries within the existing legal aid system. Further, based on the research findings the paper then illustrates on factors responsible for the trust deficit while discussing various structural glitches present in the legal aid services which have direct linkage towards the shift of free legal aid beneficiaries from LACs to private legal practitioners. In the end, the paper recommends a few structural reforms based on the feedback received from various stakeholders and the author's observations while studying the legal aid system.

2. CRITICAL ANALYSIS OF LEGAL AID SERVICES IN INDIA

The idea of free legal aid stems from the welfare mindset of the State. It aims to provide access to justice. Access to justice can be termed as "the ability of people to seek and obtain a remedy through a formal or informal institution of justice, and in conformity with human rights."[147] The first documented reference for free legal aid can be traced in the 14th Law Commission of India in 1958. Later, India mandated the provision for free legal aid under Article 39 A of the constitution of India. Further, in India, it has been recognised as a fundamental right under Articles 21 of the constitution of India. Additionally, to accomplish the objectives of the aforementioned constitutional mandate, the Legal Services Authorities Act, 1987 was implemented.[148] It also mandated to establish a nationwide network for providing free legal aid services to the weaker sections of the society.

2.1 Governance of the legal aid system in India

In order to instrumentalise the concept of legal aid services in India, the National Legal Services Authority (NALSA) was constituted in 1995. NALSA is the principal authority for implementing and monitoring legal aid programs across India. It aims to promote legal literacy, setting up legal aid clinics in universities and law colleges. It is the apex body to authorize and lay down the policies

[147] United Nations Development Programme, Access to Justice Practice Note (2004). United Nations Office on Drugs and Crime, Access to Justice: Legal Defence and Legal Aid (2006)
[148] Act No.39 of 1987; w.e.f. October 11,1987

and principles necessary for making legal aid available under the Legal Services Act (LSA Act), 1987.

Further, the Supreme Court Legal Services Committee has also been constituted under the LSA Act for effective access to justice in the Apex Court. The committee grants the cost of preparation of the matter and provides an advocate for preparing and arguing the case. The Committee, after ascertaining the eligibility of person, having an annual income of less than INR 1.25 Lakh or belonging to any of the category mentioned in the LSA Act, provides necessary legal aid.

At the state level, State Legal Services Authority (SLSA) has been constituted to allocate the policies and directions by the NALSA, to provide legal aid to the people and to conduct *Lok Adalats* (Public Courts) in the state. The honorable Chief Justice of the respective High Courts heads the SLSA, and a serving judge of the High Court is nominated as the executive chairman of SLSA. In addition to SLSA, every district has its own District Legal Service Authority (DLSA) to implement the legal service programme at the respective districts of the state. DLSA is chaired by the District judges in the respective districts.

It is reiterated that there is no dearth of statutory enactments on the right to free legal aid in India. Legal aid system is not functioning efficiently and not catering to the requirements of the beneficiaries. Legal aid services provided by the empaneled legal practitioners are free of any charges, but people in majority are reluctant to approach free legal aid authorities for availing such services.

The author has examined, both, the primary and secondary sources of information on the subject, which include the relevant provisions of the Constitutional Law, the Legal Services Authorities Act, 1987, Order 33 of the Code of Civil Procedure, 1908, Section 304 of the Criminal Procedure Code, 1973, the National Legal Services Authority (Free and Competent Legal Services) Regulations, 2010, and National Legal Services Authority (Legal Aid Clinics) Regulations, 2011, for in-depth scrutiny of the existing literature on regulating legal aid services. Additionally, the author, for this research assignment, has also surveyed the reports in newspapers on various issues related to legal aid services in India. Further, serving and former member secretaries at the NALSA, Delhi State Legal Services Authority (DSLSA), and the Supreme Court Legal Services Committee were also consulted to critically study the functioning of the legal aid system, specifically in Delhi and generally in India. It was learned that the programme, even after spending huge resources, has not been able to achieve the objectives, for which the system of legal aid has been created in India. The public is under the impression that such legal practitioners are not committed and sincere to the objectives of the legal aid programmes but have considered these services as a platform for cheap popularity only.

2.2 Persons and services covered under free legal aid services

People who lack in resources to engage the paid legal services of the advocates such as women, scheduled tribes (ST), scheduled castes (SC), workman, the person below the poverty line, a person having an annual income less than the specified stipulated income limit, victims of disaster, disabled persons, etc.[149] These beneficiaries are entitled to legal aid services in the form of payment of court fees, process fees and all other charges for drafting, preparing and filing of any legal proceedings. However, the programme of legal aid services has not yielded desirable outcomes when it comes to providing access to the judicial system.

3. SCHEME OF THE EMPIRICAL STUDY

The basic objective of the study was to identify the impediments to the delivery of legal aid services to the respective beneficiaries. Further, the observations from the study also aid in deducing viable solutions of the identified problems by involving all stakeholders involved in the legal aid services. The empirical study has been designed to explain and explore the nexus between various dependent and independent variables such as dearth of committed LACs, lack of competency of the LACs, non-accountability of the LACs and the quality of free legal aid services received by beneficiaries. The LAC's commitments and competencies were determined based on availability, interaction with the beneficiaries, time spent on legal aid services, a deputation of juniors, demanding money from the recipients, the commitment shown to protect the interests of the beneficiaries and other relevant parameters. The important variables include the impact of the lack of competency and commitments of LACs on the quality of legal aid services and lack of trust of the beneficiaries over the legal aid system.

The empirical study included primary data collected through structured and unstructured questionnaires from the major stakeholders of the legal aid programme in North, South, East, West, North West, South East, Central, Shahdara, New Delhi, and South West and North East Districts in Delhi and Delhi High Court. This empirical study included the participants from the DLSA, the Delhi High Court Legal Services Authority, and the DSLSA New Delhi. To scrutinise the real character of the functioning of the legal aid services, the author needed to carry out empirical research for evaluating the quality of services provided by the LACs.

During the course of the said study, as per the structured and unstructured questionnaires collected the primary data from 702 beneficiaries of legal aid services; 173 judicial officers dealing with legal aid cases in civil and criminal subject matters; 11 Regulators (Member Secretaries) of the Delhi

[149]Section 12, the Legal Services Authority Act, 1987, requires LSAs to give free legal aid to: Members of Scheduled Castes, Members of Scheduled Tribes, victims of trafficking in human beings or beggar, Women, Children, Persons with disabilities, Persons under circumstances of undeserved want e.g. victims of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster, Industrial workmen, Persons in custody, Economically vulnerable person.

