

Closing the Implementation Gap: Grievance Redress and India's Social Welfare Programs

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Poor implementation of social welfare programs is a chronic challenge in developing countries such as India. Yet, despite the large number of people affected and the serious consequences of implementation failure, there have been few studies, and even less theorization, of grievance redress in these contexts. Based on fieldwork conducted by the author, this Article examines grievance redress mechanisms for social welfare programs in the Indian states of Madhya Pradesh and Bihar. Borrowing from the idea of “accountability regimes” developed in the administrative law literature, the Article proposes a comparable set of “grievance redress regimes.” It creates a matrix to weigh the relative merits of different grievance redress regimes and judge how new grievance redress mechanisms impact them. It argues that this approach can help policymakers and others more accurately pinpoint the strengths and weaknesses of specific grievance redress mechanisms, imagine a broader range of policy prescriptions, and ensure that different grievance redress mechanisms support, not undermine, each other.

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INTRODUCTION

A line spills out of a meeting hall in the district headquarters as two police officers try to keep the waiting crowd under control. It is Tuesday morning, time for the weekly Janata Darbar, or public hearing, in the city of Jabalpur in the Indian state of Madhya Pradesh. Inside, the energetic thirty-something district collector sits listening at his elevated desk. Three elderly women with tattered saris protest that the government pension they receive is less than they are entitled to. A middle-aged businessman complains about encroachment on his land that the police have failed to address. A day laborer asks for help with medicines for his sick father. The grievances keep coming from the pressing line. There will be about 200 that day. About a dozen lower officials representing different government departments in the district sit on benches on one side of the hall. The district collector asks one of the officials to look into a complainant's matter, reprimands another for not doing his job correctly, and then jots a note for a citizen to take to the relevant

office to ensure he is assisted.¹

It's getting later in the evening in Jabalpur's old city, but auto rickshaws still compete with vegetable carts and shoppers on a crowded street lit up by fluorescent lights. Beneath a small storefront is one of the seventy ward offices in the city. A couple of constituents wait on plastic chairs for their ward member—a middle-aged woman BJP politician—to sign their applications to be placed on the Below Poverty Line list. Her signature is not necessary, but "expedites" the process. The ward member heads the social welfare committee on the mayor's counsel. She explains, "I can transfer clerks, or even an assistant commissioner, who don't do their work properly The officials thought at first they could sideline me. They said 'madam' this, 'madam' that. They took photos with me to make me feel important, they talked smoothly, but they wouldn't do anything. They tried to give me false information. Then I became strict."²

Before two black-robed judges in a colonial-era courtroom of the Jabalpur High Court, a young human rights lawyer presents her case. She has flown in from Delhi to argue that the National Rural Health Mission is not being implemented in the state and as a result women are dying while giving birth. A lawyer from a local non-government organization stands next to her. One of the judges asks government counsel why certain public health centers have no doctors, or are locked, or have no medicine. The case will drag on for several hearings over many months until the judges finally order that the National Rural Health Mission must be fully implemented in the state and monitoring committees at the district level be created to ensure compliance.³

India has no shortage of legislation, rights, and policies designed to improve the social welfare of its people.⁴ Yet, like in

1. Observations from author's visit to Jabalpur in March 2012.

2. *Id.*

3. Interview with a Human Rights Lawyer based in a Delhi Litigation Organization (May 2, 2012) (on file with author); see *High Court of Madhya Pradesh Recognizes Woman's Right to Survive Pregnancy and Childbirth as a Fundamental Right*, HUMAN RIGHTS LAW NETWORK, <http://www.hrln.org/hrln/reproductive-rights/pils-a-cases/877-high-court-of-madhya-pradesh-recognizes-womans-right-to-survive-pregnancy-and-childbirth-as-a-fundamental-right.html> (last visited Dec. 19, 2014) (excerpting the order in the case, *Sandesh Bansal v. Union of India* (2008)).

4. The Indian Constitution's directive principles provide guidance to the government to promote social welfare. See generally INDIA CONST. pt. IV. The Constitution's section on fundamental rights has been amended to include a right to education, and the Indian

many developing countries, there is often a chasm between the law on the books and the reality on the ground.⁵ Teachers do not show up to work.⁶ Ration shops do not give allotted grain.⁷ Corruption and apathy are common in a bureaucracy well known for its insularity and officiousness. One commentator has gone so far as to call countries such as India “flailing” states, given the disconnect between the government’s declared policy goals and their inadequate implementation.⁸

In India, the possible culprits of such widespread implementation failures are numerous. They encompass not only poor public administration and policy design, but also a range of social, political, and economic factors, including deep societal inequality,⁹ corruption,¹⁰ and significant resource constraints.

Supreme Court has interpreted this section more generally to mandate many other social and economic rights. INDIA CONST. arts. 14, 21A, *amended by* The Constitution (Eighty-Sixth Amendment) Act, 2002; Arun Thiruvengadam, *Revisiting The Role of the Judiciary in Plural Societies (1987): A Quarter-Century Retrospective on Public Interest Litigation in India and the Global South*, in *COMPARATIVE CONSTITUTIONALISM IN SOUTH ASIA* 341–69 (Sunil Khilnani et al. eds., 2013); Nick Robinson, *Expanding Judiciaries: India and the Rise of the Good Governance Court*, 9 WASH. U. GLOBAL STUDIES L. REV. 1 (2009). See generally S.P. SATHE, *JUDICIAL ACTIVISM IN INDIA: TRANSGRESSING BORDERS AND ENFORCING LIMITS* (2002). The government has created far-reaching social welfare programs to further these rights and otherwise improve the well-being of the population. See, e.g., PDS PORTAL OF INDIA, DEPARTMENT OF FOOD & PUBLIC DISTRIBUTION, <http://pdsportal.nic.in/main.aspx> (last visited Jan. 11, 2015) (providing subsidized grain to India’s poor); The National Rural Employment Guarantee Act, 2005, No. 42, Acts of Parliament, 2005 (India) (providing 100 days of employment to every family in rural India); The Right of Children to Free and Compulsory Education Act, 2009, No. 35, Acts of Parliament, 2009 (India) (guaranteeing primary education for every child in India); NATIONAL SOCIAL ASSISTANCE PROGRAMME, <http://nsap.nic.in/> (last visited Jan. 11, 2015) (providing pensions to impoverished seniors, widows, and handicapped persons); INDIRA AWAAS YOJANA, <http://iay.nic.in/netiay/home.aspx> (last visited Jan. 11, 2015) (providing housing for the poor).

5. Lant Pritchett, *Is India a Flailing State? Detours on the Four Lane Highway to Modernization* 1, 16 (Harvard Kennedy School Faculty Research Working Paper Series RWP09-013, 2009).

6. Nazmul Chaudhury et al., *Missing in Action: Teacher and Health Worker Absence in Developing Countries*, 20 J. ECON. PERSP. 91, 92 (2006).

7. CMS TRANSPARENCY, INDIA CORRUPTION STUDY 2010: IS THE SITUATION CHANGING? 9–13 (2010).

8. Pritchett, *supra* note 5; see Devesh Kapur, *The Political Economy of the State*, in *THE OXFORD COMPANION TO POLITICS IN INDIA* 443, 444 (Niraja Gopal Jayal et al. eds., 2010) (“[I]t had been apparent to observers quite early on that the Indian state’s ability to follow through and enforce its obligations was always severely limited relative to the rhetoric.”).

9. For example, India’s Gender Inequality Index was 0.610 in 2012, making it the

Government social sector expenditure in India was approximately \$123 billion in 2012–2013, which was almost a fivefold increase from just a decade before. Despite this large increase in social sector spending in India, it still averaged out to only about \$100 per person in 2012–2013 for all welfare programs (including health, education, food subsidies, and housing).¹¹ In response to this complex challenge, a number of policy initiatives have sought to overcome the country's persistent implementation gap. For example, a 1992 constitutional amendment gave local governments new powers in an attempt to create local control and oversight over many development programs.¹² The Right to Information Act provided citizens sweeping rights to demand information from the government that they could then use to monitor its activities.¹³ In recent years, the Supreme Court and High Courts have routinely brought the government to task for the lack of implementation of different government schemes, particularly those aimed at the poor,¹⁴ and increasingly proactive ombudsmen (called lokayuktas) in India's states have investigated high profile corruption cases.¹⁵ These initiatives have emphasized direct and local governance, citizen's rights, and transparency. They are in part the consequence of an increasingly empowered public, whose voices are heard not just at the ballot box, but also in the form of grievances to the government.¹⁶

worst performer in South Asia outside Afghanistan. UNITED NATIONS DEVELOPMENT PROGRAM, HUMAN DEVELOPMENT REPORT: THE RISE OF THE SOUTH 158 (2013), available at http://hdr.undp.org/sites/default/files/reports/14/hdr2013_en_complete.pdf.

10. In 2012, India ranked ninety-fourth in Transparency International's Corruption Perceptions Index, tied with Djibouti, Benin, and Greece. *Corruption Perceptions Index 2012*, TRANSPARENCY INTERNATIONAL, <http://www.transparency.org/cpi2012/results> (last visited Dec. 20, 2014).

