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**Editor-in-Chief**  
Prof. (Dr.) Sri Krishna Deva Rao

**Executive Editor**  
Prof Jeet Singh Mann



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## 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 good governance are transparency and accountability, which have 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 Corruption, Institutions and Economic Growth in India, to the Study on Administrative Public Interest Litigation Initiated by the People's Procuratorates in China, assessing the election campaign expenditure in India, to learning about the Ancient Raj dharma paving the way to a sustainable governance system in India, analysing the status of social audit of MGNREGA in India, to evaluating the effectiveness of Right to Information mechanism in Women University of Haryana including commentary from an expert on highlighting the competency and commitments of Legal Aid Services in India by empirical scrutiny.

The first article, '*Corruption, Institutions and Economic Growth: An Econometric Analysis*,' by T. Lakshmanasamy, Formerly Professor, Department of Econometrics, University of Madras, Chennai, discusses how corruption adversely affects governance and economic growth through political institutions and governance. The nexus between corruption, political institutions, governance, and economic growth is quantitatively less understood. The author in this paper analyses the effects of corruption and governance on economic growth, focusing on the effects of voice and accountability, government effectiveness, the rule of law, political stability, and the absence of violence and regulatory quality. This paper analyses the effect of corruption and governance on economic growth in 110 emerging countries of the world for 15 years from 1999 to 2014, applying the panel fixed effects and random effects estimation methods.

The second article, '*Administrative Public Interest Litigation Initiated by the Procuratorates in China: A Case Study on the First Public Interest Litigation regarding Cultural Heritage Protection in Shanghai*' YANG Hong-qin, Associate Professor, Ph.D.(law), Shanghai University of International Business and Economics, China LIU Qing-zhe, LL.M, Shanghai University of International Business and Economics, China explores the role of People's Procuratorates in safeguarding public interest in China. The paper's main focus is to analyse the role of procuratorate

empowered by law in bringing a lawsuit against the administrative authorities to safeguard the public interest when the illegal administrative act or negligence of the administrative organ infringes or causes to infringe the public interest.

The third article, '*Election campaign expenditure in India: A need for reforms*' by Shelly Mahajan, Senior Program Associate, Association for Democratic Reforms analyses the election expenditure (accounted) data declared by National political parties and the winning candidates to the Election Commission of India (ECI) during the last three general elections to Lok Sabha. The author attempts to address the questions on the actual costs of campaigns and identify the major expenditure heads under which National parties and winning candidates incurred the highest expenses. The study observes that the election expenditure continues to rise exponentially with every passing general election; a majority of which is spent on publicity, travel, and expenditure incurred by parties towards candidates, despite the ease of access to mass mobilisation and growing use of digital technology for reaching out to voters.

The fourth article, '*Ancient Rajdharmā – Paving the Way to a Sustainable Governance System in India,*' by Deepashree Chatterjee, Assistant Professor, Goenka College of Commerce and Business Administration, West Bengal; Dr. Arpita Chatterjee, Teacher in Mount Carmel School, Bhagalpur, Bihar. In this article, the authors discuss some of the major verses from ancient Indian books and kinds of literature like Mahabharata, Manusmriti, Arthashastra, Shukraniti, Agni Purana, etc. on the principles and practices of good governance and throw light on how they provide a guiding note on major areas of governance, like the functioning of the various wings of administration, taxation system in India, foreign policies, legal and judiciary system, etc. Some of the loopholes in the present system of administration in India have also been identified and suggestions related to the changes that must be incorporated in the present governance system to make it fair and sustainable have been provided.

The fifth article, '*Status of Social Audit of MGNREGA in India*' by Dr. Rajesh Kumar Sinha, Assistant Professor, CSA NIRD&PR; Dr. C. Dheeraja, Associate Professor and Head, CSA, NIRD&PR, Hyderabad, describes the concept, process, evolution of social audit system in India. The legal framework and executive instructions for social audit have been analysed. Status of social audit has been assessed in the context of coverage of social audit, findings and actions taken

on those findings, funding to Social Audit Units (SAUs), social audit process, personnel and their capacity building, independence of SAUs, transparency, and accountability in SAUs. Based on findings, the paper makes recommendations to the Central Government, Ministry of Rural Development, State Governments, and SAUs to further strengthen India's social audit process and institutions.

The Sixth article, '*The Effectiveness of Right to Information Mechanism in the Women University of Haryana: An Evaluation*' by Dr. Pawan Kumar, Assistant Professor of Law, B.P.S. Women University Khanpur Kalan Haryana. The legislature of Haryana established the only State-Funded Women University of Haryana by enacting Bhagat Phool Singh Mahila Vishwavidyalaya Khanpur Kalan Act, 2006 to educate women in higher education. In compliance with the provisions of the RTI Act, the university has established a sound Right to Information Mechanism. The paper intends to know: (1) The mechanism developed by the University to provide information under the Right to Information Act especially (a) whether a single or multiple State Public Information Officer/s has been appointed by the University under RTI Act? (b) Whether the State Public Information Officer/s have effectively discharged their duties under the RTI Act? The paper also looks into the frequency of second appeals against the decision taken by State Public Information Officer/s of the University. Further, it analyses the appeals and the decisions taken by the Commission in such matters.

Lastly, the expert review article, '*An Empirical Scrutiny of the competency and commitments of Legal Aid Services in India*' by Prof. Jeet Singh Mann, Centre for Transparency and Accountability in Governance, National Law University Delhi, has focused on the functioning of Legal Aid Counsels (LACs) as they play a pivotal role in the dispersion of legal aid services. The principal argument of this paper is that commitment and competency of LACs affect the mandate of legal aid services. The article focuses on the services provided by LACs, issues relating to the implementation of these services. The assessment of competency and commitment of LACs forms its base from the perspective of beneficiaries, LACs, judicial officers, and regulators

Finally, the Centre for Transparency and Accountability in Governance is very grateful to all the authors who have contributed to this journal. We are thankful to Prof SKD Rao Vice-Chancellor, National Law University Delhi, for providing the support and valuable time for this journal. I

would also like to thank the advisory board of editors, Prof. Zhang Hong, , 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, Prof S Sachidanandam, Prof BT Kaul, and Shri Venkatesh Nayak, for providing their inputs for the content of this journal. Finally, I acknowledge the efforts put in by the editorial committee for proofreading and editing for the journal's publication.

**Prof Jeet Singh Mann**

**Dated: 17 June 2021**

Executive Editor, IJTAG

Director, Centre for Transparency and Accountability in Governance, NLU Delhi

**PART I :**  
**COMBATING CORRUPTION**



# THE EFFECT OF CORRUPTION AND GOVERNANCE ON ECONOMIC GROWTH IN EMERGING ECONOMIES: A PANEL ECONOMETRIC ANALYSIS

*T.Lakshmanasamy*

## ***Abstract***

*Corruption adversely affects economic growth through political institutions and governance. The quantitative evidence on the nexus between corruption, political institutions, governance, and economic growth is scanty and less understood. This paper analyses the effects of corruption and governance on economic growth in 110 emerging countries using panel data for 15 years from 1999 to 2014, applying panel fixed effects and random effects estimation methods. The effects of government effectiveness, political stability, regulatory quality, rule of law, voice and accountability, and absence of violence on GDP growth rate are estimated. The empirical results show that corruption affects economic growth negatively while good governance improves economic growth. The effect of regulations and rule of law on economic growth is positive, while space for political stability, voice and accountability, and absence of violence are insignificantly associated with GDP growth. Democratisation and decentralisation would improve economic growth in emerging economies.*

**Keywords:** Corruption, institutions, governance, economic growth, econometric panel estimation.

## 1. INTRODUCTION

Corruption is a global phenomenon that is endemic to governments all over the world. The World Bank cites corruption as the single most important obstacle to development. It is a subversive force that can topple the most entrenched regimes, and it corrodes currencies, markets, and investments. Corruption exists in a wide array of illicit behaviour, such as bribery, extortion, fraud, nepotism,

graft, speed money, pilferage, theft, and embezzlement, falsification of records, kickbacks, influence peddling, and campaign contributions. While corruption is commonly attributed to the public sector in India, it also exists in other sectors under the sphere of governance, such as political parties, the private business sector, and NGOs. Corruption poses a major threat to economic growth by reducing the public and private sector efficiency when it enables people to assume positions of power through patronage rather than ability and merit. Even the scale of corruption in institutions and agencies outside the government and political system are no less. Corruption in private businesses, autonomous institutions/enterprises, civil society, and media are widespread and equally affect a nation's social and economic health. Corruption undermines the rule of law, democratic governance, accountability, and sustainable development. Corruption harms political and economic institutions that are already fragile and contributes to failures in governance and development. Corruption breaches the contract between citizens and public officials, and this has grave consequences for government functioning. Indeed, corruption is a consequence of a collapse of governance and is also a cause of its continued failure.

There is no uniform definition of corruption because what is regarded as corruption depends on the existing laws and regulations guiding certain actions. Some countries define corruption in the broadest form while others legislated on the narrow definition of the term corruption. However, it is generally accepted that corruption means the misuse or abuse of public office for private gain. Payments are corrupt when they are illegally made to public agents with the goal of obtaining a benefit or avoid a cost. Corruption is the intentional noncompliance with arm's length relationship aimed at deriving some advantage from this behaviour for oneself or related individuals.<sup>1</sup> Transparency International defines corruption as "the misuse of public power for private benefit." Public officials abuse their power to extract or accept bribes from private persons or entities for personal benefit. Irrespective of how a nation perceives the definition of corruption in its economy, corruption is a deterrent to economic growth and social development, hence a stumbling block to its well-being and progress.

Table 1 and Figure 1 present the level of corruption worldwide in 2020, where the corruption perception index (CPI) scale ranges from 0 to 100 according to Transparency International.

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<sup>1</sup>V. Tanzi, *Corruption Around the World: Causes, Consequences, Scope and Cures*, 45(4) IMF Staff Papers 559-594(1998).

According to Transparency International, Denmark and New Zealand consistently maintain top rank in the corruption perception index as the least corrupt countries with a CPI score above 85 in the 100-point index, and Somalia continues to be the most corrupt country with a CPI score of 12 ranking 179 among the countries in 2020. Figure 2 presents the rank of India in CPI, ranking above 80 in recent years. Figure 3 presents the trend in corruption index scores over the years in India. The level of corruption in India has increased from a low CPI score of around 25 in 1996 to a score of 40 in 2020. India ranks at 86 with a 40 out of 100 in the corruption perception index in 2020, a slip of 6 ranks from 80, and a score of 40 in 2019.

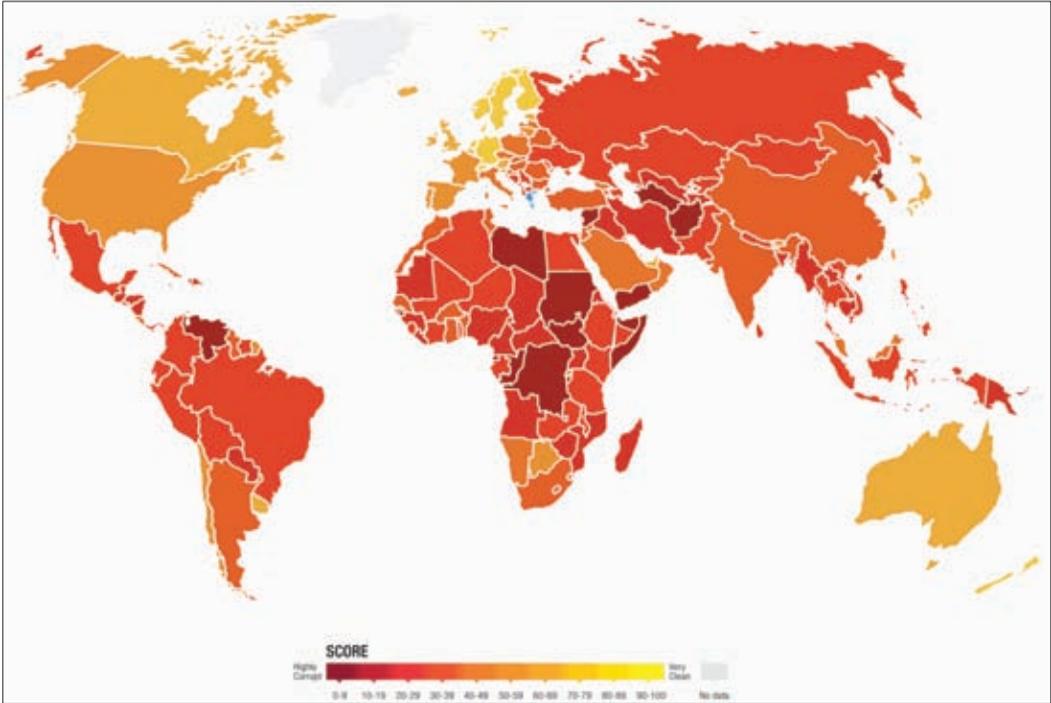
**Table 1: Least and Most Corrupted Countries in the World, 2020**

Low corruption countries			High corruption countries		
Country	Rank	CPI	Country	Rank	CPI
Denmark	1	88	Bhutan	24	68
New Zealand	1	88	USA	25	67
Finland	3	85	China	78	42
Sweden	3	85	India	86	40
Switzerland	3	85	Brazil	94	38
Singapore	3	85	Pakistan	124	31
Norway	7	84	Russia	129	30
Netherlands	8	82	North Korea	174	18
Luxembourg	9	80	Somalia	179	12
Germany	9	80	Syria	177	13

USA	23	69	South Sudan	179	12
Bhutan	25	68	Somalia	179	9

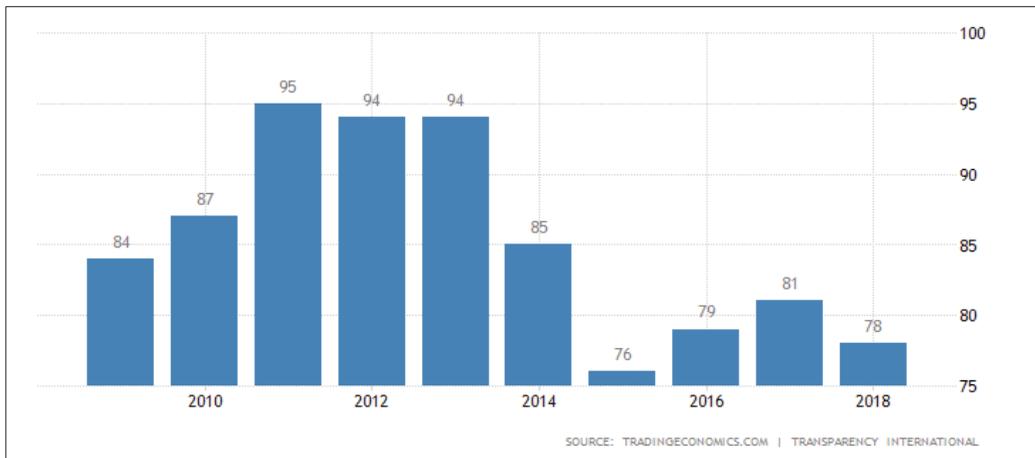
Source: Transparency International.

**Figure 1: Corruption Perception Index Around the World, 2020**



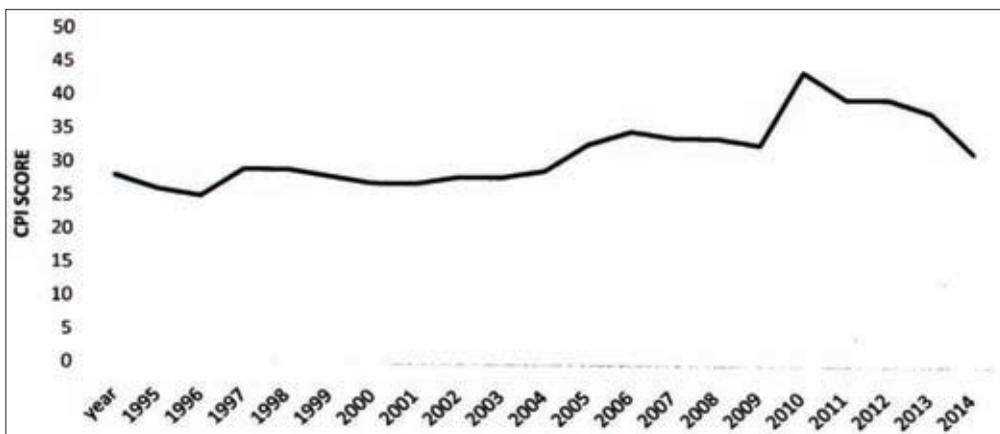
Source: Transparency International.

**Figure 2: Trend in Corruption Perception Index of India**



Source: Transparency International.

**Figure 3: India's Corruption Perception Index (Scores)**



Source: Transparency International.

Frequently, the political and governance systems of a country are cited as the root cause of corruption. Good governance is widely considered the solution to most of the country's problems, including corruption. There is no universal acceptance of what constitutes a good governance mechanism, but a sort of agreement does exist on the broad elements of governance as processes

and institutions by which authorities are exercised in a country or a region. Good governance covers all aspects of the interface between individuals and businesses on one hand and government on the other. The Planning Commission of India, in its 11<sup>th</sup> plan, says that governance should cover the following distinct dimensions:<sup>2</sup>

- Constitutionally protected the right to elect government at various levels fairly, with effective participation by all sections of the population.
- The governments at all levels must be accountable and transparent. Closely related to accountability is the need to eliminate corruption, widely seen as a major deficiency in governance.
- The government must be effective and efficient in delivering social and economic public services, its primary responsibilities.
- Local governments (panchayats and municipalities) should be empowered to function efficiently for local economic development and social justice.
- The rule of law must be firmly established.
- The entire administrative system must function in a manner that is to be fair and inclusive.

It is a matter of great concern that the world's largest democracy, India, with a comprehensive constitution and a vibrant civil society has performed so poorly on internationally accepted governance indicators. It is also perplexing to see that the largest democracy and third-largest economy with rapid economic growth and a many-fold increase in budgetary allocations for social sector expenditure, India's ranking in the world in terms of Human Development Index (HDI) remains pathetic, ranking lower than even poor and underdeveloped countries. It seems that something must have gone terribly wrong in the democratic governance of the country, for the country has not been able to redistribute fruits of its democracy and rapid economic growth to majority of its population. Due to corruption and/or otherwise, benefits of growth have remained accumulated in a few influential hands. That is why perhaps India has the dubious distinction of having some of the largest numbers of billionaires amidst the largest number of the poor in the world. Indeed, an increase in the number of billionaires indicates the country's robust

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<sup>2</sup>Planning Commission, *Eleventh Five-Year Plan, 2007-2012*, Government of India (2008).

macroeconomic performance, but at the same time, a disproportionate decline in poverty is certainly suspicious and indicates corruption in governance.

Corruption and governance lie on a continuum but occupy opposite poles, and in fact, corruption is the antithesis of good governance. Whereas governance, with its end goal of creating a good government, aims to serve the interest of the largest number of people, corruption, through public office and resources, serves the narrow interest of few families and allies. Good governance with transparency and accountability is fundamental for democracy. Good governance entails an administration that is sensitive and responsive to the needs of the people and effectively coping with emerging challenges in society by framing and implementing relevant laws and measures. It includes strict rules for accountability. Good governance largely depends on the extent to which the general citizenry perceives a government to be legitimate, i.e., committed to improving the general public welfare, deliver public services, and equitable in its conduct, favouring no special interests or groups. Hence, democratic governance is a necessary requirement to fight corruption.

Generally, some factors that by their very nature (e.g. rigid system, social immobility) cause corruption and some intermediary and accentuating factors (e.g. ignorance, illiteracy, and procedural) become the impetus to corruption. Some of the causative factors of corruption are:

- Political factors such as voice and accountability, government effectiveness, political stability, absence of violence.
- Institutional factors such as the rule of law and regulatory quality.
- Social inequalities of patriarchy, caste, language, region, and religion.
- Centralized democracy, undemocratic dynasty culture, opaque and unaccountable political parties.
- Colonial bureaucracy with rigid and discretionary powers and a deeply rooted patronage system.
- Ineffective judicial system.

Some of the intermediary/accelerating factors of corruption are:

- Outdated rules of governance of police, private sector, religious institutions, and NGOs.

International Informal Citizens with Widespread Illiteracy, unawareness of rights, roles, and responsibilities.

- Large-scale public sector and public procurement policies.
- Lack of self-accountable media and civil society.

Economic research on the causes and consequences of corruption, especially economic growth, is not a recent phenomenon; it has a long history in economics dating back to the rent-seeking literature's seminal contributions. Theoretical studies suggest that government failure is a function of corruption, and corruption should have a detrimental effect on economic growth in the long run. Simultaneously, corruption may counteract government failure and promote economic growth in the short-run, given exogenously determined suboptimal bureaucratic rules and regulations.<sup>3</sup> Del Monte and Papagni develop a model of economic growth with public inputs to private production and private inputs to public goods, in which the bureaucrats buy from the private sector for the production of public goods with some degree of discretion which permits a possible rent-seeking.<sup>4</sup> The aim of an illegal agreement between the exchanging parties is to profit from the lack of information and the governments fight corruption through costly public purchase monitoring. The extent of corruption is a decision variable in the maximisation of expected revenue.

Empirically, an estimate of the short-run and long-run effects of corruption on economic growth in the US during the period 1991-2000 using a state-level cross-section data shows that the effect of corruption on economic growth is negative and statistically significant in the middle and long-spans but insignificant in the short-span.<sup>5</sup> In Italy, the long-run consequences of bureaucratic corruption on public investment productivity are significant and distinct from a direct negative effect of corruption on the growth rate.<sup>6</sup> Inverse relationship between FDI inflow and corruption is observed in Nigerian inverse relationship, and a large volume of FDI inflow is associated with a low level of corruption and a significant positive relationship between FDI inflow and economic

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<sup>3</sup>P. Bardhan, *Corruption and Development: A Review of Issues*, 35(3) *Journal of Economic Literature*, 1320-1346 (1997); D. Kaufmann, *Corruption: Some Myths and Facts*, *Foreign Policy*, 114, 131 (1997); S. Rose-Ackerman, *Corruption and Government*, Cambridge University Press, Cambridge, UK (1999).

<sup>4</sup>A. Del Monte & E. Papagni, *Public Expenditure, Corruption, and Economic Growth: The Case of Italy*, 17(1) *European Journal of Political Economy* 1-16 (2001); A. Del Monte & E. Papagni, *The Determinants of Corruption in Italy: Regional Panel Data Analysis*, 23(2) *European Journal of Political Economy* 379-396 (2007).

<sup>5</sup>N. Akai, Y. Horiuchi and M. Sakata, *Short-run and Long-run Effects of Corruption on Economic Growth: Evidence from State-Level Cross-Section Data for the United State*, Osaka International University Press, Osaka, Japan (2005).

<sup>6</sup> Supra 5. See also Supra 6

growth in Nigeria.<sup>7</sup> Further, corruption per worker negatively influences output per worker directly and indirectly on foreign private investment, expenditure on education, and capital expenditure per worker in Nigeria.<sup>8</sup> An analysis of the impact of the quality of political institutions on economic growth linking corruption, governance, and economic performance in 30 developing countries shows that improving the quality of political institutions decreases the level of corruption and boosts sustainable economic growth in developing countries.<sup>9</sup>

In India, the effect of corruption on the informal sector is significant. India has a vast informal sector, and the extent of corruption in every sector is remarkably significant. In fact, stifling bureaucratic interference and corruption at every stage of economic activity are among the main reasons behind high participation in informal and unregulated sectors. Also, in states characterised by high inequality and poverty, corruption is a valuable tool for the government to pacify social unrest, allowing a lower level of governance with substantial corruption in the system. The estimated empirical results show that higher corruption increases the level of employment in the informal sector. However, the higher the level of lagged state domestic product, the positive effect of corruption on the size of the informal sector is nullified.<sup>10</sup>

Given that there exists a large-scale corruption and the level of corruption affects growth and development, and the evidence that corruption affects economic growth through political institutions and governance, and there are various institutional and regulatory mechanisms to combat corruption, an understanding of the nexus between corruption, political institutions and economic growth in the modern context is warranted. Hence, this paper investigates the effect of corruption and governance on economic growth around the world. Specifically, this paper estimates the effects of voice and accountability, government effectiveness, rule of law, political stability and absence of violence and regulatory quality, and corruption on economic growth. In the empirical analysis, this paper uses panel data on 110 emerging countries of the world for 15 years from 1999 to 2014. This paper considers seven variables for empirical estimation: growth

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<sup>7</sup>A.O. Akinlabi, B. Hamed & M.A. Awoniyi, *Corruption, Foreign Direct Investment and Economic Growth in Nigeria: An Empirical Investigation*, 1(9) *Journal of Research in International Business Management* 278-292 (2011).

<sup>8</sup>E.T. Adenike, *An Econometric Analysis of the Impact of Corruption on Economic Growth in Nigeria*, 4(3) *Journal of Business Management and Economics* 54-65 (2013).

<sup>9</sup>A. Zidi & S.M. Dhifallah, *Corruption, Governance and Economic Growth in Developing Countries: Analysis by Panel Data*, 3(2) *International Journal of Management and Business Studies* 25, 30 (2013).

<sup>10</sup>N. Dutta, S. Kar & S. Roy, *Informal Sector and Corruption: An Empirical Investigation for India*, 27 *International Review of Economics and Finance* 357, 373 (2013).

rate, corruption and governance variables voice and accountability of the citizens, political stability and absence of violence, effectiveness of government, quality of regulations, and rule of law. The data on growth rate is obtained from the World Bank World Development Indicators, and the data on corruption, political institutions, and governance are collected from the Political Risk Services Group database.

The Political Risk Services (PRS) or the “Coplin-O’Leary Country Risk Rating System” is the methodology developed by William D. Coplin and Michael O’Leary at the Maxwell School of Citizenship and Public Affairs, Syracuse University with the U.S. Department of State, the Central Intelligence Agency, and other government agencies and major multinational corporations. Political Risk Services is the most widely accepted system of entirely independent political risk forecasting. Data are collected in a specific format across 17 categories for each country, which are then converted into 0-3 scores (low, very high or best, worst). The numerical scores are then converted to create alphabetical ratings and are reported for each country. In the empirical analysis, panel estimation methods of fixed effects and random effects models are used, and the Hausman test identifies the appropriate model. Panel data contains the same observations (countries) in each cross-section repeated over time. Unlike the different time series and pooled cross-section estimations, the panel data controls the country-specific unobservable heterogeneity and time-invariant variables and the correlation between the omitted variables and the error term.

## 2. **ECONOMETRIC METHODOLOGY**

In the panel fixed effects model, the individual heterogeneity is assumed to be constant or fixed and uncorrelated with other explanatory variables. These fixed effect variables, which indicate the economic behaviour of countries, are used to control each country is different from another. If individual fixed effects are omitted, then the omitted variable bias will cause biased and inconsistent coefficient estimates of the explanatory variables. Therefore, the fixed effects model takes the time-invariant country effects in the constant term of the regression. The panel data model can be specified as:

$$y_{it} = \alpha + \beta x_{it} + \lambda_i + u_{it} \quad (1)$$

The fixed-effects model is specified as:

$$y_{it} = \alpha_i + \beta x_{it} + u_{it} \quad (2)$$

where  $\alpha_i$  includes the country-specific fixed effects ( $\lambda_i$ ).

When the individual country effects are not controlled and are uncorrelated with explanatory variables, then the country effects can be specified as a country-specific random element and included as a regressor in the estimating equation. The random effects model can be specified as:

$$y_{it} = \beta x_{it} + \varepsilon_{it} \quad (3)$$

where  $\varepsilon_{it} = (\lambda_i + u_{it})$ , the individual fixed effects is a part of the error term. The random-effects panel model is estimated by the generalised least squares method.

As both the fixed effects and random effects models can be estimated on the panel data, the appropriate model for the given data is decided by the Hausman specification test. The Hausman test is based on the fact that the random-effects model should be preferred as it takes into account the time effects (between variations) and the random country-specific effects, whereas the fixed effects model considers only cross-section (within variations), and time effects are assumed to be constant. If the zero-correlation OLS assumption [ $Cov(\lambda_i, x_{it}) = 0$ ] holds, then the Hausman test is to test the difference in the estimates of fixed effects model versus random-effects model for significance. Insignificance of fixed effects regression model constrains the null hypothesis of the Hausman test. The Hausman test is specified as:

$$H = (\hat{\beta}_{RE} - \hat{\beta}_{FE})' \Omega^{-1} (\hat{\beta}_{RE} - \hat{\beta}_{FE}) \sim \chi_k^2 \quad (4)$$

where  $\Omega^{-1}$  is the variance-covariance matrix, and the test statistics are distributed as chi-square. If the chi-square statistic rejects the null hypothesis (random effects regression), the fixed effects model chooses otherwise random effects to occur.

### 3. EMPIRICAL RESULTS

In the empirical analysis of the effect of corruption and governance on economic growth, the country's annual growth rate is the dependent variable. The definition of the variables used in the study and their descriptive statistics are presented in Table 2. In the 110 emerging economies, the average growth rate is 2.8 percent, and the mean corruption score is 0.38. All the governance variable scores are above average, except for the effectiveness of government.

**Table 2: Descriptive Statistics of Variables**

<b>Variable</b>	<b>Description</b>	<b>Mean</b>	<b>Std. dev.</b>
GR (annual growth rate)	Growth rate of real GDP of countries (2010 base)	2.780	5.627
CR (level of corruption)	Extent of public power for personal interests and private profit in terms of wealth and gain (0-1 score)	0.386	0.145
VA (voice and accountability)	Ability of a country's citizens to participate and choose the government, based on a number of indicators measuring various aspects of the political process, civil liberties and human rights (0-1 score)	0.595	0.227
PV (political stability and absence of violence)	The likelihood that the government in power will be destabilised or overthrown by unconstitutional means and/or violent or threatened by the public such as terrorism (0-1 score)	0.711	0.114
GE (government effectiveness)	Aspects of quality and availability of public service, the bureaucracy, the competence of civil servants, the independence of the administration of political pressure and the credibility and transparency of the government's reform commitments and policies (0-1 score)	0.473	0.226

RQ (regulatory quality)	Policies and measures of bank supervision and monitoring as well as the perception of the blockage imposed by excessive regulation in areas such as foreign trade and business climate (0-1 score)	0.630	0.202
RL (rule of law)	Indicators that measure the confidence of citizens in accordance with the laws and rules of society (0-1 score)	0.568	0.192
Observations		1750	

Table 3 presents the correlation between the variables. The correlation coefficients show that corruption and government effectiveness are negatively associated with annual growth rate and the other governance variables are positively correlated with the growth rate. There is a positive correlation among the governance variables and between them and growth rate and even corruption.

**Table 3: Pair-wise Correlation Coefficients of Variables**

Variable	GR	VA	PV	GE	RQ	RL
VA	0.032	1.000	-	-	-	-
PV	0.037	0.334	1.000	-	-	-
GE	-0.010	0.536	0.275	1.000	-	-
RQ	0.069	0.500	0.396	0.475	1.000	-
RL	0.054	0.314	0.421	0.391	0.371	1.000
CR	-0.059	0.391	0.351	0.448	0.340	0.424

Table 4 presents the fixed effects and random effects panel regression estimates for the impact of corruption and governance on economic growth in emerging economies. In both fixed effects and random effects estimates, the effect of corruption level on economic growth is significantly negative, clearly indicating that corruption is harmful to the economy's growth. An increase in corruption reduces the growth rate in emerging economies by 3.5 to 4 percent. Political stability and the absence of violence in emerging economies have a positive effect on their growth rate. Controlling for the country-specific fixed effects, an increase in the level of political stability and absence of violence would significantly increase the growth rate by 4.5 percent. However, when the political stability and absence of violence interact with other variables, the effect, though still a positive 1.7 percent, loses its statistical significance. Improving government effectiveness in emerging economies boosts economic growth. An increase in government effectiveness will increase the economic growth rate by 1.5 to 4 percent in these emerging economies. Poor governance by the government negatively affects economic growth in emerging economies.

In the random-effects model, the effects of the quality of regulation and rule of law are significantly positive. An increase in regulatory quality will increase the economic growth rate by 2.1 percent, and an increase in rule of law affect the annual growth by 1.7 percent. However, the effect of voice and accountability, though positive, has no substantial effect on economic growth in the emerging economies, as the coefficients are statistically insignificant. In most of the emerging economies and the citizen's rights and liberties are oppressed, people's participation in choosing their government is limited. The governance institutions in the emerging economies are still weak and offer limited scope for people to raise voice and demand accountability from the governing institutions. Though the laws and rules are there and there are regulatory institutions in the emerging economics also in tune with global trends, to enable the people to raise their voice and demand accountability, the repressive political institutions offer very little scope for rights and liberties to participate in the democratic functioning of the country.

**Table 4: Panel Fixed Effects and Random Effects Estimates of Corruption and Governance on Economic Growth**

Dependent variable: Growth rate of GDP

Variable	Fixed effects	Random effects
CR	-3.574** (2.37)	-4.156*** (3.38)
VA	1.718 (0.90)	0.919 (0.56)
PV	4.477** (1.98)	1.725 (1.04)
GE	4.015* (1.86)	1.629* (1.69)
RQ	1.817 (1.62)	2.215** (2.35)
RL	0.680 (0.33)	1.754* (1.67)
Constant	1.097 (0.55)	0.910 (0.40)
$\sigma_u$	2.192	1.476
$\sigma_\varepsilon$	5.391	6.388
$\rho$	0.141	0.070
F-value/ $\chi^2$	8.23	30.47
Prob>F/ $\chi^2$	0.00	0.00

Note: Absolute t-values in parentheses. \*\*\* significant at 1 percent level - \*\* significant at 5 percent level - \* significant at 10 percent level.

The Hausman's specification test result for the appropriateness of the fixed effects and the random effects models is presented in Table 5. The null hypothesis being the preferred model is random

effects vs. the alternative hypothesis being the acceptance of the fixed effects model. It basically tests whether the unique errors ( $u_i$ ) are correlated with the regressors, and the null hypothesis is that they are not. The Hausman test concludes that the random-effects model is more suitable for the data as the test result shows p-value of 0.617 which is higher than 0.05.

**Table 5: Hausman Specification Test**

Variable	Fixed effects	Random effects	Difference	Std. error
CR	-3.574	-4.176	0.602	0.839
VA	1.718	0.923	0.791	1.449
PV	4.477	1.801	2.676	1.568
GE	-4.015	-1.557	2.458	1.904
RQ	1.817	2.213	-0.397	0.727
RL	-0.680	1.761	2.440	1.721
Constant	1.097	0.910	0.188	1.672
Hausman test: $H_0$ : difference in coefficients not systematic.				
$\beta_{FE}$ : consistent under $H_0$ and $H_1$				
$\beta_{RE}$ : efficient under $H_0$ and inconsistent under $H_1$				
Test: $H = (\beta_{FE} - \beta_{RE})'(V_{FE} - R_{RE})^{-1}(\beta_{FE} - \beta_{RE}) \sim \chi^2 = 5.35$				
Prob.>chi <sup>2</sup> = 0.62				

The Breusch Pagan Lagrangian Multiplier test for random effects model is given by:  $GR_{it} = \beta x_{it} + u_i + \varepsilon_{it}$ . The null hypothesis in the LM test is that variance across entities is zero i.e. no significant difference across units (no panel effect):

$$H_0: \sigma_u^2 = 0 \text{ or correlation between } \varepsilon_{it} \text{ and } \varepsilon_{is} = 0.$$

$$H_1: \sigma_u^2 \neq 0 \text{ or random effects method is applicable.}$$

The LM is distributed as a chi-squared distribution. The estimated Breusch Pagan LM test result presented in Table 6 shows LM at 0.0001, meaning there is a significant difference across the countries, and thus random effect model is accepted over the fixed effects regression.

**Table 6: Breusch-Pagan LM Test for Random Effects Estimation**

Dependent variable: Growth rate

Variable	Variance	Std. dev.
x	36404.1	190.757
u	29.164	5.400
$\varepsilon$	37377.77	193.333
Test: var(u) = 0	$\chi^2 (01) = 13027.40$	Prob > $\chi^2 = 0.00$

#### 4. CONCLUSION & RECOMMENDATION

The form and course of economic and social development of any country are determined primarily by the quality of political institutions, importantly the levels of governance and corruption. Corruption has been endemic and one of the main institutional failures characterising emerging countries that is economic performance. The quality of governance, coupled with corruption, is significant in explaining the performance of economies. This paper has focused on empirically analysing the interaction between the quality of political institutions, corruption and economic performance in 110 emerging countries over 15 years from 1999-2014. The data are collected from the World Bank and the Political Risk Services database. Empirically, this paper followed the fixed effects and random effects panel regression methods of estimation. The estimated results show that corruption impacts economic growth negatively while good governance is associated positively with economic growth. Regulations and Rule of Law on economic growth are positive while spaces for voice and accountability and political stability and absence of violence have insignificant effects on growth rate. The weak and undemocratic political institutions and lack of democracy increase corruption. Thus, these institutional failures that characterise developing

countries tend to destabilise their long-term economic growth. Hence, a great deal of democratisation and decentralisation would improve economic growth in emerging economies.

**PART II :**  
**GOOD GOVERNANCE**



# ADMINISTRATIVE PUBLIC INTEREST LITIGATION INITIATED BY THE PROCURATORATES IN CHINA: A CASE STUDY ON THE FIRST PUBLIC INTEREST LITIGATION REGARDING CULTURAL HERITAGE PROTECTION IN SHANGHAI

YANG Hong-qin & LIU Qing-zhe

## *Abstract*

*In the public field of ecological environment and resource protection, when administrative authorities fail to fulfil their duties or abuse their power which results in the infringement of public interests, the Procuratorate(s), as the state organs of legal supervision, have the right to make prosecutorial recommendations to administrative authorities and discharge their performance of duties following the law. If the administrative authority fails to fulfil duties or correct non-compliant acts upon the receipt of prosecutorial recommendations, the Procuratorate shall file administrative public interest litigation in order to protect public interests.*

**Keywords:** Administrative public interest litigation; Procuratorate; Prosecutorial recommendation

## 1. CASE INTRODUCTION

In response to the practical demand on the protection of the environment and other public interests, after a two-year pilot program from July 2015 to May 2017, ‘Administrative Public Interest Litigation’ which the Procuratorate initiated, was formally established in the Administrative Litigation Law of the People's Republic of China in June 2017.

Article 25 of the Administrative Litigation Law of the People's Republic of China stipulates that:  
*“Where the Procuratorate finds nonfeasance by any administrative authority assuming supervision and administration functions in fields of the protection of the ecological environment and resources, food and drug safety, protection of state-owned property, and the assignment of*

*the right to use state-owned land exercises functions in violation of any law, and the actions of which infringes national interest or the public interest, it shall issue prosecutorial recommendations to such administrative authority, and urge it to perform following the law. If such administrative authority fails to comply, the Procuratorate shall file a lawsuit with the court following the law.”*

On 2<sup>nd</sup> March 2018, the Supreme People's Court and the Supreme People's Procuratorate issued the 'Interpretation on Application of Law' for cases regarding prosecutorial Public Interest Litigation, which marks that the system of public interest litigation initiated by the Procuratorate has been improved and the mechanism of judicial protection over the public interest with Chinese characteristics has gradually emerged. After that, problems such as unclear procedures or unclear rights and obligations in the administrative public interest litigation were resolved. Furthermore, the procuratorates can protect public interest more effectively in practice. The case of the first public interest litigation for the 'protection of cultural heritage in Shanghai' made a good example.

In the first half of 2019, the Procuratorate of Baoshan district of Shanghai found that the FengDeBridge (a cultural heritage protection unit in Baoshan district) could not be found during the investigation of heritage protection in Baoshan district. According to records, FengDeBridge became a dry bridge since a river dried up in 1986. No Intelligent Navigation System could locate the bridge due to the lack of detailed address, the disappearance of the Original River, and the complex terrain near the ancient town where FengDeBridge was located. FengDeBridge was built during the KangXi Reign of the Qing Dynasty and had specific value to study the history, economy and customs of the Ming and Qing Dynasties and its historical and geographical characteristics. However, the Bridge is in a chaotic environment with prominent safety risks. Now, it is agreed by all the public interest prosecutors that it is crucial to file administrative public interest litigation to protect the ancient bridge.

The Procuratorate of Baoshan district of Shanghai cooperated with the department to protect cultural relics in Baoshan district and collected many historical records, cultural relic protection materials, and relevant laws and regulations. They also issued two prosecutorial recommendations to administrative authorities on 26<sup>th</sup> April and 5<sup>th</sup> May 2019. The two recommendations require relevant departments to fulfil their responsibilities to protect the FengDeBridge in accordance with the law while eliminating potential safety hazards and improving the surrounding environment.

Simultaneously, based on the fact that the bridge is located in the residential area and the past governance inefficiency, it is difficult to protect the bridge. Therefore, the Procuratorate suggested the relevant departments establish a long-term mechanism to protect the bridge and further enhance the publicity of understanding the importance of protecting the bridge, thereby preventing recurrence of similar problems.