Legal Services Authorities (DLSA) in Delhi High Court Legal Services Committee; 174 Legal Aid Counsels (LACs); and 1039 women at Special Courts and Family courts, who were eligible but did not opt for the legal aid services for their disputes at 11 District courts in Delhi and Delhi High Court.

4. THE STATE OF BENEFICIARIES' PREFERENCES IN THE LEGAL AID SYSTEM

4.1 The paucity of resources compel beneficiaries to opt for free legal aid service regardless of quality

In the study carried out by the author, about 98 percent (688 out of 702) of the beneficiaries opted for free legal services because they had no resources to engage in a paid private counsel for their litigation. Therefore, these litigants thought that if they had enough resources to afford private legal practitioners, they would not have approached for the free legal aid services to the DSLA offices in respective Districts. This compulsion is directly linked to the lack of resources where the sole driver to approach LACs is financial constraints, not the nature of the services provided under LAS. Thus, they are compelled to opt for free legal service.

4.2 Legal aid services are free, but people are not keen to opt for it

The above narrative makes it evident that the beneficiaries choose free legal aid out of compulsion, not by choice. More than 64 percent of beneficiaries thought that they would not opt for the services of LACs again if they are financially sound. Further, in terms of preferences, around 49.6 percent of beneficiaries preferred choosing a paid legal practitioner over LACs. Furthermore, about 39.5 percent of the beneficiaries were of the opinion that they would never approach the free legal aid service again. In total, almost 89 percent of legal aid beneficiaries were not keenly interested in availing free legal aid service for them again. Thus, it is apparent from the study that beneficiarieswere not keen on opting for the free legal aid for the second time.

It was also noticed that if the beneficiaries had resources, they would have preferred to appoint a paid private legal practitioner rather than approaching the free legal aid services for their claims/ grievances. Therefore, it is clear that in a majority of cases, legal aid beneficiaries opt for free legal aid services as a compulsion due to lack of resources. For them, the non-availability of resources would have been the only reason to approach the DLSAs for the free legal aid services.

4.2.1 Entitled women beneficiaries are also not willing to opt for LACs

Another aspect which came to notice was the disinclination of women in availing legal aid services. One might question why women beneficiaries, in particular, are not willing to opt for a free legal aid service? To investigate this unwillingness, a special category of women beneficiaries was taken into consideration from Family and Special women's courts. These financially sound women beneficiaries

were entitled to free legal aid and yet decided for a paid private legal practitioner (PLPs). The study showed a grim reality for this category in particular and free legal aid beneficiaries in general. Around 97.2 percent of the entitled women beneficiaries, wh,ich were well aware of their rights under the LSA Act, did not even avail of the services of LACs. They believed that LACs are low in quality when it comes to fighting for their cause. Moreover, according to these entitled women beneficiaries (around 95 percent)that LACs are incompetent and not committed towards the cause of free legal aid services.

Therefore, women beneficiaries, who were entitled to free legal aid services, showed a high degree of reluctance to approach LACs. In the study, it was also found that these women preferred to choose the paid services of a private lawyer over the free legal aid. There seems to be a fair amount of trust deficit, as evident by the empirical outcomes, among the legal aid beneficiaries of LACs. This trust deficit prevails due low quality of free legal services; lack of commitment and competency; and low standards of accountability. The pitfalls exist due to various intervening causes. The next sections will delve into the inherent causes that lead to the above-observed trust deficit among free legal aid beneficiaries.

5. COMMITMENT OF THE LACs

LACs, registered with the bar councils of the states as described under the Advocate Act 1967, are empaneled for providing free legal aid services at Civil and Criminal Courts across the nation. They are generally engaged for three years on a case by case basis or ad-hoc basis. This leads to a lack of devotion, probably due to the nature of engagement. Additionally, private practice promises a much better quantum of honorarium as compared to the legal aid services. It was also seen that the LACs were paid on the basis of allotted cases, where honorarium is paid in stages, without any usual payment like a regular employee.

Due to the ad-hoc arrangement, the availability of LACs was affected. This can be deduced from the fact that 29.3 percent of LACs were accessible for the free legal aid litigation on a part-time basis only. Further 28.2 percent of the LACs were of ad-hoc commitment, where they interact with the system of legal aid services for the particular case only. In both the categories, more than 57.5 percent of the LACs had no full-time availability, because of ad-hoc empanelment by the DLSA. The duration of the availability is also dependent upon the number of legal aid cases allotted to the LACs. It was also found that these LACs were otherwise busy in their private practices in various courts in Delhi.

5.1 The LACs associate themselves with legal aid services for career enhancement

This section will deal with the motive of the LACs to join legal aid services. It becomes crucial to reflect upon the commitment of such professionals. In order to evaluate their purpose for association with these services, the viewpoints of both regulators and LACs themselves have been taken into consideration.

Regulators of legal aid services at DSLA and Delhi High Court legal service authority, in particular, were a firm believer of the altruistic motives of LACs. The data also affirmed that around 54.5 percent of the regulators opined that the LACs join legal aid services for promoting and supporting the causes of the beneficiaries of the legal aid services. A minuscule, approximately 9.1 percent, one out of 11, regulators felt that LACs join legal aid services for employment opportunities. Another 36.4 percent of regulators were of the views that LACs joins legal aid services to gain experience in courts. The moment LACs attain some exposure and become confident about practicing in courts; they willfully depart from the legal aid institution. As per the views of these regulators, LACs are allowed to practice and experiment at the cost of poor beneficiaries.

In addition to the above narrative, about 59.2 percent (103 out of 174) of LACs interviewed were of the opinion that they joined legal aid services for supporting the causes of deprived and downtrodden strata of the society. On the other hand, approximately 19 percent of LACs responded that they joined the legal aid services to get good experience and exposure to court practices. According to them, a legal aid service is a platform for better opportunities. Some 4.6 percent of the LAC respondents were of the view that they became part of the legal aid system for the employment opportunities. Further, around 2.3 percent of the LACs accepted that they enter into the service for acclimatisation in the profession.