11. *Trends in Social Sector Expenditure—Statewise*, 48 ECON. & POL. WEEKLY 87 (2013); RESERVE BANK OF INDIA, STATE FINANCES: A STUDY OF BUDGETS OF 2012–2013 41 (2013), available at <http://rbidocs.rbi.org.in/rdocs/Publications/PDFs/00SF090113FUL.pdf> (specifying component programs of social services expenditure).

12. See INDIA CONST. pt. IX, amended by The Constitution (Seventy-Third Amendment) Act, 1992 (formalizing the power of panchayats—i.e. village governments—in the Constitution); INDIA CONST. pt. IXA, amended by The Constitution (Seventy-Fourth Amendment) Act, 1992 (formalizing the power of municipal governments in the Indian Constitution) [hereinafter 73rd and 74th amendments].

13. The Right to Information Act, 2005, No. 22, Acts of Parliament, 2005 (India).

14. Robinson, *Expanding Judiciaries*, *supra* note 4, at 8–10.

15. See *infra* Part II.C.

16. The Indian population is wealthier and more informed than ever before. The literacy rate in India in 1981 was 44.92%. In 2011, it was 79.31%. CENSUS OF INDIA, STATEMENT-4: LITERACY RATE (2011). Meanwhile, GNP per capita has increased from 8,594 rupees in 1981 to 33,731 rupees in 2010. GOVERNMENT OF INDIA, UNION BUDGET AND

Indeed, a responsive grievance redress system has emerged as a key goal for policymakers in their quest to address the government's implementation failures.

Yet, despite the large number of people affected, there is surprisingly little theorization, or even description, of grievance redress mechanisms in India or the developing world more generally.¹⁷ When social and economic rights are promoted as a grievance redress tool, proponents often emphasize that such rights empower citizens to make claims against their government.¹⁸ However, outside of pleas to courts, little attention is paid to the other means by which citizens seek to redress grievances concerning these rights, or how to improve such systems. While some economists have examined factors that may increase demand for or supply of grievance redress mechanisms, much less work has been done to actually map the types of mechanisms that do exist, document how they interact, or analyze their comparative costs and benefits.¹⁹ Indeed, when grievance redress mechanisms are analyzed it is usually in isolation, in large part because the study of grievance redress mechanisms is not typically seen as part of a larger field of study.²⁰

This Article argues that the idea of accountability regimes—which has been developed in the administrative law literature—can be adapted to help fill this hole in the academic literature.²¹ Part I

ECONOMIC SURVEY 2010–2011, STATISTICAL APPENDIX (2011). Studies in India have shown citizens with more wealth and access to more networks make more claims on their government. See, e.g., Gabrielle Kruks-Wisner, *Making Claims: Citizenship and Service Delivery in Rural India* (Massachusetts Institute of Technology Political Science Department, Working Paper No. 16, 2011).

17. Varun Gauri, *Redressing Grievances and Complaints Regarding Basic Service Delivery 2* (World Bank Policy Research, Working Paper No. 5699, 2011) (noting a literature review found “few descriptions, and almost no thematic reviews or evaluations, of redress procedures in developing countries”). Limited work has been done exploring how administrative law concepts can improve the implementation of administration in the developing world. See MALCOLM L. RUSSELL-EINHORN & HOWARD N. FENTON, *USING ADMINISTRATIVE LAW TOOLS AND CONCEPTS TO STRENGTHEN USAID PROGRAMMING* (2008).

18. For an overview of the rights-based approach to development, see Brigitte I. Hamm, *A Human Rights Approach to Development*, 23 HUM. RTS. Q. 1005 (2001) (describing the development of a human rights-based approach to development); Emma Harris-Curtis, *Rights-Based Approaches: Issues for NGOs*, 13 DEV'T IN PRACTICE 558, 560 (2003) (noting “[t]he rights discourse is challenging because it asserts the individual person living in poverty as active agent rather than a passive recipient”).

19. Gauri, *supra* note 17.

20. *Id.*

21. Francesca Bignami, *From Expert Administration to Accountability Network: A New Paradigm for Comparative Administrative Law*, 59 AM. J. COMP. L. 859 (2011) (explaining “comparative administrative law should be framed no longer as the rules and

describes how low-level officials are embedded in different administrative, political, and legal accountability regimes of public governance, each of which creates a corresponding grievance redress regime. It lays out a matrix to compare the merits of these three grievance redress regimes and applies this model, drawing on fieldwork conducted by the author in two districts in the Indian states of Madhya Pradesh and Bihar.²² After establishing this broader framework, Part II then examines how three prominent grievance redress mechanisms developed in India in recent years—level jumping, rights to implementation, and implementation advocates—can reshape the grievance redress regimes identified in Part I.

The Article concludes by explaining how a holistic view of the ways in which citizens complain to the state can help prevent policymakers, academics, and activists from becoming myopic in their search for grievance redress solutions. For example, social and economic rights litigation may be a well-publicized tool used for grievance redress in India and elsewhere, but it should be understood as one amongst a wide range of complementary and alternative grievance redress mechanisms that may have far greater practical import. Developing a more holistic framework for understanding grievance redress can help policymakers more accurately pinpoint the strengths and weaknesses of specific grievance redress mechanisms, craft a broader range of policy prescriptions, and ensure that different grievance redress mechanisms and regimes support rather than undermine one another.

This Article only focuses on the forums in which Indians complain directly to the state concerning social welfare programs.

judicial-redress mechanisms that guarantee the effective working of administration but rather as an accountability network through which civil servants are embedded in their liberal-democratic social orders”).

22. The author conducted fieldwork in the districts of Jabalpur (Madhya Pradesh) and Patna (Bihar) during four visits in the first half of 2012 and conducted over sixty interviews, including with local politicians, administrators, civil society, community leaders, and residents in the districts of Patna and Jabalpur. Interviews were qualitative and are used in this Article to illustrate the functioning of grievance redress mechanisms and to supplement the scant literature. Bihar and Madhya Pradesh have historically had larger shares of their population in poverty than other states. They also have been the sites of recent attempts to reform public administration, in part through well-publicized grievance redress efforts. Both Patna and Jabalpur are largely urban districts, where an increasing proportion of Indians live. The populations of Bihar and Madhya Pradesh are 103.8 million and 72.5 million, respectively. The population of Patna district is 5.8 million, while Jabalpur district is 2.4 million. CENSUS OF INDIA, PROVISIONAL POPULATION TOTALS: MADHYA PRADESH (2011), *available at* http://censusindia.gov.in/2011-prov-results/data_files/mp/01Content.pdf; CENSUS OF INDIA, PROVISIONAL POPULATION TOTALS: PAPER 2, VOLUME 1 (2011), *available at* http://www.censusindia.gov.in/2011-prov-results/paper2/prov_results_paper2_bih.html.

Pertinently, it does not examine grievance redress mechanisms for public services outsourced to private parties. It also does not put forward a theory about how grievances are produced, for instance by examining how civil society, political parties, or the media create a broader climate that may either generate or validate different kinds of complaints. Nor does it directly deal with why certain social welfare programs fail in their implementation or which policy design alternatives might generate fewer grievances in the first place.

I. GRIEVANCE REDRESS REGIMES

The state holds lower-level officials accountable through different mechanisms of control. As Jerry Mashaw and others have noted, there are at least three forms of accountability regimes in public governance: administrative, legal, and political.²³ These accountability regimes each answer differently the questions: accountable to whom? About what? Through what process? By which standards? And with what effects?²⁴ For example, administrative accountability is about hierarchical control of inferior officials by superior officials through a managerial process in which the lower officials can be penalized or fired. In legal accountability, public officials are responsible for their actions to judicial or quasi-judicial actors through a process of administrative or judicial review judged in accordance with the law. Political accountability concerns how officials are accountable to politicians based on the political acceptability of the official's behavior.²⁵

Such a categorization of accountability makes clear that

23. Jerry Mashaw, *Accountability and Institutional Design: Some Thoughts on the Grammar of Governance*, in PUBLIC ACCOUNTABILITY, DESIGNS, DILEMMAS AND EXPERIENCES 115, 121 (Michael W. Dowdle ed., 2006). Robert Goodin similarly invokes accountability regimes in his work. He views political accountability as ultimately driven through the market of elections and so more outcome oriented. For him, administrative accountability is based on monitoring whether officials accomplish set steps and so more process oriented. He also examines non-profit accountability but does not look at legal accountability. Robert Goodin, *Democratic Accountability: The Third Sector and All* (Hauser Hauser Center for Nonprofit Organizations, Working Paper No. 19, 2003); see Francesca Bignami, *From Expert Administration to Accountability Network: A New Paradigm for Comparative Administrative Law*, 59 AM. J. OF COMP. LAW (2011) (discussing different accountability regimes, which include those generated by the public and organized groups).

24. Mashaw calls the necessary logic of these questions the grammar of governance. Mashaw, *supra* note 23, at 122.

25. According to Mashaw, political accountability might also be the accountability of politicians to voters. *Id.*

lower-level officials are in fact answerable to multiple authorities, who often judge the acceptability of their actions by different criteria. A citizen can bring a grievance to a forum in any one of these accountability regimes, for example, by complaining to a superior official about an inferior, bringing a complaint to a politician, or filing a legal claim before a judge. In other words, each accountability regime has a corresponding “grievance redress regime.” Each of these three avenues of redress triggers a different process and has its own potential costs and benefits for a complainant, as well as for the functioning of the system overall. For an individual complainant, some forums for redress may be more accessible, while others may be less impartial either towards them or towards the local administration. Moreover, different actors in different accountability regimes will vary in their power to remedy a grievance and require different resource expenditures from the state. The below matrix lays out one potential interpretation of the merits of different redress regimes in relation to these variables in the Indian states of Madhya Pradesh and Bihar.