The prosecutorial recommendations issued by the procuratorates were highly valued by the administrative authorities. Within one week, the prosecutorial recommendations were implemented, and all misconduct was rectified. In a written reply to the procuratorate, the relevant departments said that they had recruited many volunteers to conduct routine inspections, cleaning work and putting in publicity efforts, which should enhance the understanding of the value of the ancient bridge and appreciate its beauty.

## **2. THE LEGAL BASIS AND CHARACTERISTICS OF ADMINISTRATIVE PUBLIC INTEREST LITIGATION INITIATED BY THE PROCURATORATE**

### **2.1 Legal Basis**

The administrative public interest litigation refers to the system that the procuratorate is empowered by law to bring a lawsuit against the administrative authorities to safeguard the public interest when the administrative organ's illegal administrative act or negligence infringes or causes to infringe the public interest such as environmental resources. The fundamental purpose of the administrative public interest litigation system is to protect the public interest. The public interest includes national interest and public social interest. In a modern country, the legislature, the judiciary, and the administrative authorities are supposed to protect the public interest. Among them, executive power affects the public interest extensively and frequently.

Administrative organs are the key to protecting and realizing the public interests. However, administrative authorities' fulfilment of duties and abuse of power may lead to infringing the public interest. With the improvement of social productivity and the acceleration of economic development, many problems of public interest protection, including environmental pollution, loss of state-owned assets, food and drug safety, are becoming increasingly prominent.<sup>11</sup>

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<sup>11</sup>Liu Hui, The Purpose and Construction of Public Interest Litigation Filed by the Procuratorate, 34 (5) Legal Forum 112, 116 (2019).

The Constitution of the People's Republic of China stipulates that the procuratorates of the People's Republic of China are the state organs for legal supervision. The right of the procuratorates to bring administrative public interest litigation is determined by China's national conditions and political system. In the state power hierarchy, according to the orientation of the Constitution under the supervision of the National People's Congress, the prosecutorial power is set in parallel with the executive, judicial and supervisory powers. The procuratorates state organs that exercise their public power, make it their duty of legal supervision in filing administrative public interest litigation. Traditional administrative litigation aims at the rescue and protection of rights. However, the administrative public interest litigation is based on public interest protection and statutory authority.

The procuratorates are organs of public power, and the law must derive all their functions and powers. From the perspective of national governance, administrative public interest litigation provides an entry of "national power" for public interest protection. That said, through the operation of the right of legal supervision, supported by the judicial judgment, to promote administration according to the law, thereby the procuratorates are achieving the fundamental purpose – ‘public interest protection.’

The procuratorates have the following advantages in filing administrative public interest litigation:

- They are independent and therefore suitable to bring litigation on behalf of the state and the public interest;
- They have statutory powers of investigation, which is conducive to the investigation and collection of evidence;
- They have professional legal supervision teams that can cooperate with the court effectively and reduce judicial costs significantly.

## **2.2 Characteristics**

Firstly, administrative public interest litigation initiated by the procuratorates is *special administrative litigation*. The traditional administrative litigation in China is the litigation of "the civilian suing the government," while the administrative public interest litigation breaks the traditional structure and presents *the litigation between different departments* within the government. Therefore, the litigation is no longer a legal measure for private rights to restrict

public rights, but a confrontation between two public rights, or a balance between powers.<sup>12</sup> The prosecution is not to prevent the people's rights and interests from infringement but to maintain the objective legal order or abstract public interests.

Secondly, the procuratorates are the *only eligible subject* to file administrative public interest litigation. The Procuratorate is legislated as the only plaintiff. This is the one-monitor launching mode. The Procuratorate initiates administrative public interest litigation based on the *supervision power granted by the state*.

Thirdly, the *position* of the procuratorates in administrative public interest litigation is *equivalent to other ordinary parties*, but there are differences in the litigation procedures. Administrative public interest litigation is not legislated separately but stipulated in the Administrative Procedure Law, nor given different litigation status from ordinary parties. For example, if the Procuratorate refuses to judge the first instance made by the court, they can appeal to the superior court just like an ordinary party. However, there are still some differences between administrative public interest litigation and administrative litigation in the procedures.

For instance, "When a court holds a court session of a public interest litigation case filed by a Procuratorate, the court shall, within three days before the court session, serve a notice of appearance upon the Procuratorate. The Procuratorate shall assign prosecutors to appear in court and, within three days upon receipt of the notice of appearance from the court, submit to the court a notice of assigning prosecutors to appear in court. The notice of assigning prosecutors to appear in court shall state the names and legal positions of procurators appearing in court as well as their specific duties to be performed after appearing in court."

Lastly, before the procuratorates file administrative public interest litigation, *the statutory pre-trial procedure must be fulfilled*. The pre-trial procedure here refers to the fact that administrative public interest litigation cannot be directly brought to the court; the prosecutorial recommendations shall first be issued to the administrative organ. Only when an administrative organ fails to perform its duties, the procuratorates can bring litigation to the court.

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<sup>12</sup>Wang Yiyu, Review and Improvement on Environmental Administrative Public Litigation Presenting by the Procuratorial Organ, 73 (5) Journal of CUPL 13, 14 (2019)

### 3. PRE-TRIAL PROCEDURE OF ADMINISTRATIVE PUBLIC INTEREST LITIGATION : PROSECUTORIAL RECOMMENDATION

The prosecutorial recommendation is an essential part of the administrative public interest litigation system. As mentioned above, about the first public interest litigation for protecting cultural heritage in Shanghai, the problem was solved through prosecutorial recommendation without entering into the judicial proceedings. In practice, most problems existing in the administrative authority have been resolved during the prosecutorial recommendations. The Interpretation of Application of Law for Cases regarding prosecutorial Public Interest Litigation stipulates that:

*“The administrative organ shall, within two months upon receipt of a written procuratorial proposal, perform its duties and make a written reply to the Procuratorate. If there is such emergency where the damages of the state interests or public interests continue to expand, the administrative organ shall make a written reply within 15 days.”*

The establishment of the reply period may urge the administrative organ to perform its duties by law. The prosecutorial recommendation has characteristics and values as following:

Firstly, the prosecutorial recommendation is *mandatory*. The prosecutorial recommendation is a featured measure with Chinese characteristics in prosecutorial power. The most essential feature of state power is its compulsion. Although the prosecutorial recommendation does not carry the same effect as enforcement orders from the courts, the prosecutorial recommendation has a certain degree of compulsion as a power given to the Procuratorate by law. It mainly reflects that the supervised object must conduct the self-examination and error correction procedures upon receiving prosecutorial recommendation and reply to the Procuratorate in written form. Otherwise, it must bear the corresponding legal responsibility.<sup>13</sup>

Secondly, the prosecutorial recommendation procedure is more "moderate" than the litigation procedure. The Procuratorate makes the prosecutorial recommendations to the administrative organ before initiating the administrative public interest litigation. The "softness" of the pre-trial

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<sup>13</sup>Zhang Xiaofei & Pan Huaiping, Procuratorial Suggestions on Administrative Public Interest Litigation: Value Implication, Existing Problems and Optimization Path, 234 (6) Theoretical Exploration 124, 127 (2018).

procedure and the "hardness" of the litigation procedure support and connect each other, forming the dual-monitors supervising mode of "prosecutorial recommendation and administrative public interest litigation" with the maintenance of public interest as the fundamental measurement standard. The practice has proved that the pre-trial prosecutorial recommendation procedure is necessary and specific, which has become a standard way to end administrative public interest litigation cases.

Thirdly, the prosecutorial recommendation procedure pays more attention to the self-correction of administrative organs, which improves problem-solving efficiency. One of the typical public problems in modern society is environmental problems that are often complicated and uncertain. The practical measure of this problem mainly depends on the flexible and efficient administrative power. The prosecutorial power should respect administrative autonomy. Therefore, concerning the construction of the administrative public interest litigation system, we should take the administrative power as the leading factor of restriction mechanism design while putting the supervision and correction of the prosecutorial power behind the self-correction of the administrative organ.

The prosecutorial recommendation sends "warnings" to the administrative organ that may occur out of illegal or improper behaviours, forming a backward mechanism while urging the administrative organ to inspect its behaviour seriously even under external pressure. The administrative organ tries to rectify consciously and adjust the appropriate administrative behaviour. This mechanism can realize self-control and plays a complementary role for the administrative organs to relieve the damaged public interests. The value of administrative public interest litigation is more in solving the problem by deterring public interest litigation. Therefore, the prosecutorial recommendation procedure is conducive to saving judicial resources, optimizing social governance, solving problems in time, and fully respecting the administrative power, stimulating enthusiasm, and encouraging the administrative organs to take the initiatives to correct errors. The relevant administrative organs have more acceptability, a higher implementation rate, and better supervision and social effects.

Lastly, the purpose of the prosecutorial recommendation is consistent with the purpose of the administrative organ's management of public affairs. The Procuratorate should bring the administrative public interest litigation before the court to urge the administrative organ to timely

solve the problem that infringes the public interest, which is essentially homogeneous with the administrative power whose duty is to maintain the public social interest. Therefore, the objectives of the two organs are the same.

#### **4. THE SPECIFIC PATH FOR THE PROCURATORATE TO FILE ADMINISTRATIVE PUBLIC INTEREST LITIGATION**

The specific path of administrative public interest litigation should be that if the Procuratorate finds that the public interest is damaged or there is significant damage during the performance of its duties, it can launch an investigation and analyse the cause of the damage. The Procuratorate shall put forward prosecutorial recommendations to the administrative organ and urge it to perform its duties following the law before filing administrative public interest litigation. Upon expiration for the reply of prosecutorial recommendations, the Procuratorate shall decide whether to file administrative public interest litigation according to the specific circumstances after a follow-up investigation. Among the specific path setting and arrangement, the following issues are of higher importance:

##### **4.1 The Definition of Public Interest**

At present, the four categories, including *protection of the ecological environment and resources, food and drug safety, protection of state-owned property and transfer of state-owned land-use rights*, are clearly defined as public interests. The benefits of listing the types of public interests are making the Procuratorate aware of their responsibilities in public interest litigation and effectively establishing the administrative public interest litigation system in the initial stage. However, it also has disadvantages that many other public interest issues make entering the administrative public interest litigation procedures difficult. With the improvement of the administrative public interest litigation system, public interest can be expanded gradually.<sup>14</sup>

##### **4.2 Types of Claims**

There are two central claims in administrative public interest litigation:

- One is to confirm that the act of the administrative organ is illegal;

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<sup>14</sup>Guan Baoying, Research into Expansion of Public Interests in the Administrative Public Interest Litigation, Political Science and Law 125, 132 (05/08/2019).

- The other one is to order the administrative organ to supervise the public interest following the law.

First, the Procuratorate needs to confirm that the illegal administrative act; then, the Procuratorate requires the administrative organ to fulfil a supervisory duty. Confirmation of illegality is the premise and the core of litigation request of urging the administrative organ to perform its duties. The main purpose of administrative public interest litigation is to urge administrative organs to perform their duties according to the law to protect public interests rather than be held accountable. The Procuratorate can supervise the administrative organ in the case of its violation of the law or its failure to perform supervision duties. However, the specific performance of supervisory duties belongs to the category of administrative power and cannot be replaced by supervisory power.

#### **4.3 Both Parties Have the Burden to Provide Evidence**

In traditional administrative litigation, the burden of proof is reversed, where the administrative organ provides the evidence to prove whether the penalty decision made before it is legal as the defendant. Administrative public interest litigation cannot simply apply the reversed burden of proof. The procuratorates are specialized supervisory organs with certain powers of investigation. While the Procuratorate is investigating and collecting evidence, relevant authorities shall cooperate with it. In administrative public interest litigation, the Procuratorate shall first provide evidence to preliminarily prove the illegality of the administrative activities of the defendant. The defendant shall also provide evidence to prove the legality of its actions. Both parties shall have the burden to provide evidence.

#### **4.4 Conditions of Withdrawal**

In traditional litigation, withdrawal of the plaintiff is the right of action. Nevertheless, in administrative public interest litigation, the Procuratorate cannot withdraw unless certain conditions are met. *“Where, in the trial of an administrative public interest litigation case, the defendant’s correction of his or its illegal act or legal performance of his or its duties makes the realization of all claims of a Procuratorate and the Procuratorate withdraws the prosecution, a court shall rule to permit such withdrawal.”* Administrative public interest litigation is not to award the applicant/plaintiff but to solve public interest. This is a special administrative public

interest litigation withdrawal mechanism. Suppose the administrative organ has entirely performed its duties after the Procuratorate initiated the litigation. In that case, it can withdraw the litigation, which can stimulate the administrative organ's enthusiasm for rectification and fully perform its duties, thereby achieving the most effective protection of public interests.

The conditions for withdrawing the litigation mainly include two aspects: one is to prove whether the illegal act can be effectively stopped and the damaged public interest can be restored. It cannot be withdrawn if the violation of law has not stopped or the public interest is being continuously violated. The other one is to prove whether administrative means are exhausted. If the former cannot be achieved and the administrative organ already exhausted legal means of carrying out duties, it is unnecessary to urge the administrative organ. These two essential aspects are the priorities. The former is the first, and the latter is the final criterion to judge whether the organ has entirely performed its duty.

#### **4.5 Similar Case Effect**

Traditional administrative litigations only solve a person or a matter, but administrative public interest litigations, whose value reflects in the warning and educational role, aim to deal with a certain kind of problems. In the case mentioned initially, which was successfully handled by just one litigation, the administrative department was urged to earnestly perform their duties in environmental protection and finally applied its proven experiences throughout the whole region. Turning ordinary cases into leading cases, subverting the traditional "winning and losing" game structure, and transforming dispute resolution into the protection of public interests, is where the system value of administrative litigations of public interests lies.

#### **5. CONCLUSION:**

Administrative organs are the key to protecting and realizing the public interests. However, administrative authorities' fulfilment of duties and abuse of power may lead to infringing the public interest. With the improvement of social productivity and the acceleration of economic development, many problems of public interest protection, including environmental pollution, loss of state-owned assets, food and drug safety, are becoming increasingly prominent.

Therefore, prosecutorial power has been brought into being, whose power is to supervise other organs, including the administrative authorities. The public interest litigation initiated by the

Procuratorate is the embodiment of legal supervision that adds a mechanism to check and balance the extreme administrative power through coordination with the legal supervision power and the judicial power. Therefore, because of its nature and functional orientation of the legal supervision organs, the procuratorates have become the "last resort" to protect public interests.



## ELECTION CAMPAIGN EXPENDITURE IN INDIA: A NEED FOR REFORMS

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*“The exorbitant cost of Indian elections has become a cardinal fact of the Indian political economy that is widely acknowledged and lamented – including by politicians and their donors. But it is not simply the material outlays that grab one’s attention, it is the manner in which the money flows.”*

- Milan Vaishnav, *Carnegie Endowment for International Peace* (2019)

### ***Abstract***

*The paper analyses the election expenditure (accounted) data declared by National political parties and the winning candidates to the Election Commission of India (ECI) during the last three general elections to Lok Sabha. It attempts to address the questions on the actual costs of campaigns and identify the major expenditure heads under which National parties and winning candidates incurred highest expenses. The study finds that the election expenditure continues to rise exponentially with every passing general election; majority of which is spent on publicity, travel and expenditure incurred by parties towards candidates, despite the ease of access to mass mobilisation and growing use of digital technology for reaching out to voters. The analysis of the background details of the elected candidates by Association for Democratic Reforms (ADR) shows how greater financial capability and campaign expenditure translates into winnability and undermines the level playing field. The expenditure data analysed as submitted by parties and winners’ hints at underreporting due to glaring dissimilarities between the figures declared on paper and the visible lavish spending during electoral campaigns, which may be attributed to the absence of limit on spending by political parties. The research findings raise new concerns and*

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<sup>15</sup> This paper represents the analysis done by the Association for Democratic Reforms (ADR) and is the product of professional research. The paper has not been published anywhere else nor is being considered for publication elsewhere and is the author's original work. A copy of first draft of this paper was uploaded on the ADR website last year for a brief period for reference purpose only.

*intend to generate a discussion around the changing nature of election campaigning in the digital age and the challenges of expenditure monitoring thereof.*

**Keywords:** Campaign Expenditure, Democracy, Digital Media, Elections, Money Power, Political Parties

## 1. BACKGROUND

Elections in India are generally extravagant affairs and are widely seen as a celebration of democracy of the world's largest electorate population. The beating of drums, sloganeering, loudspeakers blaring music, road shows, noisy processions, voters flaunting merchandise of politicians, clearly make elections a flamboyant and raucous exercise. The Election Commission of India (ECI) popularly refer to them as the *dance of democracy* or the *festival of democracy*. However, each passing election raises concerns regarding its notoriously high costs and the bitterly fought vicious campaigns. A near six-fold increase is observed in the total estimated expenditure (including the costs of conducting elections) incurred between 1998 (Rs 9,000 crore) and 2019 (Rs 55,000-60,000 crore) general elections. Approximately Rs 700 per vote was spent in the 2019 Lok Sabha elections as projected in the report compiled by Centre for Media Studies (CMS). These estimates account only for the campaign expenses incurred during the period between the announcement of election schedule by the ECI and the declaration of poll results, leaving out a huge sum of money spent during the campaigns that start weeks before the actual notification of polls. Nonetheless, they exceeded the expenditure incurred in the U.S. Presidential election 2016 by roughly \$1.5 billion as estimated by Centre for Responsive Politics<sup>16</sup> and the 2014 Lok Sabha elections by \$3 billion. This raises a pertinent question about whether a developing country like India which is struggling with a nearly \$3 trillion economy can afford costly elections of this scale. There isn't anything inherently problematic about the rising costs of election campaigns over the years, given that vibrant election campaigns can engage citizens and initiate a democratic dialogue between parties and voters. It strengthens political parties and candidates, and provide chances to compete on more equal terms. Campaign finance deals with "the costs of democracy", a popular terminology by Alexander Heard known for his analysis of campaign finance in the US.<sup>17</sup> Political

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<sup>16</sup> A. Usmani, *India's Election Becomes The World's Most Expensive*, Bloomberg Quint (04/06/2019), available at <https://www.bloombergquint.com/elections/india-election-expenditure-2019-lok-sabha-elections-was-the-worlds-costliest>, last seen on 28/09/2020.

<sup>17</sup> A. Heard, *The Costs of Democracy* (1<sup>st</sup> ed., 1960).

campaigns have many expenditures including travel expenses of candidates and staff, maintenance of a cadre of volunteers, direct and indirect costs of communicating with voters etc. Election expenditure can be broadly divided into two categories – legal expenditure (allowed by law for electioneering, subject to permissible limit) and illegal expenditure (expenditure on items not permitted by law such as bribery or ‘cash for votes’, paid news etc.).<sup>18</sup>

Structural changes such as growing size of constituencies, fierce political competition, predominance of social media, emergence of political consultants/campaign managers and the intensifying need for ambitious large-scale election campaigns have added to the costs borne by parties and candidates to run a successful poll campaign and caused an indispensable rise in campaign spending, as the nature of election campaigns change dramatically over the years. The introduction of anonymous Electoral Bonds that were on sale for extra days during the general elections 2019 may have also contributed to increased election expenditure. Electoral Bonds of higher denominations worth several thousand crores were purchased during the poll period.

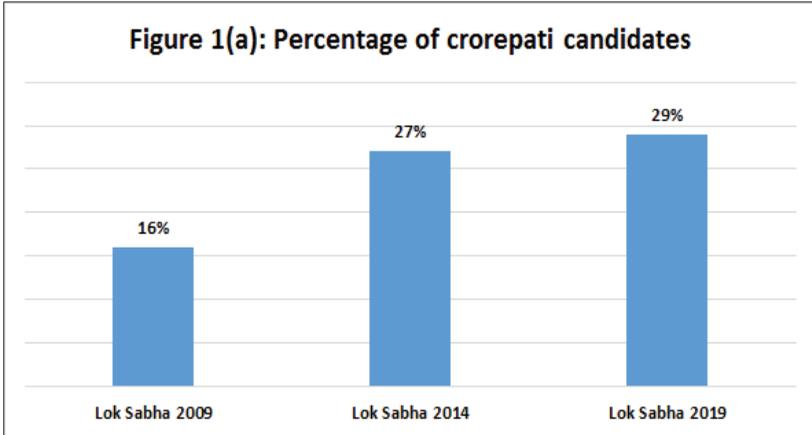
However, the practice of illegitimate flow of cash in form of bribery, liquor, or any other item disbursed and given to the electors with the intent to influence them, and the growing dependence of parties on wealthy candidates (having the ability to self-finance election campaigns) deeply hurts the level playing field and undermines the democratic integrity of the electoral process. There has been an increase from 16% to 29% in the number of crorepati<sup>19</sup> candidates that contested Lok Sabha elections between 2009 and 2019 as depicted in figure 1(a). The average assets per candidate who contested in Lok Sabha elections 2019 were Rs 4.14 crore.<sup>20</sup>

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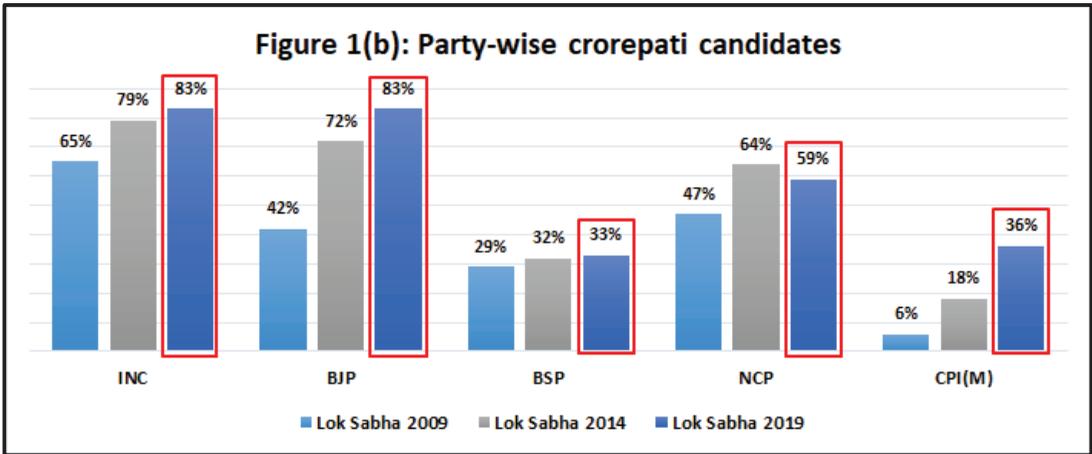
<sup>18</sup> *Compendium of Instructions on Election Expenditure Monitoring*, Election Commission of India, 2(2019), available at <https://eci.gov.in/files/file/9383-compendium-of-instructions-on-election-expenditure-monitoring-february-2019/>, last seen on 26/09/2020.

<sup>19</sup> Candidates with declared assets worth more than 1 crore.

<sup>20</sup> *Analysis of Criminal Background, Financial, Education, Gender and other details of Candidates – 2019*, ADR Reports on Lok Sabha Elections 2019, available at <https://adrindia.org/content/lok-sabha-elections-2019-phase-1-7-analysis-criminal-background-financial-education-gender>, last seen on 29/12/2019.



Furthermore, 83% of the total candidates nominated by BJP and INC for Lok Sabha elections 2019 were *crorepatis*. 59% and 36% of candidates of NCP and CPI (M) respectively, declared assets worth more than Rs. 1 crore.<sup>21</sup> Clearly, the competitive parties with money guzzling campaigns select the wealthiest candidates.

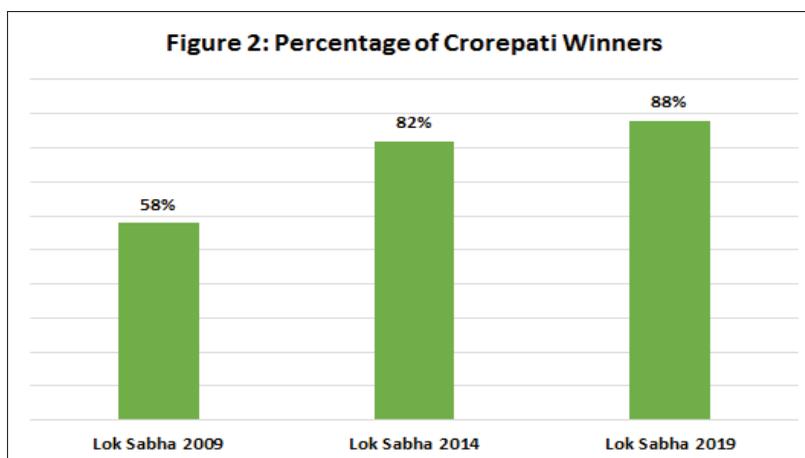


The above numbers are significant given that financial superiority is becoming an essential prerequisite for securing party ticket and gaining electoral advantage to be able to unduly influence voters. Furthermore, the chance of winning of a candidate is observed to be closely related to his/her financial background. ADR analysis also found that the chance of winning of a crorepati

<sup>21</sup> Ibid, at 2.

candidate in the 2019 Lok Sabha elections was 21% whereas chance of winning for a candidate with assets less than Rs. 1 crore was a mere 1%. The percentage of crorepati winners rose from 58% in 2009 to 88% in 2019 general elections.<sup>22</sup> The average assets per winner in the Lok Sabha 2019 was Rs 20.98 crore. Such correlation shows how the need for greater campaign finance can determine who contests and wins elections. This is where the rising costs of campaign spending become problematic as they make electoral politics inaccessible to those who are deserving but incapable of incurring huge expenses. Money becomes a determining factor in election outcomes. A politician from Arunachal Pradesh was quoted as saying –

*“Last time, I wanted to contest, so I did a recce... The rate was Rs 20,000 to Rs 25,000 per vote, and there are around 17,000 to 18,000 voters, so adding the cost of mithuns [a buffalo-like animal that is worth more than Rs 50,000] and pigs for the feasts, it came to around Rs 25 crores to Rs 30 crores. I decided not to contest, it was beyond me.”*<sup>23</sup>



The second and more concerning aspect about expensive electoral campaigns is how a huge share of the money spent during elections is on items which are not permitted under the law and have been seized in large numbers during the campaigning period each day – cash in form of bribe, liquor, drugs/narcotics, precious metals, freebies, etc. A quarter of the total poll expenditure

<sup>22</sup> *Analysis of Criminal Background, Financial, Education, Gender and other details of Winners Lok Sabha 2019*, ADR Reports on Lok Sabha Elections 2019, available at <https://adrindia.org/content/lok-sabha-elections-2019-analysis-criminal-background-financial-education-gender-and-other>, last seen on 20/12/2019.

<sup>23</sup> *The Election Fix: Despite note ban, cash is all over India's elections – but can votes be bought?*, Scroll.in (07/04/2019), available at <https://scroll.in/article/919108/the-election-fix-despite-note-ban-cash-is-all-over-indias-elections-but-can-votes-be-bought>, last seen on 22/02/2021.

estimated by Centre for Media Studies (CMS) is cash distributed to voters directly.<sup>24</sup> 10%-12% voters admitted receiving cash for votes, another two-third acknowledged that voters around them were also bribed. The total seizure reported by the ECI at the end of Lok Sabha elections 2019 was a monstrous Rs 3475.76 crore.<sup>25</sup> A considerable amount of the total poll expenditure is unaccounted cash which remains outside the purview of the formal system suggesting that the abuse of money power has increased manifold. Thus, it becomes vital to assess the nature of campaign spending in elections and the significance of its changing scale for the larger electoral politics of India.

In light of the above stated problem, this paper analyses the recurring features and the emerging trends in the expenses undertaken by candidates and parties during general elections over the last decade. It looks at some of the major heads under which parties and candidates incur the maximum costs, and how the surmounting costs impact the overall well-being of electoral politics. Most importantly, the paper also documents the challenges of election expenditure monitoring keeping in view the underreporting of expenditure figures filed by candidates/winners with the ECI, non-compliance by political parties of the prescribed expenditure statement format and the indirect third-party expenditure incurred on online political advertising with campaigns now going digital. In its handbook on *Election Expenditure Monitoring* published in February 2019, the Election Commission outlines that a new form of expenditure is coming to the fore in recent times in form of Surrogate Advertisements, Paid News and Social Media etc. The Commission admits that this category of expenditure will never be reported or will be underreported by the political parties/candidates and pose challenge for scrutiny of the expenditure statements, thereby requiring a more robust system of expenditure monitoring. In conclusion, the paper suggests some possible remedies and reiterates the implementation of the long pending recommendations of the Law Commission, Election Commission and ADR to ensure that elections are not contested on the might of the monies and remain independent of any undue influence.

## **2. ELECTION EXPENDITURE MONITORING FRAMEWORK**

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<sup>24</sup> *Poll Expenditure, The 2019 Elections*, Centre for Media Studies, A CMS Report, 7 (2019), available at <https://cmsindia.org/sites/default/files/2019-05/Poll-Expenditure-the-2019-elections-cms-report.pdf>, last seen on 29/10/2019.

<sup>25</sup> *Seizure Report as on 24.05.2019*, Election Commission of India, 2 (2019), available at <https://eci.gov.in/files/file/10273-seizure-report-as-on-24052019/>, last seen on 25/12/2019.

- 2.1 By virtue of Article 324 of the Constitution of India, the Election Commission is responsible for the superintendence, direction and control of Parliamentary and Assembly elections. It is upon the Commission to ensure that the level playing field for all stakeholders inclusive of candidates and political parties is not disturbed and the electoral process does not fall prey to misuse of money power.
- 2.2 Under section 77(1) of the Representation of the People Act, 1951, it is mandatory for every candidate to the House of People or a State Legislative Assembly to maintain a separate and correct account of all expenditure incurred or authorised by him or by his election agent between the date of his nomination and the date of declaration of the election result, both dates inclusive.<sup>26</sup> The failure to maintain such an account is an electoral offence. The particulars of account of election expenses in respect of each item of expenditure from day to day to be kept by a candidate or his election agent are laid down in Conduct of Election Rules, 1961.
- 2.3 The total expenditure of the candidates is subject to the limits prescribed under section 77(3) of R.P. Act, 1951 while there is no such cap on party spending. These limits vary for Parliamentary and Assembly constituencies in States and Union Territories as provided by Rule 90 of the Conduct of Elections Rules, 1961. The ceilings on expenditure range from Rs 54 lakhs to Rs 70 lakhs for a Parliamentary Constituency and from Rs 20 lakhs to Rs 28 lakhs for an Assembly Constituency. Recently, the Election Commission proposed for a 10 per cent increase in the campaign expenditure limit for all future elections given the constraints posed by coronavirus which means that for the upcoming Bihar Assembly polls in October 2020, the expenditure limit maybe raised to Rs 30.8 lakhs.<sup>27</sup>
- 2.4 According to section 78 of R.P. Act, 1951, every contesting candidate is mandated to lodge the account of his/her election expenses with the District Election Officer (DEO) within 30 days of the declaration of the result of the election. Failure to file the expenditure statement within the stipulated time period and in the required manner without good reason/justification can result in disqualification of the candidate by the ECI under Section 10A of R.P. Act. The contesting political parties are required to file their expenditure statements to the ECI in the

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<sup>26</sup> *Compendium of Instructions on Election Expenditure Monitoring*, Election Commission of India, 2(2019), available at <https://eci.gov.in/files/file/9383-compendium-of-instructions-on-election-expenditure-monitoring-february-2019/>, last seen on 22/02/2021.

<sup>27</sup> *Election Commission proposes 10% hike in poll campaign expenditure cap*, The Indian Express (10/09/2020), available at <https://indianexpress.com/article/india/election-commission-proposes-10-hike-in-poll-campaign-expenditure-cap-6589787/>, last seen on 22/02/2021.

prescribed format within 75 days of Assembly elections and 90 days of Lok Sabha elections, as directed by the Supreme Court in *Common Cause Vs. Union of India* in 2005.

- 2.5 Under Section 10A of RPA read along with other provisions of the Act and the Rules, the Election Commission holds the requisite powers to conduct necessary enquiry to ascertain the fact about compliance of statutory requirements in the matter of submission of election expenses accounts. In *L.R. Shivaramagowde Vs. T.M. Chandrashekar – AIR 1999 SC 252*, SC held that the Election Commission can scrutinize the account of election expenses filed by the candidate and disqualify him/her in case the account is found to be incorrect. The account of election expenses once lodged are notified for inspection by the DEO and a scrutiny report prepared on the same is submitted to the Commission by the DEO.
- 2.6 Day to day monitoring and gathering of evidence of the election expenditure incurred by the candidates and political parties during the campaign period is undertaken by a host of officials appointed by the Election Commission – Expenditure Observers, Assistant Expenditure Observers, Video Surveillance Teams, Accounting Team, Complaint Monitoring Control Room and 24X7 Call Centre, Media Certification & Monitoring Committee, Flying Squads, Static Surveillance Teams (SSTS) etc. For every single item to be used in electioneering by a candidate, the EC has price fixed to check abuse of money power.
- 2.7 The Election Commission in its guidelines on Transparency and Accountability in party funds and election expenditure dated 29<sup>th</sup> August, 2014 stated that parties must ensure that no payment in excess of Rs 20,000 is made in a day to any person/company/other entity in cash subject to a few exceptions. It also maintains that any financial assistance by any party to its candidates must be within the ceiling prescribed for the candidates.
- 2.8 Regarding the regulations on third party expenditure, an attempt was made by Supreme Court in its judgement in *Kanwar Lal Gupta Vs. Amar Nath Chawla* (A.I.R. 1975 SC 308) in 1974 to delink party and candidate spending for the purposes of calculating campaign expenditure limits. SC ruled for party spending on behalf of a candidate to be included in calculating candidate's expenses. However, the judgment was nullified by an amendment introduced to the RPA in Parliament.
- 2.9 As of today, the expenditure incurred by the leaders of political party on account of travel by air/other means of transport for propagating the party's programme and the political parties or their supporters for generally propagating the party's programme shall not be deemed to be

expenditure in connection with the election incurred or authorized by a candidate of that political party under Section 77, RPA.

### 3. PROBLEMATIC AREAS

The 15<sup>th</sup> Law Commission chaired by Justice B.P. Jeevan Reddy (170<sup>th</sup> Law Commission Report)

—

*“The existing law does not measure up to the existing realities. The ceiling on expenditure is fixed only in respect of the expenditure incurred or authorised by the candidate himself but the expenditure incurred by the party or anyone else in his election campaign is safely outside the net of legal sanction. The spirit of the provision suffers violation through the escape route. The prescription of ceiling on expenditure by a candidate is a mere eye-wash and no practical check on election expenses for which it was enacted to attain a meaningful democracy.”*

The 2001 Consultation Paper of NCRWC on Electoral Reforms estimates that actual campaign expenditure by candidates is in the range of about twenty to thirty times the said limits. It is widely understood that there is distortion between the reported and estimated candidate expenditure. The Law Commission in its 255<sup>th</sup> Report also ascertained that there is under-reporting of election expenditure and attributed it to legal lacunae, black money and poor enforcement.

Firstly, the law under Section 77 of the RPA is silent on the subject of expenditure regulation by political parties. The implication of this is that parties and candidate supporters are allowed unlimited expenditure in the name of general party propaganda that makes no reference to any particular candidate. Parties indulging in ingenious accounting tend to make use of this and attribute a large amount of their expenditure to their leaders/star campaigners whose travel expenditures fall under the exempted category. Secondly, the law on candidates’ expenditure limits only covers the period between the date of nomination and the date of declaration of result, exempting the expenditure incurred outside of this window from any scrutiny. If media reports are to be believed, it is common experience that political parties effectively start their election campaigns well before the formal notification of elections.

Furthermore, the disclosure norms also require strengthening. Despite the legal requirement for candidates to lodge their expenditure statements within 30 days of declaration of result, the expenditure statements of 532 out of 543 candidates – elected MPs in General Elections 2019 are

available in the public domain at the time of writing of this paper. While parties are required to submit the account of their expenses within 90 days of Parliamentary elections, the expenditure statements of only twenty-six Regional and seven National Parties are available in the public domain, as of date. For the last four State Assembly elections – Maharashtra & Haryana, Jharkhand, and Delhi – several political parties’ expenditure statements are yet to be available on the ECI website. More than 259 days, 198 days and 150 days have passed to the deadline of submission of expenditure statements by parties for Maharashtra & Haryana, Jharkhand, and Delhi Assembly elections, respectively as shown in the table below. ECI’s transparency guidelines lack any statutory authority and there is no legal consequence for political parties failing to submit their expenditure statements on time.

Political Party	Table 1: Status of submission of election expenditure reports - State Legislative Assembly elections (As of 25 September, 2020)			
	Delhi- 2020	Maharashtra- 2019	Haryana-2019	Jharkhand-2019
BJP	Not available on ECI website	06 January, 2020	06 January, 2020	Not available on ECI website
BSP	Not available on ECI website	Not available on ECI website	Not available on ECI website	24 February, 2020
CPI	Not available on ECI website	17 December, 2019	17 December, 2019	Not available on ECI website
CPM	17 July, 2020 (79 days delayed)	06 January, 2020	06 January, 2020	7 March, 2020
INC	Not available on ECI website	Not available on ECI website	Not available on ECI website	Not available on ECI website
NCP	Not available on ECI website	Not available on ECI website	Not available on ECI website	21 January, 2020
AITC	Did not contest	Did not contest	Did not contest	Not available on ECI website
AAP	Not available on ECI website	Not available on ECI website	Not available on ECI website	Not available on ECI website

Political Party	Table 1: Status of submission of election expenditure reports - State Legislative Assembly elections (As of 25 September, 2020)			
	Delhi- 2020	Maharashtra- 2019	Haryana-2019	Jharkhand-2019
JDU	Not available on ECI website	Did not contest	21 February, 2020 2020 (41 days delayed)	Not available on ECI website
LJP	Not available on ECI website	Did not contest	Did not contest	Not available on ECI website
RJD	Not available on ECI website	Did not contest	Did not contest	03 September, 2020 (175 days delayed)
RLD	Not available on ECI website	Did not contest	Did not contest	Did not contest
SHS	Not available on ECI website	Not available on ECI website	Not available on ECI website	Not available on ECI website
AIFB	Not available on ECI website	27 November, 2019	27 November, 2019	Not available on ECI website
SAD	Did not contest	Did not contest	28 December, 2019	Did not contest
SP	Did not contest	26 May, 2020 (136 days delayed)	26 May, 2020 (136 days delayed)	5 August, 2020 (147 days delayed)
INLD	Did not contest	Did not contest	Not available on ECI website	Did not contest
AIMIM	Did not contest	14 January, 2020 (3 days delayed)	Did not contest	09 July, 2020 (120 days delayed)
IUML	Did not contest	Not available on ECI website	Did not contest	Not available on ECI website
JDS	Did not contest	Not available on ECI website	Did not contest	Not available on ECI website
MNS	Did not contest	17 January, 2020 (6 days delayed)	Did not contest	Did not contest

Political Party	Table 1: Status of submission of election expenditure reports - State Legislative Assembly elections (As of 25 September, 2020)			
	Delhi- 2020	Maharashtra- 2019	Haryana-2019	Jharkhand-2019
AJSU	Did not contest	Did not contest	Did not contest	Not available on ECI website
JMM	Did not contest	Did not contest	Did not contest	Not available on ECI website
JVM-P	Did not contest	Did not contest	Did not contest	Not available on ECI website
RLSP	Did not contest	Did not contest	Did not contest	24 August, 2020 (166 days delayed)
NPEP	Did not contest	Did not contest	Did not contest	Not available on ECI website
<b>Total parties contested</b>	<b>13</b>	<b>14</b>	<b>13</b>	<b>22</b>

**Source:** ADR reports on Election Expenditure and ECI's website

In December 2015, while speaking at a regional conference on 'Use of Money in Politics and Effects on People Representation', the then Chief Election Commissioner Nasim Zaidi said that the data available indicates that candidates are under-reporting expenses within the prescribed ceiling.<sup>28</sup> Majority of winners report only 40-80 percent of their expenses to the ECI. He further admitted that elections are becoming expensive – ordinary citizens including those with outstanding personal record and public service cannot even dream to contest elections. In April last year, during the Lok Sabha elections, Telugu Desam Party (TDP) MP J.C. Diwakar Reddy was quoted in an article in *The Hindu* as saying that the election expenses crossed Rs 10,000 crore in Andhra Pradesh and on an average, each candidate spent anywhere around Rs 25 crore in each Parliamentary constituency.<sup>29</sup> An article published in *The Hindu* dated July 16, 2019 estimated

<sup>28</sup> *Majority of Candidates 'under-reporting' Poll Expenses: EC*, Business Standard (15/12/2015), available at [https://www.business-standard.com/article/pti-stories/majority-of-candidates-under-reporting-poll-expenses-ec-115121500502\\_1.html](https://www.business-standard.com/article/pti-stories/majority-of-candidates-under-reporting-poll-expenses-ec-115121500502_1.html), last seen on 24/09/2020.