Moreover, about 14.9 percent of the LACs were of the view that they get into legal aid services for learning and preparing for selection in the higher judiciary as judicial officers. Therefore, it is evident that around 40 percent of the LACs join legal aid services on those grounds, which are not even remotely connected to the very mandate of the legal aid system. Therefore, the experience of practicing in courts, not the competency and commitment, is the primary reason for the empanelment of the LACs.

5.2 Preference to private practice over free legal aid services

According to the approximately 55.2 percent (387 out of 702) of beneficiaries in 12 courts responded that the LACs were not so keen to interact with them and preoccupied with their private practices. The beneficiaries also observed that most of the LACs give priority to the private practice over their legal aid services This results into the issues of non-availability for arguments and not prepared for arguments, which is not limited to one district or one judge in civil or criminal courts but also have affected the governance of legal aid services across the State.

Further, the nature of the grievances or complaints filed by the beneficiaries to regulators and judicial officers and judicial officers to the regulators is also a reflection of the low quality of commitment of the LACs. Feedback from a majority of the judicial officers, regulators, and beneficiaries depicts that most of the LACs don't prepare for arguments and always come late. It can

be said that LACs devote much of their time in private practices rather than in serving legal aid beneficiaries.

5.3 The LACs are focused on demanding money from beneficiaries instead of quality legal aid services

Legal aid services are delivered free of costs across the nation. The legal aid scheme is funded by public money and regulated by the NALSA and DSLSA in Delhi. The LACs providing free legal services are paid a prescribed honorarium in stages for defending the interests of the beneficiaries. It is also pertinent that beneficiaries are not required to pay for any services under the legal aid system. Although in practice, it is happening otherwise. Beneficiaries have been compelled to pay money before the commencement of trial or submission of suit or other applications by LACs. According to law, demanding unlawful consideration from the underprivileged beneficiaries for rendering legal aid services is a crime and contrary to the mandate of the LAS in India. As per the opinion of 37 percent of beneficiaries, LACs demanded money for providing legal aid services to them. The said problem of illegally demanding money is not confined to one particular district in Delhi.

Additionally, 56.4 percent of beneficiaries either did not pay money or were reluctant to disclose it to the team of researchers on the apprehension that their LACs would be withdrawn after such disclosure. Such respondents were under the impression that in the case of withdrawal of such LAC, they would be stranded without the LACs. It is essential to mention that there is not a single district or court in Delhi, where LACs do not demand the money. It is a matter of variance in the degree of money demanded. The data, coupled with other feedbacks from the judicial officers on demanding money, is a reflection of the extent of the lack of commitments of the LACs toward the legal aid system. The only option available to a beneficiary is to complain to the respective regulator. It was also seen that the regulators had received complaints from beneficiaries regarding LACs demanding money, and around 90.9 percent of the regulators (10 out of 11) had warned the LACs in most of the complaints. Whereas only 1 out of 11, that is, 9.1 percent of regulators had replaced the LACs.

The regulators have no power to expel the name of the LACs without the prior approval from the DSLSA (head office). But, the DSLSA or the Bar Council of Delhi or Bar Council of India (BCI) seldom punish any LAC appropriately, for demanding money from the beneficiaries, which is grave misconduct on the part of any legal practitioner. Further, the LACs may resign or refuse to entertain the allotted case or withdraw at any point in time from the list of empanelment. In such instances, the regulators and the beneficiaries of the legal aid services are helpless. The beneficiaries suffer the most in such contingencies. LACs were also asked about the reasons for demanding money to have a comprehensive understanding of this issue.

5.3.1 Reason for demanding money: LACs perspective

In the study, around 2.3 percent of LACs (4 respondents) accepted that they demanded money from the beneficiaries for the services rendered. As per these respondents, a LAC is required to make an initial payment for the relevant documents & charges, and the DLSAs make no advance payment at the time of allocation of cases to the LACs. After that, bills and forms are to be submitted to the DLSAs for claiming honorarium in stages. The LACs replied that there is undue delay in the payment process. So, they are compelled to demand money from the beneficiaries. Further, the issue of honorarium has also been acknowledged by the regulators as one of the reasons for lack of commitment. Also, around 18.2 percent of the regulators had admitted that low honorarium does create difficulties for LACs.

Therefore, it has been observed that money does come as part of a hindrance when it comes to quick delivery of legal aid. It has also been observed that due to a complex, technical, and prolonged process of money payment, honorarium for the legal aid services is hardly paid within a reasonable time frame. There is no time bound action for making the payment. Such inordinate delay in the payment of honorarium frustrates LACs. According to the majority of LACs, payment of honorarium sometimes takes years together. No advance payment of sufficient amount to the LACs is made at the time of allocation of cases. The LACs themselves meet all the expenses at the time of filing suits and other proceedings. Therefore, these LACs have been compelled to adopt a practice of demanding money from the beneficiaries for their survival. Even though there are some concerns with the delayed payment of honorarium to the LACs, but the justification given for exacting money is unreasonable.

5.4 Administrative deficiencies in the las system contribute to the level of commitment

Administrative deficiencies cause deadlocks and often results in miscommunications among the person working in the organisation. The LAS system suffers from it too. As the study shows that around 10.9 percent of the LACs felt that judicial officers do not respect and provide due care in case of free legal aid services. This kind of attitude towards LACs by judicial officers directly affects the very morale of the LACs. It supplements distrust among LACs and judicial officers to the extent that it causes the disruption of workflow. Another important aspect related to administrative deficiencies is quality infrastructure. Quality infrastructure provides positive impact and higher efficiency in delivering any public welfare scheme. In case of LAS, it lacks behind so much so that around 18.2 percent of the regulators blamed the low quality of infrastructure for the difficulties faced by the LACs.

5.5 LACs do not adhere to the motto of legal aid services

It is apparent that beneficiaries and other stakeholders of the legal aid services are reluctant to engage the LACs in defending their interests in civil and criminal courts in Delhi. It is also observed that most of the LACs want to conclude cases as early as possible to get the honorarium in stages from the DLSAs. The outcome and duration of the trial of the case are not so relevant in making payment to the LACs.