A Grievance Redress Regime Matrix

	Political Redress	Legal Redress	Administrative Redress
Access	High	Low	Intermediate
Impartiality towards complainant	Low	High	Intermediate
Impartiality towards local administration	Intermediate	High	Low
Power to Remedy	Low	Intermediate	High
Cost to Government to Create	Low	Intermediate	High (if new forum); Low (if preexisting)

It is important to note that the above redress matrix is highly context-driven. This Part examines some of the most notable aspects of the administrative, political, and legal grievance redress regimes in Madhya Pradesh and Bihar—including significant changes in the past twenty years—to broadly support the above description of redress regimes in these two states. However, the matrix is meant to be illustrative, not definitive. For example, a citizen may find a district collector (i.e., the chief administrative official in a district) has

significantly more formal power to remedy their complaint than a grievance redress officer, although both the district collector and redress officer are categorized together in the above matrix under administrative redress. Instead, the matrix should serve as a starting point for understanding the general strengths and weaknesses of redress regimes, which can vary considerably depending on context and individual circumstances.

Nor is the categorization in the above matrix immutable. A very insular and difficult to approach bureaucracy can be made much more accessible with the introduction of social workers or something as simple as a clearly demarcated help desk. Indeed, one of the primary goals of tracking the relative merits of redress regimes should be to analyze how the introduction of new grievance redress mechanisms may reshape these regimes—a topic taken up in more detail in Part II.

While context and specific redress mechanisms matter, there are also likely inevitable tradeoffs between regimes. For example, ensuring that the actor receiving a complaint is impartial to the complainant and the local administration may require that the actor be independent of both the political and administrative processes. Creating such a post, in the form of a judge or another type of independent arbitrator, inevitably costs more than simply allowing citizens to complain to politicians or existing administrators. Maximizing the independence of a forum may frequently entail increased costs. These tradeoffs between different grievance redress regimes indicate that a mixture of regimes may maximize the chances of citizens to effectively and efficiently redress their complaints.

A. Administrative Redress

State and local administrative officials implement most major social welfare schemes in the country, although these schemes are generally legislated and funded by the central government.²⁶ The British divided India into a series of districts and appointed district collectors, possessing wide discretionary authority, as the

26. Kapur, *supra* note 8, at 453. Such a structure is longstanding. At independence, the Indian government recruited the American academic Paul Appleby to recommend administrative reforms. In his final report, Appleby noted, “No other large and important national government, I believe, is so dependent as India on theoretically subordinate but actually rather distinct units responsible to a different political control, for so much of the administration of what are recognized as national programmes of great importance to the nation.” PAUL APPLEBY, REPORT OF A SURVEY: PUBLIC ADMINISTRATION IN INDIA 21 (1953).

administrative heads of each district.²⁷ Today, the district remains the chief unit of administrative coordination in India, and the district collector is the most powerful administrator at the local level. There are 640 districts in India, each containing an average population of 1.9 million, and each of these districts is typically further sub-divided into between five and twelve blocks.²⁸

Top-level bureaucrats in a state—such as secretaries of state departments, district collectors, municipal commissioners, and some block development officers—are appointed from the much vaunted, centrally-recruited, and highly competitive Indian Administrative Service (IAS). These officials are seen as quite distinct, and generally of a higher quality, than those recruited through the state services that form the ranks of administrators beneath them. More broadly, Indian civil servants, both state and central, are mostly career officials and seniority is an overriding factor in promotion, frequently crowding out other merit-based factors.²⁹

Several provisions of the Indian Constitution protect Indian civil servants, particularly Article 311, which makes it difficult to remove or sanction them.³⁰ Bureaucrats are well known for pressing their employment claims in court and these civil servant litigants have disproportionately shaped and benefitted from administrative law as interpreted by the judiciary in India. As Upendra Baxi, a noted Indian legal academic, has pointed out, civil servants, or “Article 311 super-citizens” as he calls them, “derive maximal advantages of the doctrine of natural justice . . . and yet routinely deny this to ordinary citizens caught within the web of their administrative powers.”³¹

27. For an excellent history of local-level administration in British India, see B.B. MISRA, *DISTRICT ADMINISTRATION AND RURAL DEVELOPMENT: POLICY OBJECTIVES AND ADMINISTRATIVE CHANGE IN HISTORICAL PERSPECTIVE* (1983). For the best-known history of the Indian Civil Service, see PHILIP MASON, *THE MEN WHO RULED INDIA* (1992).

28. There are 5,924 blocks in India. However, the number of blocks in a district can vary significantly. For example, in Madhya Pradesh there are 50 districts and 342 blocks. In Bihar there are 38 districts and 534 blocks. *ADMINISTRATIVE ATLAS OF INDIA* (2011).

29. As a result, states have increasingly turned to contract workers for routine administration (such as contract teachers, health workers, or grievance redress officers). These workers tend to be younger and less well paid. For more on contract workers and service law in India, see generally Nick Robinson & Varun Gauri, *Education, Rights, and Incentives: Contract Teacher Cases in the Indian Courts*, 32 *COMP. LAB. L. & POL'Y J.* 991 (2011).

30. Part XIV of the Constitution of India, which includes Article 311, lays out in detail how civil servants may be recruited, fired, penalized, and the terms of their service. *INDIA CONST.* pt. XIV.

31. Upendra Baxi, *Introduction*, in I.P. MASSEY, *ADMINISTRATIVE LAW* (7th ed. 2008).

Twenty years ago, someone with a complaint about a government social service would have had few places to turn within the local administration. Grievance redress cells, staffed with officials who were charged with investigating maladministration, were introduced starting in the late 1960s, but they lacked sustained support or motivated staff.³² As one former high ranking bureaucrat, who served as a district collector in the 1970s, recalled, “[t]he corrupt and inefficient deputy was usually put in charge of grievance redress because it was seen as the position that didn’t matter . . . no one would complain because inspectors wouldn’t listen to them.”³³ A deputy district collector in Madhya Pradesh stated that when he began working in the 1980s many officials saw themselves as “lords or rajas” and that to get anything from the system at all “depended on the personality of the bureaucrat.”³⁴ Personal connections with either local officials or politicians were seen as a necessary precondition for a response to a grievance.

The insularity of local administration still clearly continues and many in the public remain unaware of available grievance redress mechanisms.³⁵ One consultant for the government of Bihar stated that he still found that, when administrators “provide a service, the bureaucrat thinks it is like them providing a personal gift to the citizen.”³⁶ Yet, concerted attempts have been made in both Bihar and Madhya Pradesh to change this attitude. Notably, Chief Ministers in these states actively repeat in speeches to the public and officials that bureaucrats should consider themselves “public servants.”³⁷

32. For example, the First Administrative Reforms Commission in 1966 recommended improving existing grievance redress mechanisms. STUDY TEAM ON REDRESS OF CITIZENS’ GRIEVANCES REPORT: SUBMITTED TO ADMINISTRATIVE REFORMS COMMISSION AUGUST 16–17 (1966).

33. Interview with a Former High-Ranking Indian Administrative Service Officer (Feb. 2, 2012) (on file with author); see Interview with a Grievance Redress Official in Patna, Bihar (Apr. 3, 2012) (on file with author) (“Before if you complained to an officer you could never track and never find out what happened.”).

34. Interview with a High-Ranking District Level Official in Madhya Pradesh Involved in Implementing Right to Service Act (Feb. 20, 2012) (on file with author).

35. 29TH REPORT OF STANDING COMMITTEE ON PERSONNEL, PUBLIC GRIEVANCES, LAW AND JUSTICE ON PUBLIC GRIEVANCES REDRESSAL MECHANISM 36 (2008) (“The Committee is of the view that generally people are not aware that a system of redressal exists in many departments of the Government.”).

36. Interview with a Consultant for the Government of Bihar Who Works on Bihar’s Right to Service Act (Dec. 8, 2011) (on file with author).

37. Interview with a High-Ranking District Level Official in Madhya Pradesh, *supra* note 34.

In both states, district collectors and other high-ranking officials have in recent years held public hearings, or janata darbars, once a week to hear complaints from the public.³⁸ These officials use these open forums to learn about instances of noncompliance by lower officials. This also allows them an opportunity to publicly reprimand erring officials and directly communicate with citizens about what they should expect from administrators.

In Bihar, the government has appointed public grievance redress officers—mostly retired state civil servants—who follow up on complaints given at public hearings held by the district collectors, Chief Minister, and other executive officials. For example, in Patna district in 2012 there were about five grievance redress officers with a staff of about ten clerks who follow up on the 1,000 or so complaints received each month in the district.³⁹ These grievance redress officers enter these complaints into a computer database and forward them to the relevant officials who must then respond by stating what action they have taken. This response is then forwarded back to the complainant.⁴⁰ These grievance redress officers have the power to penalize other officials, but do so rarely, perhaps because they pride themselves on working with officials rather than acting as adversaries or, perhaps, because, as former bureaucrats themselves, they are reluctant to become confrontational with their former colleagues in their new role.⁴¹ A telephone hotline in Bihar has also been created to take complaints that are then processed in a similar manner.⁴²

In an attempt to more strictly regulate lower-level officials, Chief Ministers have passed right to public service acts in over a dozen Indian states since 2010, including in Bihar and Madhya Pradesh.⁴³ These acts built off of the Citizen's Charter movement of

38. Interview with a High-Level District Official in Jabalpur (Mar. 20, 2012) (on file with author); Interview with a High-Level District Official in Patna, Bihar (Apr. 3, 2012) (on file with author).