<sup>29</sup> *Election expenses crossed ₹10,000 crore in State*, The Hindu (23/04/2019), available at <https://www.thehindu.com/news/national/andhra-pradesh/election-expenses-crossed-10000-crore-in-state/article26916005.ece>, last seen on 10/06/2020.

that an average expenditure figure of Rs 10 crore per serious candidate is plausible – fourteen times the election expenditure limit. Nevertheless, the last time a candidate was disqualified for flouting the spending rules was an MLA in Uttar Pradesh in 2011.

Many in the political class argue that the election expenditure limits are unrealistically low and have not kept pace with the rate of inflation. The actual cost of running a successful campaign is several times higher than the prescribed ceiling and this creates an incentive for candidates to underreport their expenses. In December 2019, the Representation of the People (Amendment) Bill, a private member's bill on removal of ceiling on election expenses introduced by MP Rajeev Gowda, on the grounds that capping of election expenses is counterproductive, was discussed in Rajya Sabha. However, the bill was withdrawn by Mr Gowda in March this year after a discussion, wherein the MP also criticised electoral bonds for promoting opacity and black money. Research also shows that for a candidate to remain in the electoral fray, he/she needs to incur a certain minimum amount. The level of competition between candidates in a given constituency decrees the scale of money spent on campaigning, which easily varies from constituency to constituency. The CMS study calls this “competitor compulsions”. Political Scientist Simon Chauchard contends that costlier elections may not result from lower levels of morality in the political class or from a surge in bribe giving; basic logistical costs/ short-term wages that candidates pay to their workers and the crowds these recruit at times, political competition, generational changes, and larger size of constituencies place even more meaningful constraints on candidates.<sup>30</sup>

According to Election Commission of India, the objective of any provision limiting the expenditure is two-fold: First is to ensure that electoral politics remains open to any individual/political party to be able to contest on footing of equality with any individual/party, howsoever rich and well-financed. Second, to eliminate influence of big money in the electoral process.<sup>31</sup> The evidence above suggests otherwise and questions the effectiveness of the existing laws, making it important to study electoral spending and deliberate upon the impact thereof.

#### **4. ELECTION EXPENDITURE – TRENDS AND CHALLENGES**

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<sup>30</sup> S. Chauchard, *Why Are Elections Getting More Expensive in India?*, Carnegie Endowment for International Peace website, available at <https://carnegieendowment.org/2018/07/25/why-are-elections-getting-more-expensive-in-india-pub-76913>, last seen on 27/01/2020.

<sup>31</sup> *Supra* 3, at 2.

Several reasons have been attributed to the consistent surge in election spending over time. Consequently, it is imperative that we look at some of the major trends and findings in the expenses incurred by National political parties and the elected candidates for Lok Sabha 2019 elections and comparing the same to previous Parliamentary elections for a deeper understanding.

#### **4.1 National & Regional Parties' expenditure for Parliamentary Elections 2019**

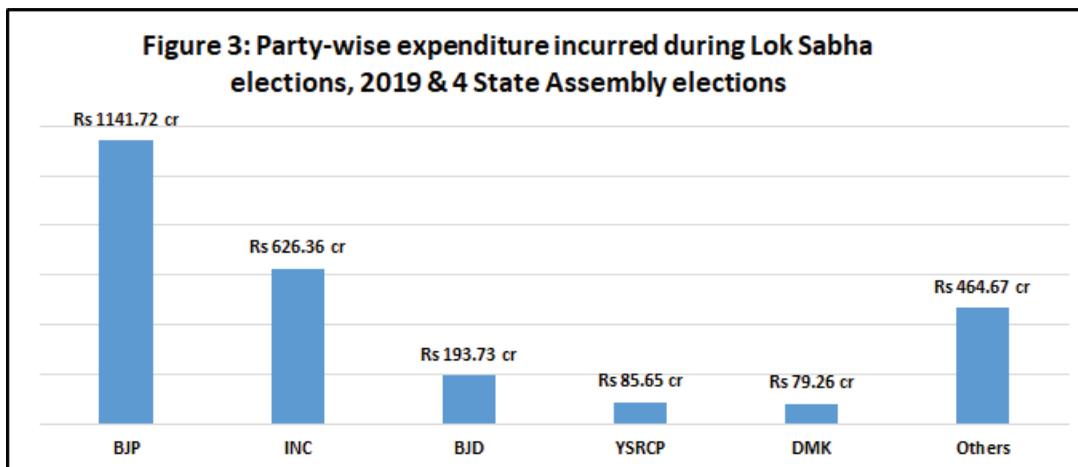
##### **4.1.1 Election Expenditure – Lok Sabha 2019 and 4 State Assembly elections held simultaneously**

According to the ninety days reporting period requirement for submission of accounts of election expenses by political parties, the expenditure statements of one National party namely National People's Party (NPEP), and 17 Regional parties including DMDK, JD(S), RJD, JKNPP, RLD etc. are unavailable on the website of the Election Commission. The expenditure statements of Indian Union Muslim League and Shiv Sena are not available for the Andhra Pradesh Assembly elections. Additionally, the reporting format followed by the parties is such that the expenditure declared by them is inclusive of the expenses incurred during General Elections 2019 and the four State Assembly Elections that were held simultaneously – Arunachal Pradesh, Andhra Pradesh, Odisha and Sikkim (hereafter, referred as four State Assembly elections).

The seven National parties and 25 Regional parties analysed in this paper collected total funds worth Rs 6405.59 cr while the total expenditure (by cash or cheque/DD or expenditure remaining outstanding) incurred during the Lok Sabha 2019 elections and four State Assembly elections amounted to Rs 2591.39 cr.<sup>32</sup> As shown in figure 3, BJP incurred the highest expenditure of Rs 1141.72 cr, nearly twice the next highest spender INC at Rs 626.36 cr.

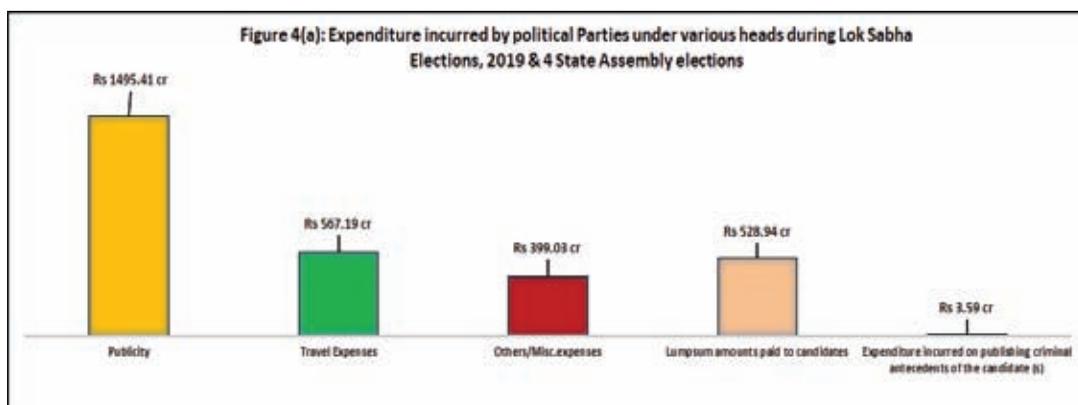
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<sup>32</sup> *Analysis of Funds Collected and Expenditure Incurred by Political Parties during Lok Sabha Elections 2019*, ADR reports on Election Expenditure, available at <https://adrindia.org/content/analysis-funds-collected-and-expenditure-incurred-political-parties-during-lok-sabha>, last seen on 24/09/2020.



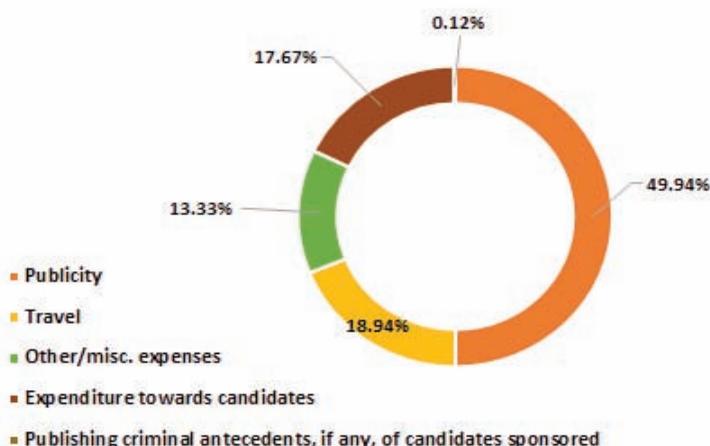
In each of the previous two Parliamentary elections, BJP incurred more than 50% of total campaign expenses declared by all National parties. The party spent Rs 448.81 cr and Rs 712.48 cr in 2009 and 2014 Lok Sabha elections, respectively.

Of the total expenditure (accounted) of Rs 2994.16 cr incurred under various heads during these elections, parties spent almost half of their campaign funds on publicity, followed by the ‘travel expenses’ and ‘lumpsum amounts paid to candidates’ by parties. Bulk of the publicity expenses were spent on Media Advertisement (print & electronic media including social media; bulk sms, cable, website, TV channels, etc.) worth Rs 1166.15 cr. The travel expenses of Rs 567.19 cr as shown below include the expenditure incurred by the Leaders (Rs 8.31 cr) and Star Campaigners (Rs 558.88 cr) of the political parties on account of travel by air or by any other means of transport for propagating the programme of a political party and fall within the exempted category.

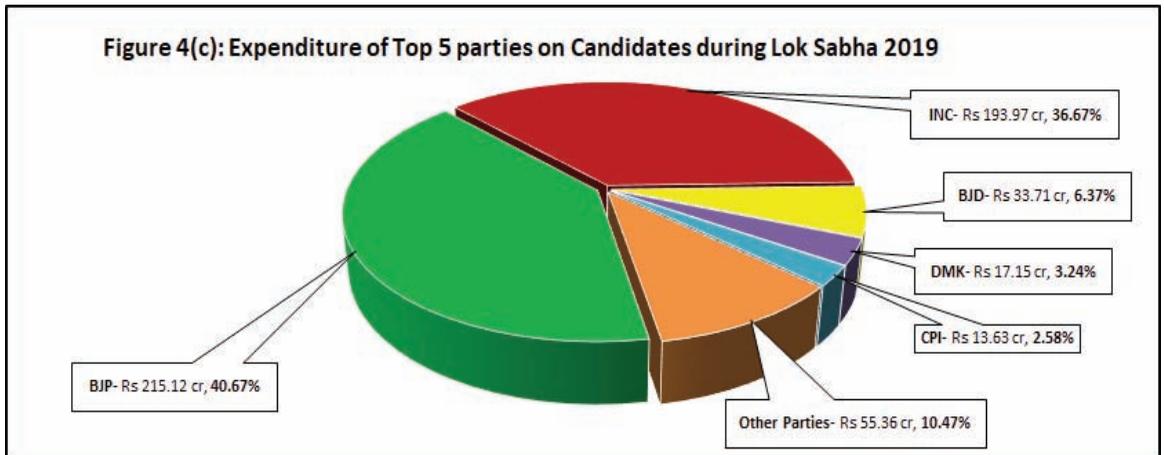


In September 2018, Supreme Court mandated both candidates and political parties to publish criminal information about contesting candidates on party websites as well as in newspapers and television at least three times after the filing of nomination papers. Barring 14 political parties including BSP & SP, the remaining political parties spent a total of Rs 3.59 cr towards publication of this information. Despite fielding at least 85 candidates with criminal background, BSP is the only party among National parties, that declared zero expenditure towards publication of criminal antecedents of its candidates.

**Figure 4 (b): Share of expenditure incurred under various heads during Lok Sabha 2019 & 4 State Assembly elections**

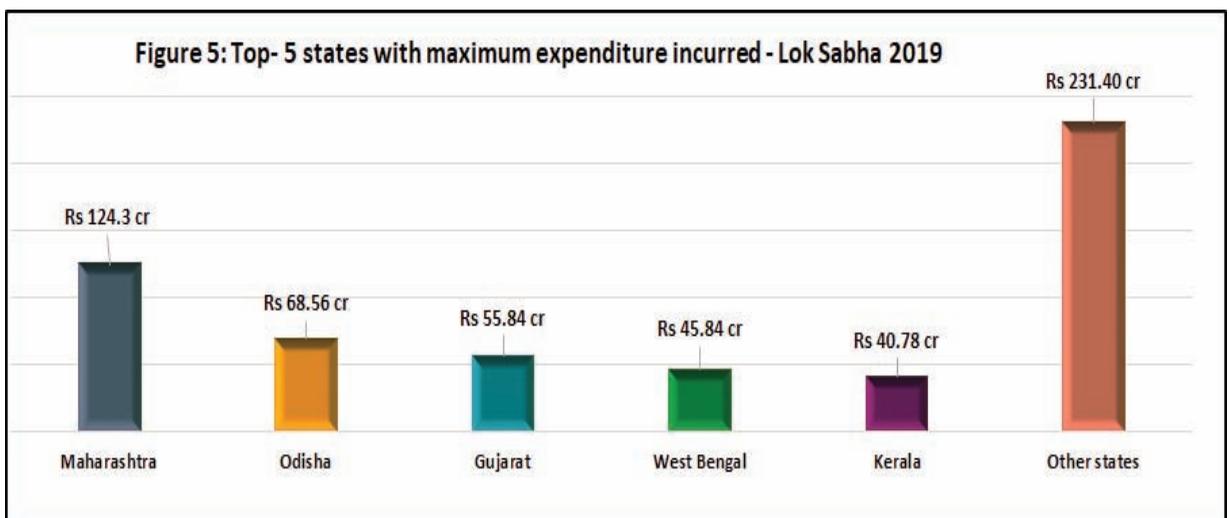


Political Parties' expenditure towards candidates is declared under the head of 'Expenses on Candidates' which provides details of parties' spending on candidates under publicity, travel, lumpsum payments to candidates, publication of criminal antecedents of contesting candidates and other expenses. Figure 4(c) shows the share of 'lumpsum payments to candidates' out of the total expenses incurred by the 32 political parties considered in this paper under various heads, which



is 17.67% or Rs 528.94 cr of the total expenditure. 13 of the 32 political parties analysed declared that they did not incur any expenses on its candidates.

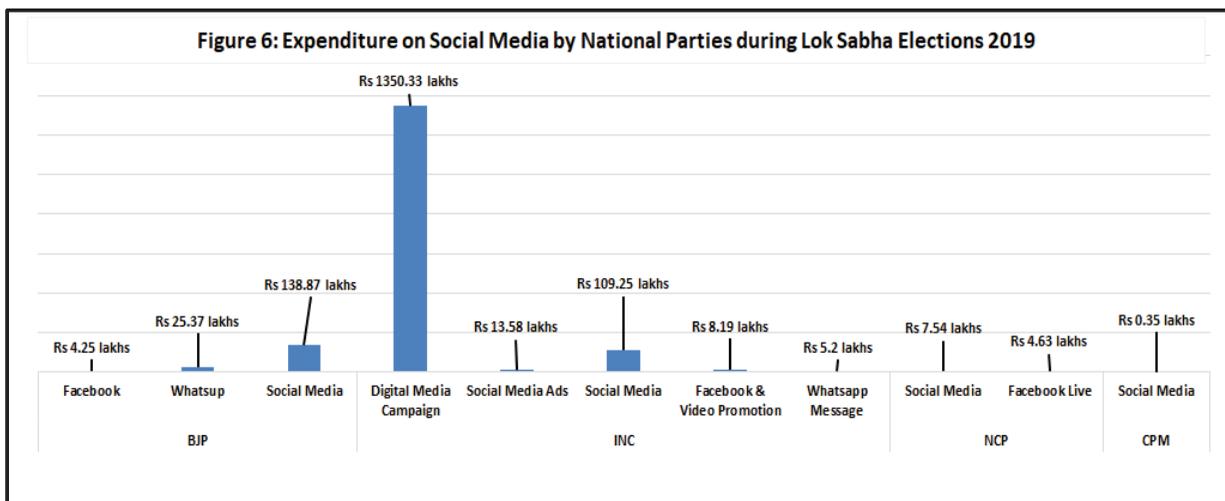
Bulk of the expenditure incurred by political parties during Lok Sabha elections 2019 and 4 State Assembly elections has been incurred from parties' central headquarters, amounting to Rs 1639.41



cr while the state units spent Rs 951.98 cr. In case of the seven National parties, parties incurred the highest expenditure from Maharashtra state units worth Rs 124.3 cr.

The Election Commission has instructed that candidates and political parties shall include all expenditure on campaigning inclusive of expenditure on advertisements on social media, both for maintaining a correct account of expenditure and for submitting the statement of expenditure. Expenditure incurred towards social media advertising is defined under electronic media and is reported under the sub-head of ‘Media Advertisement’, under Publicity. Four of the seven National Parties whose expenditure statements have been analysed declared spending money on social media advertising. These include BJP, INC, NCP and CPM. Social media advertising included Facebook Live, Facebook & Video promotion, WhatsApp messaging, social media posts etc.

BJP spent Rs 138.87 lakhs on social media followed by Rs 25.37 lakhs on WhatsApp and Rs 4.25 lakhs on Facebook. INC spent the highest Rs 13.50 crores on digital media campaign followed by



Rs 1.09 crores on social media and Rs 13.58 lakhs on social media advertisements.

As per the data released by Facebook and Google Ad library report, all ad spending by political parties and their affiliate pages, as of May 22, 2019, amounted to a total of Rs 55.2 cr. It is

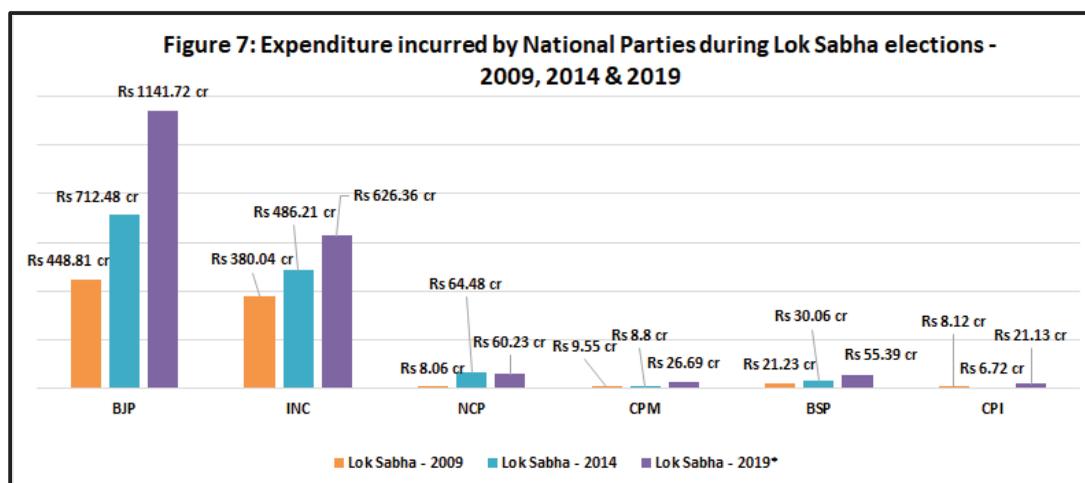
estimated that political parties spent not more than 1% of their overall spending on Facebook and Google advertisements.<sup>33</sup>

#### 4.1.2 National Parties' Election Expenditure Trends – Lok Sabha 2009, 2014 and 2019

For comparison of election spending with the previous Parliamentary elections, six National parties namely BJP, INC, NCP, BSP, CPM and CPI have been considered given the fact that AITC and NPEP were recognised as National Parties in 2016 and 2019, respectively.

As per the election expenditure statements submitted by the aforesaid six National parties for Parliamentary elections held over the last decade, the following trends can be observed in election spending:

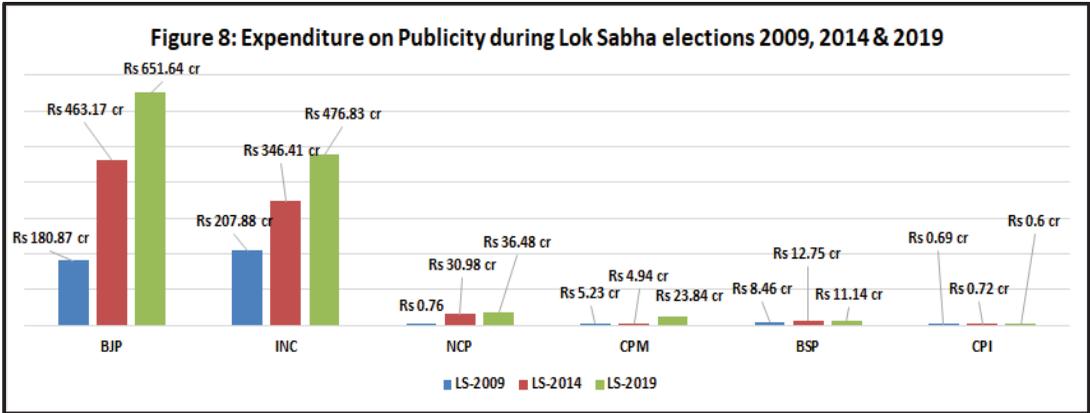
- Clearly, for majority of the National parties analyzed, the total expenditure incurred, in cash or cheque/DD, has substantially augmented with each passing Lok Sabha election. Between 2009 and 2019 Lok Sabha elections, NCP declared the highest increase of 647% from Rs 8.06 cr to Rs 60.23 cr, followed by CPM (174%) and BSP (160.90%). In case of BJP and INC, the increase in expenditure was nearly 154% and 65% respectively.



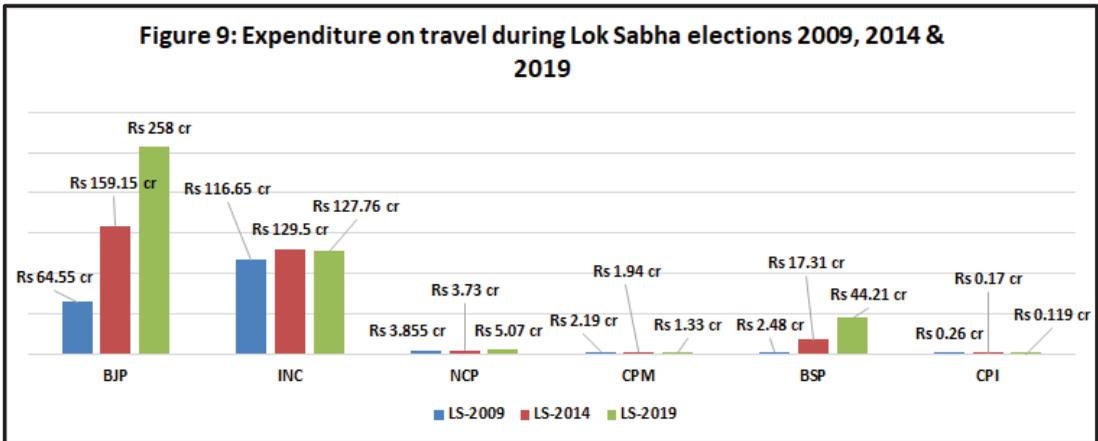
- Six National parties spent the highest on Publicity (includes media advertisement, public meetings and publicity materials) in the last three Parliamentary elections. In some cases, the jump in expenses between 2009 and 2019 elections was significant while in other cases,

<sup>33</sup> S.P. Mampatta, *FB, Google ads' share less than 1% of overall poll campaign outlay in India*, Business Standard (09/07/2019), available at [https://www.business-standard.com/article/politics/fb-google-ads-share-less-than-1-of-overall-poll-campaign-outlay-in-india-119060500377\\_1.html](https://www.business-standard.com/article/politics/fb-google-ads-share-less-than-1-of-overall-poll-campaign-outlay-in-india-119060500377_1.html), last seen on 24/09/2020.

it remained more or less constant. NCP and CPM experienced the highest increase in their publicity expenses by 4700% and 355.83% respectively.



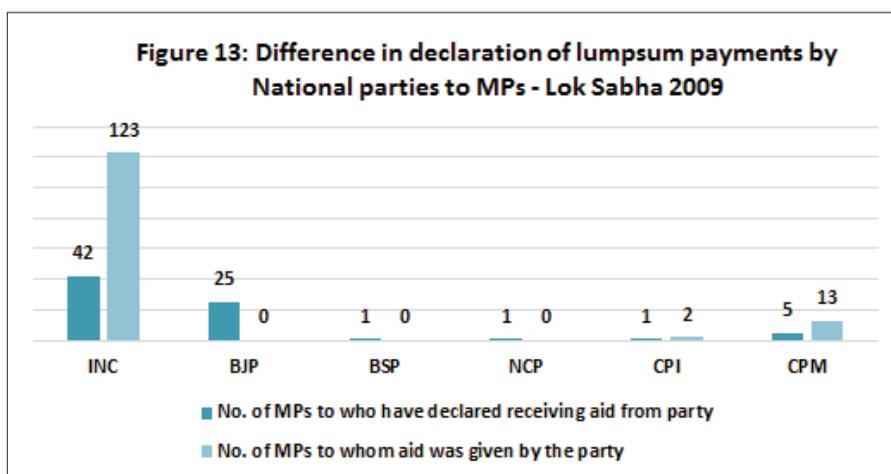
c) Travel expenses of parties on their leaders/star campaigners form a substantial part of their overall election spending. After expenditure on publicity, the expenses incurred on travel or sometimes the ‘expenses on candidates’ form the third largest share of expenses by National parties. In the last ten years, the travel expenses incurred by INC, NCP, CPM and CPI, did not undergo any substantial changes. However, BJP and BSP’s travel expenses increased by almost 300% and 1683% respectively.



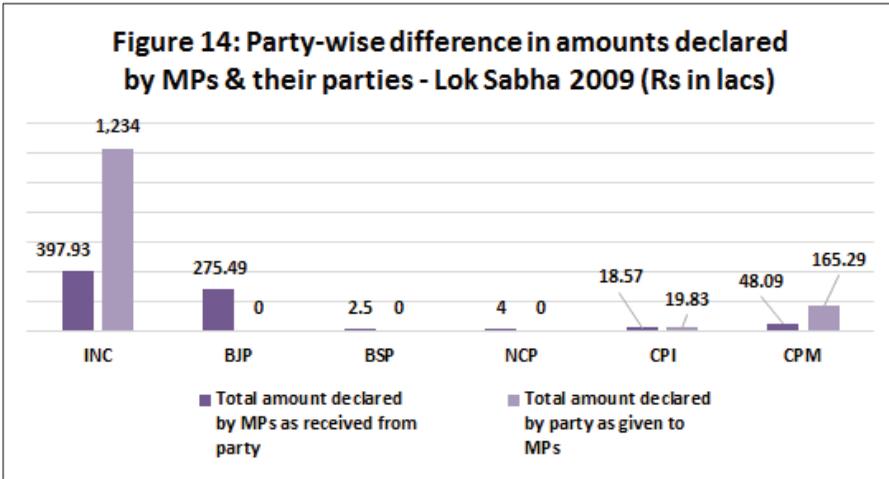
**4.2 A Comparison of Declaration of Election Expenses by Political Parties and their MPs – Lok Sabha 2009 and 2014 elections**

The expenditure statements of political parties contain details of ‘lumpsum payments to candidates’ and the abstract statements of candidates provide information on ‘lumpsum amount received from the parties. ADR compared and analysed the inconsistencies in such information declared by winning candidates and their respective political parties for 2009 and 2014 Parliamentary elections. Given that the expenditure statements of all political parties and winners are still not available for Lok Sabha elections 2019, a similar analysis for the recent Parliamentary elections will be taken up later and the paper will be updated accordingly. This analysis is extremely crucial to ascertain the compliance of the prescribed expenditure ceiling by parties/candidates and the role of the ECI in ensuring effective enforcement of the regulations on spending and financial reporting.

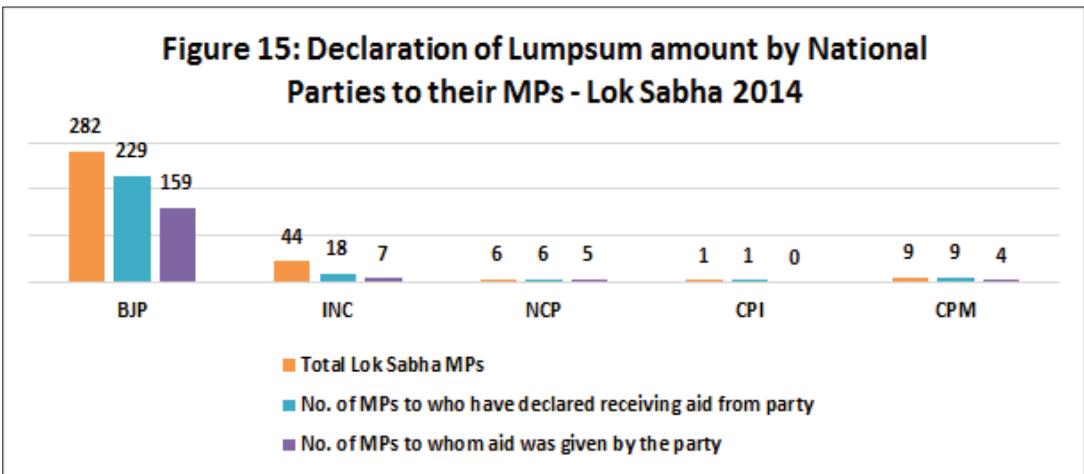
For 2009, the expenditure data of 388 out of 543 MPs, whose complete information was available, was analysed by ADR.<sup>34</sup> 277 MPs of the total analysed were from National parties. Six National parties namely INC, BJP, BSP, NCP, CPI & CPM declared lumpsum amount worth Rs 14.19 cr paid to their 138 MPs, however, only 75 MPs declared receiving money from their respective parties worth Rs 7.46 cr, nearly half the total amount declared by the National parties. In case of Regional parties, 15 MPs from 12 different parties mentioned various amounts as received from their respective parties which did not match with the affidavits submitted by the parties.

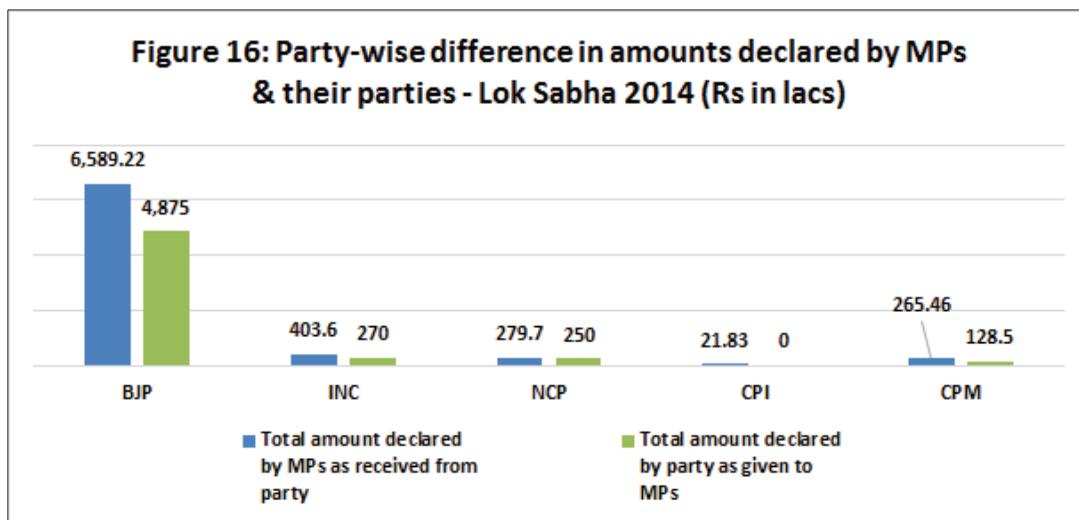


<sup>34</sup> *Comparison of Declaration of Election Expenses of Political Parties and their MPs, Lok Sabha 2009 – 2014*, ADR reports on Election Expenditure, available at <https://adrindia.org/research-and-report/political-party-watch/combined-reports/2014/comparison-declaration-election-expe>, last seen on 29/10/2019.



Taking the case of Lok Sabha 2014 elections, the complete data of 539 MPs was available and analysed by (ADR, 2015). 342 MPs of the total analysed were from 5 National parties (BJP, INC, NCP, CPI & CPM; BSP did not win a seat). It was found that 263 MPs declared receiving lumpsum amounts from their respective parties worth a total of Rs 75.59 cr, while the parties declared giving Rs 55.23 cr to only 175 MPs. 38 MPs from 15 different Regional parties either declared nil amount as received or mentioned various amounts as received from their respective parties which did not match with the expenditure statements submitted by the parties.





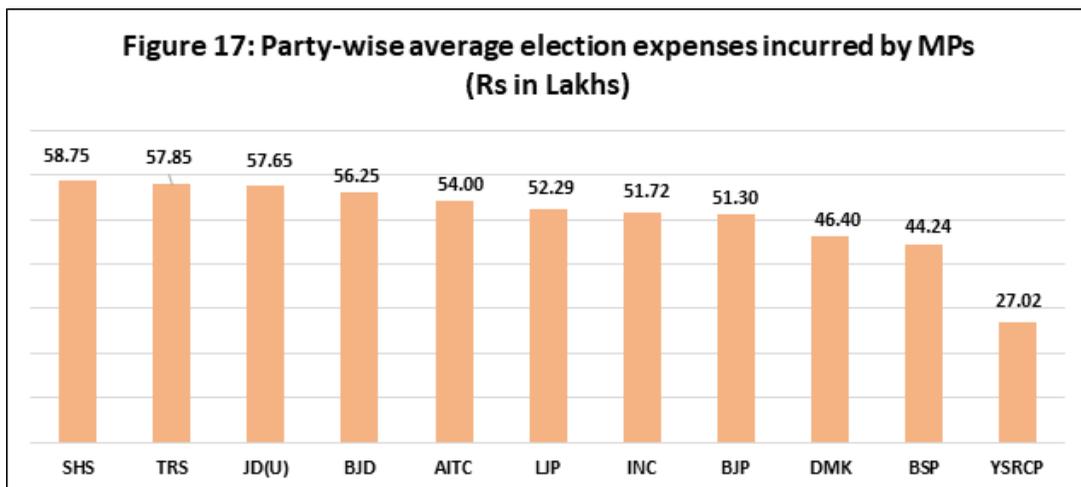
#### 4.2.1 Analysis of Election Expenses of MPs for Lok Sabha 2019

The paper analyses the election expense statements of 532 out of 543 MPs from 35 political parties for Lok Sabha elections 2019, which are available in the public domain. More than one year has passed since the due date for submission of the election expenditure statements by candidates, however, the statements of the remaining MPs are yet to be available in public domain.

The expenditure limits for Lok Sabha elections were Rs 70 lakh in bigger states while it was Rs 54 lakhs for some smaller states for each Lok Sabha constituency. The following observations have been made for the available election expense statements of MPs for Lok Sabha 2019 elections:

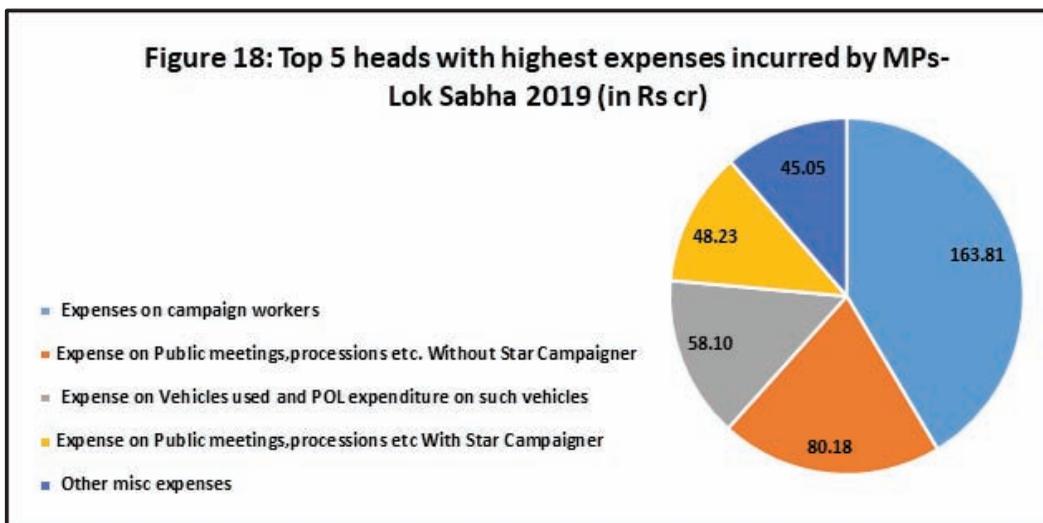
- Candidates have constantly claimed that the election expenditure ceiling is very low. Nevertheless, based on the election expense declaration of 532 MPs analyzed for Lok Sabha 2019, only two MPs, one from BJP and one from Kashmir National Conference party have exceeded the expenditure limit in their constituency. 51 MPs (9.58%) have declared election expenses of less than 50% of the expense limit in their constituency.
- The average amount of money spent by the MPs analyzed is Rs 50.81 lakhs, which is about 73% of the expense limit.

- c) The party-wise average election expenses show that the average spending of 299 MPs from BJP is Rs 51.30 lakhs (74% of the average expense limit), for 51 MPs from INC is Rs 51.72 lakhs (75% of the average expense limit), for 22 MPs from AITC is Rs 54 lakhs (77% of the average expense limit) and for 16 MPs from JD(U) is Rs. 57.65 Lakhs (82% of the



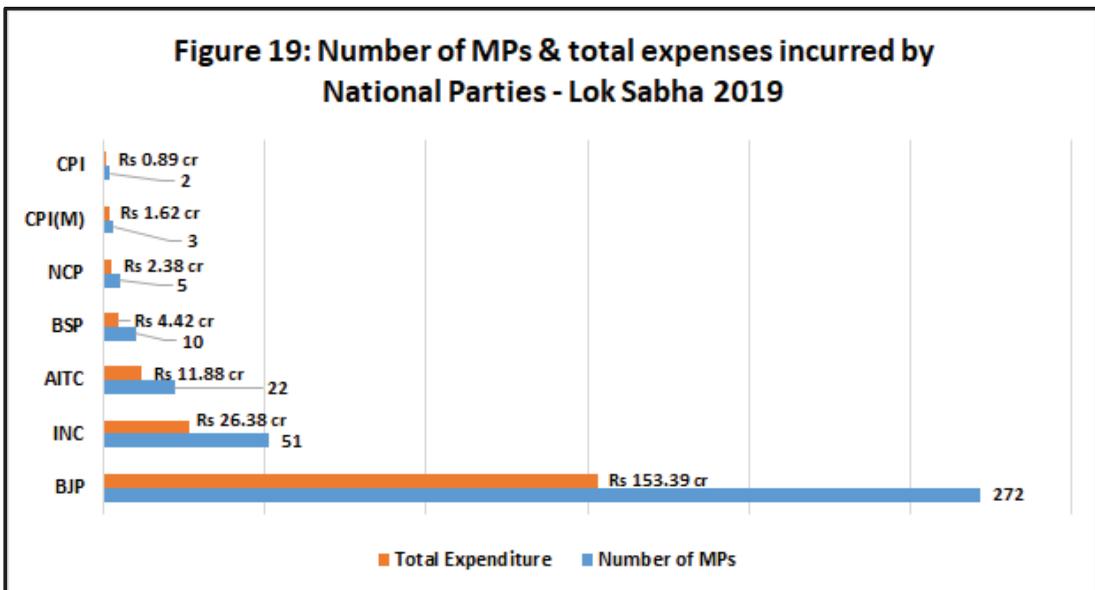
average expense limit).

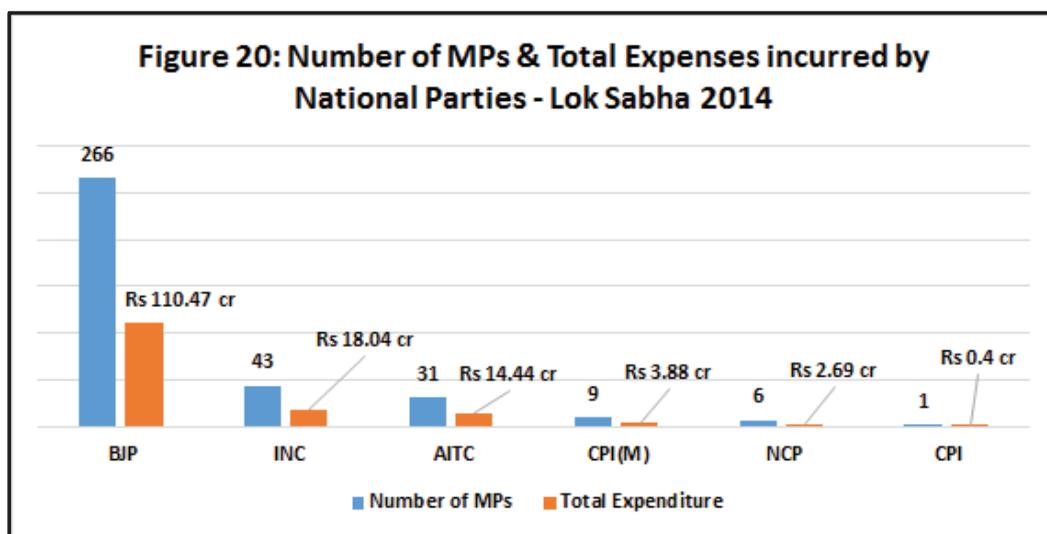
- d) The 532 MPs analyzed incurred expenditures under several heads. The top five heads under which maximum expenses were incurred are shown in figure 18. Highest expenses were incurred on ‘expense on campaign workers’ followed by ‘expense on public meetings, rally, and processions without Star Campaigners’ and ‘expense on vehicles used and POL



expenditure on such vehicles. Among all, ‘expense incurred on publishing of declaration regarding criminal cases’ were the least, Rs 1.09 cr.