As per the assessment of the judicial officers (75.1%), most of the LACs are partially devoted or not at all, to the mandate of the legal aid services. These judicial officers found that majority of the LACs are occupied with a private practice and are hardly interested in the protection of the interests of the beneficiaries. As per the observations of most of the judicial officers, the LACs use legal aid system as transit and platform to gain experience and develop contacts, as a means of experimentation and survival benefits at the cost of the beneficiaries of legal aid services. This corrosion in the dedication of the LACs leads to the erosion of trust of people over the free legal aid services.

Further, the regulators of legal aid service have also expressed the same concerns that LACs are preoccupied with a private practice. About 37.3 percent of beneficiaries revealed that LACs are not devoted to the services of the legal aid system. Around 13.7 percent of the beneficiaries opined that LACs were very hostile towards their interest. Another 18.5 percent beneficiary considered that LACs were not at all committed. According to 69.5 percent of the respondents,LACs are not entirely committed and devoted to the causes of beneficiaries. The problem of lack of commitment is not confined to one particular district but also have affected the operations of the legal aid services across the city.

6. COMPETENCY OF THE LACs

Majority of the LACspossesses just average professional capabilities. Professional competency is one of the primary essential components of the quality of services in any profession. It is a well-established fact that LACs are key stakeholders, the pilots, of the free legal aid services. The system of legal aid services cannot flourish or fly without competent and committed LACs. If a LAC is not well versed in the law and practice in the relevant subject matters, then the entire system of legal aid is bound to fail.

6.1 Assessment of various aspects of competency

The evaluation and assessment of the competency of LACs have been done on three aspects. Namely, quality of arguments, quality of articulation, and quality of drafting of the LACs. Further, the author took into account the independent assessments of the services of LACs by legal aid beneficiaries, judicial officers, and regulators for drawing some logical inferences.

6.1.1 Argument skills of the LACs

Argumentation plays a crucial role in the field of law. It can be defined "as a verbal, social and rational activity aimed at convincing a reasonable critic of the acceptability of a standpoint by putting forth a constellation of one or more propositions to justify this standpoint."[150]The study showed that around 55.9 percent of the beneficiaries were of the view that the quality of argument skill of the LACs is below average. It was also observed that 21.7 percent of the beneficiaries felt that the LACs are just average in their skills. Moreover, 62.4 percent of the judicial officers (judges) in 12 courts were of the opinion that the argument skill of the LACs is just average. And, the same category of the respondents', that is, judicial officers also felt that 16.1 percent of the LACs are below average in their argument skills. However, regulators are contrary to the above narrative. About 45.5 percent of regulators were of the opinion that the quality of arguments made by LACs is fairly well. Additionally, it was inferred that around 72.8 percent(8 out of 11 regulators), who was also responsible for the empanelment of the LACs, had assessed that most of the LACs are above average and none are below average in their argument skills.

6.1.2 The quality of articulation of the LACs is just fair

The quality of the presentation of the facts and law is also crucial in the litigation process. If a legal practitioner is unable to articulate the relevant facts and law for claiming some relief, then it is likely to jeopardize the interest of the client/litigants. A claimant is unlikely to get any relief from the court, which will also affect the reputation of the said legal practitioners in the future.

As per the empirical study, more than 62 percent of beneficiaries rated the quality of articulation made by LACs as severely poor, with only 15.7 percent of LACs having above average articulation skills. Further, 61.8 percent of judicial officers, in civil and criminal matters, rated LACs as just average in the event of articulation skills. Whereas around 18.5 percent of the judges have found it to be below average. Again, regulators had a contrarian view, as per the assessment, about 72.7 percent of regulators, in eleven districts and Delhi High Court, believed that LACs poses good articulation skills.

6.1.3 Drafting skills of LACs are around average

The writing skills are one of the most valuable expertise of legal practitioners. Quality of drafting plaints, applications, counter-affidavits and affidavits, and other relevant documents is desirable at trial and appellate courts. These are part and parcel of the adjudication processes in courts. Litigants are likely to be affected severely by the poor quality of drafting of legal documents. The quality of written submission is the third relevant category for the evaluation of competency of LACs.

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[150] Omnia E. El-Shenawy and Abdel MoneimShehatab, *Lawyers' Argumentation Skills: A Comparison between Criminal and Civil Cases*, 211 Procedia - Social and Behavioral Sciences 1036, 1042 (2015), available athttps://ac.els-cdn.com/S1877042815054786/1-s2.0-S1877042815054786-main.pdf?_tid=b904a99c-ec6c-44ab-852c-d85c65066012&acdnat=1531899098_00091bf56bb45ea98591bc452e157e00last seen on 18/07/2018.

Competency of LACs on written skills has been determined based on the assessment of judicial officers and regulators. Surprisingly, on evaluating the drafting skills of the LACs, it came out that about 54.5 percent of the regulators thought that LACs are good in drafting relevant documents needed for providing legal aid services to the beneficiaries. Another 45.5 percent felt that the drafting skills of the LACs are just fair or average.

On the other hand, around 62 percent of beneficiaries rated the drafting skills of LACs far below the average, with about 23.4 percent of beneficiaries stated the drafting skills of LACs as very bad. Besides, about 50.3 percent of the judicial officers recognized the writing skills of the LACs of ordinary caliber. Besides, 28.9 percent of the judicial officers in the same category enunciate that the LACs are below average for the drafting skills.

6.1.4 Overall competency professional skills of LACs arejust average

The assessment of professional skills such as language skills, articulation, and drafting skills, have been the broad parameters of the competency of LACs. Approximately 49.7 percent of the judicial officers and 54.5 percent of regulators indicated that majority of the LACs are of average professional skills. Around, 26.1 percent of judicial officers thought that overall professional skills of the LACs are below satisfaction level. Furthermore, the majority of beneficiaries around 63 percent (40.5% Bad + 22.4% Very Bad) have rated the overall competency skills of LACs below average.

Therefore, the assessment indicates that LACs are not competent to handle serious crimes involving a matter of life and death. As per the considerate views of 89.3 percent of the Judicial officers (Senior Judicial officers in Session Courts and other Special Courts, dealing with serious crimes), LACs are never engaged in serious crimes such as rape, murder, culpable homicide not amounting to murder, narcotics and other major offenses. Such senior judicial officers always consider the appointment of *amicus curiae*, generally experienced legal practitioners of competency known to the judicial officers, are engaged to protect the interests of poor people, who are not in a position to hire a counsel at own.