39. Of these, about 450 come from the Chief Minister's public hearings as relating to Patna, 400 from the Patna district collector's public hearings, and the remaining 50 or so come via post or are forwarded from principal secretaries within the state government. Interview with a Grievance Redress Officer in Patna, Bihar, *supra* note 33.

40. *Id.*

41. *Id.*

42. See BIHAR PUBLIC GRIEVANCE REDRESSAL SYSTEM, <http://www.bpgrs.in/> (last visited Jan. 11, 2015).

43. Nick Robinson, *Right to Public Service Acts in India: The Experience from Bihar and Madhya Pradesh*, ACCOUNTABILITY INITIATIVE (2012), available at http://www.accountabilityindia.in/sites/default/files/policy-brief/right_to_public_services_act_nick_robinson.pdf.

the late 1990s and early 2000s, which saw hundreds of such charters demarcating the services citizens could expect from different government departments.⁴⁴ However, assessments of these charters by civil society and academics found they were not effectively implemented in part because they did not set clear guidelines for the delivery of services that could be enforced.⁴⁵ By contrast, right to public service acts set a time limit by which an applicant can expect a response when applying for specific services, such as a Below Poverty Line card or an income or residency certificate. The Acts require the reasons for all rejections to be recorded in writing. If the service is not provided within the stipulated time, or a citizen feels they have been wrongly rejected, they can appeal to an appellate authority with the power to fine the responsible official.⁴⁶ Either the petitioner or the bureaucrat can further appeal to a final reviewing authority. The appellate authority and reviewing authority are both within the bureaucracy itself, and are usually composed of senior administrative officials.⁴⁷ In practice, however, there have been few appeals and fewer penalties given.⁴⁸

Complaints to the local administration can also be less formalized. Forms of self-organization and protest are relatively common as a way to seek redress. For example, in Chariatad village,

44. See generally INDIAN INSTITUTE OF PUBLIC ADMINISTRATION, CITIZEN'S CHARTERS IN INDIA: FORMULATION, IMPLEMENTATION, AND EVALUATION (2008).

45. *Id.* at 12–14; PUBLIC AFFAIRS CENTRE, INDIA'S CITIZEN CHARTERS: A DECADE OF EXPERIENCE 38 (2007), available at <http://www.pacindia.org/uploads/default/files/publications/pdf/1264b6a536388591ba81aef60860abd6.pdf>.

46. Bihar Right to Public Service Act, §§ 5, 6 (2011) (India); Madhya Pradesh Lok Sew Aon Ke Pradan Ki Guarantee Adhinyam, No. 24 of 2010, § 6 (2010) (India). The equivalent to a national right to public service act is also being considered. See PRS LEGISLATIVE SERVICES, LEGISLATIVE BRIEF: THE RIGHT OF CITIZENS FOR TIME BOUND DELIVERY OF GOODS AND SERVICES AND REDRESSAL OF THEIR GRIEVANCES BILL, 2011 (2012), available at <http://www.prsindia.org/uploads/media/Citizen%20charter/Legislative%20Brief%20Citizens%20Charter%2027%20Sep.pdf>.

47. See Bihar Right to Public Service Act, app'x one (2011) (India).

48. The number of appeals as of 2012 was in the low hundreds in both Madhya Pradesh and Bihar. About half of those appeals have been brought *suo moto* by the appellate authority against lower officials when they themselves noticed that services had been delayed beyond the stipulated time. This low level of appeal by citizens may be because many applicants remain unaware of their ability to appeal or do not want to because they believe it will take too much time or antagonize local officials. However, officials in charge of these programs claim the low level of citizen appeal is evidence that there are few problems with service delivery. Interview with a High-Level State Official Who Works on the Right to Service Act in Bihar (Jan. 18, 2012) (on file with author); Interview with a High-Ranking State Official Implementing the Right to Service Act in Madhya Pradesh (Feb. 22, 2012) (transcript on file with author).

a Dalit community just beyond the outskirts of Patna, Bihar, local villagers organized an agitation in which some three hundred people went to the Block Development Officer's office. The citizens put a number of demands to the officer: rights to the land they lived on, regular rations from the Public Distribution System shop,⁴⁹ removal of a middleman from a local government housing scheme, and receipt of promised school scholarships for their children. The Block Development Officer met with these villagers on several occasions and addressed some, but not all, of these grievances.⁵⁰

Despite the continuing occurrence of such public agitations, citizens in Bihar and Madhya Pradesh have significantly more developed grievance redress options within public administration than they did twenty years ago.⁵¹ These newer mechanisms are more formalized, and redress officials now have greater powers. Importantly, there is also more clarity in what the public should expect from the state.⁵² Yet challenges remain in maintaining the independence of redress forums and improving the limited willingness and capacity of officials to investigate and penalize other officials.

B. Political Redress

The literature on accountability in the developing world largely misses or downplays the critical role of local politicians in addressing grievances concerning the implementation of government programs.⁵³ Yet, in India, when individuals have trouble accessing a

49. The Public Distribution System provides subsidized food and non-food commodities to the poor in India. See generally PDS PORTAL OF INDIA, <http://www.pdsportal.nic.in/> (last visited Jan. 11, 2015).

50. Interview with a group of villagers in Patna District discussing implementation of social welfare programs (Apr. 6, 2012) (on file with author).

51. More broadly, accountability mechanisms have multiplied across India in recent years. See Bala Posani & Yamini Aiyer, *State of Accountability: Evolution, Practice and Emerging Questions in Public Accountability in India* (Accountability Initiative, Working Paper No. 2, 2009).

52. For example, through the passage and press coverage of right to public service acts. See Robinson, *Right to Public Service Acts in India*, *supra* note 43.

53. There are exceptions in the literature. See, e.g., John M. Ackerman, *Social Accountability in the Public Sector: A Conceptual Discussion* 24 (The World Bank Social Development Papers: Participation and Civic Engagement, Paper No. 82, 2005) (noting that "given its constant interaction with the public the legislature is one of the more productive locations for citizen participation. Legislatures constantly hold public hearings, conduct consultations, speak with lobbyists, inform the public as to the status of bills, etc."); Kruks-Wisner, *supra* note 16 (describing grievances to local politicians). The experience in

government service, they will commonly first go for help to their local politician, whether this is a panchayat leader (i.e., village head), ward member, their Member of the (state) Legislative Assembly (MLA), or perhaps even their Member of Parliament (MP) or Chief Minister. MPs field complaints about roads.⁵⁴ Panchayat and ward leaders hear about difficulties of getting on the below poverty line list. Local politicians sign applications so that they receive priority from administrators, place phone calls to follow up on applications, and meet with local administrators to convey complaints from constituents.⁵⁵ Perhaps politicians' largest role is simply helping guide their constituents through what can often seem like a labyrinth of forms and conditionalities to access government services.

These politicians generally perform all these functions with few staff or other support.⁵⁶ Some politicians have their own offices, but many meet with constituents directly in their homes. As one ward member described in Patna, Bihar (where there are seventy-two wards), "[w]e take complaints from constituents all the time. From 6 am to 10 pm I would say I get 5 to 6 complaints a day."⁵⁷ A ward member in Jabalpur, Madhya Pradesh (where there are 60 wards), recounted that "20 or more people come every day for my help. They want ration cards, PAN cards, to get on the below poverty line list, electrical work, sanitation"⁵⁸ In a sign of a perceived need, politicians at the state and national-level are working to create more fully staffed and resourced offices to better provide constituent services.⁵⁹

The number of politicians addressing grievances has increased in recent years, along, arguably, with their eagerness and ability to do so. The role of local politicians in responding to

democracies with wealthier economies is that elected officials handle large numbers of complaints. In the United Kingdom, for example, Members of Parliament deal with up to three million complaints annually. CAROL HARLOW & RICHARD RAWLINGS, *LAW AND ADMINISTRATION* 445 (William Twining et al. eds., 3d ed. 2009).

54. See Interview with a Member of Parliament from Delhi (Feb. 9, 2012) (on file with author).

55. Interview with a Member of the Legislative Assembly in Patna, Bihar (Apr. 5, 2012) (on file with author).

56. *Id.*; Nick Robinson, *MPs Need Help with Homework Too*, INDIAN EXPRESS (Sept. 9, 2009, 2:42 AM), <http://archive.indianexpress.com/news/mps-need-help-with-homework-too/510522/>.

57. Interview with Two Ward Members in Patna, Bihar in Joint Conversation (Apr. 5, 2012) (on file with author).

58. Interview with a Ward Member in Jabalpur (Mar. 19, 2012) (on file with author).

59. Interview with Two Ward Members in Patna, Bihar, *supra* note 57.

complaints expanded considerably after the passage of a constitutional amendment in 1993, which empowered local governments across the country.⁶⁰ For example, the National Rural Employment Guarantee Act (NREGA), a national employment program, funds panchayats (or local-level governments) to choose work projects and reimburse workers, bypassing state and national government agencies.⁶¹ As a result, there are more politicians with authority at different levels of governance.