- e) Of the 532 MPs whose expenditure statements have been analyzed, 299 MPs from BJP incurred a total expenditure of Rs 153.39 cr (56.74%), 51 MPs from INC spent a total of Rs 26.38 cr (9.76%) and 22 MPs from AITC spent 4.40% or Rs 11.88 cr of the total expenditure incurred. During the Lok Sabha election 2014, 266 MPs from BJP spent Rs 110.47 cr, 43 MPs from INC incurred Rs 18.04 cr and AITC’s 31 MPs incurred a total expenditure of Rs 14.44 cr. BSP did not win a single seat in 16<sup>th</sup> Lok Sabha elections.





### 5. CHALLENGES TO ELECTION EXPENDITURE MONITORING

In the run up to the Lok Sabha elections last year, the Chief Election Commissioner Sunil Arora said, “Holding free and fair elections is one of the biggest challenges facing the Indian democracy due to prevalent abuse of money power”. Till March 2019, around 120 expenditure sensitive constituencies were identified. The EC increased the number of ‘special expenditure observers’ to monitor illegal cash and inducements to voters. Despite the scale of seizures this election, twice that of 2014 Lok Sabha elections, it is unclear whether that made any significant difference on the poll expenditure. A former bureaucrat in her article titled “Weathervane of democracy” in *The Hindu* dated April 16, 2019, pointed out how electoral malpractice has appeared in new forms. She stated that, “Voter bribery and manipulation through the media have become the techniques of unethically influencing voters in place of voter intimidation and booth capturing..... Misuse of media is difficult to trace to specific parties and candidates”.

The rapidly changing nature of election campaigns that spend more on micro-targeting (easier to hide) on digital sphere have thrown up new challenges in monitoring and estimation of actual election expenditure of political parties and candidates. There is agreement among stakeholders about how election campaigning starts prior to the notification of polls, which also involves advertising in media particularly social media, public interactions and other activities directly targeted at key voter groups in the context of elections. Spreading party poll agenda using the

medium of cinema/biopics and through dedicated TV channels which cannot be directly linked to a party/candidate continue to remain outside the purview of any accounted election expenditure.

The EC made several efforts to monitor political activities on social media. Its Media and Monitoring Committee had a social media expert on board during the Parliamentary elections last year and mandated pre-certification of all political advertisements on social media platforms. The campaign expenses on social media were required to be accounted in expenditure statements and the Model Code of Conduct (MCC) applied to social media content by parties/candidates. Nonetheless, groups like Association of Billion Minds (ABM) which is just one among many, allegedly executed the election campaign for the BJP on social media.<sup>35</sup> Several pages on Facebook which made no direct reference to the party/candidates and had million followers were updated and their ownership was transferred to ABM. These pages were then modified to act as party mouthpieces and propagated false news, inflammatory content and poll propaganda in the run up to the Lok Sabha elections 2019. Immediately, after the elections these pages vanished. The party and the company relationship managed to evade the scrutiny of the Commission. Admittedly, social media algorithms/analytics and the use of proxies to spread political messages make it hard to track spending or influence on digital media and largely go unaccounted. The ‘viral’ political content, issue-based advertisements or covert advertising on other platforms such as WhatsApp or TikTok, paid trends on Twitter that could influence voters and work to benefit of parties/candidates are hard to attribute to any party’s/candidate’s campaigning and remain outside the purview of scrutiny.

This doesn’t augur well for the upcoming Bihar Assembly elections, the first state election to be held during the pandemic and will be largely digital in nature. Not only digital campaigns pose challenges to election expenditure monitoring but will widen the space for digital political propaganda in form of fake news, hate speech, voter suppression, deep fakes, surrogate advertising etc. The recent allegations against Facebook for favouring the BJP are even more troubling and put at serious risk the idea of free and fair elections given how sophisticated digital campaigns

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<sup>35</sup> S. Bansal, G. Sathe, R. Khaira, & A. Sethi, *How Modi, Shah Turned A Women’s NGO Into A Secret Election Propaganda Machine*, The Huffington Post (April, 2019), available at [https://www.huffingtonpost.in/entry/how-modi-shah-turned-a-women-s-rights-ngo-into-a-secret-election-propaganda-machine\\_in\\_5ca5962ce4b05acba4dc1819](https://www.huffingtonpost.in/entry/how-modi-shah-turned-a-women-s-rights-ngo-into-a-secret-election-propaganda-machine_in_5ca5962ce4b05acba4dc1819), last seen on 07/01/2020.

along with platform bias/oversight benefit one party over others and determine the electoral outcome.

The practice of horse-trading has also grown in salience and now involves huge sums of money as inducement in a quid pro quo arrangement. The money spent can potentially influence the voting trend. However, remains outside of any accounting or reporting requirement.

The reporting of election expenses in the expenditure statements filed by parties/candidates to the ECI raise several questions on the effectiveness of the process. Political parties and candidates delay the submission of their election statements by several months, escaping any timely scrutiny by general public. It is also unclear whether ECI (or CBBT on behalf of ECI) has taken any action against the defaulters. Despite a prescribed format, several parties have combined their election expenses for 2019 Lok Sabha and the four State Assembly elections held simultaneously without providing a separate account for the two type of elections. Parties and candidates also fail to provide a separate account for their social media expenses, and often combine it with all other expenses under electronic media.

## **6. INTERNATIONAL PRACTICE ON ELECTORAL SPENDING –A COMPARATIVE PERSPECTIVE**

The international legal framework on election expenditure aims to control campaign spending of parties and candidates with the objective to bring about some semblance of an equal chance of success. Paragraph 19 of the *1996 UN Human Rights Committee General Comment No. 25 to Article 25 of the International Covenant on Civil and Political Rights (ICCPR)* provides for reasonable capping on campaign expenses “where this is necessary to ensure that the free choice of voters is not undermined or the democratic process distorted by disproportionate expenditure on behalf of any candidate or party”. Reference is also found in *Recommendation Rec (2003) 4 of the Council of Europe’s Committee of Ministers* about requirements relating to expenditure limits, disclosure, reporting, independent monitoring and supervision, among several other international commitments and standards. At the same time, some jurisdictions refrain from imposing limits on election expenditure, as in case of the USA, deeming it as an unconstitutional curtailment of the fundamental right to freedom of speech and expression.

Keeping in view the challenges of expenditure monitoring confronted by the electoral regulatory regime in India, it would be pertinent to look at the international practice on election spending

laws/enforcement. For the same, the systems prevalent in the United Kingdom, the United States and Canada have been considered in this paper.

### **6.1 The United Kingdom**

There are strict limits on expenditure incurred by both candidates and political parties, including on the spending by third parties that differ depending on the type of election. The caps are on expenditure incurred by the party in any one constituency (£30,000) as well as the total expenditure that can be incurred by the party for all the constituencies it contests. In the UK, all paid political advertising by both political parties and candidates is forbidden on television and radio. Any ad which may influence public opinion on matter of public controversy is also prohibited. Most importantly, the law on spending limit differentiates between the restrictions imposed before (long campaign) and after (short campaign) a person officially becomes a candidate. Parties are required to prepare weekly reports and the election agents of every candidate also needs to submit the account of election expenses/ payments incurred by the candidate or on behalf of him during election period to Electoral Commission within thirty-five days of the declaration of result. For non-compliance, the Commission has prescribed for penalties but lacks any power to impose criminal sanctions.

### **6.2 The United States of America**

In 1976, the US Supreme Court invalidated ceiling limits on campaign expenses on the grounds that they restricted freedom of speech and violate the First Amendment rights of the candidates, therefore, unconstitutional. There is also absence of ceiling on independent third-party expenses. All expenses incurred by candidates and parties are required to be filed periodically to the Federal Election Commission (FEC); these norms are also applicable to independent expenditures and third-party political groups called Political Action Committees (PACs). Instances of non-compliance may lead to an FEC enforcement case or Matter Under Review (MUR) and are also dealt with by imposing fines. According to Pew Research, there is huge support among the public in favour of campaign spending limits to reduce the influence of money in politics.<sup>36</sup>

### **6.3 Canada**

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<sup>36</sup> B. Jones, *Most Americans want to limit Campaign Spending, say Big Donors have Greater Influence*, Pew Research, available at <https://www.pewresearch.org/fact-tank/2018/05/08/most-americans-want-to-limit-campaign-spending-say-big-donors-have-greater-political-influence/>, last seen on 25/01/2020.

Election expenses are subject to ceiling for candidates, registered parties and third parties. The candidate spending limit amount varies from one electoral district to another and also depends on the duration of election period. A candidate who gets elected or receives at least ten percent of the valid votes cast in his /her electoral district and who complies with the reporting requirements/submits auditor's report is entitled to a publicly-funded reimbursement of election and personal expenses paid up to a maximum of 60 percent of the election expenses limit established for the electoral district. Similarly, registered parties are also eligible for publicly funded reimbursement up to a certain amount on fulfilling the required compliance. Prior to the 43<sup>rd</sup> General Election in Canada this year, new rules were set out by the federal government under Election Modernisation Act that restrict the amount of spending permitted in the pre-election period. It also regulates third party political activity.

## **7. CONCLUSION AND RECOMMENDATIONS**

No regulatory framework guarantees effective enforcement of campaign finance regulations given that in a democracy, laws controlling electoral spending are passed by politicians themselves. The willingness and capacity of parties and other stakeholders to moderate use of money and follow the law both in letter and spirit is most essential. The manner in which a political party manages its access to and use of funds defines the foundation for the political finance regime of a democratic country. Large, unaccounted expenditure can be sustained only if the system is abused to enable multiple returns on investment. Accountable and legitimate party expenditure/campaign finance is at the heart of the fight against corruption.

Organizations responsible for enforcement of campaign finance regulations must be independent, capable with inclusive and transparent leadership appointments and secured tenure. These characteristics are integral for better implementation and effective enforcement. The following are the recommendations which need to be adopted:

- a) Political parties have continued to take advantage of a legal vacuum – absence of any regulation on capping of their election expenditure. There is a general agreement that there must be reasonable and enforceable limits on expenditures incurred by political parties during elections. The EC proposed that the parties' expenditure during elections should be either 50% of, or not more than, the expenditure ceiling limit provided for the candidate. This ceiling must

also be applicable on parties before the announcement of elections when widespread electioneering and public mobilization is in full swing.

- b) The 255<sup>th</sup> Law Commission Report recommends amending Section 77 to extend the imposition of a ceiling on the election expenses of the candidate to the period before date of nomination.
- c) Similar to the restrictions in the UK and Canada, third party campaigning must be strictly monitored given the extensive use of social media nowadays. Third party campaigners who intend to incur expenditure for any party/candidate beyond a prescribed limit should register with ECI. Any expenditures sans the sanctions of the Commission and without prior consultation of the parties of candidates must be penalized. Third party expenditure on specific candidates should be included within that candidate's ceiling.
- d) ADR's petition on election expenditure monitoring of political parties proposes for parties to submit election expenditure statements one year prior to the date of announcements of elections (Lok Sabha and Assembly elections); submission of expenditure statements during the election period should be done at regular intervals: once a month before declaration of elections and at least once a week during the election period.
- e) Vote-buying or bribery of voters is a serious menace that is detrimental to the integrity of elections. The EC should be given powers to countermand polls on the grounds of large scale of vote-buying and suggested to make it a cognizable offence during elections. There should be civil penalties extending up to de-registration of party/ disqualification of candidates for those indulging in this practice.
- f) The EC has proposed for making paid news an electoral offence under the Representation of the People Act. The EC reported a total of 647 confirmed cases of paid news during Lok Sabha 2019 elections. Despite growing vigilance by the EC, the poll body reiterates the need to fix the lacunae in the law to be able to deal with the practice holistically.
- g) As of now political parties are not regulated by any law; a comprehensive bill regulating political parties, dealing with party constitution, organization, internal elections, candidate selection etc. is the need of the hour.
- h) For political parties to be truly accountable and transparent in their functioning, it is vital that they comply by the CIC's 2013 order declaring them public authorities under the Right to Information Act, 2005. This is the only way to ensure parties' compliance with the disclosure

requirements given that the account of election expenses of all the parties are yet to be available in the public domain – more than four months have passed since the deadline.

- i) Many of the aforesaid suggestions would be effective if the ECI is suitably empowered to take enforcement action. At present, the ECI can only review the status of political parties if parties fail to contest elections for six years successively. However, it has no power to order deregistration of political parties as penalty. EC must be given this power in special circumstances where parties have violated the provisions of the Constitution or breached the undertaking given to the EC at the time of registration.
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# ANCIENT RAJDHARMA – PAVING THE WAY TO A SUSTAINABLE GOVERNANCE SYSTEM IN INDIA

*Deepashree Chatterjee & Dr. Arpita Chatterjee*

*The ancient system of governance, referred to as Rajdharma, which primarily revolves around the king and his duties, rights, laws, virtues, conduct, and the right way of living, has led to the emergence of the present system of governance in India. Whether it was during the reign of our ancient kings like Chandragupta or during the Ramayana or Mahabharata era, our literature proves the importance our society has placed on a strong and good governance system for ages. The paper discusses some of the major verses from ancient Indian books and literature like Mahabharata, Manusmriti, Arthashastra, Shukra niti, Agni Purana, etc., on the principles and practices of good governance. It highlights how they provide a guiding note on significant areas of governance, like the functioning of the various wings of the administration, taxation system in India, foreign policies, legal and judiciary system, etc. Some of the loopholes in the present system of administration in India have also been identified and suggestions related to the changes that must be incorporated in the present governance system to make it fairer and more sustainable.*

**Key Words: Rajdharma, Rulers, Vedas, Governance, public administration**

## 1.. INTRODUCTION

The ancient system of governance revolved around the king, who, though, was the administrator, was bound by moral, political, and social obligation to serve his people<sup>37</sup>. His rights, duties, virtues, conduct, laws, and the right way of living have been referred to as *Rajdharma*. In other words, the principles to be followed and duties to be observed by a king for the sake of his country or those being ruled that is the path of righteousness and proper religious practice is known as *Rajdharma*<sup>38</sup>.

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<sup>37</sup> S.K. Sharma, *Good Governance in Ancient India: Remembering Kingship in Shantiparva of Mahabharata*, VI Meerut Journal of Political Science and Public Administration 109, 115 (2003).

<sup>38</sup> R. Tripathi, *Good governance: origin, importance and development in India*, 07 International Journal of Development Research 16968, 16969 (2017), available at <http://www.journalijdr.com/sites/default/files/issue-pdf/11084.pdf>, last seen on 18/01/2021.

The importance of *Rajdharm* can be understood from the fact that almost all our important scriptures have their mention at some of the other places.

Good governance was an essential agenda of the Hindu rulers of ancient times.<sup>39</sup> Therefore, it is imperative to understand the various aspects of good governance followed for ages and determine how relevant they are considering the present scenario. Hence, the present study delves into the various aspects of good governance as mentioned in the ancient Indian scriptures and attempts to relate it with the present governance system, thereby analyzing how they could address the various administrative issues in the modern context.

## **2.. WHAT DO THE INDIAN ANCIENT SCRIPTURES SAY ABOUT RAJDHARMA AND GOOD GOVERNANCE?**

In the *Shanti Parva*, which is twelfth of the eighteen major books (Parvas) of *Mahabharata*, chapter 1- 128 contains a description on the duties of kings and rulers and the principles of good governance and dharma. Part 1 of the book contains the *Rajdharmanusana Parva*, where the dying Bhishma counsels Yudhishthira on the rules of good governance. According to the *dharma*, the king should always rule, which is to be eventually respected by the king and his people<sup>40</sup>. *Dharma*, in Shanti Parva, has been defined not in terms of any rituals or religious principles but based on something which enhances *satya* (truth), *ahimsa* (non-violence), *asteya* (non-stealing of others property), *shoucham* (purity), and *dama* (restraint)<sup>41</sup>. It mentions that the best law and rule is the one that ensures welfare and upliftment for everyone without harming any particular group.

*A king should be guided by understanding and knowledge gathered from various sources, and he has to ensure that the moral laws prevail everywhere in his kingdom.*<sup>42</sup>

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<sup>39</sup> J. Mukherjee, *REVISITING GOOD GOVERNANCE IN ANCIENT INDIAN POLITICAL THOUGHT*, LXXI The Indian Journal of Political Science 53, 300 (2012), available at <https://www.jstor.org/stable/42748367> (last visited on Jan 18, 2021).

<sup>40</sup> S.K. Sharma, *Good Governance in Ancient India: Remembering Kingship in Shantiparva of Mahabharata*, VI Meerut Journal of Political Science and Public Administration 109, 119 (2003).

<sup>41</sup> Shanti Parva, available at <http://www.vyasaonline.com/shanti-parva/> (last visited January, 24, 2021).

<sup>42</sup> *Ibid.*

In Ancient India, *Manusmriti* (served as the most authoritative and important Hindu law book) or *dharmashastra* was the first Sanskrit text to have been translated into English in 1794 and was also used by the British colonial government to formulate the Hindu laws in India <sup>43</sup>

In *Manusmriti*, it has been said:

*'Ekameva Dahatyagnirnaram Durupsarpinama  
Kulam Dahati Rajagnih Sapashudravyasanchayama'*<sup>44</sup>

It means that though the fire only burns that, which comes inside it, Rajagni or unrest in the kingdom burns everything, including the entire dynasty. Thus, the *Manusmriti* exerts utmost importance upon the duties of a ruler that includes ensuring welfare and peace in his kingdom, failing which would lead to the destruction of the ruler and his entire dynasty.

In *Agnipurana*, *Rajdharma* has been explained by Maharishi Pushkar to Lord Rama. In his view, *a king should be the destroyer of enemies, protector of his people, and a giver of an appropriate punishment to the criminals*. Lord Rama also narrates the principles of good governance to his brother Laxman, as:

*'Nyayenarjanamarthasya Vardhanama Rakshanama Charet  
SatpaatrapratipattaschRajvrittam Chaturvidham'*<sup>45</sup>,

According to which a king should earn wealth justifiably, thereafter increase it, further protect it and lastly, donate it to the right person. The government in power should keep a note of the characteristics of an ideal ruler, as defined by our ancient scriptures, and ensure truthfulness, honesty, and integrity in all their actions. A leader should hold capabilities to protect their country

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<sup>43</sup>Manusmriti, available at: [https://en.wikipedia.org/wiki/Manusmriti#cite\\_note-Flood\\_1996,\\_page\\_56-2](https://en.wikipedia.org/wiki/Manusmriti#cite_note-Flood_1996,_page_56-2) (last visited on Jan 24, 2021).

<sup>44</sup> Kumar Surendra, *The Manusmriti*, 509 (Arsh Sahitya Prachar Trust, New Delhi, 1985)

<sup>45</sup> T. Jha and G. Tripathi, *Agnipuranam*, Chapter 238, 727 (Hindi Sahitya Sammelan, Allahabad, 3<sup>rd</sup> ed., 2007).

from enemies while simultaneously ensuring peace in the country. The administrator should follow the path of *dharma*, as mentioned in the *Shanti Parva* of Mahabharata.

### **3.. PRESENT ADMINISTRATION SYSTEM AS INFLUENCED BY THE ANCIENT SYSTEM OF GOVERNANCE**

India's existing politics and governance system seems to have been inspired by our ancient system of *Rajdharm* as mentioned in the ancient books or *granthas* (in the Sanskrit language), including Manusmriti *Kautilya Arthashastra*, *Agni Purana*, etc. Nevertheless, the rules and principles which were followed from the ancient period underwent many changes and have taken the form of modern politics over time. The influence of the ancient system can be found in the following aspects:

#### **A. King ruling with the help of a council of ministers –**

In ancient times, the king was the ultimate authority and the supreme power who ruled with the help and assistance of his council of ministers. The king's power was delegated to the different ministers who were allocated with specific responsibilities for the smooth functioning of the state. Today, the task of holding authority and the responsibility of governing the states lies with the executive branch of the government.

In India, the President is the constitutional head of the state and heads the Union's executive. However, the real executive powers vests with the council of ministers (headed by the Prime Minister) to aid and advise the President, and the president, in the exercise of his functions, acts according to such advice. The council of ministers headed by the Prime Minister work on the various functional areas allotted to them to govern the country<sup>46</sup>. The position of the Prime Minister in India can be compared to that of the king in ancient times, who is the real head of the state as all the powers reside in him and should also possess the qualities to govern the country like that of a king.

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<sup>46</sup> Constitution of India, available at [https://en.wikipedia.org/wiki/Constitution\\_of\\_India](https://en.wikipedia.org/wiki/Constitution_of_India) (last visited on Jan 26 2021)

## B. Delegation of authority –

In *Manusmriti*, the ancient system of administration is described, wherein a state is comprised of several villages, and for the welfare of these villages, a Chief of the village was appointed<sup>47</sup>. The king also appointed high-ranking officers for good management in the cities<sup>48</sup>. Alike today, we elect *gram pradhanas*, who is the village's chief, to take care of the villages. While at the State level, there are a separate set of ministers headed by the Chief Minister for the better administration in a state. The mode of governance where a delegation of authority was a common feature seems to have been inspired by our ancient system of governance.

## C. The Foreign and International policies of India as influenced by the ancient Indian scriptures

The concepts and principles mentioned in the ancient Indian scriptures hold good today in many contexts and can be used as a guideline in political maneuvering.<sup>49</sup> For instance, the concept of anti-racism seems to have been inspired by the *Shukraniti*, where it is mentioned that the race of a person is not determined by birth or color but by his virtues and deeds<sup>50</sup>. The concept of a 'sovereign state' and 'denunciation of foreign rule' was also used in the *Arthashastra*, where it mentions that if a state is under foreign rule and not treated as its own, it would be impoverished, and its wealth would be carried off<sup>51</sup>. The objective of maintaining world peace in our foreign policies also seems to have been inspired by the ideals of Ashoka, grandson of Chandragupta Maurya, who tried to run his empire on the principles of morality and peace.

Even Kautilya mentioned in the *Arthashastra* that if the benefits of war and peace are equal, peace should always be preferred<sup>52</sup>. For instance, Kautilya in the *Arthashastra* discusses the theory of an international system called 'circle of states' or *rajamandala*, according to which

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<sup>47</sup> Kumar Surendra, *The Manusmriti*, 153 (Arsh Sahitya Prachar Trust, New Delhi, 1985)

<sup>48</sup> *Ibid*, at 556

<sup>49</sup> Dr. Arpita Chatterjee and Deepashree Chatterjee, "AN ANALYSIS OF THE INFLUENCE OF ANCIENT INDIAN SCRIPTURES ON INTERNATIONAL RELATIONS AND FOREIGN POLICIES OF INDIA, 03, 03, *International Journal of Advanced Research in Commerce, Management & Social Science* 152-157 (2020)

<sup>50</sup> Benoy Kumar Sarkar, *THE SACRAD BOOKS OF THE HINDUS*, 8, (Panini Office series, Allahabad, 1913).

<sup>51</sup> R. Shamasastri, *Kautilya's Arthashastra* 302 (Government Press, Bangalore, 1915)

<sup>52</sup> *Ibid* at 251

the states border the ruler states in the form of a circle are the hostile states. The second circle comprises of those states which share common borders and forms circle around these hostile states. These second circles of states are considered natural allies of the ruler state against the hostile states that lie between them. Thus, it insists on the principle of friendship with the enemy of the enemies<sup>53</sup>. India's present international policy is also based on this logic of Kautilya as mentioned in the *Arthashastra*, following which India considers Afghanistan and Japan as natural allies against Pakistan and China, respectively.<sup>54</sup>

#### **D. The present taxation system as influenced by the one prevalent in ancient India**

The system of raising funds in the form of taxation by the kings was prevalent in ancient India. Chapter 7 of the *Manusmriti* mentions that the taxes were collected from the businessmen based on the revenue and expenditure and the profits earned while considering food and maintenance costs.<sup>55</sup> Kalidas, the renowned Sanskrit writer and the greatest poet and dramatist of Sanskrit literature, in his work *Raghuvansham*, mentions that "it is only for the welfare of the people that a king collects taxes, just as the Sun draws moisture from the earth to return thousand fold more."<sup>56</sup> According to Kalidas, the tax should be imposed in such a manner that both the king (who imposes) and those who have imposed share the results and harness the benefits of development.<sup>57</sup> Further, Chapter 88 of *Shanti Parva* of Mahabharata suggests that "the king's tax without injuring the capabilities of its citizens to provide wealth to the monarchy, similar to the way bees draw honey from flowers without harming it or keepers of cow milk them without hurting the cows or starving the calf". It suggests that those who cannot bear the burden of tax should not be levied taxes.<sup>58</sup>

The taxation system of India is also based on the capabilities of a person to pay his tax, and the rates at which taxes need to be paid are based on the different tax slabs. Those falling under the higher tax slabs pay higher taxes than those with lower income and are categorized into lower tax slabs. Further, those who cannot pay taxes due to their low incomes are also

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<sup>53</sup> Chanakya: India's Truly Radical Machiavelli, *available at* : <https://nationalinterest.org/feature/chanakya-indias-truly-radical-machiavelli-12146> (last visited on 24 Jan, 2021)

<sup>55</sup> Surendra Kumar, *The Manusmriti* 562 (Arsh Sahitya Prachar Trust, New Delhi, 1985).

<sup>56</sup> S.K. Jha and A. Kumar, "Relevance of Thoughts of The Great Poet Kalidas on Taxation in The Present Era" 2 *Global Research Analysis*, 153 (2013)

<sup>57</sup> Ibid

<sup>58</sup> "Shanti Parva", *available at* <http://www.vyasaonline.com/shanti-parva/> (last visited January, 24, 2021)

exempted from paying any tax. The taxes collected are utilized for the developmental works undertaken by the government for the welfare of the citizens.

### **E. Importance of treaties or *Sandhis* entered into by kings in the ancient governance system**

It is frequently observed in the modern administration system that various countries enter into different treaties with each other. The concept of entering into various treaties also prevailed in the ancient governance system. Treaty or *sandhi* is an agreement between sovereign states in which one state enters into a particular agreement basing upon certain specific conditions for a specified period of time. In *Agnipurana*, 16 types of treaties (*sandhis*) have been mentioned, which were practiced enormously in ancient days. Among them, the four treaties most essential treaties were *mutual favour, friendship, relation, and gifts*.<sup>59</sup> For example, in times of distress or natural calamity, a king of the kingdom in distress used to seek help from another king with whom he had entered into the treaty of mutual favour. Various treaties of friendships were entered into so that various rulers could get support from each other in the trade of various products or get help in additional soldiers or arms and ammunitions in times of war.

Such treaties were very common, especially among the kings with common enemies. In ancient days, kings used to enter into treaties to build relationships with other kings by tying marital knots with their daughters, sisters, etc. Gifts were also exchanged as a symbol of friendship. One of the most common examples is the gifting of the state of *Anga* to Karna by Duryodhana, as mentioned in the epic *Mahabharata*, which won him the commitment of Karna, a powerful ally against Pandavas<sup>60</sup>. Kautilya in the *Arthashastra* also mentions treaties or *sandhis* as a strong method of foreign policy, which helps to enhance the power of one state relative to others.

Our present governance system also emphasizes the various treaties among different nation-states or treaties between nation-states and international organizations. Today, there are more than three thousand treaties entered into by India with several countries. Some recent treaties India has entered into include the ‘Memorandum of Understanding between India and Portugal

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<sup>59</sup> T. Jha and G. Tripathi, *Agnipuranam*, Chapter 240, 734 (Hindi Sahitya Sammelan, Allahabad, 3<sup>rd</sup> ed., 2007).

<sup>60</sup> Anga Kingdom. *available at* [https://en.wikipedia.org/wiki/Anga\\_Kingdom](https://en.wikipedia.org/wiki/Anga_Kingdom) (last visited May 20, 2020).

concerning cooperation in the field of industrial and intellectual property rights, ‘cooperation agreement between India and Portugal on maritime transport and ports,’ ‘agreement between India and Brazil on cooperation in the field of geology and mineral resources, etc<sup>61</sup>.

In ancient days, various rulers visited the kings of other kingdoms to maintain a healthy and friendly relationship. Like rulers of ancient times, our Prime Minister also visits various countries to build friendly relations with them and enters into talks related to peace, cooperation, etc. On many occasions, various gifts are also presented as a symbol of goodwill and harmony. One of the instances of such visits is when the Prime Minister of India visited London in 2015 to give a new dimension to the Indo-UK relationship. He gifted his UK counterpart David Cameron a pair of handcrafted bookends, and the centerpiece of each of the bookends contained silver bells with verses from the Bhagavad-Gita engraved in Sanskrit English meaning along the inside rim. He had also gifted him a book compiled with letters sent by Indian soldiers who served in France during World War 1. The visit resulted in a long-lasting bilateral tie-up, and commercial deals worth \$9 billion in the fields of retail, IT, logistics, energy, finance, education, and health sectors were sealed.<sup>62</sup>

#### **F. *Dandaniti* – the law of punishment as prevalent in ancient India**

Indian law contains different punishments for different offences. Punishments are given according to the severity of the crime committed. In Chapter 4 of the *Arthshastra*, Kautilya propounds *dandaniti* (the law of punishment) and says that all respect the king who imposes a deserved punishment to the culprits. Punishments that are awarded due considerations make people devoted to righteousness, but when they are ill awarded under the influence of fury, greed, or ignorance, they tend to ignite the hermits, ascetics, and the households<sup>63</sup>.

In chapter 237 of *Shanti Parva*, Bhishma propounded “only those punishments proportionate to the crimes committed and advised to avoid harsh and capital punishment.”<sup>64</sup>. Also, “any

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<sup>61</sup> Treaty / Agreement, Ministry of External Affairs, Government of India, available at: <https://mea.gov.in/TreatyList.htm?1> (last visited on January 26, 2021)

<sup>62</sup> Why Modi's UK visit has been a big success available at <https://www.dailyo.in/politics/modi-uk-visit-david-cameron-bilateral-ties-xi-jinping-jaguar-land-rover-make-in-india-unsc-terrorism/story/1/7420.html> (last visited on 20 January 2021)

<sup>63</sup> R. Shamastry, *Kautilya's Arthashastra* 158 (Government Press, Bangalore, 1915)

<sup>64</sup> *Shanti Parva*, available at: <http://www.vyasaonline.com/shanti-parva/> (last visited on January 24, 2021).

innocent relative of the criminals should never be punished for the crimes committed by them.”<sup>65</sup> Section 416 of Criminal Procedure Code, 1973 seems to be in line with this, as it states that if a woman who is sentenced to death is found to be pregnant, the execution of the sentence is postponed or many a time reduced to life imprisonment so that the innocent baby developing inside her or who arrives in this world is not punished for the crime committed by his/her mother<sup>66</sup>. An instance can be drawn from the case of the Sri Lankan citizen, Nalini Sriharan, who was arrested on 14 June 1991 for being involved in the conspiracy of the killing of the former Prime Minister of India, Sri Rajiv Gandhi, when she was found to be pregnant<sup>67</sup> who thereafter ended up giving birth to a baby girl in jail. After being found guilty, she was awarded a death sentence on 11 May 1999. However, on the intervention of the widow of Sri Rajiv Gandhi, who had petitioned for clemency for the sake of Nalini’s daughter, her death sentence was later commuted to life imprisonment.<sup>68</sup>

#### **4. TRANSFORMATION TOWARDS BETTERMENT – THE POSITIVE ASPECTS OF MODERN POLITICS**

The modern system has witnessed several changes over time, many of which are better than what used to be followed in the ancient days. For example, in ancient days, thrones were handed over to another king (accordingly to genealogy), as a result of which many a time, tyrannical rulers came to power and oppressed the citizens. However, today, India has become the world’s largest democracy, and the people of the country elect their leaders through votes, contrary to the ancient system of passing over thrones through generations. Thus, if a leader is found to be oppressive and does not perform his duties well, people have the power to remove him and elect a better and worthy leader.

In the ancient system of governance, all powers, whether related to the framing of the laws or their execution or the power to grant punishments vested in the king's hands. In the present Indian

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<sup>65</sup> Ibid.

<sup>66</sup> Death Sentence in India - IPC - Death penalty, available at: <http://www.legalserviceindia.com/articles/dsen.htm> (last visited on January 25, 2021)

<sup>67</sup> Nalini Sriharan lives to tell the tale, *available at* <https://timesofindia.indiatimes.com/city/chennai/Nalini-Sriharan-lives-to-tell-the-tale/articleshow/55508048.cms> (last visited on 24 January 2021)

<sup>68</sup> Assassination of Rajiv Gandhi”, available at [https://en.wikipedia.org/wiki/Assassination\\_of\\_Rajiv\\_Gandhi](https://en.wikipedia.org/wiki/Assassination_of_Rajiv_Gandhi) ((last visited on 26 January 2021).

political scenario, another positive change that has been brought forth is the separation of the Judiciary, executive, and legislation. Here, the legislative system comprises the Parliament and the State legislatures responsible for passing the laws in the country and states. The power to amend the Constitution of India also vests in Parliament. The powers to execute the laws lie with the government, comprising the President, the Council of Ministers, the Vice-President, the Union Ministries, and the Independent Executive Agencies. The judicial system in India comprises different courts, including Subordinate Courts, District Courts, High courts, and Supreme Court, the apex court of India. The judiciary holds the power to interpret the laws, issue verdicts, and provide judgment based on the various law provisions.

The separation of judiciary, executive, and legislation ensures the fair working of the democracy, prevents concentration of the exclusive powers in one hand, and simultaneously restricts the arbitrary actions of each wing. Even *Kautilya* reiterated the importance of a magistrate in *Arthashastra*, where he mentions that in the absence of a magistrate, the weak will be swallowed by the strong. However, in his presence, the weak can resist the strong.<sup>69</sup>

## **5. RECOMMENDATIONS**

The timeless ancient Indian scriptures provide guidelines and principles, which has led to a robust governance system for ages and can be referred to while dealing with the present administrative problems. Some of the areas where an immediate reformation is needed to ensure a strong and efficient governance system are:

### **A. Need for selection of a ‘right’ leader**

Though we have the freedom to choose our rulers or leaders today, we often fail to choose the right leader. Many political leaders with criminal backgrounds are allowed to contest the elections and form a government. Many illiterate citizens are enticed with money by the political parties for voting in their favour. This further leads to corruption while also destroys the citizens' wealth for personal gain(s). For example, in the infamous Coalgate scam of 2012, various bureaucrats included political leaders and several ministers from the then ruling political party. The allocation of coal blocks between the years 2004 to 2009 was made inefficiently and illegally (possibly),

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<sup>69</sup> R. Shamasastri, *Kautilya's Arthashastra* 158 (Government Press, Bangalore, 1915)

resulting in the considerable loss of the country<sup>70</sup>. According to a study made in 2017 by Transparency International, a Berlin-based non-governmental organization, India has been the most corrupted country in the Asia-Pacific region. The study found that seven out of ten people in India had to pay bribes to access public services<sup>71</sup>.

## **B. Need to acquire four crucial domains of knowledge vital for a ruler as described in *Arthashastra***

Acharya Kautilya in the *Arthashastra* classified knowledge into four domains, wherein the knowledge of industry and business has been termed as *Varta*<sup>72</sup>. *Varta* comprises agriculture, cattle breeding, and trade<sup>73</sup>. The knowledge of *Varta* helped a king gain control over his supporters and enemies as he could earn treasure and expand his army force through the *Varta* strategy. It is evident that in the modern era, agriculture, cattle breeding, and trade are the important areas for the economic development of a nation. Therefore, the government must have sufficient knowledge in these specific areas to frame proper policies. For example, despite the fertile soil of India, our nation was not self-sufficient in food grains due to frequent famines, low productivity, financial instability, etc.

However, several initiatives taken by the government for a green revolution in India (1965) introduced modern methods and technology like high-yielding variety seeds, pesticides, irrigation facilities, fertilizers, pesticides, etc. India, thereafter, became a self-sufficient nation in food grains<sup>74</sup>. Similarly, operation flood in India launched in 1970 after the thrust is given by the chairman of the National Dairy Development Board (NDDB), Verghese Kurien, appointed by the Prime Minister of India, transformed India from a milk deficient nation to the world's largest producer of the milk<sup>75</sup>. This proves how the *Varta* strategies defined in our ancient literature hold their importance in the modern governance system.

<sup>70</sup> 8 biggest scams that put India to shame *available at* [https://yourstory.com/2017/12/8-scams-india?utm\\_pageloadtype=scroll](https://yourstory.com/2017/12/8-scams-india?utm_pageloadtype=scroll) (last visited on Jan 21, 2021)

<sup>71</sup> *Ibid.*

<sup>72</sup> How Did India's Ancient Masters Classify Domains of Higher Learning or VIDYA, *available at*: <https://www.esamskriti.com/e/Spirituality/Education/How-Did-India-colon-s-Ancient-Masters-Classify-Domains-of-Higher-Learning-or-VIDYA-1.aspx> (last visited on Jan 25, 2021).

<sup>73</sup> R. Shamasastri, *Kautilya's Arthashastra* 14 (Government Press, Bangalore, 1915).

<sup>74</sup> Green Revolution in India, *available at*: [https://en.wikipedia.org/wiki/Green\\_Revolution\\_in\\_India](https://en.wikipedia.org/wiki/Green_Revolution_in_India) (last visited on Jan 27, 2021).

<sup>75</sup> Operation Flood, *available at*: [https://en.wikipedia.org/wiki/Operation\\_Flood](https://en.wikipedia.org/wiki/Operation_Flood) (last visited on March 27, 2020).

### **C. Requirement of active and honest functioning of the executive**

People, especially in the less developed areas or belonging to less educated sections, often complain about the administration and police not working properly. Many times, prompt action is not observed in severe crimes. For example, females in a state commonly suffer from domestic violence, but police officers not taking any action or strict actions against the culprits despite the multiple complaints that are mostly observed. In the *Nirbhaya case*<sup>76</sup>, a twenty-three-year-old physiotherapy intern, who was gang-raped brutally, resulted in her death in 2012. The inaction on the part of the police can also be drawn out from the fact that just before a few hours of the Nirbhaya rape incident, another person, a carpenter, was robbed in the same bus by the same group of people just a few hours ago and was dumped under the IIT flyover. The carpenter reported the incident to the three constables passing nearby but refused to take any action stating that the crime scene was not under their purview<sup>77</sup>. Had the immediate actions were timely taken, Nirbhaya could have been saved. Hence, all those entrusted with the responsibility of law enforcement and order must perform their duties with utmost sincerity, failing which strict action must be taken against them by the government.

### **D. Requirement of prompt action by the judiciary**

There are many pending cases in the courts, which increases the turmoil of victims, who often find the criminals coming out on bail and the cases being dragged for long that they are exhausted physically, mentally, and economically fighting for justice. In the above instance of Nirbhaya case, while the fast track court of Delhi awarded death sentence on January 3, 2013, it was executed on March 20, 2020, after a long delay of more than seven years<sup>78</sup>, due to the several legal options available to the accused, like appealing to the higher courts, filing pleas in the stages so that the execution of the capital punishment can be delayed, etc. points at the various loopholes that exist in our existing judicial system. In ancient times, punishments awarded by the rulers were implemented instantly, so the fear of law was more among people, and hence crime rates were also low.

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<sup>76</sup> Mukesh & Anr v. State of NCT of Delhi, Criminal Appeal NOS. 607-608 OF 2017(arising out of S.L.P. (Criminal) Nos. 3119-3120 of 2014)

<sup>77</sup> 2012 Delhi gang rape, *available at*: [https://en.wikipedia.org/wiki/2012\\_Delhi\\_gang\\_rape](https://en.wikipedia.org/wiki/2012_Delhi_gang_rape) (last visited on Jan 19, 2021)

<sup>78</sup> Ibid.

In *Arthashastra*, Kautilya says that “if a judge resumes a case that has been already settled or disposed of, he should be punished with the highest amercement.”<sup>79</sup> Even after judgment is passed by a lower court in our country, appeals are made to the higher courts, and the people with criminal mentality are aware that the courts may take a long time to arrive at a decision. Therefore, fast-track courts should be established area wise and more power should be entrusted upon them so that at the time of execution, the punishments can be reduced. In cases of heinous crimes, the various levels of judicial processes should be reduced so that ultimate judgment can arrive soon.