6.2 Private legal practitioners are more adept in professional skills when compared to LACs

A comparative examination of the capabilities between the LACs and the private legal practitioners (PLPs) was also necessary to review the professional efficiency of the LACs. As per the opinion of 61.8 percent judicial officers, the LACs are just average in case of argument (language) skill. Whereas 54.9 percent of the judicial officers find the quality of argument skills of the PLPs of above average degree. It is also inferred from the analysis that the majority of the LACs are covered under the average category, whereas the majority of the PLPs represent the above average category.

In the case of the drafting skills, 56.6 percent of the judicial officers believed that PLPs are good at drafting abilities, whereas 50.3 percent of the judicial officers find the LACs of average ability. On

assessing the overall capabilities of private legal practitioners and LACs, it is revealed that PLPs are better skilled than the LACs. There is a wide gap between the professional skills of the PLPs and LACs for providing quality legal services. Further, about 93.8 percent, 975 out of 1039, of the women respondents, from Family and Special women's courts, expressed that high quality of commitment and competency of paid private legal practitioners as the two principal factors for overlooking the free legal aid services provided by the LACs. On the other hand, 5.8 percent of such respondents appointed paid private lawyers on the grounds of accountability, trust, and approachability for interaction and discussion for the claims of the respondents. The above narrative also validates the reasons for which women, beneficiaries who are entitled to free legal aid services, prefer private legal practitioner over LACs. This is the primary justification for the legal aid beneficiaries to prefer PLPs instead of the free legal services of LACs.

6.3 The process of empanelment affects the competency

As shown above that it's the lack of competency of LACs that negatively affects the LAS system and demotivates legal aid beneficiaries to even opt for free legal aid. LACs are inducted in the LAS via an empanelment process. It becomes pertinent to study the effectiveness of the process. To find out the effectiveness of the empanelment process for the employment of the LACs, regulators were approached to specify the quality and competency considered by them for the empanelment of the LACs. Notably, around 72.7 percent of the regulators had found experience or practice in courts over commitment and competency of the LACs as one of the criteria for the empanelment. It is also important to mention that not a single panel, for the empanelment process in 12 Courts in Delhi, conducts written exams on practical issues on the law.

No board or committee for the empanelment adopts parameters of competency and commitment for the empanelment of the LACs across the State. During the course of the study, it was also observed, which is also corroborated by various senior judicial officers, that mainly LACs are empanelled based on recommendations from senior judges of the same court or other courts, that is,only one out of 11 (9.1 percent) regulators accepted that such appointments are made because of recommendations of various senior judicial officers.

6.4 Regulators & LACs blame beneficiaries for the pitfalls

Although, the narrative above explains the issues faced by the 'beneficiaries of the legal aid' on the one hand and the motives under which LACs pursue the noble cause of legal aid on another hand. It becomes rationally important to put forward the issues faced by the LACs while dealing with beneficiaries. The study shows that about 45.5 percent of the regulators blamed the beneficiaries for the problems caused to the LACs. Furthermore, a good number of LACs, approx. 21.8 percent, condemned the attitude of the beneficiaries for the low quality of the interface between them. As per

these LACs, beneficiaries' have unreasonably high expectation from the free legal aid system. In cases where the courts do not provide desirable relief, they blame the LACs for the failure.

6.5 Inadequate commitment and incompetence of the lacs have negatively impacted the quality of legal aid services

As the study demonstrates, that the reluctance on the part of free legal aid beneficiaries is widespread across the 11 District courts and the Delhi High Court. The reasons for this reluctance have its roots in an inadequate commitment and incompetence of the LACs empaneled in the LAS. On commitments, LACs concentrate more on individual growth rather than on the notion of free legal service. Moreover, issues like improper infrastructure and delay in payment of honorarium demotivate them towards the very cause of free legal aid.

Additionally, LACs are incompetent in terms of argumentation, articulation, and drafting of any case. On comparing with a paid legal practitioner, their overall skill set stands substandard. Hence, inadequate commitment and incompetence of the LACs have negatively impacted the quality of legal aid services.

7. NON-ACCOUNTABILITY OF LACs

7.1 Lack of adequatemonitoringsystem over the services of LACs

It is essential to mention that the LACs after empanelment is placed under the authority of a regulator (Member Secretary) for providing quality legal aid services and control over the conducts of LACs. It is pertinent to note that as per the mandate of the Para 10 of the NALSA (Free and Competent Legal Services) Regulations 2010, every legal service institution, for monitoring the activities of the legal aid services including the functions of the LACs, will constitute a monitoring committee. It was noticed that except Delhi High Court none of the eleven District courts in Delhi have any such committee. Some of the regulators were also not aware of such requirements. The non-existence of any monitoring system for reviewing the day-to-day activities of the LACs has bred uncertainty in the operations.

Further, in the absence of such a support mechanism to guide and advise the LACs in the case of any difficulties during litigation have also led to a deterioration in the quality of legal aid services. The regulators in the said DLSAs have not adopted any tool or technique to ensure the accountability of the LACs for the quality legal aid services. Around 54.5 percent of regulators, 6 out of 11 respondents, had acknowledged that they do not have any specific mechanism in place to monitor the commitment and competency of LACs. It can be logically inferred that more than 50 percent of the regulators do not use any such method to regulate commitments and competency of LACs. This has led to ineffective governance over the operations of the LACs.

7.2 The non-maintenance of systematic records for complaints against the LACs

The regulators in 12 courts have not maintained any proper and separate records on complaints lodged against the LACs, which can be utilised for subsequent empanelment and ensuring the accountability of the LACs. As the primary data shows that more than 54.5 percent of regulators responded that no such records could possibly be maintained on complaints against the LACs. Further, another 45.5 percent of the regulators expressed that no systematic records/files have been retained for the said purpose.

However, the primary data from the regulators revealed that 72.7 percent of the regulators take account of the complaints or grievances from the beneficiaries for the subsequent empanelment of LACs. Without any systemic records being maintained by more than 3/4th of the regulators, no person can rely upon such record, which is not in existence or very poorly maintained, to decide the empanelment of some LACs. Further, 27.3 percent of the regulators honestly accepted that no complaints or grievances are taken into consideration for subsequent empanelment of LACs. Therefore, the existing system of empanelment of the LACs neither punishes the non-performer LACs nor rewards the performer LACs for the promotion of legal aid services.