Politicians have also seemingly become more active in soliciting grievances from citizens in recent years. Both the Chief Ministers of Bihar and Madhya Pradesh are well known for traveling in their states for many days each month holding public hearings in which citizens can complain about governance issues.⁶² Administrative staff then follow up on these complaints. In Bihar in 2012, the Chief Minister received around 10,000 complaints a month either in person or in writing.⁶³ Although there is arguably some bias towards wealthier persons attending these hearings, many complaints involve issues affecting poor people, such as not getting grain under the public distribution system, lack of work under the National Rural Employment Guarantee Act, or the quality of the mid-day meal at public schools.⁶⁴ It is noteworthy that the Chief Minister receives more complaints than all the district collectors in the state combined, seemingly indicating citizens are more eager to approach politicians rather than administrators with their grievances.⁶⁵

Despite receiving many complaints, local politicians often do not have direct control over the relevant administrators. For example, a MLA may hear about problems with the provident fund, but he is technically merely a legislator with no executive powers. Instead, these politicians' power over the bureaucracy is generally

60. 73d and 74th amendments, *supra* note 12.

61. National Rural Employment Guarantee Act, 2005, No. 42, Acts of Parliament, 2005 (India). The Act uses the panchayat structure formalized and empowered by the 1993 amendments to implement the work program, which is one of the largest social welfare programs in India.

62. See, e.g., Prasad Sanyal, "Janata Darbar" Was My Idea, Says Bihar's Nitish Kumar, NDTV (Jan. 13, 2014, 7:48 PM), <http://www.ndtv.com/article/india/janta-darbar-was-my-idea-says-bihar-s-nitish-kumar-470629> (describing the Chief Minister of Bihar taking credit for the idea of starting janata darbars).

63. Interview with a Consultant for an International Organization that Works on Bihar's Right to Service Act (Jan. 17, 2012) (on file with author) (describing the government's efforts to track complaints received at Chief Minister's janata darbars).

64. *Id.*

65. *Id.*

more subtle and their ability to influence officials often has to do with a number of variables related to political standing. If a politician is in a ruling party, they may be in a position to influence other politicians in the executive to transfer an official to a more or less desirable posting, which is generally the most direct control politicians in the executive exercise over specific bureaucrats since it is so difficult to remove officials under the law. If a local politician, particularly a member of the opposition, is upset with the operation of the local administration, they can organize and lead public protests in the street or through the media. Officials fear the complications that result from such confrontations with politicians and how it may reflect on their record. As one MLA in Madhya Pradesh commented, “[p]ractically I have no power to suspend a government official. . . . Our power comes from the people. It comes from the media. We are a spokesperson. The officials don’t want litigation or an agitation. They are worried about these types of things so they listen to us.”⁶⁶ More charitably, many officials say they are sensitive to politicians’ concerns as they see them as representatives of the people. One district collector in Bihar noted, “I listen very carefully to [politicians’] feedback. You have to remember before I have reached the office a politician has already met with a hundred people and heard their complaints.”⁶⁷

Perhaps part of the reason the literature is so quiet on the role politicians play in implementing social welfare and other legislation is that many academics view these leaders as a “politicizing” and corrupting influence on policy.⁶⁸ Politicians are accused of manipulating bureaucrats’ careers and transferring them based not on competence, but on perceived party loyalty or malleability to colluding in corruption.⁶⁹ Politicians are antithetical to both a

66. Interview with a Member of the Legislative Assembly in Patna, Bihar, *supra* note 55.

67. Interview with a High-Level District Official in Patna, Bihar, *supra* note 38.

68. AKHIL GUPTA, RED TAPE: BUREAUCRACY, STRUCTURAL VIOLENCE, AND POVERTY IN INDIA 187 (2012) (finding in his study in Uttar Pradesh that “[b]ureaucrats complained that they had been reduced to becoming servants of politicians, who did not respect them and forced them to indulge in corrupt actions. On the other hand, politicians complained that they could not get anything done because of a recalcitrant and entrenched bureaucracy that was interested only in its own privilege and not in getting results”); see WILLIAM GOULD, BUREAUCRACY, COMMUNITY, AND INFLUENCE IN INDIA: SOCIETY AND THE STATE 1930S–1960S 166 (2010) (discussing how older bureaucrats saw the 1950s as the golden era of public administration when politicians were less involved in governance).

69. It is widely discussed that in states like Bihar and Madhya Pradesh, sought-after postings are often bought by officials from politicians both at the top and bottom levels of the bureaucracy. Paying for favorable postings to politicians then arguably necessitates

technocratic or legalistic view of grievance redress. They are known to favor constituents who vote for them while ignoring the requests of those who do not.⁷⁰ There is no standardized training required to become a politician and, if one proves incompetent or arbitrary in helping constituents, there are no checks except elections.

Politicians are also sometimes seen as inappropriately seizing executive power as a method of exerting their authority and patronage. It is common, for example, in Madhya Pradesh for local politicians to sign constituents' applications for government services as an added extra step that increases the ability of politicians to dole out favors.⁷¹ State-level politicians also have been accused of purposefully stifling the development of local politicians and officials (who might become competitors) by both limiting the powers that are transferred to local governments and, when such powers are transferred, making sure state-level representatives sit in key appointments in local government.⁷²

bureaucrats partaking in corruption once in office to recoup the cost. Interview with the Head of an NGO Working on Rural Development Issues in Madhya Pradesh (Feb. 22, 2012) (on file with author); Lakshmi Iyer & Anandi Mani, *Traveling Agents: Political Change and Bureaucratic Turnover in India*, 94 REV. ECON. & STAT. 723 (2012) (documenting politicized transfer of bureaucrats in India).

70. Interview with a Field Worker at an NGO that Works on Development in Madhya Pradesh (Mar. 19, 2012) (on file with author) (explaining how he has witnessed some politicians in Madhya Pradesh ignore the complaints of constituents they believe vote for the opposing party); Jayanth Krishnan et al., *Grappling at the Grassroots: Litigant-Efforts to Access Economic and Social Rights*, 27 HARV. HUM. RTS. J. 151 (2014) (finding that citizens expressed the belief that politicians only aided those who had voted for them in the previous election).

71. Interview with Two Ward Members in Patna, Bihar, *supra* note 57 ("If there is a problem and someone thinks they should be on the Below Poverty Line list they must fill out a form and appeal. They need our signature. We can tell the inspector to check again. Without our involvement it is quite difficult to get the inspector to come again.").

72. In 1993, the Constitution was amended to create standardized local government institutions. INDIA CONST, art. 43. However, the powers given to local government are reliant on enacting legislation passed by each state. In the years after independence, in the absence of strong local government institutions MLAs had often filled the political vacuum at the local level. As a result, many state legislatures have been hesitant to surrender many powers to local government. Interview with a Field Worker at an NGO that Works on Development in Madhya Pradesh, *supra* note 70. MLAs and MPs also have government sanctioned development funds at their disposal giving them discretionary budgets that they can unilaterally spend on development projects. Some have argued that these development funds violate the basic separation of powers in India, and contribute to these representatives feeling they have executive powers in their constituency. However, these funds have been held constitutional by the Supreme Court in *Bhim Singh v. Union of India*, (2010) 5 S.C.C. 538 (India).

Over the past two decades, while the number and influence of politicians as a forum for grievance redress has arguably increased, so too has the opportunity for direct citizen engagement. The Gram Sabha—essentially a town hall meeting of a village—is granted wide powers under the Panchayati Raj Act, as well as several other pieces of legislation. For example, the Gram Sabha is responsible for conducting social audits under the National Rural Employment Guarantee, such that the entire village reviews the accounts of the employment scheme.⁷³ Grievances concerning the implementation of this massive job program may be brought during these meetings, and the Gram Sabha can issue a recommendation for further action.⁷⁴ However, this form of direct engagement has been handicapped by the constrained powers of these bodies to penalize officials and local officials who can dominate and interfere with their functioning.⁷⁵ Ordinary citizens frequently remain unaware of these bodies and lack the capacity to actively engage with them. For example, a 2009–2010 study in Madhya Pradesh that involved 12,000 households from across rural areas in the state showed that less than 5% of sampled villagers claimed social audits were even occurring in their community.⁷⁶

In summary, citizens often view politicians as the most accessible means of complaining to the government. The process of approaching politicians is less formal than approaching legal or administrative bodies, politicians are known to the community, and politicians are frequently more responsive than the bureaucracy to specific complaints. During the last two decades politicians have arguably reached out more to constituents and developed more formalized constituent services. Yet, politicians often do not treat constituents impartially, and have been accused of complicity in or outright corruption.⁷⁷ Even when politicians want to exert influence on the bureaucracy to improve service delivery, their power to do so is limited depending on their own political standing and relationship to the local administration.