#### **E. Need to identify loopholes in Indian laws and remove it**

Various loopholes in the Indian laws should be changed as soon as they are identified. For instance, Section 43(3) (a) and Section 44 of the Wildlife Protection Act, 1972 prohibits killing peacock, which is our national bird, and prohibits the export of tail feathers or any article made from the bird. However, it allows domestic trade of feathers and articles made from it, provided these are shed naturally. Taking advantage of this exemption, thousands of kilos of these feathers are being sold by killing the peacocks for their feathers, which is evident from the fact that India has lost nearly half of its peacock population since Independence.<sup>80</sup>

In the Nirbhaya case also, according to the prison rules, if there is more than a convict who has been awarded death sentence for the same case, and one of them moves mercy plea, then the sentence of everyone involved in the crime would be postponed till a decision on the mercy plea is made. Taking advantage of this loophole, the accused had been deliberately filing mercy pleas in different stages, one at a time, so that the execution could be delayed. Further, the juvenile, who was also involved in the heinous crime, was set free after being kept for three years in the corrective home<sup>81</sup>. There should also be some amendment in the laws, allowing severe punishments to such juvenile who commits crimes of exceptionally violent nature, as this meager punishment of a maximum term of three years, in case an accused is a juvenile, might provide juveniles of such criminal mentality, a fuel to commit a crime of any extent without much fear.

<sup>79</sup> . Shamasastya, *Kautilya's Arthashastra* 302 (Government Press, Bangalore, 1915).

<sup>80</sup> Peacock is shocked in India : ban its feathers trade, *available at*: <https://www.change.org/p/peacock-is-shocked-in-india-ban-its-feathers-trade-naresh-kadyan> (last visited on March 08, 2020).

<sup>81</sup> 2012 Delhi gang rape, *available at*: [https://en.wikipedia.org/wiki/2012\\_Delhi\\_gang\\_rape](https://en.wikipedia.org/wiki/2012_Delhi_gang_rape) (last visited on Jan 19, 2021).

These loopholes, once identified, should be removed immediately. For example, the proposal for the amendment of Section 43(3)(a) and Section 44 of the Indian Wildlife Act, 1972, which ultimately will prohibit the transfer or sale of tail feather and articles made from them, has already been considered and is expected to be passed soon. To put a stop to rape cases, Andhra Pradesh Criminal Law (Amendment) Act 2019 was passed by the Andhra Pradesh Legislative Assembly, according to which investigation of rape cases must be completed within in 7 days and trial in 14 working days in cases where there is adequate conclusive evidence, which has reduced the total judgment time from the previous 4 months to only 21 days from existing 4 months. The Act also prescribes the death penalty for rape crimes where there is adequate conclusive evidence<sup>82</sup>. Such amendments should be brought to the entire country as well.

#### **F. Need to curb terrorism with strong hands**

An ancient scholar named Ushna had used the following verse against the enemy country:

*'Dwaveva Grasate Bhumih Sarpo Bilshayamiva  
Rajanam Chaviroddharam Brahmanam Chaprivasinam'*

The verse encourages a king to defeat the enemy country; otherwise, he will be swallowed by the earth as a snake swallows mice living in a hole.<sup>83</sup> Even in the *Arthashastra*, Kautilya mentions that anyone who attacks the Kingdom shall be put to death for creating disturbances to the people<sup>84</sup>.

However, there have been numerous instances of terrorism where our government had not taken strict and prompt action, despite knowing the involvement of the enemy country in the attacks. For instance, the 2008 Mumbai terror attack, which was a series of coordinated bombing and shooting attacks between 26-29 November, 2008 in Mumbai resulting in the death of at least 174, including 9 attackers, and leaving more than 300 wounded, was carried on by 10 members of Lashkar-e-Taiba, a terror organization based in Pakistan<sup>85</sup>. Almost all the suspects were either from Pakistan or were born in Pakistan and included three Pakistani army officers as well. The reports also

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<sup>82</sup> What is Disha Act, the new law of Andhra Pradesh? *available at* <https://www.gktoday.in/current-affairs/what-is-disha-act-the-new-law-of-andhra-pradesh/> (last visited on Jan 26, 2021).

<sup>83</sup> A.B Upadhyaya, *Sanskrit shastron kaa Itihaas* 427 (Sharda Sansthan, Varanasi, 1969).

<sup>84</sup> R. Shamasastri, *Kautilya's Arthashastra* 241 (Government Press, Bangalore, 1915).

<sup>85</sup> Mumbai terrorist attacks of 2008, Encyclopaedia Britannica, accessed March 05, 2020, <https://www.britannica.com/event/Mumbai-terrorist-attacks-of-2008>

revealed the involvement of Pakistan's Intelligence Agency (ISI) in the funding of the attack<sup>86</sup>. Though it further strained the relationship between India and Pakistan, a firm answer was required by India to prevent further attacks.

However, of late, instances have been of the Indian government of India taking strict and prompt action against the terrorists from Pakistan. For instance, in response to the *fedayeen attack* in the town of Uri by the militants controlled by Pakistan based terrorist organization, Jaish-e - Muhammad, which killed nineteen Indian army soldiers, and subsequent attack in Pathankot and Gurdaspur, the Indian army responded promptly to the attacks after getting a nod from the Prime Minister of India, Sri Narendra Modi, with a surgical attack on September 2016 in the terror camps of the Pakistani-administered Kashmir. Indian army claimed that at least twenty Lashkar-e Taiba militants were killed, and at least 12 training camps belonging to Hizbul Mujahideen, Lashkar-e-Taiba, and Jaish-e-Mohammad had been swiftly moved from their locations in Pakistan-administered Kashmir<sup>87</sup>. The military raid has been widely praised in India and affirms our present prime minister's strong leadership abilities.

## 6. CONCLUSION

Ancient Indian scriptures like *Mahabharata*, *Arthashastra*, *Ramayana*, *Shukra Niti*, *Manusmriti* provide a deep insight into the governance system followed in ancient India. They provide guidance on the sound governance system, which should be kept in mind before framing any modern era strategies.

Though, some of the changes adopted over time, as the democratic way of electing a leader rather than the coronation of a king by heredity; separation of legislature, executive, and judicial system prevent arbitrary allocation of power in one hand, etc. are a step towards better governance. Further, issues like corruption, the inaction of administration to protect the people, lengthy court process, inefficiency in administration, etc., should immediately be addressed. A robust judicial system and a correct *dandaniti* (the science of chastisement) should be the basis for ensuring peace

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<sup>86</sup> 2008 Mumbai attacks, available at: [https://en.wikipedia.org/wiki/2008\\_Mumbai\\_attacks](https://en.wikipedia.org/wiki/2008_Mumbai_attacks) (last visited on Jan 26, 2021)

<sup>87</sup> 2016 Indian Line of Control strike, available at: [https://en.wikipedia.org/wiki/2016\\_Indian\\_Line\\_of\\_Control\\_strike](https://en.wikipedia.org/wiki/2016_Indian_Line_of_Control_strike) (last visited on Jan 26, 2021)

and security in society. Justice delayed is said to be justice denied. Hence, long and tiring judicial processes must be revamped for the benefit of the citizens. Various loopholes in the laws and the legal system must be identified, and suitable changes must be brought forth.

With the rich cultural heritage of our country, strong unity in diversity existing among the citizens, rich ancient scriptures, along a robust ancient system of governance to learn from, India has the potential to be an exemplary example by having one of the best governance systems in the world, provided the negatives caused due to modernization must be excavated from its grassroots.

## STATUS OF SOCIAL AUDIT OF MGNREGA IN INDIA

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### **Abstract**

*Accountability has been recognised as one of the pillars of good governance, and the social audit system has emerged as one of the tools to enforce accountability in government programs. Social audit of the implementation of Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA), 2005 has slowly got institutionalised, and the Government of India is making an effort to expand it to other programs. Centre for Social Audit of the National Institute of Rural Development and Panchayati Raj (NIRD&PR), Hyderabad, has conducted a study to understand the current status of the social audit of MGNREGA in India. This paper describes the concept, process, and evolution of social audit in India. The legal framework and the executive instructions for social audit have been analyzed. The status of social audit has been assessed in the context of coverage of social audit, findings and the actions taken on those findings, funding to Social Audit Units (SAUs), social audit process, personnel, and their capacity building, independence of SAUs, transparency, and accountability in SAUs. Based on the findings, the paper also provides recommendations to the Central Government, the Ministry of Rural Development, State Governments, and SAUs to further strengthen India's social audit process and institutions. A Strengthened and effective social audit of MGNREGA will improve the program's implementation and further the participatory democracy and decentralisation process in rural India.*

**Key Words:** Social Audit, MGNREGA, Social Audit Units, Accountability, Rural Development

### **1. INTRODUCTION**

Social Audit in MGNREGA has been systematically initiated about a decade back after notification of MGNREG Audit of Scheme Rules. However, different States are at different stages and it is pertinent to periodically assess the status of social audit across India and identify

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achievements and challenges. Such periodic assessment helps in taking policy and operational decisions at Central and State level to improve structure and functions of agencies facilitating social audit and overall effectiveness of social audit in enforcing accountability, transparency and encouraging people's participation. This paper is outcome of the study of the study of status of social audit of MGNREGA in India during the financial year 2018-19. Key issues, among others, that have been examined by this paper includes coverage of social audit in terms of percentage of GPs social audited, efficiency in entering social audit findings into social audit module of MGNREGA's MIS, independence of social audit units in terms of freedom to manage its own funds and human resources, transparency and accountability within the social audit units as they have to set examples for other institutions being a watchdog. First section of this paper deals with concept of social audit and its evolution in India. Second section describes the legal framework for social audit and covers MGNREG Act 2005, MGNREGA Audit of Scheme Rules 2011, Auditing Standards for Social Audit 2016. Third section deals with key findings of the study on status of social audit and analyses coverage, findings & actions as per MIS, independence of social audit units of different States, funds received by SAUs from central and State governments during the financial year 2018-19, social audit processes in different States, status of deployment of social audit resource persons, transparency and accountability in functioning of SAUs. Final section makes recommendations for the Union Ministry of Rural Development, CAG, State governments and SAUs themselves for enhancing effectiveness and credibility of social audit of MGNREGA.

## **2. JURISPRUDENTIAL PARADIGMS OF SOCIAL AUDIT IN INDIA**

Social Audit has emerged as an important accountability tool in India. The World Bank Institute observed that the "social audit" aims to make the organizations more accountable for the social objectives they declare. Characterizing an audit as 'social' does not mean that it does not examine costs and finances: its central concern is to monitor how resources are used to achieve the social objectives, including how resources can be better mobilized to meet those objectives.

A social audit involves more than just examining the internal records and includes the experiences of the people the organization or service is intended to serve. In addition, the social audits strengthen the community's voice, not only by allowing the people to express their views through surveys but also through formal mechanisms of participation in interpreting the evidence and developing solutions. The entire process builds capacities at both the national and local levels, and

both, in the community organizations and among the service providers”. Sinha observed that the “Social audit is a process in which, details of the resources, financial and non-financial, used by public agencies for development initiatives are shared with the people, often through a public platform such as the Gram Sabha (assembly of all registered voters) in rural India.”<sup>90</sup>

The Government of India has recognised social audit as an important tool to enforce accountability in public programs. The social audit found its first mention in the recommendations made by the Ashok Mehta Committee (1977) constituted to give recommendations to revive the Panchayati Raj Institutions (PRIs) with new vigour and greater developmental role at the grass-root level. The Committee recommended establishing the “Social Audit Cell” at the district level as a watchdog agency to monitor the utilization of the funds earmarked for the socio-economic development of the weaker sections. In 1993, with the enactment of the 73rd Constitutional Amendment, it became compulsory for the departments to review all the development programs executed, a social audit, although the specific word ‘social audit’ was not used.

The 2nd Administrative Reforms Commission (ARC), in its 4th Report on the “Ethics in Governance,”<sup>91</sup> recommended that the “operational guidelines of all developmental schemes and citizen-centric programs should provide for a social audit mechanism.” In India, the social audit was popularised as the Civil Society Organisations (CSOs) such as *Mazdoor Kisan Shakti Sanghathan* (MKSS)<sup>92</sup>. In response to the widespread corruption in public programs such as National Food for Work (NFFW)<sup>93</sup> Programmes, particularly in the rural areas of Rajasthan. Initially, different approaches to conduct the social audit were observed in the country. However, by 2011, the SSAAT (Society for Social Audit, Accountability, and Transparency)<sup>94</sup> model of social audit by Andhra Pradesh was recognised by the Government of India, as the model to be followed by others States for the social audit of MGNREGA.

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<sup>90</sup>Sinha, Rajesh Kumar, *Promoting Accountability on the Ground: Social Audit under MGNREGA*, Vol. 61 No.3 Kurukshetra 40, 41 (2013).

<sup>91</sup>4th Report on “Ethics in Governance”, Chapter 5 para 5.4.2.

<sup>92</sup> MKSS is a civil society organisation and works with workers and farmers of Rajasthan.

<sup>93</sup> NFFW was launched in November 2004 in 150 most backward districts to provide supplementary wage employment and food-security.

<sup>94</sup> SSAAT is a society set up by Govt. of Andhra Pradesh to facilitate social audit in the State.

### 3. LEGAL FRAMEWORK FOR SOCIAL AUDIT OF MGNREGA

Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA), 2005, officially introduced social audit in the rural development programs for the first time. Section 17 of the MGNREGA states that the Gram Sabha would monitor the execution of the works within the Gram Panchayat and conduct social audits of all the existing projects under the scheme taken up within the Gram Panchayat twice a year. The Gram Panchayat shall ensure the availability of all the relevant records to the Gram Sabha for conducting the social audit. To ensure that the social audits are well executed, the Ministry of Rural Development (MoRD), Government of India, notified the 'Mahatma Gandhi National Rural Employment Audit of Scheme Rules' 2011 Comptroller and Auditor General of India.<sup>95</sup>

The 'Mahatma Gandhi National Rural Employment Audit of Scheme Rules,' 2011 details out the responsibilities of the Social Audit Unit as a facilitating organisation; the Social Audit prerequisites; process to be followed in the social audit; the roles and responsibilities of the working officials at the different levels, the responsibility of the State government in taking the follow-up action; and on the State Employment Guarantee Council (SEGC) responsible for monitoring the action taken and place it before the State Legislature. These Rules prescribed that the State Government shall identify or establish an 'independent' Social Audit Unit (Hereinafter referred to as SAU) to facilitate the conduct of the social audit by the Gram Sabha(s). This SAU, among other things, has been made responsible to:<sup>96</sup>

1. Build the "capacities of the Gram Sabha(s)" by deploying the resource persons, at different levels in the village, block, district, and the State, drawn from the primary stakeholders and CSOs;
2. Prepare the "social audit reporting formats, resource material, guidelines and manuals for the social audit process";
3. Create awareness amongst the labourers about their "rights and entitlements" provided under the Act;
4. Facilitate the verification of the records with "the primary stakeholders and worksites";

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<sup>95</sup> MGNREG Audit of Scheme Rules, 2011, MoRD Notification 30<sup>th</sup> June 2011 available at <http://mnregaweb4.nic.in/netnrega/SocialAudit/guidelines/document/MGNREGS%20Audit%20of%20Scheme%20Rules,%202011.pdf>.

<sup>96</sup> Ibid.

5. Facilitate the smooth conduct of the social audit assist Gram Sabha(s).
6. Host the “Social Audit Reports” and the “Action Taken Report” in the public domain.

These Rules also prescribed the four prerequisites for conducting the social audit<sup>97</sup>:

- Social Audit shall be independent of the implementation process;
- The implementing agency shall not interfere with the conduct of social audit;
- The implementing agency shall provide the requisite information to SAU at least 15 days prior to the commencement of the social audit; and
- Social audit resource persons shall not be the ‘resident(s)’ of the same Panchayat.<sup>98</sup>

The Audit of Scheme Rules, 2011, also prescribed the process for conducting the social audit. According to the above-stated scheme, the resource persons along with the primary stakeholders shall verify the ‘muster rolls’ (by contacting the wage seekers), the worksites (to assess the quantity and quality of the work), the financial records (to verify the correctness of the financial reporting), the records used for the procurement of the materials, and any other payments made from the Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGS) fund. In information of the villagers, a Gram Sabha shall be convened to discuss the findings of the verification exercise, carrying through the rights and the entitlements of the labourers, and also, about the proper utilisation of the funds. These Rules make the District Programme Coordinator (DPC) responsible for ensuring the availability of the records to the SAU while also ensuring that the corrective actions are taken.<sup>99</sup>

The rules also make the State Government responsible for taking the follow-up action on the findings drawn out of the social audit, and the State Employment Guarantee Council (Hereinafter referred to as SEGC) to monitor the actions taken by the State Government. The cost of establishing SAU and conducting social audit has been prescribed by these Rules to be met as central assistance from the Central Government. Later, the MoRD decided to provide 0.5% of the total allocation under the MGNREGS to SAUs directly as assistance granted by the Central Government. Some States had set up SAUs, which started facilitating the conduct of a social audit.

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<sup>97</sup> Ibid.

<sup>98</sup> Ministry of Rural Development, Government of India, *Mahatma Gandhi National Rural Employment Guarantee Audit of Scheme Rules, 2011*, available at <http://mnregaweb4.nic.in/netnrega/SocialAudit/guidelines/document/MGNREGS%20Audit%20of%20Scheme%20Rules,%202011.pdf>, last seen on 10.03.2021.

<sup>99</sup> Ibid

However, these Rules were not being complied with in letter and spirit (Ministry of Rural Development, 2011).<sup>100</sup>

The CAG did an audit of the SAUs to check if they comply with the Audit of Scheme Rules, 2011, and made the following recommendations:<sup>101</sup>

- The Ministry may impress the State governments to establish independent SAUs and ensure adequately trained resource persons at all levels.
- Effective steps may be taken to ensure the preparation of the annual calendar of social audit while simultaneously monitoring its implementation.
- The record management process may be improved at all levels to facilitate the credibility of social audits.
- The social audit team may ensure the proper verification of the project sites and conduct door-to-door visits in compliance with the existing provisions.
- Ensure increased awareness amongst the stakeholders to participate in the Gram Sabha meetings on the social audit.
- Ensure the timely conduct of the social audit meetings, discuss & enhance reporting mechanism, and undertake follow-up actions, as per the Audit of Schemes Rules 2011.

MoRD, on receiving the recommendations mentioned above, started to work on them. Consequently, Social Audit Manual was brought forth in 2015, which defined social audit and elaborated on the steps involved in the process of the social audit of MGNREGA. The most important initiative was to formulate the auditing standards for the social audit process to strengthen social audit. MoRD also constituted a Task Force (2015) to look into all the aspects of Social Audit and further advise on making the Social Audit exercise more effective. In the process, the recommendations made by the Task Force were accepted.

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<sup>100</sup>Ministry of Rural Development, Government of India, *Mahatma Gandhi National Rural Employment Guarantee Audit of Scheme Rules, 2011*, available at <http://mnregaweb4.nic.in/netnrega/SocialAudit/guidelines/document/MGNREGS%20Audit%20of%20Scheme%20Rules.%202011.pdf>, last seen on 10.03.2021.

<sup>101</sup> Report on Mahatma Gandhi National Rural Employment Guarantee Audit of Scheme Rules, 2011 (Social Audit Rules), Report of Comptroller and Auditor General of India, Union Government (Civil) Report No.08 of 2016.

In December 2016, the MoRD forwarded the laid Auditing Standards to all the states for further necessary actions and proper compliances. These Auditing Standards prescribed the following minimum principles for social audit<sup>102</sup>: (i) Access to Information (*Jaankari*); (ii) involvement and participation of the citizens in the process of decision-making and arriving at the justifiable output (*Bhagidari*); (iii) the protection of citizens for free and fair discussions (*Suraksha*); (iv) citizen's right to be heard (*Sunwai*); (v) presence of the collective platform, to strengthen and substantiate citizens voices (*JantakaManch*); and (vi) dissemination of the report with the social audit findings (*Prasar*). For ensuring the independence of the social audit process, the auditing standards for social audit prescribes that the Governing Body of SAU should be chaired by an individual who is chosen by the State Government, from the list of the eminent persons, as identified and communicated by the Ministry of Rural Development, Government of India.

The Governing Body shall approve an Annual budget, annual calendar and annual report of the SAU. The Auditing Standard also prescribed the qualifications and the composition of the selection committee to select the Director for SAU. Further, it prescribed that the minimum tenure of the Director would be for three years and that SAU shall be paying the salaries/ honoraria to its resource persons at the State, District, Block, and Village level, directly. For objectivity and impartiality, the auditing standards prescribed that the conclusions put forth in opinions and reports shall be based exclusively upon the evidence obtained and the replies received from the functionaries and assembled following the auditing standards. To infuse professionalism among the resource persons, it prescribed that professionals must possess characteristics/ qualities of professionals that include knowledge, competency, accountability, honesty, and integrity during the audit resource persons. Quality assurance and improvement programs should also be developed and maintained, covering all the aspects of the social audit activities. There should be a periodic internal and external assessment of the social audit.

On the audit process, the auditing standard prescribed that:

- Resource persons should obtain the understanding of the entity/program to be audited,

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<sup>102</sup> Auditing Standards for Social Audit, F. No. L-11033/40/2016'RE-VII Dated 19.12.2016, MoRD, Govt of India. Available at [https://nrega.nic.in/netnrega/writereaddata/Circulars/1948Social\\_Audit\\_.pdf](https://nrega.nic.in/netnrega/writereaddata/Circulars/1948Social_Audit_.pdf).

- SAU shall frame an annual calendar which shall include all the Gram Panchayats coverage within a specific period, and
- The audit assignment should be planned to reduce the audit risk.

For access to the information and the records for the purpose of social audit, the auditing standards prescribed that the State governments should frame the appropriate rules for fixing accountability of the social audit teams for the prevention of the records within a stipulated time frame. The nature of the punitive action that shall be taken on its violation should also be defined. The audit findings, conclusions, and recommendations must be based on the physical, oral, documentary, analytical evidence, verification, and *jansunwai*. SAU resource persons should document their actions in a sufficiently detailed manner to clearly understand the procedures performed, the process involved while obtaining the evidence, and the conclusions reached.

The social audit report should then be presented to the larger collective methodically by the SAU resource persons. Also, the participation of the beneficiaries in the collective platform must be ensured. For ensuring the follow-up action, on the findings of the social audit, the auditing standards prescribe that a follow-up mechanism should be established to monitor and ensure that the appropriate action has been taken as per the social audit's findings. Divided responsibilities and proper timelines should be provided for the corrective actions in a time-bound manner, and a collective platform should be established for sharing and reflecting on the follow-ups received.<sup>103</sup>

#### **4. ASSESSMENT OF THE SOCIAL AUDIT OF THE MGNREGA IN INDIA**

The Centre for Social Audit (CSA), National Institute of Rural Development, and Panchayati Raj (NIRD & PR) conducted a study and prepared a report titled 'Status of Social Audit Units in India, 2019' in which the assessment of the 'independence of social audit process; human and financial resources for social audit; social audit process; quality of social audit; follow-up action on findings of social audits were made, and recommendations to strengthen social audit under MGNREGS were also provided. The Data for the study was collected from the SAUs of different States, and later, desk-based scrutiny was done. Following are the key findings of the study:<sup>104</sup>

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<sup>103</sup>Ministry of Rural Development, Government of India, *Annexure I- Auditing Standards for Social Audit of Office Memorandum F.No.L-11033/40/2016-RE-VII Dated 19<sup>th</sup> December, 2016*, available at [https://nrega.nic.in/netnrega/writereaddata/Circulars/1948Social\\_Audit\\_.pdf](https://nrega.nic.in/netnrega/writereaddata/Circulars/1948Social_Audit_.pdf), last seen on 11.03.2021.

<sup>104</sup>Karuna M. et.al, *Status of Social Audit Units in India 2019*, (1<sup>st</sup> edition, 2019), NIRD&PR, Hyderabad.

#### **4.1 Number of MGNREGS Social Audits Conducted:**

Most of the States have increased the number of Gram Panchayats (Hereinafter referred to as GP) audited in 2018-19 compared to 2017-18. Nevertheless, the number has gone down in the following States – Chhattisgarh, Madhya Pradesh, Mizoram, Nagaland, and Tripura. Due to resource constraints, most SAUs, states that they are able to facilitate only one social audit per year in every GP. In 2017-18, only two states (Karnataka and Meghalaya) facilitated audits twice in every Gram Panchayat. In 2018-19, only 4 states (Tamil Nadu, Himachal Pradesh, Karnataka, and Meghalaya) facilitated audits twice a year in every Gram Panchayat conducted. The following nine States have completed audits in almost all GPs, at least once in a year but in very few Panchayats: Sikkim, Himachal Pradesh, Gujarat, Meghalaya, Odisha, Telangana, Karnataka, Tamil Nadu, and Andhra Pradesh. States like Manipur, Bihar, Maharashtra, Nagaland, Uttarakhand, Kerala, and Mizoram conducted audits in very few GPs. Where Kerala has started to facilitate audits recently. So, far they have completed the pilot audits in 224 wards in 152 GPs and have drawn up a detailed calendar for 2019-20.<sup>105</sup>

#### **4.2 MGNREGS Social Audit Findings & Actions from the Management Information System (2018-19):**

The percentage of the audit reports entered in the Management Information System (Hereinafter referred to as MIS) closely matches the percentage of audits conducted for most States. The difference is higher than 20 percent in Jharkhand, Madhya Pradesh, Assam, and Gujarat. The total number of Panchayats audited in all the States is 123517 (51 percent of all Panchayats in the States), and the total data entered in all States is 89476 (37 percent of all Panchayats in the States). Thus, the number of issues based on MIS data is less than the total issues identified during the social audit since the findings of nearly one-third of the GPs have not been entered. 22 States reported a total of 7,29,995 issues in 2018-19. The violation of the Social audit process was the highest. Though, at the national level, only 7 percent of the issues filed have been closed.<sup>106</sup>

#### **4.3 Independence of Social Audit Unit:**

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<sup>105</sup> Ibid. Pp. 2-3.

<sup>106</sup> Ibid. Pp. 3-4.

Only 22 states have registered a separate society to facilitate the social audit and have a functional Social Audit Unit. These states include Andhra Pradesh, Arunachal Pradesh, Assam, Bihar, Chhattisgarh, Gujarat, Himachal Pradesh, Jammu & Kashmir, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Manipur, Meghalaya, Mizoram, Odisha, Punjab, Sikkim, Tamil Nadu, Telangana, Uttar Pradesh, and Uttarakhand.

The SAU in Jharkhand was established under the Jharkhand State Livelihood Promotion Society (JSLPS) created to implement the State Rural Livelihood Mission (SRLM). The SAU in West Bengal is functioning under the West Bengal State Rural Development Agency (WBSRDA), a body under different 'Program Implementing Units.' The SAU in Tripura is created under the Directorate of Audit, Finance Department. The SAU of Nagaland functions under the Society for Training and Research on Rural Development (STRORD). The Social Audit in Sikkim is done by the Voluntary Health Association of Sikkim (VHAS), an NGO. Rajasthan and Haryana have recently registered society, but they do not have a functional SAU. Except for Bihar, all the other States have included the Principal Accountant General (Hereinafter referred to as PAG) as a member of their Governing Body. The Secretary (Rural Development) is the chairperson of the governing body in SAUs of Jharkhand, Karnataka, Maharashtra, Sikkim, and Tamil Nadu, which is against the stipulations and compromises of the 'independence of the Governing Body. The SAUs of Madhya Pradesh, Mizoram, Nagaland, and West Bengal do not have any chairperson. The Chief Secretary is the chairperson of the governing body in the SAUs of Andhra Pradesh, Assam, Chhattisgarh, Gujarat, Meghalaya, Odisha, Tripura, Uttar Pradesh, and Uttarakhand. The Rural Development Minister is the chairperson in the SAUs of Manipur. In Kerala, Arunachal Pradesh, Bihar, Himachal Pradesh, Punjab, the chairperson is the secretary of a department other than the Rural Development Department.

In Telangana, the chairperson is a retired IAS officer. There are many States where an officer of the implementing agency is one of the signatories in the bank account, and his/her approval is required to operate the account. In Telangana, there are 13 members in the SAUs Governing Body and has one Principal Accountant General as a Member. The Principal Secretary, PR&RD, is the Member & Secretary of the Governing Body. The current SAU Director is the Member & Convenor of the Governing Body. There are six civil society representatives, three former IAS officers, and one serving IAS officer, the Director of SAU. A former IAS officer chairs the Governing Body. The Governing Body decides all operational decisions relating to the SAU

including the approving positions, the recruitment policy and the procurement policy. In Assam, the joint signatory is the senior FAO, Department of P&RD; in Bihar, it is the Deputy Secretary of the RD Department; in Chhattisgarh, a senior official of the RD&PR department has been appointed as the Additional Director of the SAU; in Gujarat, it is the Accounts Officer of MGNREGA, CRD; in Karnataka, it is the Financial Advisor of the RDPR Department; in Maharashtra, it is the Deputy Secretary, EGS; in Manipur, it is the ACS, RD & PR Department; in Jharkhand, it is the CEO of the Jharkhand State Livelihood promotion Society, who is an additional secretary of the Rural Development Department.

Tripura, Himachal Pradesh, Madhya Pradesh, Maharashtra, Odisha, Tripura, West Bengal, Uttar Pradesh, and Jammu & Kashmir requires monthly reports on the attendance/performance of the Block Resource Persons (BRPs) and the District Resource Persons (DRPs) from the implementation officers (Programme Officer and/or officers reporting to District Programme Coordinator), in-process, making the SAU personnel dependent on the implementation officers. In Uttar Pradesh, the DRPs report to the District Development Officer (DDO). While it is true that the DDO is not involved with MGNREGS implementation, but he/she reports to the DPC, who is the in-charge of the implementation of MGNREGS in the district. In West Bengal, the DRPs report to the Deputy Collector. In other States, the reporting process is more direct. In Odisha, the DRPs report to the Project Director, District Rural Development Agency (DRDA), and in Madhya Pradesh, the DRP reports to the CEO of the Zila Parishad.<sup>107</sup>

#### **4.4 Funds received by SAU:**

In 2018-19, the 0.5 percent meant for social audits was directly given by MoRD to 19 SAUs. The total amount given was Rs.174 crore. The highest amount was given to Tamil Nadu (Rs.30.27 crore, 0.47 percent), and the lowest amount was to Sikkim (Rs.19.16 lakh, 0.15 percent). There were two issues with the release of funds to SAUs. First, many States received the funds for the social audit quite late. Some of them even received the 2nd tranche of 2018-19, only in 2019-20, causing serious operational issues. SAUs have had to postpone the audits' conduct and could not pay salaries to the employees and village resource persons for months. Second, while 0.5 percent of the previous year's expenditure has to be allotted for the social audit, the actual amount allotted varies, and it is not clear how it has been calculated. In addition to the funds from MoRD, few

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<sup>107</sup> Ibid. Pp. 30-35.

States gave additional funds to the SAU, which shows the commitment and support for the social audit from the States. Sikkim gave Rs. 40 lakhs, and Meghalaya gave Rs. 34.56 lakhs in 2018-19. In 2019-20, the Jharkhand State government gave Rs. 100 lakhs for SAU administration. It is also proposed that the funds received should be used, among others, to strengthen the State and district offices, to support concurrent audits, strengthen labour forums, and document the work done.<sup>108</sup>

#### **4.5 Social Audit Process:**

Most States have a team of Village Resource Persons (VRPs) led by a BRP to facilitate the social audit in the GP over five days. However, some states, including West Bengal and Bihar, do not have any BRPs. The number of BRPs is deficient in Maharashtra. In these States, the DRP oversees the audit in multiple GPs and does not have the time to guide VRPs, leading to inadequate social audits. In some states, including Arunachal Pradesh, Odisha, Mizoram, Punjab, Uttarakhand, Karnataka, and Meghalaya, the BRPs oversee the audit multiple GPs leading to the lower quality of audits. In Assam, the audit is facilitated only by the BRPs, and no VRPs are involved in the process. In most states, the Gram Sabha selects a senior citizen/respected person/MGNREGS worker/ non-political person, someone who is not involved in implementing MGNREGS, in presiding over the social audit Gram Sabha(s). There is discomfort on this matter in Meghalaya, as there is a government order stating that the elected President should preside over all Gram Sabha(s). In Telangana, the independent observer (if present) and Karnataka's nodal officer presides over the Gram Sabha. In the scheduled areas of Jharkhand, the Gram Pradhan (traditional head) presides over the meeting. In Sikkim, one of the Zila Parishad's members presides over the Gram Sabha.

In most states, the GP Secretary / Gram Rozgar Sewak records in writing the meeting minutes. In some states, either one of the social audit resource persons or an educated person selected in the meeting, or a GP secretary from the neighbouring GP records in writing, the meeting minutes. Most States leave a copy of the social audit report with the GP that should be accessible to any interested person. The DRP or BRP also uploads the social audit findings in the MIS in most states. Social audit expenses vary widely among different States. SAUs have said that the audited expenditure per GP varies from Rs. 2500 in Gujarat to Rs. 72,000 in Bihar. Basing on the SAU's expenditure and the number of audits done, the average social audit expenditure per GP can be

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<sup>108</sup> Ibid. Pp. 36-37

calculated. In Uttarakhand, Maharashtra, and Bihar, the social audit expenditure spending is the highest percentage. Punjab, Nagaland, and Jharkhand are spending more than one percent of the MGNREGS expenditure per GP in facilitating the social audit. Odisha, Andhra Pradesh, and West Bengal spend less than 0.30 percent of the MGNREGS expenditure. In Jharkhand, after completion of the block level hearings, a district-level hearing is held in every district once a year to discuss the social audit findings and review the action-taken report prepared by the implementation agency. An exit conference is held at the district level in Arunachal Pradesh, West Bengal, and Sikkim. In Nagaland, a district-level public hearing chaired by the DPC (RD Department) is held where the resource persons highlight all the social audit findings. Issues that are not resolved during the Social Audit Gram Sabha are discussed for further rectification/escalations. Only Telangana and Andhra Pradesh have created vigilance cells to follow-up on the social audit findings and ensure that adequate actions are taken.<sup>109</sup>

#### **4.6 SAU Personnel:**

Out of 26 States in India, only 16 have a full-time Director for the SAUs. The absence of a full-time Director seriously impacts the SAU's functioning. Arunachal Pradesh, Assam, Bihar, Himachal Pradesh, Gujarat, Jammu & Kashmir, Madhya Pradesh, Manipur, and West Bengal have a person in charge of monitoring their SAUs. Andhra Pradesh, Chhattisgarh, Jharkhand, Kerala, Maharashtra, Nagaland, Odisha, Sikkim, and Telangana have appointed a Civil Society Person as a Director. Karnataka, Meghalaya, Punjab, and Uttar Pradesh have appointed a retired government official as a Director. Madhya Pradesh has not been able to recruit a Director even after advertising about it three times. Tamil Nadu had appointed a serving officer of the Rural Development and Panchayati Raj Department as a director of SAU. While the Auditing Standards and the AMC specify that the minimum tenure for a Director should be three years and that they can be removed only on the advice of the Governing Body, this has not been followed in many states, including West Bengal, Tamil Nadu, Assam, Madhya Pradesh, Bihar, and Uttar Pradesh. All of these have had three or more directors in the last three years. Among States with an annual expenditure of less than Rs.1000 crore in 2018-19, Mizoram, Arunachal Pradesh, Himachal Pradesh, Punjab, Uttarakhand, and Gujarat have empanelled resource persons to the SAU's. Among States with

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<sup>109</sup> Ibid. Pp. 37-45.

annual expenditure greater than Rs.1000 crore in 2018-19, Jharkhand, Assam, Maharashtra, and Odisha have empanelled resource persons to the SAU's. In addition to empanelled BRPs, Maharashtra and Uttarakhand also have empanelled DRPs. Compared to the sanctioned posts, the number of employed DRPs is significantly low in Bihar, Chhattisgarh, Gujarat, Kerala, Maharashtra, Tripura, Uttar Pradesh, and West Bengal. In comparison to the sanctioned posts, the number of employed State Resource Persons (SRPs) in Assam, Bihar, Chhattisgarh, Gujarat, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Punjab, Sikkim, Tamil Nadu, and Uttar Pradesh is less.

Most States do not have an adequate number of people. Understandably, the number is limited based on the amount of funds available to them. However, even in the States with more than Rs.1000 crore in annual expenditure, the resource persons are less. Most states have very few fixed tenure employees, which is one of the key reasons behind their poor performance, as measured by the number of audits done and the number of findings reported. The total number of people trained is 98,209.<sup>110</sup> Nevertheless, there is a wide variation in the number of people who have been trained. In Jharkhand, Chhattisgarh, and Madhya Pradesh, some trained women have been deployed as VRPs. However, most States are unable to record the number of SHG women appointed among the trained people are deployed as VRPs, and how many audits they have been facilitated. Therefore, a robust MIS is required for this. If the trained people are not provided with this opportunity immediately after their training, they would require refresher training.

#### **4.7 Transparency and Accountability of SAU:**

Only eight of the following SAUs have a public website-Andhra Pradesh, Jharkhand, Kerala, Meghalaya, Nagaland, Telangana, Uttar Pradesh, and West Bengal. Even the States with a website has most of the documents that need to be proactively disclosed yet are not available. MoRD requested the SAUs to send quarterly reports to the Principal Auditor General (PAG) of their respective States. The specified format includes the information about expenditure made by the SAU, audits conducted, audit findings, action taken on the findings received. SAUs of Chhattisgarh, Jharkhand, Karnataka, Kerala, Manipur, Maharashtra, Meghalaya, Mizoram, and Nagaland are not doing this. Each SAU should have a code of conduct that should be appropriately

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<sup>110</sup> Ibid. Pp. 46-56

adhered to by all the employees. The Auditing Standards states that the ‘Standard Code of Ethics should be written in the clearly defined language.’ However, eight states, including Bihar, Gujarat, Himachal Pradesh, Kerala, Madhya Pradesh, Maharashtra, Tripura, and West Bengal, do not have this. SAUs of few States, including Chhattisgarh, Andhra Pradesh, Telangana, and Tripura, has established a system including test audits, cross-checks, monitoring visits, rotation of employees, publicising telephone number, where people can complain about the social audit resource persons. Karnataka has done verification of the social audit findings in two percent of Gram Panchayats. Few States have an accessible system through which the general public can register their complaints/ grievances against the resource persons facilitating the social audit. In response to corruption complaints, the SAUs in Karnataka, Tamil Nadu, Chhattisgarh, and Andhra Pradesh have taken action against their employees.<sup>111</sup>

## **5. RECOMMENDATIONS FOR STRENGTHENING SOCIAL AUDIT OF MGNREGA**

### **5.1 Recommendations for Central Government:**

It is time to roll out the social audit across all development schemes/programs. The report of the ‘Joint Task Force Working Group’ on ‘Expanding the Scope of Social Audit’ mentioned that the six Central Ministries other than the MoRD had volunteered 11 of their schemes for social audit, but no action has been taken on this, so far. The Central government should support social audits across programs from the different departments. The same team that facilitates the social audit of MGNREGS and other rural development programs in a GP should also facilitate the social audit of the Public Distribution System (Ministry of Consumer Affairs, Food, and Public Distribution), Mid-day Meal Scheme (Ministry of Human Resources Development), Integrated Child Development Services (ICDS) Scheme (Ministry of Women & Child Development), Drinking Water (Ministry of Jal Shakti), National Health Mission (Ministry of Health and Family Welfare) and Fifteenth Finance Commission Grants (Ministry of Panchayati Raj).

Since the schemes of importance to the rural population are run by different ministries, facilitating social audit becomes a logistical hurdle. Therefore, the Central government should address this

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<sup>111</sup> Ibid. Pp. 56-59.

problem and develop a common framework/structure/scheme that will facilitate the social audit of all relevant schemes in a GP by the Gram Sabha.

## **5.2 Recommendations for Comptroller & Auditor General (C&AG):**

The C&AG, in collaboration with MoRD, helped draft the MGNREG Audit of Scheme Rules, in 2011 and the Auditing Standards for Social Audit, in 2016. C&AG should help institutionalize the social audit across different programmes, capacity building of resource persons, and strengthen SAUs. A vibrant partnership between the CAG and SAUs of different States needs to emerge. The findings of the audit conducted may be used by one another for further scrutiny. Such synergy may also be developed for the capacity building of field staff of these organisations.