8. RECOMMENDATIONS FOR STRUCTURAL REFORMS: RESTORING THE TRUST OF BENEFICIARIES

It is explained from the above study that various contributing reasons, which are either related to the structure or the very framework of legal aid are responsible for the ubiquitous trust deficit among the legal aid beneficiaries. The paper now suggests some preventive measures to address the imperfections in the current legal aid system. These measures or institutive actions are mostly drawn from the feedbacks from judicial officers, beneficiaries, regulators, LACs and women respondents who were entitled to free legal aid but did not opt for the legal aid services, and from the author's observations during the course of study in the 12 court complexes in Delhi. Following are a few structural reforms that could uphold the free legal aid system in letter and spirit:

8.1 Swift disbursement and quantum of honorarium

During the study, concerns of the LACs regarding low honorarium was brought to the notice of the DSLSA. Around 14.4 percent of respondent LACs believed that low quantum of honorarium and unreasonable delay in making payment to the LACs were the leading causes of the low quality of services and lack of discussion between the parties.

Based on the recommendation, DSLSA enhanced the quantum of honorarium to a reasonable level with effect from 2017.[151] The said notification has created problems for the LACs and beneficiaries,

[151]DSLSA, Fee Schedule-2017, available at http://dslsa.org/wp-content/uploads/2017/07/FEE-

in the form of effective and non-effective hearing for making payment to the LACs. It has also been noticedthat the majority of the LACs are interested in concluding the case as early as possible to get the specific honorarium by compromising the interests of the beneficiaries. This is because any authority does not monitor the duration and outcome of a case/ dispute and these two factors are also irrelevant for getting an honorarium.

Further, the said notification of the DSLSA does not incentivize the duration of a case and efforts of the LACs. An honorarium is paid in stages for some steps or actions taken by the LACs, where the duration of a case is not pertinent. For instance, if two LACs are dealing with similar matters.And one case is concluded within a year, the specified honorarium is paid to the LACs. Further, in the second case, if a case is completed say after five years, then also the same honorarium is paid as per the policy of the DSLSA. The issue that is bothering most of the LACs is delayed payment of the honorarium to the LACs. It is pertinent to note that there is no specific time limit to make payment after submission all the documents to the office of DLSAs.

8.2 Recognition of the services of the LACs for the appointments and other benefits

It is a matter of the fact that the majority of the legal practitioners do not prefer to join a system of legal aid services, because of low yields as compared to private practice. Further, the services rendered by the LACs are also not taken into account for any future benefits such as the appointment of a public prosecutor or judicial officers and other benefits. Legal aid system can draw some logical inferences from the medical professionals, for the promotion of legal aid services. In the case of medical professionals, who serve in rural areas for some stipulated time, are given some additional weight in the form of an award of the degree, admission to higher degree/diploma and other pertinent benefits.

Therefore, to encourage the participation of experienced and competent legal aid practitioners in the legal aid services, it is strongly recommended that some weightage should be given to the services rendered by the LACs, for the designation of senior advocates at High Courts and Supreme Court, appointment of public prosecutors & judicial officers in lower courts and other relevant benefits.

8.3 Rigorous empanelment process

The existing system of empanelment, which is based only on an interview or reference method, is unable to acquire competent professionals with requisite professionals' skills in providing quality legal services for the legal aid system. The LACs should be empanelled based on one common written exam for civil and criminal panels for all Courts in Delhi area. All the stakeholders may

SCHEDULE-2017.pdf, last seen on 25/07/2018.

deliberate upon keeping in mind the mandate of the legal aid services, the format of the written examination (90 Marks) and interview (10 Marks) of the qualified candidates must take place. Feedbacks received from the judicial officers and the beneficiaries, and the monitoring committee should also be taken into consideration for the subsequent empanelment.

The DSLSA may conduct the complete process in Delhi courts for all the DLSAs. Competency and commitments of the candidates for providing legal aid services in specific fields such as civil or criminal must be taken into account for the empanelment of LACs on a full-time basis, one year initially, which may be extended for another two years based on satisfactory services. No LACs, directly or indirectly, should be allowed to be involved in private practice. Other terms and conditions including a reasonable quantum of honorariums, for the empanelment, must be the part of the agreement between the LACs and the DSLSA.

8.4 Creation of full-time monitoring committees

It has already been pointed out that the DLSAs has not created any monitoring committee to regulate the operations of the legal aid services provided by the LACs. As per the mandate of the Para 10 of the NALSA (Free and Competent Legal Services) Regulations 2010 (NALSA Regulations, 2010), which is also binding on all the legal service institutions including DLSAs, every legal service institution shall constitute a monitoring committee, consisting of designated professionals, for the purpose of regulating the services and activities of the legal aid services. One of the fundamental functions of the monitoring committee is to ensure the accountability of the LACs for day-to-day operations and monitoring of cases and to support the LACs in the case of any difficulties.

The non-existence of the monitoring committees has led to in-effective governance and control over the operations of the LACs. Therefore, it is recommended that a full-time monitoring committee must be formulated at the DLSAs. The said monitoring committees might also be assigned some additional assignments such as to monitor the outcome of cases and duration of the cases involving the LACs, for taking corrective actions to protect the interests of the beneficiaries and restore the faith of the beneficiaries over the legal aid services.

8.5 Penalising for an untimely withdrawal from the legal aid services

It was noticed during the study that LACs usually either refuse or withdraw from the cases of beneficiaries. An early withdrawal, resignation, or refusal to support the causes of the beneficiaries is adversely affecting the people's perception of the LACs and legal aid system. Under the existing system of legal aid services, the LACs may withdraw or resign or refuse to accept a case allotted to him or her by the DLSA at any point in time. Regulators of the DLSAs are also helpless in such contingencies. In such conditions generally, a pending case is transferred to another LACs. But in

the transfer of a case from one LAC, who resigns or refuses to be a part of the particular case, to other LACs, the ultimate sufferer is a beneficiary. A lot of inconveniences, in addition to prolonging the duration of the litigation process, in the form of transfer of documents from one LAC to another, and payment of honorarium to one LAC and the transferee LAC creates complications for the governing authorities as well the beneficiaries. The DSLSA must enter into a written agreement with the LACs at the time of empanelment, for strict compliance with the commitment of legal aid services. The terms and conditions of the empanelment must clearly be defined for the promotion of quality of legal aid services.