73. National Rural Employment Guarantee Act, 2005, ch. 4, § 17, No. 42, Acts of Parliament, 2005 (India).

74. *Id.*

75. SAMARTHAN, IMPACT ASSESSMENT STUDY OF MNREGS IN MADHYA PRADESH 69–72 (2011), available at http://samarthan.info/wp-content/uploads/2011/12/Final_MNREGS_Impact_Assessment_Study_Report_20_Jan.pdf (noting that it is those who are better educated and that have larger landholdings that are most informed about social audits and finding that local elected officials frequently did not organize these audits as required).

76. *Id.*

77. See, e.g., Iyer & Mani, *supra* note 69.

C. Legal Redress

A citizen may seek legal redress either through judicial or quasi-judicial actors. In general, accessing these forums is more difficult and expensive for a complainant than seeking either political or administrative redress. However, these judicial officials have the power to penalize government officials for clear illegalities and are created to be more impartial than other redress options. Given their prominent place in public life, these judicial forums are also leveraged to highlight particularly egregious implementation failures. As will be discussed in the next section, the category of legal redress has become more diverse with the development of several types of “implementation advocates” who often take up complaints on citizens’ behalf in judicial forums, or may even have quasi-judicial powers to penalize officials themselves.

1. The Judiciary

The lower judiciary in India is not routinely involved in redressing grievances about the implementation of social welfare programs.⁷⁸ It is simply too expensive, confusing, and time consuming for citizens to go to court to petition for rations or an old age pension they believe they were wrongly denied. Their potential claims are also more limited in lower courts, since the upper judiciary, i.e. the Supreme Court and the High Courts, hear most claims that invoke constitutional rights.⁷⁹ The Indian Constitution does not have a due process clause, but it does contain a right to equality that similarly has been read to limit arbitrary state action and require fairness.⁸⁰ However, the upper judiciary is even more difficult for most citizens to approach than the lower judiciary given that High Courts are geographically more distant from most citizens than district courts. Nor are there administrative courts in India that deal with grievances concerning social welfare programs.

78. See Krishnan et al., *supra* note 70 (advocating for more social and economic rights litigation in lower courts because of their independence, but finding that most such litigation in lower courts was confined to disputes over property).

79. Nick Robinson, *Judicial Architecture and Design*, in OXFORD HANDBOOK ON THE INDIAN CONSTITUTION (Sujit Choudhry et al. eds., 2015) (forthcoming) (describing the upper judiciary as essentially India’s constitutional courts).

80. Abhinav Chandrachud, *Of “Constitutional Due Process,”* THE HINDU (May 24, 2010, 12:02 AM), <http://www.thehindu.com/opinion/op-ed/of-constitutional-due-process/article436586.ece>.

Instead, public interest litigation, which loosens standing requirements and allows for diverse remedies to enforce fundamental rights, has emerged as a method by which litigants, frequently from civil society, can move the High Courts and the Supreme Court to order better implementation of social welfare programs, especially on behalf of the poor.⁸¹ The largest and best-known instance of this strategy is the so-called “Right to Food” case. In this case, the Supreme Court has found that the right to food was encompassed within the right to life enshrined in Article 21 of the Indian Constitution.⁸² In a series of orders, it has directed the government to implement several key social welfare programs relating to food security, including the public distribution system, free mid-day meals in schools, the national pension scheme, and the integrated child development scheme (which provides basic nutritional and medical support to all children under six and pregnant and lactating mothers).⁸³ In one order, the Court stressed the need to combat implementation gaps in these programs: “[T]he anxiety of the Court is to see that the poor and the destitute and the weaker sections of society do not suffer from hunger and starvation. . . . Mere schemes without implementation are of no use. What is important is that food must reach the hungry.”⁸⁴

The Court continually monitors the progress of the implementation of its orders in the Right to Food case, and issues follow-up orders as necessary. In more recent orders, the Court has even expanded the scope of the issues involved in the case, including requiring the government to provide shelter to the homeless.⁸⁵

The Supreme Court has appointed national and state commissioners to gather information about the implementation of the programs that fall under its orders and make recommendations both to the states and to the Supreme Court for further directions. These national and state commissioners, who are frequently members of civil society, former high-ranking bureaucrats, or academics, effectively act as ombudsmen for the social welfare programs

81. See generally, Robinson, *Expanding Judiciaries*, *supra* note 4.

82. M.B. Shah, *The Indian Supreme Court Acknowledges the Right to Food as a Human Right*, 2 *AGRIC. & RURAL DEV.* 24, 24–25 (2006).

83. Legal Action: Supreme Court Orders, RIGHT TO FOOD CAMPAIGN, <http://www.righttofoodindia.org/orders/interimorders.html> (last visited Feb. 13, 2015).

84. Interim Order of May 2, 2003, *PUCL v. Union of India* (2001), available at <http://www.righttofoodindia.org/orders/may203.html>.

85. See generally RIGHT TO FOOD CAMPAIGN, *supra* note 83 (for India Supreme Court Orders relating to homelessness).

covered by the case.⁸⁶ They focus their attention on submitting reports to the judiciary that include describing data about hunger in each of the states, the status of the implementation of the Court's orders, and recommendations for new policies to combat malnutrition.⁸⁷ They can and do make recommendations to the government, but have no power to enforce these recommendations other than seeking the Supreme Court's backing. Although the government does not always enforce the Court's directions, officials do pay heed to the Court. As one state-level Right to Food commissioner put it, these officials do not really fear that they will be held in contempt for not following the orders (a punitive power the Court rarely uses), but instead, "[t]hey are afraid they will get negative remarks in their record and it will effect their promotions if they cross the Court."⁸⁸ Meanwhile, the media plays an important role in publicizing the orders in the Right to Food case and so increases the pressure on both bureaucrats and politicians to implement these orders.

Through its directions and the creation of Right to Food commissioners the Supreme Court has essentially created a nationwide mechanism that can be used to monitor social welfare schemes with the threat of punishment. However, since there are so few commissioners monitoring the case's implementation and there are so many potential complainants, the Right to Food case has not been an effective legal tool for dealing with individual grievances on the ground and was never meant to serve this purpose. Instead, the Right to Food case, like much public interest litigation in general, has acted more like an alarm bell, pointing to widespread implementation failures which the Court has then demanded the government correct, with the media frequently serving to amplify the judiciary's voice.⁸⁹

86. Interview with the Head of a Civil Society Organization Working on Food Security Issues in Bihar (Apr. 5, 2012) (on file with author) ("The Right to Food case has pressured the government. Wherever we go it has allowed us to put pressure on the administration. But we cannot force the government to do anything, just recommend. Sometimes they follow our recommendations sometimes not. We put it into the political domain in the last five years. Before the government wouldn't even admit that people weren't getting welfare schemes. Now they will at least admit that these schemes aren't reaching some people.").

87. For more information on the Commissioner's role, see SUPREME COURT COMMISSIONERS, <http://www.sccommissioners.org/> (last visited Jan. 13, 2015).

88. Interview with the Head of a Civil Society Organization Working on Food Security Issues in Bihar, *supra* note 86.

89. Avani Mehta Sood, *Gender Justice through Public Interest Litigation: Case Studies from India*, 41 VAND. J. TRANSNAT'L L. 833, 904 (2008) (interviewing a Supreme Court justice who described public interest litigation as an "alarm clock" that alerts the government to an urgent social problem).

2. Right to Information Commissioners

The Right to Information Act ushered in a new level of transparency into government after it was passed in 2005, with vigorous backing from civil society. It mandates that every government department designate an official as a public information officer (PIO) who, for a small fee, will respond to a request for information within thirty days.⁹⁰ If the request is illegitimately denied or not responded to within thirty days, the PIO can be fined by using an appeal process to the state or central information commissioner.⁹¹ These commissioners are typically retired civil servants.⁹²

The Right to Information Act is designed only to provide information about government activities and not implement any particular program. However, it has become relatively common for an individual or civil society group to file a Right to Information Act request to inquire about the implementation of government programs.⁹³ This might be an inquiry about the status of the construction of a local school or of a person's application for a government scheme. Although the users of the act tend to come from higher educational backgrounds, civil society has frequently used it on the behalf of the poor.⁹⁴ As one Right to Information Commissioner in Bihar explained, "People often ask [in their right to information application] what happened to someone's application to go on the Below Poverty Line list. After they make this request the bureaucrats then process the request faster. This gives the person leverage."⁹⁵ A randomized controlled trial study on ration card applications in Delhi found that filing a Right to Information Act request was almost as successful a strategy as paying a bribe, and

90. The Right to Information Act, 2005, No. 22, Acts of Parliament, 2005 (India).

91. *Id.* ch. V.

92. COMMONWEALTH HUMAN RIGHTS INITIATIVE, A RAPID STUDY OF INFORMATION COMMISSIONS ESTABLISHED UNDER THE RIGHT TO INFORMATION LAWS IN INDIA 11–12 (Maja Daruwala ed., 2012) (finding that 90% of central and state chief information commissioners were former civil servants and 53% were central and state information commissioners).

93. Rukmini Shrinivasan, *Paper Power*, TIMES OF INDIA: CREST EDITION (Apr. 13, 2013), <http://www.timescrest.com/society/paper-power-10113>.

94. RTI ASSESSMENT AND ANALYSIS GROUP & NATIONAL CAMPAIGN FOR PEOPLE'S RIGHT TO INFORMATION, SAFEGUARDING THE RIGHT TO INFORMATION: REPORT OF THE PEOPLE'S RTI ASSESSMENT 2008, 8 (2009) [hereinafter RTI ASSESSMENT].