## **5.3 Recommendations for MoRD:**

To operationalise social audit across the different schemes, the Ministry should take the lead and act accordingly<sup>112</sup>:

- (i) Ministry should transfer the funds required for facilitating the social audit directly to the SAUs instead of asking the States to transfer a fraction of the administrative funds to the SAU.
- (ii) Ministry should create a separate social audit division/cell and staff it with sufficient personnel who will work across the different program divisions and support the social audit units in the States. This division/cell should pool in the funds from different program divisions.
- (iii) Ministry should build suitable Management Information Systems (MIS) to support the social audit processes.
- (iv) Regular and periodic review of the progress of the social audit needs to be done by the MoRD and the C&AG jointly. Such review may be done at least once in six months.
- (v) Implement recommendations of Joint Task Force Reports & MoRD Committee. In January 2019, the Ministry of Rural Development created a committee chaired by the Additional Secretary to make recommendations for extending the social audit to selected Rural Development (RD) programs. The other members of the committee included five Joint Secretaries of different programs and DG, NIRD&PR. The committee submitted its report in March 2019. The report has made many valuable recommendations for the different stakeholders that may be implemented.

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<sup>112</sup> Ibid. Pp. 160- 166

(vi) The amount of funds allocated for the social audit unit currently (0.5 percent of the previous year's MGNREGS expenditure) is not enough to facilitate the social audit of all gram Panchayats in a State. In 2013, MoRD had written to all States stating that up to one percent of total MGNREGS expenditure may be used for social audit. The recommendations of the Joint Task Force Committee also recommended one percent of MGNREGS expenditure. However, the Ministry reduced the amount to 0.5 percent of the MGNREGS expenditure subsequently while stating that social audits should be rolled out in at least 50 percent of the GP in the 2016-17 Annual Master Circular (AMC). Nevertheless, now, the SAUs have become stable and are expected to cover all Panchayats in a year as per the 2019-20 Annual Master Circular. Hence, the amount of money released for social audit may be raised to 1 percent of MGNREGA's previous year's expenditure.

(vii) The Social Audit Module in NREGAS is a critical component of the social audit process. Thousands of resource persons are uploading their social audit findings in the system weekly. Thousands of program officers have to respond to the social audit findings with the action they have taken. The software has improved over the last year, but the pace is not fast enough, bugs/issues continue to be reported daily, and many essential features need to be added. This is a serious bottleneck that limits the potential of social audit. A test environment for providing hands-on training to resource persons and implementation officials is not available. Administration module, Human Resource Management System, payment of wages to resource persons through eFMS, and better reports that help identify systemic issues need to be implemented.

(viii) While some SAUs are independent and are functioning effectively, many are not independent. MGNREGS Division of MoRD should review the structure of the SAUs and give directions to make them independent. MGNREGS Division should continue to support the one-month certificate training for all resource persons, facilitate exchange visits, organise regional meetings and review the social audit findings and the action taken reports regularly. The Utilisation Certificate format requires that SAUs provide the number of issues identified, misappropriation amount, and the amount recovered. However, these values are only for the most recent period.

(ix) Ministry should also track the cumulative data and insist that action be taken on all pending social audit issues. The format should also require grievance-related data. The MGNREGS

division should specify what to do with the recovered money. MoRD should collect annual social audit reports from all SAUs and summarize its annual reports laid in Parliament.

#### **5.4 Recommendations for State Governments:**

States may issue rules (i) mandating the provision of records for social audit by the implementation agencies and specify penalties for failure to do so, (ii) specifying the action to be taken corresponding to different irregularities, (iii) to ensure that all implementation officials including Line Department officials participate in the social audit and public hearings and respond to the findings and questions by the people. States may take steps to operationalise Section 25 of the Act, which specifies penalties (up to Rs.1000) for persons who contravene provisions of the MGNREG Act) and establish a 3-tier vigilance mechanism as specified in the AMC and a robust grievance redressal system for effective follow-up action on the social audit findings. Further, States must ensure that the implementation agencies take prompt action on the social audit findings and upload the same in NREGASoft and review the social audit findings and action taken reports periodically.

SEGC should prepare an annual report including a summary of social audit findings and action taken report and submit it to the State Legislature. State Governments must ensure that the SAU is independent and is set up as per the auditing standards and that adequate posts are sanctioned for the effective functioning of the society, and the posts are filled. State Government should also provide funds and resources for the conduct of social audits in addition to central assistance. Money may be provided from the IEC component since a social audit is an effective method of ensuring that people are aware of their rights and entitlements.

#### **5.5 Recommendations for SAUs:**

The SAU should not depend on the support of implementation officials at any level. It should monitor and supervise all the resource persons directly and make payments to them directly. The SAU should have a good resource with professional competence and high ethical values. Resource persons should be carefully selected, trained, and deployed. Performance assessment of all resource persons should be done periodically, and the contract of resource persons who perform well should be renewed. Good VRPs (from among SHG women, youth from labourers' families) should be identified, and they should be given opportunities to facilitate many social audits (at least one in a month). The quality of social audit facilitated by VRPs with more experience is likely to be better. A pathway should be provided for exceptional VRPs to join the SAUs as BRPs or

DRPs. There should be an effective grievance redress policy for the resource persons. SAUs should ensure that there is gender balance among the staff in the SAU and that people from different social groups are represented.

The SAU should prepare an annual calendar, plan social audits in advance, interface with all stakeholders and ensure the smooth conduct of social audits at the field level. The number of personnel facilitating the social audit and the number of audit days should not be a uniform number for all GPs but be different depending on expenditure, number of hamlets, etc. Auditing Standards for social audit must be followed religiously. SA teams should not skip any of the core activities. The SAU should promptly ensure that the social audit findings are entered in the MIS, review the action taken, and close the issues after appropriate action has been taken. SAUs should also facilitate concurrent social audits by assisting the Gram Sabha to select a Vigilance and Monitoring Committee (VMC). The SAU should mentor the VMC members and help them to conduct the concurrent audit. The SAU should establish a continuous quality improvement program and get itself evaluated periodically. It should conduct test audits with the assistance of senior resource persons to find out the quality of social audits and take appropriate action if the quality of the audit was found to be poor.

SAU should be an exemplar for pro-active disclosure as per Section 4 of the RTI Act. It should host all essential documents and social audit reports on a public website. Recruitment for all positions in the SAU should be done following an open advertisement. SAU should frame a code of conduct for all resource persons and set up a mechanism to handle complaints against SAU staff. The SAU should monitor the resource persons continuously and immediately enquire into any complaints against the resource persons. SAU should send periodic reports in the specified format to the PAG of the State. It should prepare an annual report at the end of each year summarising the key activities and key findings and send it to SEGC, PAG, State government, and MoRD.

## **6. CONCLUSION**

MGNREGA is the first development program in India that has introduced and institutionalised social audit. Developments such as MGNREG Audit of Scheme Rules 2011, Auditing Standards for Social Audit 2016, and expansion of social audit to other schemes such as Pradhan Mantri Awas Yojana-Grameen (PMAY-G) and National Social Assistance Programme (NSAP)

have further consolidated social audit practices which have ushered in a new era of transparency and accountability in rural areas in India. However, the study of the structure and process of social audit across India conducted in November 2019 by the Centre for Social Audit, NIRDPR, has revealed that some States are doing well while others are still struggling. The study has found that most SAUs can facilitate only one social audit per year in every GP due to resource constraints. The number of issues based on MIS data is less than the total issues identified during the social audit since the findings of nearly one-third of Panchayats have not been entered.

Most States have a team of VRPs led by a BRP to facilitate the social audit in the GP over five days. It has also been found that in most States, the Gram Sabha selects a senior citizen/respected person/MGNREGS worker/ non-political person, someone who is not involved in the implementation of MGNREGS to preside over the social audit Gram Sabha. The GP Secretary / Gram RozgarSewak writes the meeting minutes in the majority of States. Out of 26 States studied, only 16 have a full-time Director in SAU, and most States do not have an adequate number of resource persons in SAUs. Only eight SAUs have a public website.

Recognising the wide variations in the status of social audit of MGNREGA in different States, the study has recommended measures for the Ministry of Rural Development, CAG, State Governments, and SAUs. It recommends rolling out social audit across all development schemes/programs by developing a common framework/structure/scheme to facilitate the social audit of all relevant schemes in a GP by the Gram Sabha. A mechanism needs to be created for the institutional collaboration between the CAG and SAUs of different States. Social Audit and Financial Audit should complement one another. The amount of funds allocated for the social audit unit currently (0.5 percent of the previous year's MGNREGS expenditure) is not enough and maybe raised to a minimum of one percent, and the ministry should transfer funds required for facilitating social audit directly to the SAUs. MoRD and the C&AG may hold joint, periodic reviews on the progress of social audits and recommend measures for strengthening the same. The study further suggests implementing recommendations of Joint Task Force Reports & MoRD Committee.

For State governments, the study has suggested issuing rules mandating the provision of records for social audit by the implementation agencies and action to be taken corresponding to different irregularities. Further, States should establish a 3-tier vigilance mechanism. The process of the

social audit must include mandatory core activities described by Auditing Standards. The study recommends that the SAU ensure that the social audit findings are entered in the MIS timely, review the action taken, and close the issues after appropriate action has been taken. Further, SAUs should also facilitate the concurrent social audit. It is hoped that recommended actions are taken to strengthen further the social audit of MGNREGA, which will set an example for other development programs/schemes to follow in the future.



## THE EFFECTIVENESS OF RIGHT TO INFORMATION MECHANISM IN WOMEN UNIVERSITY OF HARYANA: AN EVALUATION

*Dr. Pawan Kumar*

### ***Abstract***

*The legislature of Haryana established the only State-Funded Women University of Haryana by enacting Bhagat Phool Singh Mahila Vishwavidyalya Khanpur Kalan Act, 2006 to educate women in higher education. The University established a mechanism for right to information in compliance with the provisions of the Right to Information Act (hereinafter referred as RTI Act). The paper intends to know: (1) The mechanism developed by the University to provide information under the RTI Act, especially (a) whether the University has appointed a single or multiple State Public Information Officer/s (hereinafter referred as PIO/s) under RTI Act? (b) Whether the PIO/s have effectively discharged their duties under the RTI Act? (c) Has the PIOs have taken adequate steps for providing information under the RTI Act?; (2) A brief study of the appeals made to the State Information Commission of Haryana (hereinafter referred as the Commission) against the University under RTI Act from 2010 to 2015 especially the frequency of second appeals against the decision taken by PIO/s of the University?; (3) An analysis of the appeals and the decisions of the Commission especially (a) How many times the State Information Commission has upheld the decisions taken by PIO/s of the University? (b) How many times PIO/s of the University has been fined by the State Information Commission? (c) How many times the State Information Commission has compensated the RTI applicant/appellant?; (4) Whether the University has established an effective mechanism for proving information under RTI Act?; and (5) Is there any need to strengthen the existing mechanism for providing information under Right to Information Act in the University? The null hypothesis of the paper is that the University, in compliance with the provisions of the RTI Act, has established a sound mechanism for tight to information Mechanism in compliance with RTI Act and the PIO/s have efficiently discharged their duties without being frequently fined by the commission which has resulted in saving of its officials working hours and revenue and there is no need to strengthen the existing mechanism in the University for providing information under RTI Act?*

**Keywords:** RTI, RTI Act, Public Information Officer/s, State Information Commission

## 1. INTRODUCTION

The legislature of Haryana established the only State-Funded Women University of Haryana by enacting *Bhagat Phool Singh Mahila Vishwavidyalaya Khanpur Kalan Act, 2006* (hereinafter referred as the University) to educate women in higher education.<sup>113</sup> The University has been founded in the memory of Bhagat Phool Singh, who founded a Kanya Gurukul at Village Khanpur Kalan in district Sonipat in 1936 with three girls students and later on Kanya Gurukul Khanpur Kalan (a private educational society) established other education institutions, namely a degree college, a college for education, an Ayurveda college, a polytechnic and a law college exclusively for women. The University Act vested all these educational institutions along with posts and properties in the University. The University has established multidisciplinary faculties including Faculty of Law, Ayurveda, Education, English, Foreign Languages, Engineering and Technology, Social Sciences, Pharmaceutical Sciences apart from a maintained degree college, polytechnic and two regional centres at Kharal in district Jind and another regional centre at Lula Ahir in Rewari district. The Government of Haryana has affiliated women colleges situated in district Sonipat and Panipat with the University. The university offers education to around ten thousand girls and empowers women in higher education across India from its inception.

The University is a public authority under section 2 (h) of the RTI Act, 2005. The paper intends to know: (1) The mechanism developed by the University to provide information under the RTI Act, especially (a) whether the University has appointed a single or multiple State Public Information Officer/s (hereinafter referred as PIO/s) under RTI Act? (b) Whether the PIO/s have effectively discharged their duties under the RTI Act? (c) Has the PIOs have taken adequate steps for providing information under the RTI Act?; (2) A brief study of the appeals made to the State Information Commission of Haryana (hereinafter referred as the Commission) against the University under RTI Act from 2010 to 2015 especially the frequency of second appeals against the decision taken by PIO/s of the University?; (3) An analysis of the appeals and the decisions of the Commission especially (a) How many times the State Information Commission has upheld the decisions taken by PIO/s of the University? (b) How many times PIO/s of the University has been fined by the State Information Commission? (c) How many times the State Information

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<sup>113</sup>. The Bhagat Phool Singh Mahila Vishwavidyalaya Khanpur Kalan Act, 2006.

Commission has compensated the RTI applicant/appellant?; (4) Whether the University has established an effective mechanism for providing information under RTI Act?; and (5) There is no need to strengthen the existing mechanism in the University for providing information under RTI Act? The null hypothesis of the paper is that the University, in compliance with the provisions of the RTI Act, has established a sound mechanism for tight to information Mechanism in compliance with RTI Act and the PIO/s have efficiently discharged their duties without being frequently fined by the commission which has resulted in saving of its officials working hours and revenue and there is no need to strengthen the existing mechanism for providing information under RTI Act?

The null hypothesis of the paper is that the University in compliance with the provisions of the RTI Act, has established a sound mechanism for providing information under RTI Act. The existing PIO/s have efficiently discharged their duties without being frequently fined by the Commission under RTI Act. The efficient workings of PIO/s have saved working hours by complying with provisions of the RTI Act in letter and spirit, reducing second appeals and saved revenue.

## **2. THE MECHANISM FOR THE RIGHT TO INFORMATION ACT IN THE UNIVERSITY**

The University has appointed a Chairperson for every University Teaching Department, Director of each Regional Centre, Principal of each maintained college and Branch Officer of every branch of the administration namely Establishment Branch (Teaching), Establishment Branch (Non-Teaching), Purchase and Supply Branch, Academic Branch, Registration and Scholarship Branch, Transport Branch, General Branch, Engineering Branch as State Public Information Officer under S. 5 (1) of the RTI Act.<sup>114</sup> The University has appointed a Nodal Officer of a branch named Legal, Grievances, and RTI to act as a nodal agency for RTI matters. The University has appointed a professor as First Appellant Authority. The University has framed regulations on fee and cost under RTI rules 2005.<sup>115</sup> The regulations prescribe a standard Performa for applying RTI in the University.<sup>116</sup> The regulation has prescribed an application fee of Rs. 10/- by way of cash receipt or demand draft or bankers' cheque apart from Postal Orders in favour of the Registrar of the

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<sup>114</sup>. Available at <http://bpsmv.digitaluniversity.ac/rti-act>, last seen on 26/10/2020.

<sup>115</sup>. Right to Information (Regulation on Fee and Costs) Rules 2005, available at <http://www.bpswomenuniversity.ac.in/download/RTI.pdf>, last seen on 26/10/2020.

<sup>116</sup>. Ibid.

University.<sup>117</sup> The regulations prescribe a fee of Rs. 2/- per page for every copy for A-3, A-4 size paper and actual charge or cost price of a copy in larger size paper or actual cost or price of samples or models or rupees fifty per diskette or floppy and prescribe a fee of rupees five per hour for each hour after first free hour.<sup>118</sup> The regulations mandate the keeping of prescribed registers for Public Information Officers and First Appellate Authority.<sup>119</sup>

### **3. APPEALS AND COMPLAINTS AGAINST THE UNIVERSITY BEFORE THE COMMISSION: A BRIEF VIEW**

The first appeal dated 23.04.2010 was filed by an employee of the University to seek information on the latest status of advance adjustment of bills of the national seminar.<sup>120</sup> The commission in its decision dated 29.09.2010 found no merit in the appeal as all information sought by the appellant/applicant has been supplied by the concerned PIO. The second appeal dated 10.02.2010 had been filed by another employee of the University for seeking information relating to the appointment of a co-employee.<sup>121</sup> The Commission, in its decision dated 29.09.2010, found that the concerned PIO had supplied complete information. The third appeal dated 04.01.2011 had been filed by a resident of the University for seeking copies of attendance registrar of an outsourced personnel and muster roll maintained for outsourced personnel engaged for payment of salary for a particular period.<sup>122</sup> The commission in its decision dated 07.04.2011 directed the concerned PIO to furnish information on a point and issued a show-cause notice for imposing penalty @ Rs. 250/- per day, for each day of delay, subject to a maximum of Rs. 25,000/- and awarded compensation of Rs. 5,000/- to the appellant for financial detriment. The fourth appeal dated 17.07.2011 had been filed by another resident of the University for seeking voluminous information and inspection of the diary and dispatch register of O/o the Vice-Chancellor.<sup>123</sup> The Commission in its order dated

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<sup>117</sup>. Ibid.

<sup>118</sup>. Ibid.

<sup>119</sup>. Ibid.

<sup>120</sup>. Dr. Gulab Singh v. State Public Information Officer O/o BPS Mahila Vishwavidyalya Khanpur Kalan, Case No. 1974 of 2010 (State Information Commission Haryana, 20/09/2010).

<sup>121</sup>. Ms. Sudhir Bala v. State Public Information Officer, BPS Mahila Vishwavidyalya Khanpur Kalan, Case No. 2038 of 2010 (State Information Commission Haryana, 20/09/2010).

<sup>122</sup>. Ravinder Kumar v. State Public Information Officer, BPS Mahila Vishwavidyalya Khanpur Kalan, Case No. 1473 of 2011 (State Information Commission Haryana, 07/04/2011).

<sup>123</sup>. Sultan Singh v. SPIO, BPS Mahila Vishwavidyalya Khanpur Kalan Case No. 3259 of 2011 (State Information Commission Haryana, 02/02/2012).

02.02.2012 decided that the concerned PIO shall afford another opportunity to the appellant/applicant to inspect the record on payment of fees as per the provisions of the RTI Act.

The fifth appeal dated 29.08.2011 had been filed by a resident of Faridabad on a plain paper which was returned in original by the concerned PIO without supplying the information on the ground that the same had not been in the prescribed format. However, on receipt of notice for appeal from the Commission, the concerned PIO supplied the information.<sup>124</sup> The Commission in its decision dated 10.04.2012 held that PIO could not insist on a standard format for filing RTI application and awarded a compensation of Rs. 1000/- to the appellant for detrimental suffered. The sixth appeal was filed by another university resident to seek certified copies of reports of the screening committee, an advertisement, and recruitment under a self-financing scheme.<sup>125</sup> The Commission in its decision dated 29.06.2012 directed the concerned PIO to supply duly certified information within 15 days from receipt its decision and, in case the information was not available, to lodge an FIR or fix responsibility against the delinquent official. The resident filed a complaint against the concerned PIO for non-compliance with the decision of the Commission.<sup>126</sup> The Commission, in its decision dated 09.03.2015, taking into consideration detriment suffered by the appellant, imposed a penalty of Rs. 25000/- upon concerned PIO for misleading the Commission and non-compliance of the Commission's order and ordered to deduct the penalty from the salary of erring PIO and awarded compensation of Rs. 2000/- to the appellant/applicant for detriment suffered.

The seventh appeal dated 14.11.2011 had been filed by another employee relating to his service matter, and the Commission in its decision dated 29.06.2012, disposed of the appeal observing that the concerned PIO has supplied the complete and correct information. The eighth appeal had been filed by a resident of the University to seek information relating to admission in Ph.D. in education, including answer sheets during a particular year and letters/complaints relating to said admission.<sup>127</sup> The Commission, in its decision dated 04.01.2013, directed the concerned PIO to furnish balance of the information within 15 days from receipt of the order the Commission and

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<sup>124</sup>. Sh. Suresh Goel v. State Public Information Officer, BPS Mahila Vishwavidyalya Khanpur Kalan, Case No. 427 of 2011 (State Information Commission Haryana, 10/04/2012).

<sup>125</sup>. Sh. Sultan Singh v. State Public Information Officer, BPS Mahila Vishwavidyalya Khanpur Kalan, Case No. 1666 of 2012 (State Information Commission Haryana, 09/03/2015).

<sup>126</sup>. Sultan Singh v. State Public Information Officer, BPS Mahila Vishwavidyalya Khanpur Kalan, Show Cause Notice No. 1306 of 2013 in Complaint Case No. 94 of 2013 in Appeal Case No. 1666 of 2012 (State Information Commission Haryana).

<sup>127</sup>. Sh. Sultan Singh v. State Public Information Officer, BPS Mahila Vishwavidyalya Khanpur Kalan, Case No. 3354 of 2012 (State Information Commission, 04/01/2013).

in case the appellant/applicant is not satisfied, he may inspect the relevant record after taking a suitable date and time from concerned PIO and asked the concerned PIO to sent a compliance report to the Commission within a specified period. The appellant resident filed a complaint against the concerned PIO for non-compliance with orders of the Commission.<sup>128</sup> The concerned SPIO submitted that orders of the Commission had been complied except on point no. 7 because answer sheets of the entrance sheets of candidates who qualified for Ph.D. test in education during a particular year cannot be supplied because of the decision of the Hon'ble Supreme Court in Civil Appeal No. 6454 of 2011 titled *Central Board of Secondary Education & Anr Vs. Aditya Bandhopadhyay & Ors* wherein the Court has held that an examinee can inspect his/her answer sheet. The Commission in its decision dated 14.08.2015 dropped the show cause notice with a direction to pay compensation of Rs. 4000/- under section 19 (8) (b) of the RTI Act to the appellant for detriment suffered.

The ninth appeal dated 28.06.2012 had been filed by an ex-employee to seek noting on the release of her pension benefits.<sup>129</sup> The Commission, in its decision dated 30.04.2013 directing the concerned PIO to supply a legible copy of points on a point. The tenth appeal dated 23.07.2012 had been filed by another employee for seeking voluminous information on action taken by the University authorities on representation given by him as well as complaints against him and also sought information about co-employees.<sup>130</sup> The Commission in its decision dated 14.05.2013 directed after observing that incomplete information has been supplied to the appellant and the information sought is voluminous, which require diversion of resources of public authority. The Commission directed that the appellant/applicant to apply afresh, giving details of each point of information sought within 15 days, and directed the concerned PIO to supply point-wise complete information to the appellant within 14 days after receipt of the application and the appellant have the option to exercise the option of inspection of the record, if not satisfied with the information supplied. The Commission awarded compensation of Rs. 1000/- for detriment suffered by the appellant. The eleventh appeal was also filed by an employee seeking copies of question papers for the Ph.D. Entrance for specified years, answer keys, attendance registers, rationalization letters

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<sup>128</sup>. Sh. Sultan Singh v. State Public Information Officer, BPS Mahila Vishwavidyalya Khanpur Kalan, Show Cause Notice No. 1325 of 2013 in Appeal Case No. 3354 of 2012 (State Information Commission Haryana, 14/08/2015).

<sup>129</sup>. Dr. Shakuntala Choudhary v. State Public Information Officer, BPS Mahila Vishwavidyalya Khanpur Kalan, Case No. 3356 of 2012 (State Information Commission Haryana, 30/04/2013).

<sup>130</sup>. Dr. Sandeep Berwal v. State Public Information Officer, BPS Mahila Vishwavidyalya Khanpur Kalan, Case No. 3814 of 2012 (State Information Commission Haryana, 14/05/2013).

of some employees, and interview letters of several posts.<sup>131</sup> The Commission in its decision dated 08.09.2014 directed the concerned PIOs (i) to file an affidavit on non-availability/destruction of Ph.D. Entrance for specified years along with answer keys, in case the same are not available; (ii) to file an affidavit within 25 days whether rationalization letters were issued to some employees; (iii) to conduct an inquiry whether interview letters for several posts were issued and (iv) to supply copies of the attendance registers to the appellant within 25 days. The appellant employee complained against the concerned SPIO for non-compliance with orders of the Commission.<sup>132</sup> The Commission found one of the concerned PIO responsible for knowingly and intentionally disobeying the commission decision and imposed a penalty 25000/- to be deducted from her salary and awarded a compensation of Rs. 4000/- to the appellant for detriment suffered.

The twelfth appeal dated 10.06.2012 had been filed by a resident in the University for seeking information about certain appointments as well as action taken on certain representations' given by the appellant.<sup>133</sup> The Commission in its decision dated 14.05.2013 directed the concerned PIO (i) to supply information on a couple of points and (ii) awarded compensation of Rs. 1000/- to the appellant for detriment suffered. The appellant resident complained to the Commission under section 18 (2) of the RTI Act for non-compliance with its decision.<sup>134</sup> The Commission, during the hearing, directed the Public Authority (the Vice-Chancellor) to get an inquiry conducted into the missing of certain documents. The Commission, in its decision, recommended that the Public Authority take appropriate action in view of the findings of the inquiry officer in its report.

The thirteenth appeal had been filed by a resident of the University for seeking (i) a copy of the corrigendum for extension of the last date of an advertisement and (ii) resume of the Vice-Chancellor of the University.<sup>135</sup> The Commission, in its decision dated 15.09.2014, directed the concerned PIO (i) to file an affidavit that no corrigendum was issued for extension of the last date the advertisement; (ii) to provide complete resume of the Vice-Chancellor to the appellant within

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<sup>131</sup> Ibid.

<sup>132</sup> Dr. Sandeep Berwal v. State Public Information Officer, BPS Mahila Vishwavidyalya Khanpur Kalan Show Cause Notice No. 1280 of 2016 in Complaint No. 23 of 2014 in Appeal Case No. 3816 of 2012 (State Information Commission Haryana, 10/05/2018).

<sup>133</sup> Sh. Sultan Singh v. State Public Information Officer, BPS Mahila Vishwavidyalya Khanpur Kalan, Case No. 3003 of 2012 (State Information Commission Haryana, 14/05/2013).

<sup>134</sup> Sh. Sultan Singh v. State Public Information Officer, BPS Mahila Vishwavidyalya Khanpur Kalan Complaint Case No. 261 of 2016 in Appeal Case No. 3003 of 2006 (State Information Commission Haryana, 19/03/2018).

<sup>135</sup> Sh. Sultan Singh v. State Public Information Officer, BPS Mahila Vishwavidyalya Khanpur Kalan Appeal Case No. 3352 of 2012 (State Information Commission Haryana, 15/09/2014).

25 days, under intimation to the Commission. The appellant resident complained against non-compliance with the decision of the Commission.<sup>136</sup>In its decision dated 14.08.2015, the Commission dismissed the complaint and dropped show cause notices citing Hon'ble High Court for Punjab and Haryana in S.P. Arora, State Information Officer-cum-Estate Officer HUDA Vs. State Information Commission Haryana and others, CWP No. 15288 of 2008 that "the right to seek information is not to be extended to the extent that even if the file is not available for the good reasons, still steps are required to be taken by the office to procure the file and to supply information. The information is required to be supplied within 30 days only if the record is available with the office".

The fourteenth appeal had been filed by a resident of the University for seeking information on receipt of house rent by some employees of the University for specific years.<sup>137</sup> The Commission, in its decision dated 04.01.2013 directing the concerned PIO (i) to provide specific information free of cost within 15 days; (ii) awarded a compensation of Rs. 1000/- to the appellant for detriment suffered. The appellant resident complained against non-compliance with the decision of the Commission.<sup>138</sup> The Commission decided (i) to impose a penalty of Rs. 10000/- on the concerned PIO for non-compliance of orders of the Commission by ordering to deduct the same from her salary; (ii) awarded a compensation of Rs. 3000/- to the appellant for detriment suffered under section 19 (8) (b) of the RTI Act.

The fifteenth appeal had been filed by a resident of the University for seeking information (i) regarding eligibility criteria for selecting the Chief Security Officer since a specific year and noting extending the last date of applications against a particular advertisement.<sup>139</sup> The Commission in its decision dated 14.05.2013 directed the concerned PIO to provide complete information and inspect the record to the appellant within one week. The appellant resident complained against

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<sup>136</sup>. Sh. Sultan Singh v. State Public Information Officer, BPS Mahila Vishwavidyalya Khanpur Kalan, Show Cause Notice No. 1029, 1030 &1031 of 2015 in Complaint Case No. 157 of 2013 in Appeal Case No. 3352 of 2012 (State Information Commission Haryana, 14/08/2015).

<sup>137</sup>. Sh. Sultan Singh v. State Public Information Officer, BPS Mahila Vishwavidyalya Khanpur Kalan Case No. 3355 of 2012 (State Information Commission Haryana, 04/01/2013).

<sup>138</sup>. Sh. Sultan Singh v. State Public Information Officer, BPS Mahila Vishwavidyalya Khanpur Kalan Show Cause Notice No. 1323 of 2013 in Appeal Case No. 3355 of 2012 (State Information Commission Haryana, 12/01/2016).

<sup>139</sup>. Sh. Sultan Singh v. State Public Information Officer, BPS Mahila Vishwavidyalya Khanpur Kalan, Case No. 3815 of 2012 (State Information Commission Haryana, 14/05/2013).

non-compliance with the decision.<sup>140</sup> The Commission disposed of the complaint with directions (i) to provide proper information to the appellant; (ii) in case the information is not available, to file an affidavit to the appellant on non-availability of the record; and (iii) awarded a compensation of Rs. 5000/- to the appellant for detriment suffered.

The sixteenth appeal dated 22.11.2012 had been filed by an ex-employee for seeking copies of noting of her personal file along with specific letters.<sup>141</sup> In its decision dated 09.05.2013, the Commission directed the concerned PIO to be careful in the future to ensure that information is supplied within a stipulated period by RTI Act without delay. The seventeenth appeal dated 21.01.2013 had been filed by a resident of the University for seeking information on documents submitted by an employee at the time of his appointment and verification of the same by an inquiry constituted by the University.<sup>142</sup> The Commission in its decision dated 04.04.2014 directed the concerned PIO to supply complete information to the appellant and, in case the information is not available as per record, to file an affidavit on non-availability of the information. The appellant resident complained against non-compliance with the decision.<sup>143</sup> The Commission decided to dispose of the complaint being devoid of merit. The eighteenth appeal had been filed by a university resident to seek information on a candidate and application form selection proceedings.<sup>144</sup> The Commission in its decision dated 09.04.2014 directed the concerned PIO to supply information to the appellant and inspect the diary and dispatch register of O/o the Vice-Chancellor. The appellant resident complained against non-compliance with the decision.<sup>145</sup> In its decision dated 06.08.2014, the Commission dropped the show cause notice observing that the information has been supplied, but after a long delay, it awarded a compensation of Rs. 5000/- to the appellant for detriment suffered and warned the concerned PIO to be careful in future.

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<sup>140</sup>. Sh. Sultan Singh v. State Public Information Officer, BPS Mahila Vishwavidyalaya Khanpur Kalan, Complaint Case No. 64 of 2017 in Appeal Case No. 3815 of 2012 (State Information Commission Haryana, 24/05/2017).

<sup>141</sup>. Smt. Shakuntala Khereta v. State Public Information Officer, BPS Mahila Vishwavidyalaya Khanpur Kalan, Case No. 5040 of 2012 (State Information Commission Haryana, 09/05/2013).

<sup>142</sup>. Sh. Sultan Singh v. State Public Information Officer, BPS Mahila Vishwavidyalaya Khanpur Kalan, Case No. 1605 of 2013 (State Information Commission Haryana, 04/04/2014).

<sup>143</sup>. Sh. Sultan Singh v. State Public Information Officer, BPS Mahila Vishwavidyalaya Khanpur Kalan, Complaint Case No. 268 of 2016 in Appeal Case No. 1605 of 2013 (State Information Commission Haryana, 31.03.2017).

<sup>144</sup>. Sh. Sultan Singh v. State Public Information Officer, BPS Mahila Vishwavidyalaya Khanpur Kalan, Case No. 1572 of 2013 (State Information Commission Haryana, 09/04/2014).

<sup>145</sup>. Sh. Sultan Singh v. State Public Information Officer, BPS Mahila Vishwavidyalaya Khanpur Kalan, Show Cause Notice No. 580 of 2014 in Appeal Case No. 1572 of 2013 (State Information Commission Haryana, 06/08/2014).

The nineteenth appeal was filed by a university resident to seek action taken on a letter.<sup>146</sup> The Commission in its decision dated 04.04.2014 directed the concerned Public Authority (the Vice-Chancellor) to get an inquiry conducted to fix the responsibility of the officer/official misplacing the letter and awarded compensation of Rs. 5000/- to the appellant for detriment suffered under section 19 (8) (b) of the RTI Act. The appellant resident complained against non-compliance with the decision. The Commission, in its decision dated 21.05.2018, disposed of the complaint being devoid of any merit. The twentieth appeal dated 30.05.2013 had been filed by a resident of the University for seeking a copy of the orders of the Vice-Chancellor on a joint seniority list of teachers of a particular department of a University and Self-Appraisal Reports submitted by a couple of teachers of a department.<sup>147</sup>

The Commission in its decision dated 11.04.2014 directed the concerned PIO to supply complete information to the appellant within 15 days. The appellant resident complained against non-compliance with the decision.<sup>148</sup> The Commission in its decision dated 16.09.2016 directed that the respondent Public Authority must maintain its record in accordance with the obligation upon it under section 4 (1) (d) of the RTI Act and awarded compensation of Rs. 10000/- to the appellant for detriment suffered. The twenty-first appeal had been filed by a university resident for seeking information on action taken on certain letters given by a teacher to the University authorities.<sup>149</sup> The Commission in its decision dated 22.04.2014 directed the concerned PIO to provide complete information to the appellant within a specified period. The appellant resident complained of non-compliance with the decision under section 20 (1) of the RTI Act.<sup>150</sup> The Commission, in its decision dated 14.06.2016, imposed a penalty of Rs. 25000/- upon the concerned PIO, for mala-fide denying the information and knowingly giving misleading information directing the same to be deducted from her salary.

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<sup>146</sup>. Sh. Sultan Singh v. State Public Information Officer, BPS Mahila Vishwavidyalya Khanpur Kalan, Case No. 2113 of 2013 (State Information Commission Haryana, 26/04/2016).

<sup>147</sup>. Sh. Sultan Singh v. State Public Information Officer, BPS Mahila Vishwavidyalya Khanpur Kalan, Case No. 3061 of 2013 (State Information Commission Haryana, 11/04/2014).

<sup>148</sup>. Sh. Sultan Singh v. State Public Information Officer, BPS Mahila Vishwavidyalya Khanpur Kalan, Complaint Case No. 209 of 2015 in Appeal Case No. 3061 of 2013 (State Information Commission Haryana, 16/09/2016).

<sup>149</sup>. Sh. Sultan Singh v. State Public Information Officer, BPS Mahila Vishwavidyalya Khanpur Kalan, Case No. 3625 of 2013 (State Information Commission Haryana, 22/04/2014).

<sup>150</sup>. Sh. Sultan Singh v. State Public Information Officer, BPS Mahila Vishwavidyalya Khanpur Kalan, Show Cause Notice No. 621 of 2014 in Appeal Case No. 3625 of 2013 (State Information Commission Haryana, 14/06/2016).

The twenty-second appeal had been filed by a resident of the university to supply certified information of 27 documents relating to service matters of an employee.<sup>151</sup> The Commission in its decision 11.04.2014 directed the concerned PIO to supply complete information to the appellant within a specified period. The appellant resident complained of non-compliance with the decision.<sup>152</sup> The Commission, in its decision, observed that the respondent Public Authority namely the University has failed to discharge its obligations as has been mandated under section 4 (1) (a) of the RTI Act, which says: “Every public authority shall (a) maintain its record duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerized are, within a reasonable time and subject to availability of resources, computerized and connected through a network all over the country on different systems so that access to such records is facilitated.”

The Commission advised the appellant to avoid filing RTI applications involving voluminous applications if he wants expeditious action by drawing attention to Hon’ble Supreme Court decision in Civil Appeal No. 6454 of 2011 (arising out of SLP (C) No. 7526/2009 titled *Central Board of Secondary Education Vs. Aditya Bandopadhyay & Ors.* The Commission disposed of the show cause notice by directing the concerned PIO to file an affidavit on the non-availability of the record. The twenty-third appeal had been filed by an ex-employee of erstwhile private education society whose institutions were vested in the University for seeking information relating to an educational institution whose property and posts were vested in the University by the University Act.<sup>153</sup> The Commission in its decision dated 08.11.2013 that (i) the concerned PIO shall furnish requisite information to the appellant within three weeks and in case the information is not held with him, and he shall obtain it from the information holders and furnish it to the appellant in a consolidated manner; (ii) issued a show-cause notice to the concerned PIO asking him as to why penalty @ Rs. 250/- subject to a maximum of Rs. 25000/- for each day of delay in furnishing the information to the appellant be not imposed upon him. The appellant filed complaint about non-

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<sup>151</sup>. Sh. Sultan Singh v. State Public Information Officer, BPS Mahila Vishwavidyalya Khanpur Kalan, Case No. 3627 of 2014 (State Information Commission Haryana, 11/04/2014).

<sup>152</sup>. Sh. Sultan Singh v. State Public Information Officer, BPS Mahila Vishwavidyalya Khanpur Kalan, Show Cause Notice No. 619 of 2015 in Appeal Case No. 3627 of 2014 (State Information Commission Haryana, 23/07/2015).

<sup>153</sup>. Sh. Rajesh Malik v. State Public Information Officer, BPS Mahila Vishwavidyalya Khanpur Kalan, Case No. 3762 of 2013 (State Public Information Officer Haryana, 08/11/2013).

compliance with the decision.<sup>154</sup> The concerned PIO submitted that available information had been supplied to the appellant, and he has inspected the record many times. In its decision dated 20.11.2014, the Commission dropped the show cause notice taking into consideration submission of the concerned PIO and awarded compensation of Rs. 5000/- to the appellant for detriment suffered.

The twenty-fourth appeal dated 09.10.2013 had been filed by a resident of Delhi for seeking certain information on appointments on two points.<sup>155</sup> The Commission in its decision dated 15.04.2013 directed the concerned PIO to supply the information to the appellant within 20 days. The twenty-fifth appeal dated 30.08.2013 was filed by an employee of the University to seek information relating to a co-employee.<sup>156</sup> In its decision dated 09.04.2015, the Commission directed the concerned PIO to supply complete information to the appellant and, in case the information is not available in the record, to file an affidavit for non-availability of the information. The appellant employee complained against non-compliance with the decision of the Commission.<sup>157</sup> The Commission, in its decision dated 01.06.2015, dismissed the complaint as being devoid of merit.

The twenty-sixth appeal has been filed by a resident of the University for seeking information of action taken certain letters to vide which employees made a complaint against each other.<sup>158</sup> The Commission in its decision dated 09.04.2014 directed the concerned PIO to provide information within 20 days and issued a show-cause notice under section 20 (1) of the RTI Act as to why penalty @ Rs. 250/- subject to a maximum of Rs. 25000/- for each day of delay in furnishing the information may not be imposed upon them. The appellant resident complained of non-compliance with the decision.<sup>159</sup> The appellant citing a decision of Hon'ble High Court of Delhi in Writ Petition (C) 3660/2012 & CM 7664/2012 decided on 13.09.2013 titled *Union of India Vs. Vishwas*

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<sup>154</sup>. Sh. Rajesh Malik v. State Public Information Officer, BPS Mahila Vishwavidyalaya Khanpur Kalan, Show Cause Notice No. 220 of 2014 in SCN No. 1250 of 2013 in Appeal Case 3762 of 2013 (State Information Commission Haryana, 20/11/2014).

<sup>155</sup>. Sh. Suchita Singh v. State Public Information Officer, BPS Mahila Vishwavidyalaya Khanpur Kalan, Case No. 5421 of 2013 (State Information Commission Haryana, 15/04/2014).

<sup>156</sup>. Dr. Sandeep Berwal v. State Public Information Officer, BPS Mahila Vishwavidyalaya Khanpur Kalan, Case No. 4376 of 2014 (State Information Commission Haryana, 09/04/2014).

<sup>157</sup>. Dr. Sandeep Berwal v. State Public Information Officer, BPS Mahila Vishwavidyalaya Khanpur Kalan, Complaint Case No. 51 of 2015 in Appeal Case No. 4376 of 2014 (State Information Commission Haryana, 01/06/2015).

<sup>158</sup>. Sh. Sultan Singh v. State Public Information Officer, BPS Mahila Vishwavidyalaya Khanpur Kalan, Case No. 4773 of 2013 (State Information Commission Haryana, 09/04/2014).

<sup>159</sup>. Sh. Sultan Singh v. State Public Information Officer, BPS Mahila Vishwavidyalaya Khanpur Kalan, Show Cause Notice No. 579 of 2014 in Appeal Case No. 4773 of 2013 (State Information Commission Haryana, 22/06/2016).