Therefore, it is suggested that the LAC at the time of empanelment must submit an undertaking indicating that he or she will not withdraw or refuse to support the mandate of the legal aid system at any point of time during the tenure of the empanelment. Further, the undertaking must also include that in the case of premature withdrawal or refusal to obey the mandate of the legal aid services and breach of the terms and conditions of the empanelment; such person will be liable to pay for damages of INR five lakhs to the respective DSLSA.

8.6 Formation of a feedback mechanism to address the commitment and competency of the LACs

In the empirical study, around 27.3 percent of the regulators revealed that the feedbacks from the LACs are regularly recorded, and based on these observations, appropriate actions are taken. About 18.2 percent, 2 out of 11, respondents were of the view that they hold regular meeting with the judicial officers and beneficiaries for monitoring the assignments of the LACs. Despite several requests to disclose such data on feedback from the LACs, no such records at the time of collection of primary data from the regulators were made accessible. It is shocking to observe from the data that about 72.7 percent, 8 out of 11 regulators, almost 3/4th, were not aware of such type of practice for enhancing the quality of legal services. These respondents do not have a feedback system from the beneficiaries and judicial officers in their respective jurisdictions. Under the existing system of governance of the legal aid services, no feedbacks from the judicial officers and beneficiaries of the legal aid services are in place.

Due to lack of scrutiny over the services of the LACs, the DLSAs are not in a position to take remedial measures to improve the quality of services and commitments of the LACs. Such exercise of feedback should be followed annually. Feedbacks will also ensure the accountability of low quality of services and commitments of the LACs. Based on the objective feedbacks and reports from the monitoring committees, DLSAs may take appropriate disciplinary actions for the non-performing LACs. The said feedbacks from the judicial offices and beneficiaries should also be considered for subsequent empanelment of the LACs.

A system of feedbacks to appraise the services of the LACs from the judicial officers and the beneficiaries is missing. It is a well-known fact that a consumer would be in a better position to evaluate the quality of some commodity. Similarly, a beneficiary of legal aid services is probably in a better position to assess the quality of commitments and competency of the LACs. It is a universally proven fact that feedback from the beneficiaries of legal aid services is an effective tool to enhance the quality of service of LACs. Feedback mechanism for legal aid services has been introduced and is being effectively implemented by many nations such as Australia, Scotland, Canada, the European Union (EU) and other countries for promoting and enhancing the quality of legal aid services.

8.7 The quality of legal aid services should be the principal rather than numbers

It has been noticed that most of the DLSAs are interested in the number game and not in the quality of services. Numbers of beneficiaries given legal aid services in a year or a quarter or half year is being considered as one of the parameters of achievement by the DLSAs, which is also probably encouraged by controlling authorities of the legal aid services in Delhi.The data maintained by the DLSAs show the details of some beneficiaries in various categories given legal aid services over a period. No data on the nature of disputes/offenses and duration and outcome of the cases involved in legal aid services is maintained.

This number game has overburdened the system of legal aid services in almost all DLSAs. The existing practices reveal inadequate screening of cases at the initial stage before the allotment of any LAC for the further processs; put unreasonable pressure on the valuable and scanty resources of the legal aid services. It is also important that legal aid services should be given in necessary cases. Resources of the legal aid services should be utilised to create a quality legal aid service system by empowering the LACs. It is pertinent to mention that the quality of legal aid services is more important than the number of legal aid services provided in a year.

8.8 Empowerment of the LACs for the quality legal aid services

As already recommended, that after strict scrutiny of the competency and commitment of the candidates, LACs must be empaneled. After such process, the LACs as per their areas of expertise should be pooled in civil and criminal law groups. A proper orientation program should be conducted at the time of induction into the legal aid services for sensitising the LACs on the mandate of the legal aid services and promotion of quality legal aid services. Further, regular refresher courses on specialised topics, during vacation or holidays may also be organised.

Besides imparting training, LACs should also be subject to the control and supervision of mentor system, where some senior legal aid practitioners, who are part of a mentoring committee or otherwise engaged by the DLSAs, can monitor and support the endeavors of the LACs in the case of any difficulties on law and practices. The DLSAs should also provide a ready to reckon or reference

book on relevant laws and procedures for civil and criminal law groups, to the LACs at the time of induction in the legal aid system. Some incentives in the form of additional allowances such as clothing allowances, and practice allowance in addition to the fixed honorarium, may also be provided to the LACs.

Further, to stimulate the LACs to provide quality legal aid services, some reward in the form of the best LAC at the DLSA and best LAC of the DSLSA, should also be announced by the DSLSA. Modalities related to the terms and conditions of these proposed awards may include some parameters of sincerity, competence, and commitment in providing legal aid services.

8.9 Appropriate operations and maintenance of open source public records

Public records related to legal aid services are not being appropriately maintained across the State. It is tough to find out from the existing records as to whether a case is pending or concluded. The duration of the case decided and the relevant outcome of such disputes involving legal aid services. Different departments or offices in DLSAs are not functioning in an integrated manner. Action taken by one office is not known to the other office. The administrative office may not be in a position to know the details of quantum and time of payment made by the accounting office. Similarly, the accounts office will not be in a position to communicate the duration and outcome of the case and delay caused in making payment to the LACs.

Further, it is also very difficult for a person to find out the details of the complaints filed by the beneficiaries and judicial officers against one LAC in a year or during the tenure of such empanelment. Because complaints and grievances related to one case are kept in the respective case file only, and there is no reflection of such complaints on the conduct of a LAC. No separate records concerning disciplinary actions taken against each LAC in a year or tenure is maintained. Maintenance of proper and systemic records related to the conducts of the LACs such as complaints against the LAC, disciplinary actions, duration of cases, the outcome of cases, and the assignments performed in a year, will certainly ensure personal accountability of each LAC.

It is recommended that an individual file in respect of the performance of all the LACs should be maintained for the complete tenure. The said data can also be used for the subsequent empanelment of LACs. Further, the integration of the operations of various offices in DLSA can also eliminate any manipulation or tamper with any records.