95. Interview with an Official at the Bihar Right to Information Commission (Jan. 17, 2012) (on file with author).

more successful than having a NGO write a letter of support.⁹⁶ The Act has also been used by civil society members and concerned members of the public to expose widespread corruption or poor administration, which the government then seeks to remedy.⁹⁷

Despite frequent use, there have been many complaints about the implementation of the Right to Information Act. For example, the media has reported that information commissioners regularly fail to provide information, even after being fined.⁹⁸ Civil society organizations have complained that the appeal process takes too long, thereby limiting its utility for many claim-seekers;⁹⁹ and that much like the judiciary, information commissioners are relatively inaccessible to those who lack the knowledge or resources to vigorously contest their rights.

II. INCREASING LEGIBILITY AND CONTROL: STRENGTHENING GRIEVANCE REDRESS REGIMES

Citizens can complain to the government through systems of administrative, political, or legal redress. Each provides an avenue for not only a citizen to have their complaint addressed, but also for the government to gather information about the implementation of its policies. In *Seeing Like a State*, James Scott argues that the modern state has brought more “legibility” to its citizens, and society more broadly, by using such tactics as creating uniform measures, counting populations through a census, and cartographic representations that detail property boundaries.¹⁰⁰ He writes, “the premodern state was content with a level of intelligence sufficient to allow it to keep order, extract taxes, and raise armies, the modern state increasingly

96. Leonid Peisakhin & Paul Pinto, *Is Transparency an Effective Anti-Corruption Strategy? Evidence from a Field Experiment in India*, 4 REG. & GOVERNANCE 261 (2010).

97. For example, in Madhya Pradesh, the NGO Samarthan has used the Right to Information Act to show that the government had been systematically paying less to old age pensioners than they were required. Interview with a Field Worker at an NGO that Works on Development in Madhya Pradesh, *supra* note 70.

98. Shilpa Baburaj, *RTI Muzzled by Public Info Officers in Madhya Pradesh, Second Appeals Piling Up*, TIMES OF INDIA (Sept. 18, 2014), <http://timesofindia.indiatimes.com/city/bhopal/RTI-muzzled-by-public-info-officers-in-Madhya-Pradesh-second-appeals-piling-up/articleshow/42792169.cms> (noting that in Madhya Pradesh that even after the State Information Officer has penalized Public Information Officers they still do not provide requested information).

99. RTI ASSESSMENT, *supra* note 94, at 15.

100. JAMES C. SCOTT, *SEEING LIKE A STATE: HOW CERTAIN SCHEMES TO IMPROVE THE HUMAN CONDITION HAVE FAILED* (1998).

aspired to ‘take in charge’ the physical and human resources of the nation and make them more productive.”¹⁰¹ A focus on health, sanitation, education, transportation, and the overall social being of each member of society required greater and greater amounts of knowledge about both citizens and the physical makeup of the state.

Like many countries, India’s evolution generally fits Scott’s descriptive evolution even if the Indian government still struggles to bring a minimum amount of legibility over its tremendously diverse population. The government’s notorious problems with successfully targeting social welfare programs for the poor show its limited capability to even distinguish the relative wealth of its citizens.¹⁰²

States though do not just attempt to gain legibility over their populations, but also over themselves. In India this has been a central struggle of government. Higher officials often do not know what lower officials are doing, at least not with the legibility necessary to effectively monitor and control them. Neither do politicians, the courts, nor the public.

Today many of the most heralded public administration innovations are those that seek to enhance legibility. The Right to Information Act provides citizens, journalists, and civil society with access to much of the same information that officials have, meaning new sets of eyes can watch official action and bring officials to account. E-governance “solutions” promise to allow both citizens and officials to track the status of applications, complaints, and administrative action with a new level of legibility, and potential for control.¹⁰³ Social audits enable citizens to directly report whether they have received public services or not.¹⁰⁴ These new innovations sit side-by-side with older techniques that sought to build legibility and control over state actors, including systematized standard setting, outside audits performed by third-parties, and bureaucratic self-

101. *Id.* at 51.

102. Jean Dreze, *Poverty Targeting and Food Security*, SEMINAR (2012), http://www.india-seminar.com/2012/634/634_jean_dreze.htm (describing practical and political challenges of targeting programs for the poor in India).

103. Perhaps the best known e-governance initiative is Aadhar, which aims to give all Indians a unique identification number as well as record their biometric data so that participants in government programs can be more accurately tracked. See UIDAI, *About UIDAI*, <http://uidai.gov.in/about-uidai.html> (last visited Nov. 21, 2014).

104. The social audit in NREGA and public boards listing who has been provided PDS rations in a community perform a similar function. In essence, these are community receipts that can be verified by the claimed user or others in the community. Anne Marie Goetz & Rob Jenkins, *Hybrid Forms of Accountability: Citizen Engagement in Institutions of Public-Sector Oversight in India*, 3 PUB. MGMT. REV. 363 (2001).

reporting, such as status reports from inferiors to superiors, annual reports, or receipt giving.¹⁰⁵

Like these other techniques, grievance redress mechanisms may also increase legibility over the actions of low-level officials. Administrators in both Madhya Pradesh and Bihar stated that public hearings were vital to monitoring the bureaucracy, with one district collector declaring that “it’s the biggest feedback I use to assess performance.”¹⁰⁶ Politicians also describe how one of the primary methods they use to learn about problems with the implementation of programs is through the grievances and feedback of constituents.¹⁰⁷ The judiciary, meanwhile, intervenes in and monitors actions of the bureaucracy almost entirely on the basis of legal complaints.

This Part looks at three mechanisms—level jumping, rights to implementation, and implementation advocates—that have developed in recent years in India to encourage complaints, make these complaints legible to higher-level officials, and, if appropriate, ensure that they are acted upon. It weighs these mechanisms impact on different grievance redress regimes developed in Part I.

A. Level Jumping: Making Elites Accessible

As described above, in Madhya Pradesh and Bihar both politicians and top bureaucrats have initiated regular public hearings in order to elicit feedback from citizens about government performance. Meanwhile, the advent of public interest litigation has made the High Courts and the Supreme Court more accessible to hear complaints concerning maladministration. Both public hearings and public interest litigation constitute a type of level jumping in which complainants bypass the morass of local bureaucracy, politicians, or

105. In Bihar and Madhya Pradesh, one of the more recent innovations is mandating a computer-generated receipt be given to each applicant when one applies for a government service. Before this process, when inquiring about a previous application the office might claim it had never been received or was lost by another department. Since these receipts are entered into a computerized database, higher-level officials can now also track each application. Interview with a High-Level State Official who Works on the Right to Service Act in Bihar, *supra* note 48.

106. Interview with a High-Level District Official in Patna, Bihar, *supra* note 38; see Interview with a High-Level District Official in Jabalpur, *supra* note 38 (“The meetings [with the public] are a good learning experience for me. I can understand from a complaint that an official isn’t doing well.”).

107. Interview with Two Ward Members in Patna, Bihar, *supra* note 57 (stating that they learn about non-implementation of programs through complaints); Interview with a Member of the Legislative Assembly in Patna, Bihar, *supra* note 55 (stating that they learn about the extent of non-implementation of Below Poverty Line cards through complaints).

judicial system and bring their concerns to a higher level.

Level jumping does not always have to be citizens “jumping up,” but can also be done by higher-level officials “jumping down.” For example, it might involve a site visit or inspection by a top-level politician or bureaucrat—often attempting to solicit complaints when they visit.¹⁰⁸

These different types of level jumping perform several functions. In one way, it is a form of randomized auditing by top-level officials. It sends a message to bureaucrats across the state that their actions are being monitored and that malfeasance might be reported beyond their immediate supervisors and local grievance redress officers (who might do little), directly to the top of the leadership hierarchy. It also communicates to the public a message that officials work for citizens and they should not be intimidated in complaining. Level jumping also allows high-ranking administrators, politicians, and judges to maintain a more immediate connection with problems that are occurring on the ground. As one district collector noted, “I take an interest in meeting with the public because I am responsible for all the officers in the district. I have to ensure they are working. The meetings are a good learning experience for me.”¹⁰⁹ Notably, in a society where there is still low functional literacy, oral complaints are an important avenue of gathering information about implementation.¹¹⁰

However, there are costs to this level jumping approach. It is time consuming for these otherwise busy top-level officials to hear so many complaints or routinely visit sites where programs are being implemented. The complaints may also be biased towards those with more ready access to these officials, such as those who live in urban areas or are more educated.¹¹¹ Top-level officials can misunderstand a problem during such a short hearing, citizen complaints are often extraneous, and, even when they are not, it is logistically difficult to address all of them. Such a strategy can also divert resources and attention from more local-level solutions. For example, in Bihar,

108. Interestingly, similarly, the British government in India encouraged district collectors to go on tour to hear feedback and grievances from the local population. MASON, *supra* note 27, at 68.

109. Interview with a High-Level District Official in Jabalpur, *supra* note 38.

110. GUPTA, *supra* note 68, at 168–69 (noting that traditionally in the Indian bureaucracy many resources were expended on looking into written complaints, but not oral. Also explaining that many will not file complaints because they either do not understand the process or fear retaliation).