*Bhamburkar* sought inquiry to fix the responsibility of erring officials responsible for missing records. The Commission in its decision dated 22.06.2016 dropped the show cause notice directing (i) the Public Authority (the Vice-Chancellor) to order an inquiry for fixing the responsibility of the officer/official responsible for improper management and the missing record and awarded a compensation of Rs. 7000/- to the appellant for detriment suffered under section 19 (8) (b) of the RTI Act.

The twenty-seventh appeal dated 31.08.2013 had been filed by an employee of the University seeking information on the stock register of a department, attendance registrars of specific classes, internal assessment, etc. contending that some of the documents provided are not legible and no information has been provided on a couple of points.<sup>160</sup> The Commission, in its decision dated 15.01.2014, disposed of the appeal by directing the concerned PIO to provide legible copies of the documents and allow the appellant to inspect the record on a specific date and time wherein the appellant can seek photocopies of the documents of specific students and not for all students. The twenty-eighth appeal dated 15.12.2013 had been filed by a resident of the University seeking information of service record of a co-employee and action taken on specific letters given by an employee.<sup>161</sup> The Commission, in its decision dated 30.06.2014, directed the concerned PIO (i) to furnish complete information; (ii) if the relevant information is not on record, to file an affidavit affirming to this effect; (iii) awarded compensation of Rs. 2000/- to the appellant for harassment faced under section 19 (8) (b) of the RTI Act. The appellant resident complained of non-compliance with the decision.<sup>162</sup> The Commission in decision taking into consideration that the information has been supplied delayed after receipt of the complaint enhanced compensation to Rs. 5000/- from Rs. 2000/- for detriment suffered by the appellant.

The twenty-ninth appeal has been filed by an ex-employee of erstwhile private educational society vested in the University for seeking information about specific service records of an employee of erstwhile institutions rationalized in the University.<sup>163</sup> The Commission, in its decision dated

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<sup>160</sup>. Dr. Sandeep Berwal v. State Public Information Officer, BPS Mahila Vishwavidyalya Khanpur Kalan, Case No. 4375 of 2013 (State Information Commission Haryana, 15/01/2014).

<sup>161</sup>. Sh. Sultan Singh v. State Public Information Officer, BPS Mahila Vishwavidyalya Khanpur Kalan, Case No. 1293 of 2014 (State Information Commission Haryana, 30/06/2014).

<sup>162</sup>. Sh. Sultan Singh v. State Public Information Officer, BPS Mahila Vishwavidyalya Khanpur Kalan, Complaint Case No. 270 of 2016 in Appeal Case 1293 of 2014 (State Information Commission Haryana, 26/10/2016).

<sup>163</sup>. Sh. Rajesh Malik v. State Public Information Officer, BPS Mahila Vishwavidyalya Khanpur Kalan, Case No. 2836 of 2015 (State Information Commission Haryana, 19/01/2015).

09.01.2015, directed the concerned PIO to file an affidavit that the information on certain points is not available in the official record and directed to provide complete information on other points. The appellant ex-employee complained against non-compliance with the decision. The Commission, in its decision, directed the concerned PIO to comply with the decision dated 09.01.2015 by filing an affidavit that record on specific points is not available as per office record and awarded compensation of Rs. 10000/- to the appellant for detriment suffered.

The thirtieth appeal dated 15.04.2014 had been filed by a resident of the University to seek information on certain inquiries and the action taken on those inquiries.<sup>164</sup>In its order dated 07.10.2014, the Commission directed the concerned PIO to supply complete information on certain points to the appellant. The appellant resident complained of non-compliance with the decision. The Commission, in its decision dated 01.12.2015, imposed a penalty of Rs. 25000/- on the concerned PIO for non-compliance with the Commission's decision, to be deducted from his salary and awarded a compensation of Rs. 5000/- to the appellant for detriment suffered under section 19 (8) (b) of the RTI Act. The thirty-first appeal had been filed by an employee of the University for seeking information on action taken by the University authorities on letters/representations given by me.<sup>165</sup> The Commission in its order dated 06.08.2014 directed the concerned PIO to provide complete information to the appellant on certain three points within 25 days. The appellant employee complained about non-compliance with the decision.<sup>166</sup>In its decision dated 28.07.2017, the Commission disposed of the complaint by observing that the concerned PIO has supplied information to the appellant after a delay, hence, awarded a compensation of Rs. 4000/- to the appellant for detriment suffered under section 19 (8) of the RTI Act. The thirty-second appeal dated 10.05.2014 had been filed by a resident of the University for seeking information on action taken on certain letters given to the Vice-Chancellor.<sup>167</sup> The Commission in its decision dated 26.08.2014 directed the concerned PIO to supply complete information to the appellant and, in case of non-availability of information, to file an affidavit to that effect. The appellant resident

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<sup>164</sup>. Sh. Sultan Singh v. State Public Information Officer, BPS Mahila Vishwavidyalya Khanpur Kalan, Case No. 3869 of 2014 (State Information Commission Haryana, 07/10/2014).

<sup>165</sup>. Dr. Sandeep Berwal v. State Public Information Officer, BPS Mahila Vishwavidyalya Khanpur Kalan, Case No. 3413 of 2014 (State Information Commission Haryana, 28/07/2017).

<sup>166</sup>.Dr. Sandeep Berwal v. State Public Information Officer, BPS Mahila Vishwavidyalya Khanpur Kalan Complaint Case No. 259 of 2016 in Appeal Case No. 3413 of 2014 (State Information Commission Haryana, 28/07/2017).

<sup>167</sup>. Sh. Sultan Singh v. State Public Information Officer, BPS Mahila Vishwavidyalya Khanpur Kalan, Case No. 4586 of 2015 (State Information Commission Haryana, 26/08/2014).

complained about non-compliance with the decision.<sup>168</sup> The Commission, in its decision dated 01.12.2015, disposed of the complaint being devoid of any merit.

The thirty-third appeal dated 23.06.2014 had been filed by a resident of Gohana for seeking information relating to an agreement signed between the Mahasabha (erstwhile private educational society) and administrator, i.e., D.C., Sonipat along with details of employees of the Mahasabha.<sup>169</sup> The Commission in its decision dated 18.12.2014, directed the concerned PIO to supply complete information to the appellant within 20 days. The thirty-fourth appeal dated 25.05.2014 had been filed by another employee of the University relating to the engineering branch of the University.<sup>170</sup> The Commission, in its decision dated 19.02.2015, disposed of the appeal by observing that the complete information has been supplied to the appellant.

The thirty-fifth appeal had been filed by a resident of the University for seeking information attendance record of a particular class of a course and the action taken against an employee of the University.<sup>171</sup> The Commission, in its decision dated 02.12.2014, directed the concerned PIO to supply complete information to the appellant except for information on action taken against an employee of the University as the same is exempted under RTI Act being a matter between the employer and employee in view of Hon'ble Supreme Court of India decision dated 03.10.2012 in Civil Appeal No. 27734 of 2012 titled *Girish Ramchandra Deshpande Vs. Central Information Commission & Ors.* The appellant resident complained of non-compliance with the decision.<sup>172</sup> The Commission in its decision dated 15.06.2018, observed that there has been poor preservation of the record in the University and imposed a penalty of Rs. 15000/- on the concerned PIO, to be deducted from his salary and awarded a compensation of Rs. 10000/- to the appellant for detriment suffered under section 19 (8) (b) of the RTI Act.

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<sup>168</sup>. Sh. Sultan Singh v. State Public Information Officer, BPS Mahila Vishwavidyalya Khanpur Kalan, Complaint Case No. 236 of 2015 in Appeal Case 4586 of 2015 (State Information Commission Haryana, 01/12/2015).

<sup>169</sup>. Sh. Rajesh Kumar v. State Public Information Officer, BPS Mahila Vishwavidyalya Khanpur Kalan, Case No. 5240 of 2014 (State Information Commission Haryana, 18/12/2014).

<sup>170</sup>. Sh. Sultan Singh v. State Public Information Officer, BPS Mahila Vishwavidyalya Khanpur Kalan, Case No. 4978 of 2014 (19/02/2015).

<sup>171</sup>. Sh. Sultan Singh v. State Public Information Officer, BPS Mahila Vishwavidyalya Khanpur Kalan, Case No. 6841 of 2014 (State Information Commission Haryana, 02/12/2014).

<sup>172</sup>. Sh. Sultan Singh v. State Public Information Officer, BPS Mahila Vishwavidyalya Khanpur Kalan, Show Cause Notice No. 1253 of 2016 & 58 of 2016 in Complaint Case No. 320 of 2016 in Appeal Case No. 6841 of 2014 (State Information Commission Haryana, 15/06/2018).

The thirty-sixth appeal dated 24.04.2014 had been filed by an ex-employee of the University for information on his pension case and receipt of grants from District Education Officer Sonipat as well as the constitution of the School Management Committee.<sup>173</sup> The Commission, in its decision dated 18.09.2014, disposed of the appeal by observing that all information except a point has been provided to the appellant and directing the concerned PIO to transfer the remaining point to District Education Officer Sonipat under section 6 (3) of the RTI Act. The thirty-seventh appeal had been filed by a resident of the University for seeking information on action taken by the University on certain letters submitted by an employee along with copies of attendance of students of a class for a particular year and no. of Ph.D. students supervised by a faculty member.<sup>174</sup> The Commission, in its decision dated 01.06.2015, directed the concerned PIO to furnish complete information on certain points and furnish an affidavit on certain points on which information is not available. The appellant complained about non-compliance with the decision.<sup>175</sup> The Commission, in its decision dated 23.08.2017, held one of the concerned PIO named Dr. Suman Dalal, responsible for delay in supplying information to the appellant as well as non-compliance with the orders passed by the Commission. Therefore, the Commission imposed a penalty of Rs. 25000/- on the PIO to be deducted from her salary and awarded compensation of Rs. 5000/- to the appellant for detriment suffered under section 19 (8) (b) of the RTI Act. Further, the Commission under section 25 (5) of the Act directed the Public Authority (the Vice-Chancellor) to direct the PIOs in the University to supply a copy of the attendance record of the students as well as employees to all the information seekers in the future who seek information under the RTI Act.

The thirty-eighth appeal dated 28.07.2014 had been filed by another employee of the University for seeking information relating to proceedings of her co-employee interview, selection, and appointment.<sup>176</sup> The Commission in its decision dated 21.11.2014, directed the concerned PIO to supply complete and correct information to the appellant within 15 days and, if the information is not available, to furnish an affidavit on non-availability of the information in the official record.

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<sup>173</sup>.Smt. Ratni v. State Public Information Officer, BPS Mahila Vishwavidyalaya Khanpur Kalan Appeal Case No. 3870 of 2014 (State Information Commission Haryana, 18/09/2014).

<sup>174</sup>. Sh. Sultan Singh v. State Public Information Officer, BPS Mahila Vishwavidyalaya Khanpur Kalan, Case No. 8752 of 2014 (State Information Commission Haryana, 01/06/2015).

<sup>175</sup>. Sh. Sultan Singh v. State Public Information Officer, BPS Mahila Vishwavidyalaya Khanpur Kalan, Complaint Case No. 256 of 2016 in Appeal Case No. 8752 of 2014 (State Information Commission Haryana, 23/08/2017).

<sup>176</sup>. Dr. Madhavi Seetha v. State Public Information Officer, BPS Mahila Vishwavidyalaya Khanpur Kalan Appeal Case No. 6660 of 2014 and 6185 of 2014 (State Information Commission Haryana, 24/11/2014).

The thirty-ninth appeal had been filed by a resident of the University for seeking information on the promotion of a teacher under the Career Advancement Scheme, a copy of the selection committee.<sup>177</sup> The Commission in its decision dated 01.06.2015, directed the concerned PIO to provide complete information to the appellant within 30 days. The appellant resident complained dated 08.03.2016 for non-compliance with the decision.<sup>178</sup> In its decision dated 30.06.2017, the Commission directed the public authority (the Vice-Chancellor) to conduct an inquiry and fix responsibility for missing record on a couple of points and awarded a compensation of Rs. 4000/- to the appellant for detriment suffered under section 19 (8) (b) of the RTI Act.

The fortieth appeal dated 21.11.2014 had been filed by an ex-employee of an erstwhile Private education institution whose property and pots were vested in the University for seeking a copy of action taken on letters written by him as well as a copy of his personal file.<sup>179</sup> The Commission in its decision dated 23.02.2015, directed the concerned PIOs to provide complete information to the appellant and, in case the information is not available on certain points, to furnish an affidavit on non-availability of the information to the appellant within a specified period. The forty-first appeal dated 15.02.2015 had been filed by a candidate who applied for a Ph.D. in a subject in the University for seeking application forms of the students who appeared in the exams as well as copies of the question paper and answer key along with complaints received against the entrance test.<sup>180</sup> The Commission in its decision dated 01.06.2015, directed the concerned PIO to supply complete information to the appellant and refund the fee taken because of the delay in supplying the information.

The forty-second appeal dated 06.02.2015 had been filed by a terminated employee of the University seeking noting extension of his probation period and a copy of the inquiry report against him.<sup>181</sup> The Commission, in its decision dated 18.05.2015, disposed of the appeal by observing that the information had been supplied to the appellant without any intentional delay. The forty-

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<sup>177</sup>. Sh. Sultan Singh v. State Public Information Officer, BPS Mahila Vishwavidyalya Khanpur Kalan, Case No. 8750 of 2014 (State Information Commission Haryana, 01/06/2015).

<sup>178</sup>. Sh. Sultan Singh v. State Public Information Officer, BPS Mahila Vishwavidyalya Khanpur Kalan, Complaint Case No. 257 of 2016 in Appeal Case NO. 8750 of 2014 (State Information Commission Haryana, 30/06/2017).

<sup>179</sup>. Sh. Rajesh Kumar v. State Public Information Officer, BPS Mahila Vishwavidyalya Khanpur Kalan, Case No. 8260 of 2014 (State Information Commission Haryana, 23/02/2015).

<sup>180</sup>. Mrs. RenuBala v. State Public Information Officer, BPS Mahila Vishwavidyalya Khanpur Kalan, Case No. 2519 of 2015 (State Information Commission Haryana, 01/06/2015).

<sup>181</sup>. Dr. Alok Kumar v. State Public Information Officer, BPS Mahila Vishwavidyalya Khanpur Kalan, Case No. 2237 of 2015 (State Information Commission Haryana, 18/05/2015).

third appeal had been filed by a resident of the University (Sh. Sultan Singh) for seeking a copy of an inquiry report as well as action taken on the said inquiry.<sup>182</sup> In its decision dated 23.07.2015, the Commission directed the concerned PIO to allow the appellant to inspect the record by fixing a convenient date and time and supply complete information on other points within 20 days. The appellant resident complained against non-compliance with the decision.<sup>183</sup> The Commission, in its decision dated 08.08.2017 in the exercise of powers under section 25 (2) and 25 (5), directed the public authority (the Vice-Chancellor) to order a high-level inquiry in the entire matter as the Commission feels that prima facie there is a forgery or manipulation of record at some level and awarded a compensation of Rs. 7000/- to the appellant for detriment suffered under section 19 (8) (b) of the RTI Act.

The forty-fourth appeal dated 27.12.2015 had been filed by an ex-employee of the University who was given compulsory retirement for seeking a copy of the inquiry report conducted against him.<sup>184</sup> The inquiry report is a report submitted by a committee against sexual harassment of women at the workplace, especially a CD recording statement of a girl student and his father against the appellant. The Commission, in its decision dated 14.07.2016 striking a balance between the RTI Act and the Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013 directed the concerned PIO to get a transcript of the CD/DVD prepared under the direct supervision of First Appellant Authority hiding the names of the victim and her father or anything which may reveal their identity and provide it to the appellant within 30 days.

The forty-fifth appeal dated 18.10.2015 had been filed by another ex-employee of an erstwhile Private education institution whose property and pots were vested in the University for seeking 16 points of information on rationalization/absorption /regularization of employees of erstwhile private educational institutions in the University.<sup>185</sup> The Commission in its decision dated 20.08.2016, directed the concerned PIO to supply correct information to the appellant and furnish an affidavit on non-availability for those points on which the information is not available as per

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<sup>182</sup>. Sh. Sultan Singh v. State Public Information Officer, BPS Mahila Vishwavidyalya Khanpur Kalan, Case No. 2518 of 2015 (State Information Commission Haryana, 23/07/2015).

<sup>183</sup>. Sh. Sultan Singh v. State Public Information Officer, BPS Mahila Vishwavidyalya Khanpur Kalan, Show Cause Notice No. 264 of 2017 in Appeal Case No. 2518 of 2015 (State Information Commission Haryana, 08/08/2017).

<sup>184</sup>. Sh. Dharamvir v. State Public Information Officer, BPS Mahila Vishwavidyalya Khanpur Kalan, Case No. 2467 of 2016 (State Information Commission Haryana, 14/07/2016).

<sup>185</sup>. Sh. Rajesh Kumar v. State Public Information Officer, BPS Mahila Vishwavidyalya Khanpur Kalan, Case No. 3211 of 2015 (State Information Commission Haryana, 14/07/2016).

office record. The forty-sixth appeal had been filed by another employee of the University for seeking noting of his pay fixation and copies of complaints against him along with the action taken on those complaints.<sup>186</sup> The Commission in its decision dated 31.03.2016, directed the concerned PIO to provide information to the appellant within 15 days and, in case the information is not available, to file an affidavit for non-availability of the information.

#### **4. FINDINGS AND RECOMMENDATIONS**

The study reveals that the University has appointed multiple PIOs in the University for each branch/department/institute/regional centre rather than appointing a sole PIO for the University treating university as a single legal entity. The study reveals that the Commission had received forty-six appeals and twenty-two complaints against the University PIOs under the RTI Act during the above nine-year period. It means that an average of eight appeals per year has been filed and decided by the Commission under RTI Act against the University. The study also reveals that employees or ex-employees of the University had filed 19 appeals for seeking information taken by the University authorities on their representation or inquiries or complaints against them or selection etc. of co-employees, and 21 appeals had been filed by relatives of the university employees residing in the University for seeking information on services matters of co-employees, action taken by the university authorities on representations/service matter of their relative employee as well as action on inquiries/complaints against their relative employee and specific information on attendances of the students and employees. Further, the study reveals that numerous complaints have been preferred before the Commission for non-compliance of decisions/orders of the Commission.

The study further reveals that most of the appeals have been filed by men and women have filed only six appeals out of a total of forty-six appeals, and none of the women complaint to the Commission. The above findings reveal that the numbers of appeals are not on the higher side, whereas the number of complaints about non-compliance of orders of State Information has been on the higher side. Therefore, it is evident that PIO/s have failed to comply with the orders of the Commission which resulted in imposition of fine on the PIOs and award of compensation to the applicants/appellants causing revenue loss to the University. Therefore, it is recommended that the

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<sup>186</sup>. Sh. JitenderMor v. State Public Information Officer, BPS Mahila Vishwavidyalya Khanpur Kalan Appeal Case No. 8840 of 2015 (State Information Commission Haryana, 31/03/2016).

University administration should establish an effective mechanism for supervision to ensure compliance with orders of the Commission by appointing a Nodal Officer, RTI, for the above purpose.

Further, the study reveals that the Commission had taken 100 days to hear the appeals and complaints, meaning that an average of two hearings was taken to decide an appeal or complaint. A bare perusal of the appeals, including complaints, reveals that the Commission has taken 11636 days for deciding these 46 appeals, including complaints which mean that the Commission has taken an average time of 8.43 months for each appeal/complaint. Further, the study reveals that the Commission has taken far more time deciding the appeals and complaints in violation of the mandate of RTI Act to decide the same as expediently as possible. Therefore, it is recommended that there is a need to prescribe a time limit for the State Information Commission to hear and decide an appeal and complaint so that the information may be promptly available to the RTI applicant/appellant and working hours of the public officials may also be saved.

Further, the study reveals that 113 PIOs have attended the hearing before the Commission at Capital of Haryana, namely Chandigarh, around 220 kilometres away from the university for these appeals and complaints. It means 226 officials over 100 dedicated their working days for the appeals and the complaints. The study shows that multiple PIOs have attended appeals and complaints before the Commission, which has resulted in revenue loss to the University in terms of working hours and additional payment in terms of T.A/D.A. apart for salary to multiple officials for the same work. Therefore, it is recommended that the University should appoint a sole State Public Information Officer treating itself as a single unit instead of appointing PIO for each unit/branch/department/institution /regional centre and such sole PIO may be assigned the duty to seek the assistance of the head of the unit/branch/department/institution/regional centre under section 5 (4) of the RTI Act and after consolidating such information may supply information to concerned RTI applicant/appellant and such PIO who may be directed to attend a hearing before the State Information Commission rather than multiple PIO/s to save revenue and working hours. Such PIO may also be well trained with provisions of the RTI Act to strengthen the Right to Information Mechanism in the University.

Further, the study reveals that the Commission found merit in all appeals and complains except on seven occasions. Further, the study reveals that the Commission had awarded compensation to the

appellant on twenty-two occasions on the appeals and the complaints. Further, the study reveals that the compensation awarded by the Commission to the appellants amounts to Rupees one hundred thousand, which resulted in revenue loss to the University for Deficiency in performance of services of its PIOs. Further, the study reveals that the Commission had imposed penalties on seven occasions on PIOs of the University, and the amount of such penalties runs into rupees one hundred fifty thousand, which was deducted from the salary of concerned PIOs. Further, the study reveals that the Commission had directed the Vice-Chancellor of the University to conduct an inquiry in five appeals to find out erring official/s responsible for missing record/information and fix responsibility of such official/s. Further, the study reveals that the Commission had directed the concerned PIOs in several appeals to furnish affidavits by observing that there is poor preservation of the record in the University and directed the University officers to maintain its record in accordance with obligations imposed under section 4 (1) (d) of the RTI Act. Therefore, the University should organize training programme for its officials on record maintenance. The study reveals that the Commission had directed the PIOs not to insist on a standard format for filing RTI applications. The study reveals that the PIOs have failed to comply with provisions of the RTI Act in letter and spirit especially in complying with orders of the State Information Commission.

## **5. CONCLUSION**

It may be concluded that the hypothesis that the University in compliance with the provisions of the RTI Act has established a sound Right to Information Mechanism in the University also stands disapproved. The hypothesis that the existing PIO/s have efficiently discharged their duties without frequently being fined by the commission also stands disapproved. The study has revealed that the State Information Commission has repeatedly fined the PIOs for violating provisions of the RTI Act as well as for non-compliance with orders of the Commission, and the Commission has also repeatedly compensated the RTI Applicants/appellants due to apathy of PIOs of the University. Hence, the hypothesis that the efficient workings of SPIO/s have saved working hours by complying with provisions of the RTI Act in letter and spirit reducing second appeals also stands disapproved. The hypothesis that there is no need to strengthen the existing mechanism in the University for right to information under RTI Act also stands disapproved.

The study has revealed that a considerable number of working hours have been lost due to PIOs' inefficient working, which has resulted in an additional financial burden on the University. Further,

it is beyond doubt that the University needs to train its PIOs to avoid revenue loss. It is also evident that there is no adequate supervision of RTI mechanism in the University, especially for compliance of orders of the State Information Commission. It is also evident that repeatedly penalized PIOs by the Commission have been allowed to continue without taking action against such PIOs. It is recommended that in case a PIO has been penalized more than twice by the Commission, such PIO should not be assigned duty in RTI Branch of the University.

It is recommended that a well-versed officer with provisions of the RTI Act should be appointed as sole PIO of the University who may be permitted to attend hearing the Commission on behalf of the rest of PIOs of the University to save working hours of such officials as it hampers the University administration and functioning. It is also recommended that the University administration promote the digitalization of records to avoid missing records in the future, especially service records of the employees. It is also recommended that the University administration should go for an RTI audit by a third party to effectively meet the provisions of the RTI Act in letter and spirit for bringing transparency and accountability. Last but not least, it is evident that the Commission has taken long time in disposing of the appeals. Hence, it is recommended that a time limit be prescribed for the Commission to decide an appeal or complaint to make the information promptly available to RTI applicant/appellant as well as to save working hours of the public officials.

**PART III:  
CTAG CONTRIBUTION**



## AN EMPIRICAL SCRUTINY OF THE COMPETENCY AND COMMITMENTS OF LEGAL AID SERVICES IN INDIA

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### ***Abstract***

*This research paper has focused on the functioning of LACs as they play a pivotal role in the dispersion of legal aid services. The principal argument of this paper is that commitment and competency of LACs affect the mandate of legal aid services. The article focuses on the services provided by LACs, issues relating to the implementation of these services. The assessment of competency and commitment of LACs forms its base from the perspective of beneficiaries, LACs, judicial officers, and regulators. In total, 3029 legal aid beneficiaries, 609 judicial officers, 1007 empaneled legal aid advocates, 33 regulators/secretaries, 3120 aware women respondents, and 8537 unaware women respondents from 36 districts in 18 states of India participated in the empirical study. Effective and efficient legal aid services are the mantra for the social and economic development of the poor. This paper demonstrates the pitfalls of the existing practices concerning legal aid service in 18 states, particularly and India in general, thereby adversely affecting the interests of the poor. There should be a strengthening of coordination between the stakeholders and institutions of legal aid services for its efficiency.*

**Keywords:** legal aid, legal aid counsels, quality of legal aid services

### **1. INTRODUCTION**

Fair legal representation is a challenge for a considerable part of the Indian population due to resource and awareness limitations. Legal aid is a means to devise an apparatus for accessibility of justice administration to the weaker sections of the society regardless of financial or social disabilities.

The Constitution of India, the Legal Aid Services Authorities Act, 1987, and other legislation also define approaching courts as the right for weaker sections of the society via the Legal Aid Services System (LASS) across the nation.

However, the experience of legal aid beneficiaries has not been satisfactory in terms of availing free legal aid services from Legal Aid Counsels (LACs). A majority of beneficiaries believe that LACs, in general, are neither competent nor committed to the mandate of legal aid. Additionally, beneficiaries assert their lack of confidence in the capabilities of LACs. Apart from this conception, there have been certain cases where due to the laxity of LACs, the beneficiary had suffered conviction or penalty. Moreover, it resonates with the perception of the legal aid program not able to attain its primary objective of providing access to the judicial system to the marginalized section of the society.

This research paper attempts to assess the state of LACs in providing legal aid services in India. With the evidence from the field, the paper argues that the level of commitment and competence of LACs complements the quality of legal aid service and affects legal aid mandate. To examine the argument, the author uses the data from a research project titled '*An Empirical Study to Examine the Impact of the Legal Aid Services Provided by the Legal Aid Counsel on the Quality of the Legal Aid System*,' sponsored by the Indian Council of Social Science Research (ICSSR), New Delhi.

The paper first delves into the research design and methodology adopted to carry out this empirical research. The subsequent sections discuss the evidence from the field in terms of commitment, the competence of LACs, the effect on beneficiaries, impediments faced by legal aid services in India, and conclude with few recommendations.

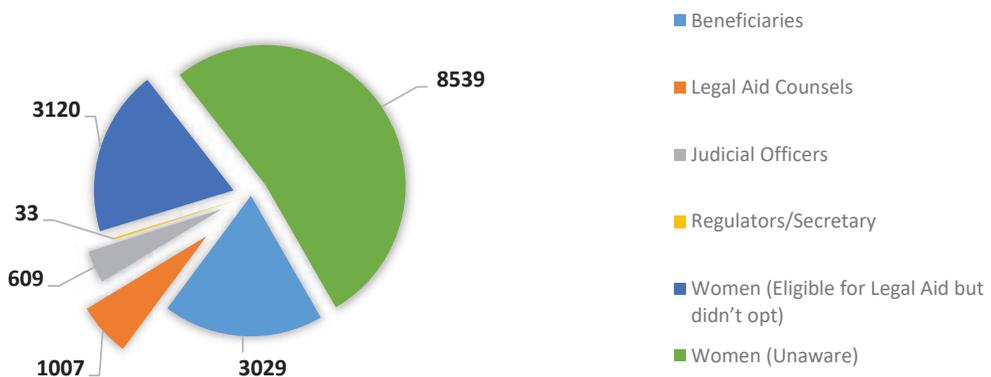
## **2. DESIGN AND METHOD OF RESEARCH**

The author and his research team employed an explanatory research design to interpret the relationship among the stakeholders in the legal aid system in India. Thus, the research paper

explains the nexus among the dependent variables like level of commitment and competency of LACs and various independent variables.

This research study uses data collected from thirty-six District Court complexes from 18 States in North, South East West, Central, and Northeast zones. Representative samples from LACs, legal aid beneficiaries, regulators, judicial officers, aware and unaware women, were collected from June 2017 to October 2018. The author and his research team used the stratified sampling method to obtain the representative samples. The field investigators performed personally administered questionnaires containing open and closed-ended questions related to the scrutiny of legal services provided by the LACs.

**Fig.1 Total Number of Respondents in each Category from the Six Zones**



In Fig. 1, we see the total number of respondents from each category. A total of 3029 legal aid beneficiaries, 609 judicial officers, 1007 empaneled legal aid advocates, 33 regulators/secretaries, 3120 women respondents who were aware but did not opt for legal aid, and 8537 women respondents who were unaware of legal aid services. Thus, this research uses inputs received from 16337 respondents to analyze the level of commitment and competence among the LACs. The trends and perceptions of various stakeholders were analyzed using tools like descriptive analysis, frequencies, and cross-tabulation in IBM SPSS Statistics 21.0.

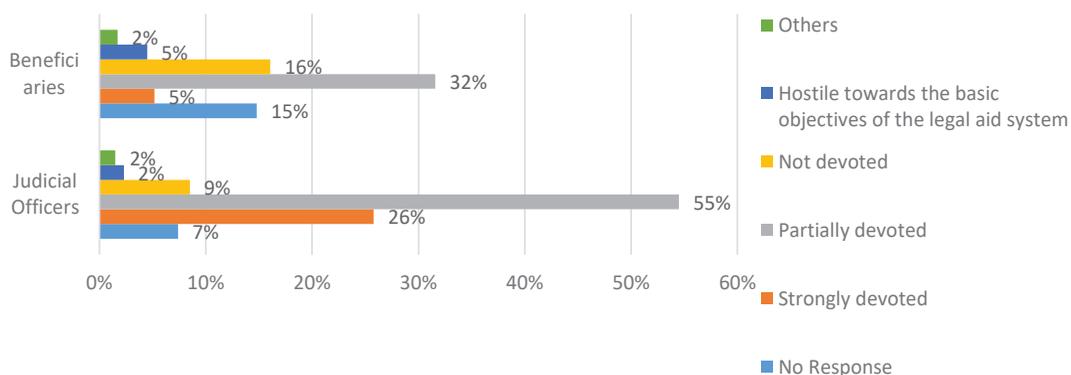
### 3. ARE LACS COMMITTED TO THE LEGAL AID SERVICES?

The LACs under the legal aid system in India are the linchpin of the services at any given state. These LACs are the only interface between a legal aid beneficiary and access to justice. Nevertheless, a common notion that LACs are not committed to the cause of legal aid is prevalent among the people. Therefore, an assessment of the level of commitment by LACs towards the legal aid beneficiaries becomes relevant to determinant to weigh in this commonly held notion.

#### 3.1. Perspectives on the Level of Commitment and Devotion of LACs

Commitment and devotion of LACs hold a prominent position in delivering the mandate of the legal aid scheme in India. Stakeholders, specifically legal aid beneficiaries and judicial officers, interact the most with the LACs. Therefore, their assessment of the commitment and devotion of LACs bear much authenticity compared to a regulator or a LAC. As shown in Fig.2, around 32% of beneficiaries and 55% of judicial officers opined that LACs are partially devoted to the cause of legal aid. Surprisingly, 16% of beneficiaries were even vocal about their respective LAC being hostile towards the primary objective of the legal aid system. On the contrary, a mere 5% of beneficiaries and 26% of judicial officers opined that LACs are strongly devoted. Thus, a majority of LACs providing their legal services were found to be partially devoted and, in some cases, even hostile or not dedicated towards the legal aid system.

**Fig. 2 Evaluation of the Commitment and Devotion of the LACs**



#### 3.2. The Parameters of Commitment of LACs

The perspectives or feedbacks from judicial officers and legal aid beneficiaries acknowledged the notion that a majority of LACs are partially devoted to the cause of legal aid. The validation of

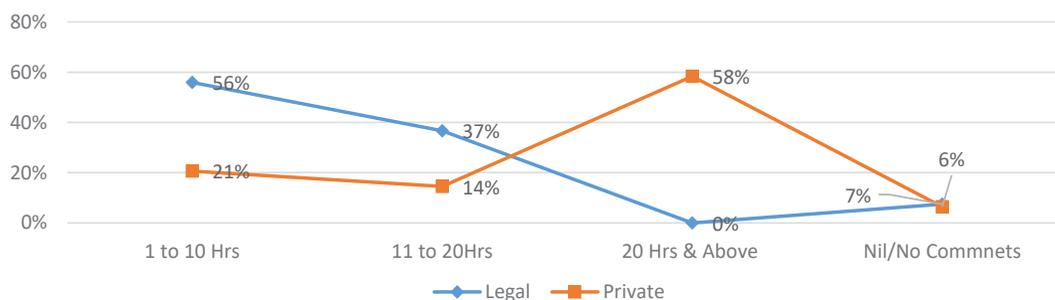
this notion from the field evidence strengthens the argument that LACs are not committed to free legal aid services.

Indicators like time spent by LACs in private and legal aid cases, place of interaction with the beneficiaries, the level of interaction with beneficiaries, and instances where judges or judicial officers had to intervene for LACs laxity determine the level of commitment of LACs for the legal aid services.

### 3.3 Time Devoted by LACs on Legal Aid Cases

The nature of engagement of LACs under the legal aid system of India permits them to undertake their private legal practice. LACs tend to distribute their weekly time among legal aid cases and private cases. Consequently, LACs often tend to spend the majority of their time on their private cases rather than on their respective legal aid ones. Evidence from the field research validates this assertion. As shown in Fig. 3, most of the time spent by LACs on private cases (Orange Line) is much higher than the hours spent on legal aid cases (Blue Line).

**Fig. 3. Time Devoted By LACs on Legal Aid Cases and Private Cases**



As per the research study, 58% of LACs accepted that they devote more than 20 hours to a private case per week. In contrast, a similar percentage of LACs, 56% of LACs, devote around one to 10 hours to legal aid cases. Thus, a majority of LACs spend a significant amount of time on private cases rather than on legal aid ones. As a result, LACs are less committed to the beneficiaries of legal aid cases.

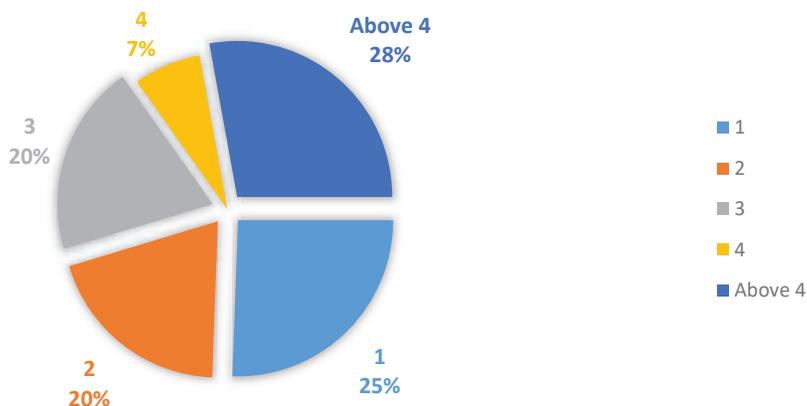
### 3.4 Does LACs Attend Proceeding of their Legal Aid Cases?

Since the average time devoted by LACs on legal aid cases stands lesser compared to the private legal cases held by the LACs. It indirectly hampers the proceedings of the legal aid cases. The empirical study shows that LACs tend to take adjournments in legal aid cases. As shown in Fig. 4, around 51.90% of judicial officers opined that LACs take approximately 1 to 5 adjournments in the legal aid cases. Unexpectedly, more than 38% of judicial officers were vocal about LACs taking more than five adjournments in legal aid cases.

Although the rate of adjournments in the legal aid cases does not reflect a clear picture of the degree of commitment put forward by LACs, it flags out the issue with LACs that they are explicitly taking adjournments. It further translates into the judicial officers observing frequent adjournments taken in legal aid cases.

The research shows that judicial officers were even vocal about the warnings they gave to LACs during the proceedings of a legal aid case. As shown in Fig. 4, 25% of judicial officers opined that they had warned LACs not committed to their lack of commitment once. On the other hand, more than 75%% of the judicial officers (7%+20%+20%+28%) believed that they had warned LACs 2 or more than twice for lack of commitment.

**Fig. 4 Instances where Judges/ Judicial Officers warned LACs for Lack of Commitment**



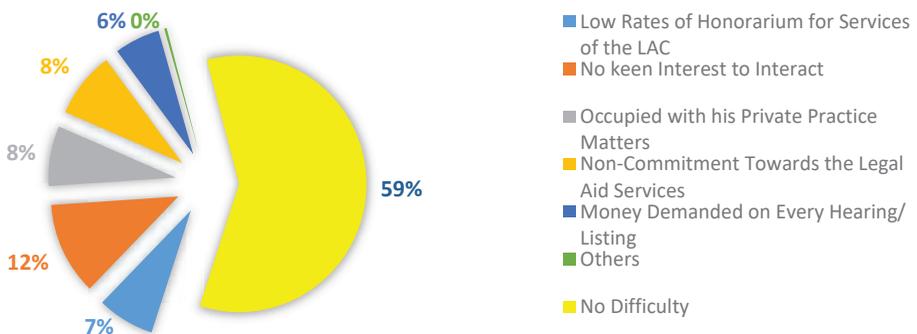
To strengthen as to what constitutes a lack of commitment, a majority of judicial officers, around 51.2% of the judicial officers, warned LACs because they were not available for

argument.<sup>187</sup>Hence, most judicial officers warn LACs because they are not present or available for argument in legal aid cases, i.e., they are not committed to legal aid beneficiaries.

### 3.5 LACs Interaction with Legal Aid Beneficiaries

Earlier, we discussed that most beneficiaries rated the commitment and devotion of their respective beneficiaries as either partially or not devoted at all. The perception that LACs are not committed towards the legal aid beneficiaries also finds its root in the low level of interaction/communication among LACs and beneficiaries. The empirical study exhibits that LACs show no keen interest in interacting or communicate with their respective clients. As shown in Fig. 5, the majority of beneficiaries (59%) face no difficulties in availing the services of LACs. However, it is essential to mention that the majority of legal aid beneficiaries responded in ‘No Difficulty’ out of sheer fear of losing their legal assistance. In the meantime, 12% of beneficiaries raised the issue that their respective LACs show no keen interest in interacting or communicate with them.

**Fig. 5 Difficulty Faced by Beneficiaries in Six Zones**

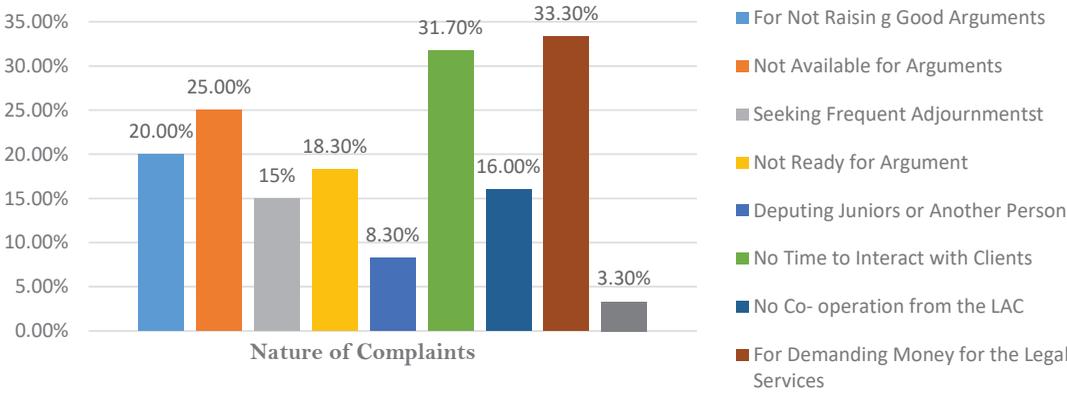


Interestingly, this issue of lack of proper communication echoes in complaints received by judicial officers and regulators. As Fig. 6 shows, apart from LACs demanding money for their legal

<sup>187</sup> The research team used cross tabulation tool in SPSS to analyze this relationship.

services, almost 32% of judicial officers received complaints from beneficiaries about LACs' low interaction with the beneficiaries.