8.10 Provision for quality infrastructural facilities at DSLAs

As it was mentioned earlier that often legal aid beneficiary and their respective beneficiaries interact in an open environment which has its shortcomings. As a result, quality of infrastructures such as adequate staff, IT facilities, office space and other relevant infrastructural facilities for the DLSAs

and the LACs are necessary for providing quick and quality legal aid services to the beneficiaries. Most of the DLSAs lack regular staff, IT facilities with an internet connection, a good library, and adequate office space for effective operations of legal aid services. Temporary arrangements for the offices of DLSAs have been made in court premises in some Districts.

Due to the dearth of IT facilities, details of the listing of legal aid cases in civil as well as criminal courts at the district level, the contact information of the LACs and maintenance of online services for various activities concerning legal aid services are not being made available on the websites of the DLSAs. The Delhi High Court Legal Services Committee has to implement e-governance scheme, where all the details of empaneled LACs and beneficiaries and other details are available on its website, for providing legal aid services.

Therefore, the legal aid service system must have regular staff, IT Facilities, and proper space to provide good quality legal aid services. IT Facilities, sufficient space to interact with the beneficiaries, and a mentoring system to support them in the case of any difficulties faced by them during litigation involving legal aid services. All these facilities such as online IT sources for locating judgments, reports, bare acts and other documents about the legal profession, space for interaction amongst the LACs & other parties, and mentoring services, must be provided in a particular accommodation meant for the LACs on a full-time basis. Therefore, empowerment of the DLSAs and LACs with good infrastructural facilities will support the endeavors of the quality free legal aid services system in Delhi.

8.11 Transparency and accountability in the operations of the legal aid service system

Legal aid delivery system, in order to restore the faith of the beneficiaries and the LACs over the legal aid system, must be transparent in its operations on allotment of cases to the LACs, time taken for making payment of honorarium to the LACs, duration, outcome and nature of cases/disputes involved legal aid services, maintenance of proper list of the beneficiaries with contact details, daily cause lists of the legal aid cases listed in the relevant courts by the respective DLSAs, empanelment of the LACs and availability of various legal aid services. Details of all the pertinent operations of the DLSAs must be made available in the public domain online. Further, legal aid service system must also ensure the accountability of their employees, who do not take time-bound actions in case of payment of honorarium and facilitating the legal aid services provided by the LACs.

Insufficiency in providing legal aid services, whether by the legal aid office staff or the LACs, should also be made accountable before the consumer forums under the Consumer Protection Act, 1986. This is because the existing legal aid service system, funded out of public money, has failed to ensure the accountability of non-performer LACs. Good governance in the functioning of the legal aid

services would certainly enhance the faith of interested parties, such as the beneficiaries, judicial officers, LACs, and other stakeholders of legal aid services, over the legal aid institution.

8.12 Full-time empanelment on tenure basis for the LACs

The existing system of legal aid services engages LACs on an ad-hoc basis. LACs are empanelled for a specific period and are paid specified honorarium for civil and criminal cases on a case basis. LACs are not full-time employees of the legal aid system. As the study showed, because of monetary returns and nature of empanelment, the majority of the LACs accord priority to private practice over the legal aid services.

Interestingly, to a specific question on creation of full-time employment for ensuring better accountability and full-time commitment from the LACs was posed to all the stakeholders such as regulators, beneficiaries, judicial officers in civil and criminal courts, and the LACs. All these respondents were explained about the proposed model of full-time empanelment on tenure basis of LACs. Approximately, 44.7 percent (15.8 percent highly recommended and 29.3 percent recommended) of legal aid beneficiaries, were positive to bring about such a change in the existing system by appointing LACs on full-time tenure basis. They were hopeful that such a system would certainly improve the quality of legal aid services. About 68.8 percent (119 out of 173) of judicial officers in 12 courts overwhelmingly supported the creation of such a scheme to employ the LACs on full-time tenure basis with some reasonably consolidated honorarium. Around 45.5 percent of the regulators strongly considered that the creation of such a scheme of employment wouldundoubtedly improve the quality of legal aid services. Further 54.5 percent of the total regulators were of the considered opinion that creation of a system of empanelling the LACs would create an ambience of quality and commitment in the LACs and restore the trust of the beneficiaries over legal aid services.

In total, all the regulators (100 percent) recommended the creation of such a scheme for the empanelment of LACs on full-time and regular employment is the need of the hour for the promotion of legal aid services across the nation. Moreover, the LACs, themselves recommended that to improve the quality of the legal aid services, full-time empanelment on tenure basis with proper monitoring and advisory body should be made.

All the regulators have recommended that such a system will strictly ensure the availability of quality services from the LACs. The majority of the judicial officers were of the opinion that such an arrangement would positively improve upon the commitment and competency of the LACs. The majority of the stakeholders have recommended that for ensuring effective accountability of the LACs and to promote quality legal aid services in Delhi, the LACs should be appointed on a full-time tenure basis. LACs under the proposed scheme will not be allowed to go for private practice. As

per the recommendations and the proposed scheme, the LACs would be given some reasonable honorarium for the services rendered.

The proposed scheme must have some monitoring committee composed of the regulator and other senior legal practitioners or retired judicial officers, through teams of mentors for civil and criminal groups, for regulating and supervising the services of LACs. It is also pertinent to mention that the organisational structure and composition, powers, duties and responsibilities, process, training, mentoring, welfare, the quantum of honorarium, the tenure of such empanelment, removal, regulations of misconducts, and other vital parameters of the proposed scheme are a matter of further deliberation and research.

9. CONCLUSION

It is strongly emphasised that there is a lot of scope for improvement in the existing system of governance of the legal aid services provided by the LACs. If the recommended measures are put in practice, then the quality of legal aid service would undoubtedly be enhanced thereby restoring the faith of the consumers of the legal aid and proper utilisation of public resources to provide effective, speedy and economical justice to poor people. The quality of the legal aid service should be of such a status where the beneficiaries recognise and respect these services as the first alternative, and not the last resort for access to justice. Hence, the trust deficit, which is prevalent among the legal aid beneficiaries is due to both structural flaws and the pre-existing loopholes in the legal aid framework. The recommendations suggested above will tighten the loopholes and make the free legal aid system more accountable from the perspective of the legal aid provider and legal aid beneficiaries.