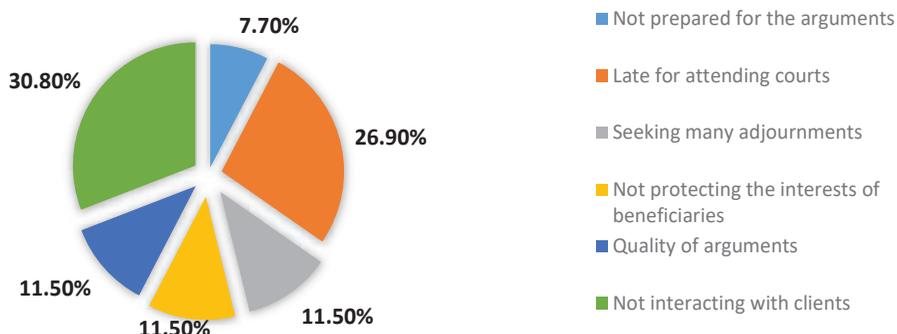
**Fig.6 Nature of Complaints Received Against LACs by Beneficiaries to Judicial Officers**



A similar pattern of complaints made by beneficiaries to regulators also came out in the research findings. As shown in Fig 7, around 31% of regulators received complaints from beneficiaries about LACs not interacting with them. It was followed by the late appearance of LACs at the time of hearing of legal aid cases.

Consequently, we see a pattern of a similar complaint, i.e., LACs showing no keen interest to interact with their respective beneficiaries. The study highlights that lack of communication or interaction with beneficiaries is one of the issues faced by beneficiaries while availing legal services from LACs. This lack of communication begets or contributes to a lack of faith among legal aid beneficiaries.

**Fig.7 Nature of Complaints Received Against LACs by Beneficiaries to Regulators**



The findings from empirical research indicate that LACs are not committed to the mandate of legal aid services. As LACs devote more time to private cases than legal aid cases, they are often not available for arguments and communicate less with their respective beneficiaries. Thus, the empirical evidence suggests that LACs are not committed to the mandate of legal aid services.

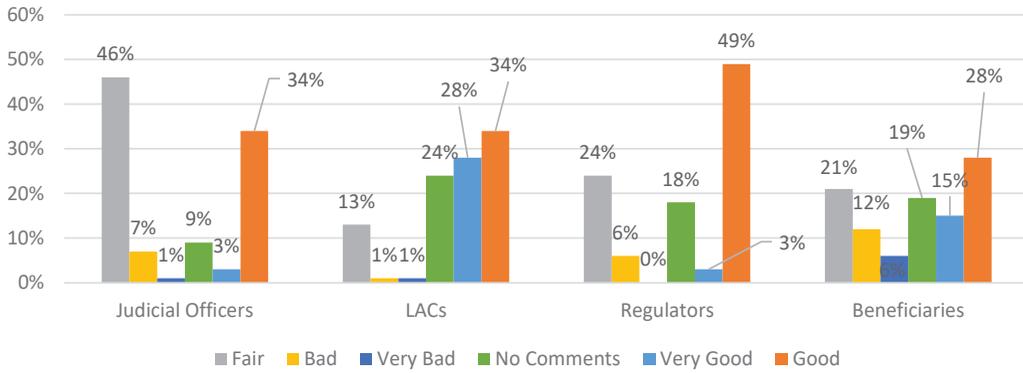
**4. ARE LACS LESS COMPETENT AS COMPARED TO PRIVATE LEGAL PRACTITIONER (PLPS)?**

The empirical research also concentrated on the competency level of LACs involved in providing legal service to beneficiaries. The stakeholders, including LACs, were asked to rate the professional skills of LACs. During the field visits, a majority of beneficiary respondents believed that LACs are not as competent as PLPs. Thus, it becomes crucial to scrutinise the professional skills of LACs with PLPs.

**4.1. Assessment of LACs by the Stakeholders in Legal Aid Services**

For comparative evaluation of overall professional skills of LACs, feedbacks from judicial officers, LACs, regulators, and beneficiaries were accounted. The scale for accounting professional skills was set as Very Good, Good in terms of good professional skill, and fair, bad, very bad as an average professional skill. As Fig. 8 shows, a majority of regulators and LACs from the six zones have rated the professional skills of LACs as ‘Good’ (Orange).

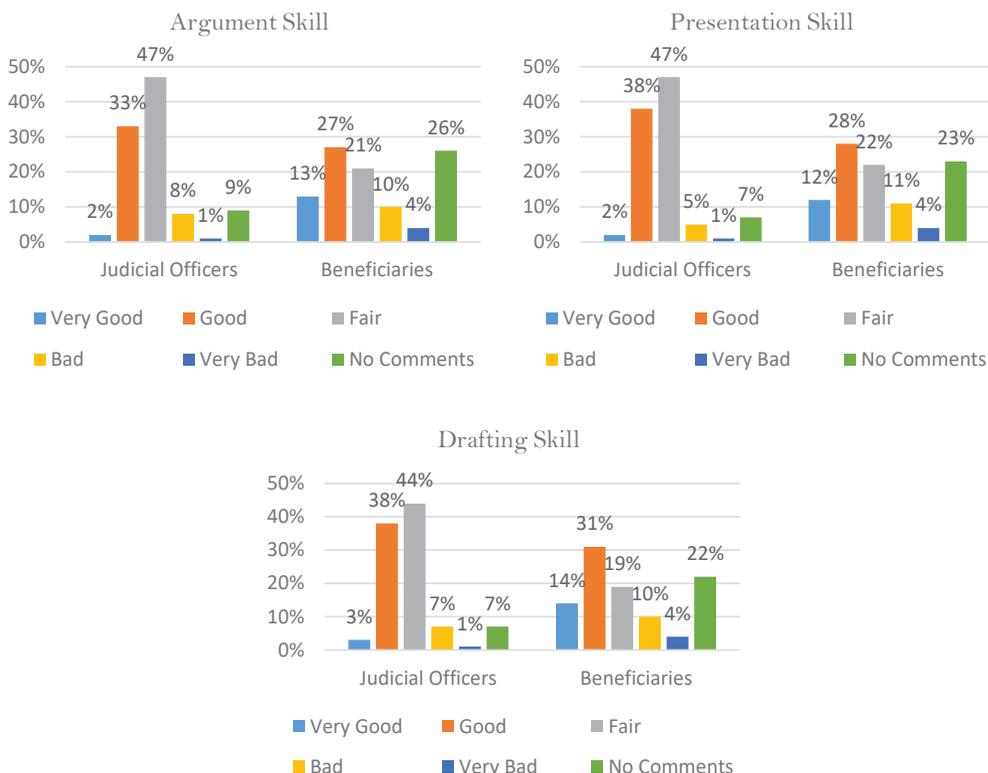
**Fig. 8 Overall Professional Skills of LACs as per Respondents from Six Zones**



These responses received from LACs and regulators on the quality of professional skills of LACs will not be accounted for assessment. It is because both regulators and LACs have their respective stake in the selection process of LACs. Consequently, they might have been inclined towards ranking the professional skills of LACs in general. Therefore, we consider responses given by judicial officers and beneficiaries.

As seen in Fig. 9, in terms of argument skills, a majority of judicial officers, around 47% of judicial officers, have rated the quality of LACs as of average quality. In contrast, a majority of beneficiaries have evaluated the quality of argument skills of LACs as reasonably good. Similarly, in terms of presentation skills, we also see that 47% of judicial officers rated the quality as fair, while most beneficiaries rated the quality of presentation skills of LACs as fairly good.

**Fig. 9 Level of Professional Skills as per Judicial Officers and Beneficiaries**



Further, around 44% of judicial officers rated the drafting skills of LACs as of average quality. On the other hand, a majority of beneficiaries rated the quality of LACs as reasonably good. Thus, Fig. 10 shows us a contrarian perspective, where judicial officers and beneficiaries have an opposing opinion on the quality of LACs. Additionally, it is a judicial officer who presides over the proceedings of the trial and oversees the performance of the LACs. S/he is much equipped and experienced in assessing the quality of professional skills of LACs as compared to a beneficiary. Hence, the responses received from judicial officers hold much significance over the quality of professional skills of LACs. Moreover, a majority of them rated the professional skills of LACs as of average quality.

#### 4.2. PLPs are more competent than LACs

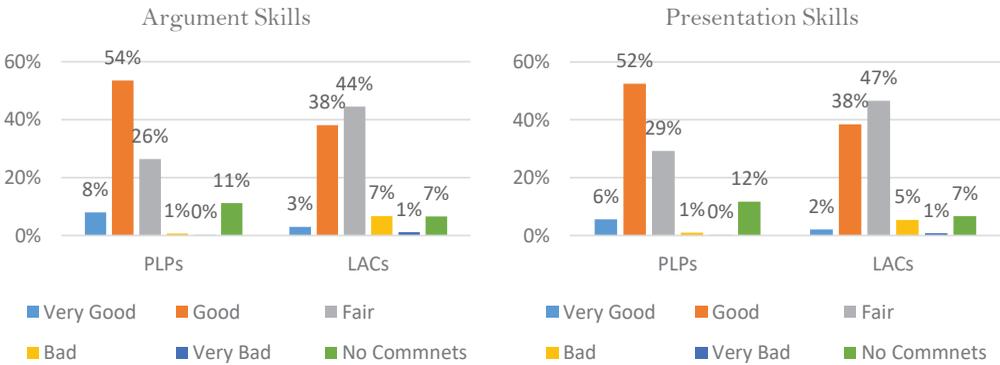
Since the judicial officer presides over the trials in general, they are exposed to the professional skills of LACs as well as PLPs. This makes their opinion towards the competency level of PLPs

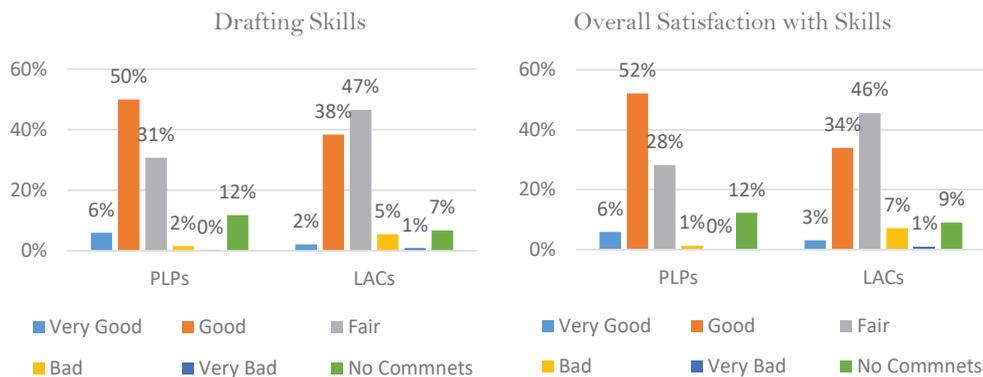
and LACs more definitive. This section compares the professional skills of PLPs and LACs as rated by judicial officers in six zones.

A skill related to argumentation is the essential skill required in the profession. An assessment of PLPs and LACs demonstrates the level of basic competency level. As shown in Fig.10, 56% of judicial officers, a majority of them, rated the argumentation skill set of PLPs as good. Whereas a majority of judicial officers, 44% of judicial officers, rated the same skills of LACs as of average quality.

Similarly, presentation and articulation of facts during a case proceeding also hold their importance, like the skill set of argumentations. In this parameter, PLPs stand way ahead than LACs as per the rating received from judicial officers. Around 52% of judicial officers responded to the presentation skill set of PLPs as good. At the same time, 47% of judicial officers rated the presentation skill set of LACs as at average level.

**Fig. 10 Comparative Assessment of Professional Skills of LACs and PLPs by Judicial Officers in Six Zones**





Further, a majority of judicial officers (50%) rated the drafting skills of PLPs as good. The assessment of drafting skills of PLPs stands way better than of LACs, as most judicial officers rated the drafting skills of LACs of average quality. Finally, in terms of overall satisfaction level, also PLPs performed better than LACs. Around 52 % of judicial officers from the six zones rated the overall satisfaction level with the skill set of PLPs as good. While the overall satisfaction level with LACs stands a mere 34% as good and 46% as average. Thus, as per the empirical evidence, the professional skill set of LACs is not at par with PLPs. This difference in competence contributes towards the lack of faith and trust among legal aid beneficiaries and diminishes the confidence of beneficiaries of legal services.

## 5. LEGAL AID BENEFICIARIES ARE BOUND TO OPT FOR LESS COMPETENT AND LESS COMMITTED LACS INSTEAD OF PLPS

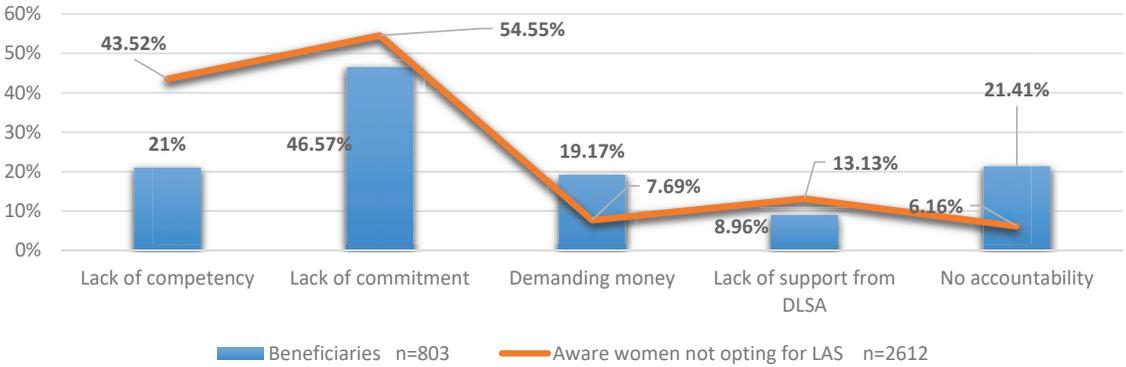
The low level of competency and commitment of LACs in comparison to PLPs negatively affects the very cause of legal aid under the LSA Act 1987. Beneficiaries not only lose their faith in the legal aid system, they rarely trust the services provided by LACs.

### 5.1. Beneficiaries Perspective on LACs

The empirical evidence suggested that LACs lack commitment and competence as compared to PLPs. However, do these parameters become an issue for beneficiaries in general? The research study focused on the difficulties faced by beneficiaries in general and aware women who did not

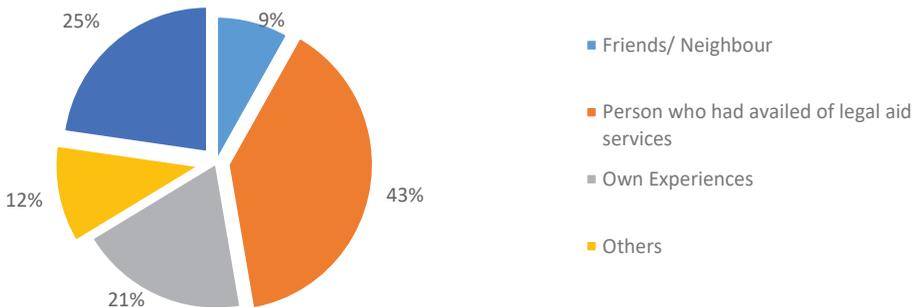
opt for legal aid services. As Fig. 11 shows, Beneficiaries (46.75%, Blue) and aware women (54.55%, Orange) raised the lack of commitment among LACs. Beneficiaries even raised the issue of lack of competency and non-accountability also.

**Fig. 11 Issues faced by Beneficiaries and Aware Women, who did not opt for LAS**



Additionally, the aware women, who were aware that they are eligible and yet chosen for a PLPs, flagged the issue of lack of competency (43.52%, Orange) among the LACs as the significant issue for not opting for a LAC. The research study even uncovered the frustration held by beneficiaries, who earlier availed legal aid services. In comparison, answering a question on persons advised aware women for not opting for the services offered by LACs. As seen in Fig 12, the person who had availed legal aid services earlier was in the majority to discourage them (aware women respondents) about legal aid services. Therefore, lack of commitment and competency negatively affected beneficiaries’ experience in availing legal aid services.

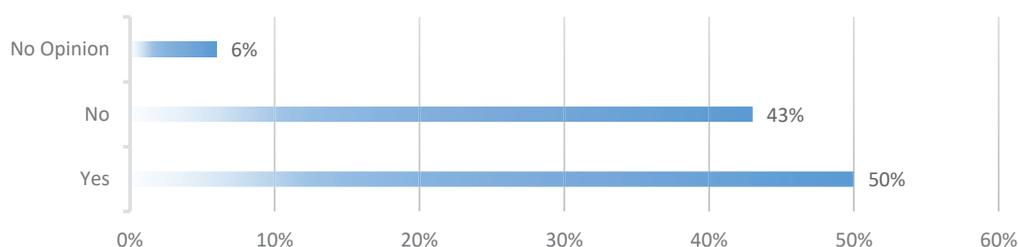
**Fig. 12 Persons Advised Aware Women not to opt for Legal Aid Services**



## 5.2. Beneficiaries Prefer Private Legal Practitioner over LACs

The empirical study explored the idea of whether LACs are the first preference of a potential legal aid beneficiary or not. As shown in Fig. 13, around 50% of beneficiaries first approached private legal practitioners (PLPs) before approaching LSA free legal aid. The attribute that compelled beneficiaries to first up opt for PLPs rather than LACs is the notion that LACs are comparatively less committed and competent compared to private legal practitioners (PLPs).

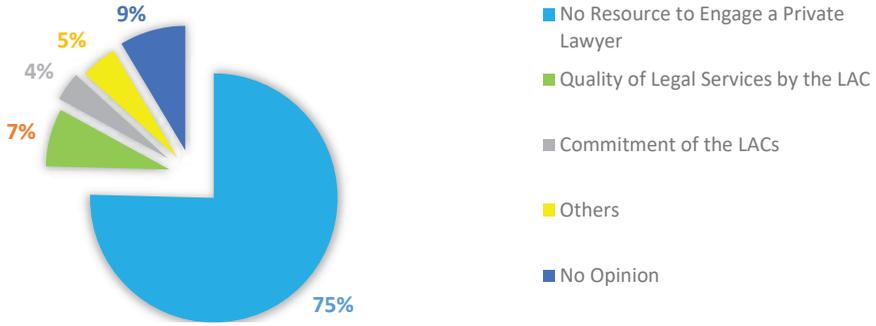
**Fig. 13 Beneficiaries Approached To PLPs, Before Approaching to LSA**



## 5.3. Resource Constraints Compels Beneficiaries to Opt for Legal Aid Services

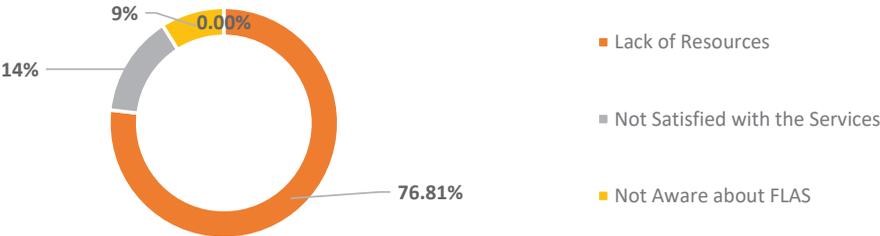
The empirical evidence confirmed beneficiaries' distrust and lack of faith in the legal aid system in general and LACs in particular. Then what compels them to opt for legal aid services? Even if they are not satisfied with the level of commitment and competence displayed by LACs. Strikingly, they prefer legal aid services under compulsion because they do not have the resources to engage PLPs. The empirical study further validates this assertion. As Fig 14 shows, a majority of legal aid beneficiaries (75%) chose free legal aid services because they do not have the economic or financial resources to engage a private lawyer. A very few beneficiaries responded that they opted for services of LACs due to the commitment or quality of legal services offered by LACs.

**Fig. 14 Rationale for Opting the Services of Legal Aid Counsel (LAC) under FLAS in Six Zones**



Indeed, it is the resource constrain among the beneficiaries, which compels them to choose the services of LACs instead of PLPs. As the empirical evidence in Fig. 15 from the beneficiaries who had earlier taken the services of PLPs and later switched to the services of LACs demonstrates that lack of resources was the only reason to shift from a PLP to LAC.

**Fig. 15 Reasons for Changing from Private Practitioner to LAC**



As shown in Fig 16, the majority of beneficiaries (31%) from all the six zones stress that they will engage LACs a second time only if they do not have ample resources to get a private lawyer. Besides, 13% of beneficiaries were even vocal about not taking the services of LACs.

**Fig. 16 Beneficiaries Responses on Engaging LACs for Second Time**



Therefore, beneficiaries choose or opt for legal aid services under the compulsion of financial or economic constraints. If given a chance, they will always prefer PLPs to LACs. Beneficiaries have no faith in LACs, as most do not encourage others to take their services.

#### 5.4. The approach of Entitled Beneficiaries toward Legal Aid Services

LACs in the legal aid services are the linchpin of the justice delivery system under the legal aid program in India. The research established that LACs are less competent and less committed to the mandate of legal aid services. Based on the feedback received from the various stakeholders, the entitled beneficiaries take the services of LACs only because they do not have enough resources.

**Fig. 17 The rationale for Opting and Not Opting Legal Aid by the Entitled Respondents**

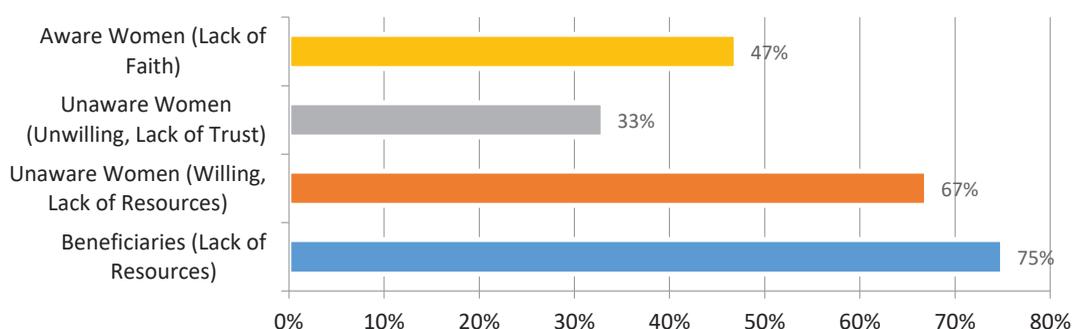


Fig 17 represents the approach of various entitled beneficiaries towards legal aid services. A majority of women who are aware that they are eligible for legal aid services do not have any faith in the legal aid system (See Yellow Bar, 47%). Further, women who are unaware of the legal aid services also have an opposing viewpoint about the legal aid services. Around 33% of these unaware women responded that they are unwilling to opt for legal aid services because they do not trust the services. In contrast, the remaining 67% of unaware women (See Orange Bar) were willing to opt for legal aid services because they do not have proper resources to engage a private legal practitioner. Hence, beneficiaries are compelled to opt for legal aid services because of a lack of resources. The evidence from the empirical research also established that competence and commitment is not the driving factor for the beneficiary to opt for legal aid services. They will engage PLPs when they have proper resources.

## **6. STRUCTURAL OBSTACLES IN THE DELIVERY OF LEGAL AID SERVICES**

The legal aid system in India aims to empower the downtrodden and marginal stratum of society with easy access to justice. This marginal stratum could be any person from a disaster-hit victim to a social and economically marginalized person. However, the field evidence suggests that the legal aid beneficiaries are not contented with the legal services or assistance. The LACs that stand as a pivot between a beneficiary and access to justice happens to be neither committed nor competent. It points towards identifying the obstacles or causes of such a state of LACs, in particular, and the legal aid system, in general. The empirical study highlights a few of these issues that affect the quality of legal aid services.

### **6.1. Insufficient Place to Interact with Legal Aid Beneficiaries**

The empirical study highlighted that a majority of beneficiaries complained about the low rate of interaction between them and their respective LACs. This low rate of interaction can be attributed to the place where most interaction between a beneficiary and LAC. As per the study, almost every stakeholder, i.e., 48% of LACs, 49% of Beneficiaries, and 63% of Regulators, said that a majority of interaction between the beneficiary and LAC happens in the court complexes.

Since most of the empaneled lawyers in the legal aid services are still junior advocates, they are devoid of independent chambers. These types of LACs often work with provisional workstations. The absence of a concrete infrastructure obligates these LACs to interact in open public with their LACs either near the court complex or in the DLSA office. As a result, the quality of communication and interaction between beneficiaries and their respective LACs suffers. It suffers because LACs are unable to be sitting in court complexes beyond court working hours. The fact that case-related interactions take place in public places. Beneficiaries get an impression of skepticism towards their respective LACs. They tend to think that the appointed LAC is neither competent nor committed towards them or their case as the appointed LAC does not have their room or chamber inside the court complex.

Linked to the above issue is the aspect related to infrastructural impediments. In an open-ended question, LACs voiced their concern about the lack of infrastructure omnipresent at every stage of

legal assistance. Most LACs are dependent on the DLSA office for either printing or for discussing legal aid cases.

## **6.2 Low Quantum of Honorarium**

The empirical study also observed that the quantum of honorarium offered to LACs by their respective District Legal Service Authority (DLSA) is one of the primary concerns faced by LACs. Around 23% of LACs were concerned about the low quantum of honorarium they receive for their services.

Amidst the low quantum of honorarium, LACs were also vocal about the delay in receiving their honorarium from their respective DLSAs. Around 34% of the LACs complained about unreasonable delay in paying honorarium by the DLSAs. During the interaction among the DLSAs and the research team, most DLSA informally blamed their respective state legal aid authorities. According to them, SLSAs delay disbursing the fund, resulting in delayed payment of honorarium of LACs. This delay in reimbursement of LACs honorarium often compels LACs to either demand money from their beneficiaries or devote their time in private practice for subsistence and livelihood.

## **6.3. Uncertain Nature of Empanelment**

The National Legal Services Authority (Free and Competent Legal Services) Regulation 2010, amended 2018, states about the process of empanelment and the nature of LACs as temporary, depending upon the respective DLSAs. This aspect of legal service hampers the motivation of a majority of LACs. Apart from the low honorarium, they devote their time to the services where the serving period is uncertain. According to our study, a majority of LACs, around 42.5% of LACs, recommended any prospect that stresses upon a full-time tenured commitment, and 24.4% of LACs highly recommended such kind of prospect. On the one hand, a full-time tenured empanelment will increase the level of commitment among LACs. On the other hand, it will inculcate a sense of accountability among LACs for legal aid cases they represent.

Another aspect of uncertainty is associated with non-recognition. The legal aid services offered by LACs receive no recognition in the trajectory of their profession. The judicial officers and peer

practitioners mistreat them during daily court proceedings. In entirety, at the level subordinate court, the efforts put forward by LACs are under-recognized. The absence of such appreciation clubbed with the low quantum of honorarium discourages them from investing their time and professional skills in legal aid cases.

#### **6.4 Lack of Inclusive Rigid Process of Empanelment**

The professional competence of a LAC is a prerequisite for delivering quality legal aid services to their respective beneficiaries. It is the ability of professional rigor and commitment of a LAC that provides just outcomes to a beneficiary. The responses received from judicial officers rated the professional skills of LACs as average, based on the argumentation, articulation/presentation, and drafting skill set. The lack of competency among the LACs affects the quality of services and discourages a potential beneficiary from opting for legal aid services. Therefore, the empanelment of competent and committed LACs becomes crucial.

According to the empirical study, a majority of regulators, i.e., approx. 82% of regulators inducted LACs based on their experience of practicing in the court. Another criterion that regulators usually follow while inducting LACs was the commitment to legal aid services. Indeed, the quality of their professional skill set was not the benchmark for the selection process. The nonexistence of any form of written examination or evaluation to empanel LACs fosters less competent and less committed advocates into the legal aid system. Besides, no committee or board for the empanelment of LACs practice any such parameters in the process of empanelment.

#### **6.5 Paucity of Systematic Record Mechanism on Complaints**

One of the front office guidelines by NALSA<sup>188</sup> suggests that every front office of DLSA, TLSA needs to maintain a feedback form of LACs. In almost all the 36 DLSAs, the front offices did not keep any such register or feedback mechanism. The legal aid beneficiaries were often compelled to complain about any shortcomings of LACs directly to either regulators or judicial officers. To add to the misery of beneficiaries, DLSAs do not even maintain any written record of complaints against LACs. The study validates the existence of this practice, as 45.5% of regulators (15 out of 33 regulators) accepted that they do not maintain any record about grievances filed or raised by

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<sup>188</sup> NALSA's Front Office Guidelines, Page 5, [https://nalsa.gov.in/sites/default/files/document/Front Office Guidelines.pdf](https://nalsa.gov.in/sites/default/files/document/Front%20Office%20Guidelines.pdf)

legal aid beneficiaries. Regulation 12 of the amended NALSA Regulations 2010 mandates that a Monitoring Committee must submit a bi-monthly report containing the assessment about the performance of LACs. As DLSA offices do not maintain any records of LACs, keeping a bi-monthly report becomes a difficult task.

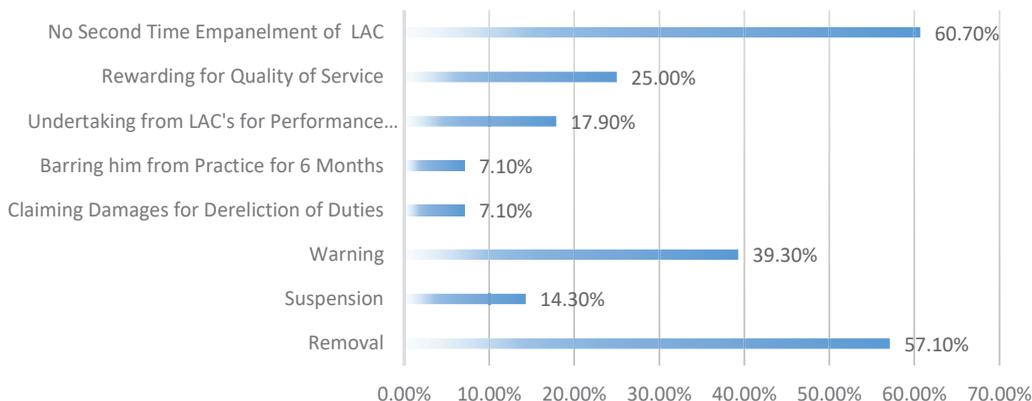
The system of feedback in legal aid services to beneficiaries plays a vital role in understanding the loopholes in the services. A legal aid beneficiary plays a crucial role in the feedback mechanism. However, the research study found that a majority of regulators does not carry out the practice of any form of a feedback system, as 70% of regulators (23 out of 33 regulators) responded that they do not carry out any feedback system from the beneficiaries about the services offered under free legal aid services. This creates a sense of void between beneficiaries and the legal aid system in which they fail to communicate their grievances.

#### **6.6. Lack of Stringent Methods to make LACs Accountable**

The role of accountability is pivotal for the good governance of any services. The aspects of accountability should not look only towards the supply-side *versus* the demand side of a service. Instead, it should focus on the linkages among the actors involved and how they can be strengthened over time. In terms of legal aid services in India, under NALSA Regulations 2010, DLSAs play a significant role in the empanelment process and regulation of LACs. A regulator (Member Secretary) at a DLSA has the authority to appoint or remove LACs in any legal aid case and control the conduct of LACs. Therefore, regulators have a responsibility to make LACs accountable towards their respective legal aid beneficiaries.

The empirical study reveals that the process of ensuring accountability is not stringent enough to shift the onus to LACs. As shown in Fig. 18, approx. 61% of regulators opined that they maintain accountability by ensuring that any LAC with misconduct does not get empaneled for the second time or again. Whereas 57.1% of regulators even remove the LACs from the list of empaneled LACs. However, the approaches adopted by regulators are always oral. Further, the office of DLSAs does not maintain the records of grievances filled by legal aid beneficiaries.

**Fig. 18 Methods through which Regulators claim to make accountability**



Regulators do not follow the new NALSA Regulation 2010, in its Para 10 and Para 11, in its true spirit. The regulation mandates creating a Monitoring/Mentoring Committee for close monitoring of the court-based legal services rendered and progress of the cases under the legal matter. Regulators even fail to maintain any such register citing insufficient human resources at the DLSA office.

As a result, the method of not empaneling a LAC becomes questionable, as no written record of their performance remains available with the respective regulator. Hence, to make LACs accountable towards the legal aid beneficiaries, regulators should stringently maintain the records filled under the mechanism for grievance redressal and managing the daily register.

## 7. RECOMMENDATIONS

The research paper illustrates the ground realities of legal aid services in the 36 subordinate courts from 18 selected states in India. The study has relied upon field evidence collected and collated from various District Courts from the stakeholders involved in either facilitating or receiving legal

aid. The recommendations suggested below deal with the issues related to legal aid services in India.

### **7.1. The Criterion of Empanelment Should Be Based on Competency**

The NALSA Regulation 2010, in Regulation 8(3), sets the bar of more than three years of experience of practicing in the Courts as the eligibility criteria for the empanelment of LACs. Instead, the DLSAs should prefer a standard written examination system focused on evaluating the level of competence of a candidate. This written examination could be helpful in the empanelment of LACs at district and *taluka* level legal aid authorities. The performance in the exam should carry a weightage of 80% and should be valid for at most 5 years. The in-face interview and feedbacks from judicial officers should have 10% of weightage, respectively, in the selection process. The terms and conditions of empanelment, the quantum of honorarium, and any other incentives should include in the agreement. To decrease the chances of LACs deserting or leaving a legal aid case before the conclusion, LACs should make to sign an undertaking. Besides, the empanelment of LACs should be on a full-time tenure basis. Such an empanelment will provide stability to LACs and increase competence, as LACs then need to devote time to private practice.

### **7.2. Making LACs more Accountable on Withdrawing from Legal Aid Cases**

The NALSA Regulation 2010 (2010), Regulation 8, articulates that a LAC can withdraw from legal aid cases just by submitting a reason to Member Secretary with a written undertaking. This process puts the onus of accountability to assign a new LAC to the regulator. It further makes obstacles in the access to justice for beneficiaries, as they have to discuss the entire case history with the newly appointed LAC. The withdrawal makes the litigation process more cumbersome for a beneficiary in the transfer of documents from one LAC to another. The issue of LACs leaving legal aid cases attributes to the low honorarium involved with legal aid cases.

There are two ways to deal with the issue. First, increase the honorarium of LACs. The increased honorarium will make legally aided cases more appealing in monetary aspects, and LACs will intend to complete these cases once assigned. Secondly, reprimanding LACs in case of premature withdrawal from legal aid cases. This may include terminating their honorarium based on delaying

access to justice to beneficiaries. If implemented, these two aspects will prove to be a starting point in inclining LACs towards beneficiaries.

### **7.3. Introducing Regulations for Disregarding Responsibilities as LAC**

LACs are also advocates. This makes them subjected to the Advocates Act, 1961, the Legal Services Authorities Act 1987, the BCI, NALSA, and respective SLSAs. A set of regulations focusing on ethics and mandate of legal aid services in India needs to integrate into these acts and regulations. These new sets of regulations must aim to permit DLSAs to take disciplinary actions against any defaulting LACs. The domain of such regulations must cover illicit demand of money from beneficiaries, regular absenteeism at the time of court hearing of allotted legal aid cases, and issues related to the accountability of LACs. Such regulations will obligate LACs to be committed to legal aid beneficiaries and cases and restore the lost faith of beneficiaries in the legal aid services in India.

### **7.4 Decreasing the Time between Reimbursement of Honorarium and Conclusion of Case**

The LACs in our research universe were vocal about the delayed reimbursement of honorarium for their legal services from DLSAs. The NALSA Regulations 2010 amended in 2018, in its 14 (3) regulation mandates that LACs should receive their honorarium without any delay. Often LACs are in a hurry to conclude legal aid cases as early as possible to get their honorarium on time. This delay ultimately hampers a beneficiary's interest. Thus, provisions about timely reimbursement of honorarium must be the norm followed by DLSAs.

Moreover, incentivizing LACs efforts on instances where conclusions of cases favour beneficiaries within a minimum period will positively impact the quality of legal aid services. Finally, the quantum of honorarium offered to LACs should be proportional to the cost of living in a particular District.

### **7.5 Legal Aid Services should have a Credit Base System for Future Appointments**

In the present setup, legal aid services in India do not carry any benefits for LACs. Many competent legal aid practitioners refrain from empanelment due to a low return of investment compared to private practice. The legal aid services in India do not have any credit base system for the career development of LACs in the future. Any prospects of adding weightage or credit to the experience

gained as LAC should carry some weightage in promotion or selection to Senior Advocates, Judicial Officers, and public prosecutors in lower courts must be encouraged. This will encourage competent and committed talents into the legal aid services in India.

### **7.6 Grievance Redressal Mechanism in Legal Aid Services**

The research study shows that complaints filed by beneficiaries or judicial officers are informal or oral. It will be beneficial for legal aid beneficiaries that Complaints and Response Mechanisms (CRMs) should be constituted at the DLSA level. The Monitoring and Mentoring Committee (MCC) should be responsible for maintaining the record of grievances filed against LACs on a case-by-case basis within this CRM. The beneficiaries can drop their feedback forms at the front office of DLSA in case of any grievances related to legal aid services. This redressal mechanism can also serve as a performance assessment of empaneled lawyers.

### **7.8 Establishing a Unified Documentation System**

The field observations confirmed that most DLSAs do not maintain any register for jail visiting advocates or jail visits, details of cases allotted to LACs, etc. The non-maintenance of any such records is contrary to NALSA Regulation 2010. Even no records of any disciplinary action taken against LACs were present at many DLSA offices. Introducing a Unified Documentation System (UDS) for legal aided cases at District Court might support in maintaining records. This UDS should also be under the jurisprudence of the Monitoring and Mentoring Committee.

The mechanism should prioritize filling and registering complaints from beneficiaries and judicial officers against any misconduct by LACs or services offered by LACs. Such an arrangement will obligate the record-keeping and keep a check on the quality of legal aid services.

### **7.9 Providing Basic Infrastructure to DLSAs**

Infrastructure is an essential requirement for delivering any form of quality welfare scheme. Legal aid services in India lack behind in terms of infrastructure availability. As the research highlights, the lack of a proper place of interaction affects the quality of communication between a beneficiary and LAC. Infrastructural impediment becomes a significant obstruction in delivering the mandate of free legal aid services in India. Many DLSAs are running in the absence of necessary

Information and Communications Technology (ICT) facilities, common discussion hall, office space, and rooms for negotiators mandatory for pre-litigation legal aid.

Furthermore, crucial information related to the listing of cases under legal aid and contact details of empaneled lawyers were missing from the official websites of DLSAs. The DLSA should have its system officer maintain and update the website of DLSA along with the District Court website. Finally, DLSA must have rooms and infrastructure devoted to junior LACs and their beneficiaries to discuss their cases, as they do not have their offices or chambers in the court complex.

## **8. CONCLUDING REMARKS**

The legal aid service is design to provide quality legal aid assistance to the downtrodden and marginal section of the society free of cost. The legal aid to a beneficiary facilitates the idea of access to justice as a fundamental right enshrined in Articles 14 and 21 of the Constitution of India. The study provides an inclusive understanding of issues through which India's current legal aid system is suffering. The paper demonstrates that LACs in subordinate courts of India are less competent and lack commitment towards their respective legal aid beneficiary. The level of commitment and competence of LACs directly links to the faith and trust of legal aid beneficiaries. The empirical evidence suggests that beneficiaries of legal aid services and judicial officers believe that LACs are partially devoted to the mandate of legal aid services. The research also exhibits that LACs spend far less time on legal aid cases as they devote themselves to their private cases. LACs are often not available for arguments at the time of court hearing. To add to the misery, LACs maintain a deficient level of communication or interaction with their respective legal aid beneficiary. These factors instill that LACs lack commitment towards the legal aid services.

On the other hand, our research also established that LACs are less proficient in argumentation, articulation, and drafting skills. A majority of judicial officers in our research universe rated the overall professional skills of PLPs way better than LACs. Therefore, LACs lack in level of commitment and competency towards the mandate of legal aid in India that implant a lack of faith and trust in legal aid services among beneficiaries.

It then becomes necessary to probe why legal aid beneficiaries opt for legal aid. The research study demonstrates that beneficiaries are compelled to choose LACs because they do not have an ample

amount of financial and economic means to engage a private legal practitioner. The study also revealed that beneficiaries instead engage PLPs over LACs because of a lack of faith and trust in the legal aid system.

However, the relative decline in the trust of beneficiaries on LACs, in particular, and the legal aid system, in general, is not solely because of LACs. It is due to structural obstructions prevalent and practices in the legal aid system in India. LACs have no infrastructure facilities available to them to garner the trust of their respective beneficiaries. Second, the quantum of honorarium that LACs receive is way too less when compared to the standard of living in the area. Moreover, many times, LACs even receive the honorarium as late as six to twelve months after a case has concluded. Third, the legal aid system in India lacks a rigorous empanelment process for LACs. It focuses on several years in court rather than the quality and level of the skill set of a LAC. Fourth, the absence of an accurate monitoring and evaluation mechanism in the legal aid services of India. Hence, lack of commitment and lack of competency among LACs directly affects India's quality of legal aid services. A majority of beneficiaries are compelled to opt for legal aid services because of a lack of resources.