111. Interview with a Consultant for an International Organization that Works on Bihar’s Right to Service Act, *supra* note 63.

where public hearings are common, almost as many people complain at public hearings directly to the Chief Minister as to all the district collectors combined.¹¹² This might be because the public believes the Chief Minister is more powerful and so more likely to be able to fix their problems, but in fact district collectors have more direct supervisory power over local administrators.

The process may also give unrealistic expectations to citizens. As one observer in Bihar recounted,

Watching the Chief Minister's Janata Darbar is like watching a monarch. You can't just make orders like that. This is all just a kind of drama. The Chief Minister can't solve land disputes. He can't solve criminal cases. Only a court can. He can't suspend an official. He can only recommend it to his superior. If we lived in a kingdom then the Chief Minister could solve these problems, but we live in a society with the rule of law.¹¹³

Nevertheless, encouraging top-level officials to hear complaints and/or conduct site visits might be an effective transitional strategy when there are widespread implementation breakdowns. Yet, if such a strategy is not undertaken in conjunction with other efforts, such as building the capacity of local level grievance redress authorities, level jumping might inadvertently result in centralizing power around the personalities of a few top-level officials, meaning action is only taken when they personally cast their attention to a problem.

B. Rights to Implementation: Formalizing Claims—Mandating Remedies

One way to encourage complaints and make them more legible is to create rights to the delivery of a service. For example, the Indian Parliament has passed acts that guarantee rights to education, information, rural employment, and certain programs that further food security.¹¹⁴ Meanwhile, state legislatures in India have

112. *Id.*

113. Interview with the Head of a Civil Society Organization Working on Food Security Issues in Bihar, *supra* note 86.

114. The Right to Information Act, 2005, No. 22, Acts of Parliament, 2005 (India); The National Rural Employment Guarantee Act, 2005, No. 42, Acts of Parliament, 2005 (India); The Right of Children to Free and Compulsory Education Act, 2009, No. 35, Acts of Parliament, 2009 (India); The National Food Security Act, 2013, No. 20, Acts of Parliament, 2013 (India).

started enacting right to public service acts that guarantee designated government services will be delivered within set time frames, and if they are not, that the responsible officials will be fined.¹¹⁵

These rights-based pieces of legislation represent a relatively new strategy in India to implement social welfare programs. In the past, schemes were implemented with generally no guarantee that any individual citizen would receive a benefit. This design was partly because of limited resources, but also because of the government's top-down vision of uplifting the poor and marginalized.

Rights, or formal claims that can be made against a government, have increasingly been seen as an answer to implementation challenges. If food is not being given to the poor in a ration shop, make such rations a right. If schools are not open and properly staffed, make this a right. Rights empower citizens to then bring claims when these programs are not properly implemented. Although rights are often celebrated as a safeguard against majoritarian excesses, or as the embodiment of emancipatory liberal political personhood, rights are perhaps more often used to ensure generally well accepted policies are properly implemented. From this viewpoint, rights are essentially a tool of higher-level officials (whether administrators, politicians, or judges) to monitor and control the bureaucracy by encouraging complaints from citizens and then penalizing erring behavior.¹¹⁶

One tactic increasingly used in India to enforce rights is to incorporate triggered monetary penalties into their implementation. For example, under the Right to Information Act, if the information a citizen requests or a reason for not providing that information is not given within thirty days after an application is submitted, then the concerned PIO will be fined.¹¹⁷ Many have seen this strategy as a success as it puts the onus on the official to show why they did not provide information. As such, a similar triggered monetary penalty was borrowed for the Right to Service Acts that have been passed in over a dozen Indian states since 2010.¹¹⁸

115. Robinson, *Right to Public Service Acts in India*, *supra* note 43.

116. SUSAN ROSE-ACKERMAN, CORRUPTION AND GOVERNMENT 200 (1999) (noting that “[l]imiting low-level bureaucratic malfeasance and incompetence is often in the interest of top officials, who may try to enlist citizens in the effort. This can be done without organized citizen activity if individuals can lodge complaints easily and without fear that officials who flout the law will take revenge”).

117. See The Right to Information Act, 2005, ch. II (India).

118. Robinson, *Right to Public Service Acts in India*, *supra* note 43.

The development of these triggered monetary penalties come out of the perceived failure of other tools, like the law governing bureaucrats terms of service, used to control official behavior. Triggered penalties are also theoretically less expensive to adjudicate as responsibility for service delivery is tied to specific officials and if the service is not performed that official is mandatorily fined. However, this tactic comes with costs. An official may not be fully responsible for a delay in providing a service or information. Further, even if they are fully responsible they may be overloaded with requests or other duties. Indeed, these automated penalties may focus officials' attention on completing duties considered a "right," but at the expense of the official's other designated tasks.¹¹⁹ The threat of unfair penalization or the creation of perverse incentives may ultimately cause not only poor service outcomes, but demoralization within the bureaucracy.

To help ensure fairness, most states' Right to Service Acts have created appeal mechanisms within the bureaucracy, while under the Right to Information Act and National Food Security Act, appeals go directly to independent commissioners.¹²⁰ Each strategy has potential strengths and weaknesses. An appeal mechanism within the bureaucracy may lead to conflicts of interest. A district collector may be less likely to fine an official under him if that official's activity reflects poorly on perceptions of how well the district collector has been administering the district. Also, it creates more variation in penalization as some district collectors may be more likely to fine subordinates than others. An outside appeal mechanism is intuitively more independent and more likely to penalize uniformly, but also more costly to maintain.

Rights empower citizens to help implement social welfare programs, but their effectiveness relies heavily on contextual factors, such as what the right actually entitles the citizen to and the availability of enforcement mechanisms. Undue emphasis on rights for implementation can even become a distraction. To make complaints more actionable, rights both formalize what a citizen can complain about and the process through which they do so. Their successful invocation often requires a level of knowledge and resources that is unrealistic for most Indians. Meanwhile

119. Interview with a District Level Official in Jabalpur Involved in Registering Persons on below Poverty Line (BPL) list (Mar. 22, 2012) (on file with author) (describing how she neglects her other duties to instead perform tasks for which she can be penalized for under her state's right to service act).

120. Robinson, *Right to Public Service Acts in India*, *supra* note 43; The Right to Information Act, 2005, chs. III, IV (India).

automatically triggered penalties to enforce rights may be too blunt an instrument to appropriately penalize errant behavior.

C. Implementation Advocates: Third Party Claim Making

Those who bring grievances over the lack of implementation often find that, if the government is not immediately responsive, it can be excessively expensive to ensure compliance. For example, a common complaint of litigants involved in public interest litigation is that they never realized how much time and money it would require.¹²¹ If the government does not immediately provide information, Right to Information Act requests can take months or years before they are answered, after multiple levels of appeal.¹²² The NREGA allows for aggrieved parties to bring a case to a lower court if the act is not properly implemented, but given the poverty of participants in the program almost no such cases have ever been brought. As a result of the high costs faced by complainants, there is growing recognition in India that grievances often need to act as a trigger for institutionalized responses, and official bodies need to continuously monitor for non-compliance without waiting for formal complaints.

India, like many other developing countries, has historically not had strong institutions of horizontal accountability, which “depend on the existence of state agencies that are legally empowered—and factually willing and able—to take actions ranging from routine oversight to criminal sanctions or impeachment in relation to possibly unlawful actions or omissions by other agents or agencies of the state.”¹²³ However, in recent years, India has seen the birth of new bodies of horizontal accountability, including those that focus, at least in part, on challenges related to the implementation of social welfare programs. In Madhya Pradesh and Bihar, the state governments have created grievance redress cells to systematically follow up on complaints received at public hearings.¹²⁴ The upper judiciary has instituted the tactic of empowering commissioners to gather needed data and issue recommendations to respond to grievances involving larger policy issues. Legislatures have created human rights and other commissions to follow up on reports of rights

121. Sood, *supra* note 89.

122. RTI ASSESSMENT, *supra* note 94, at 17.

123. Guillermo O’Donnell, *Horizontal Accountability in New Democracies*, 9 J. DEM. 112, 116 (1998).

124. Few of these complaints have been successfully resolved. Interview with the Head of a Civil Society Organization Working on Food Security Issues in Bihar, *supra* note 86.

abuses or other maladministration. Some of these bodies of horizontal accountability that are involved in advocating for the implementation of social welfare programs are briefly surveyed below before comparing some of the most important design considerations of these “implementation advocates.”

1. Lokayuktas and the Lok Pal

In about half of Indian states, including Bihar and Madhya Pradesh, there are public ombudsmen called lokayuktas, i.e., “People’s Commissioners” in Hindi. These ombudsmen are usually retired High Court or Supreme Court judges.¹²⁵

The Bihar Lokayukta’s office, created in 1973, has historically been limited to merely making recommendations based on complaints. Further, the Lokayukta’s office traditionally had no staff to formally investigate complaints and instead forwarded them to the supervisor of the concerned department, acting essentially as a “glorified post box.” Not surprisingly, in early 2012 the Bihar Lokayukta only received five to ten complaints a day (in a state of 100 million people), mostly from former bureaucrats about not getting their pension.¹²⁶

In December 2011, a new Bihar Lokayukta Act was passed. It was notified two years later, ushering in a potentially new era in the life of the institution.¹²⁷ This act gives the Lokayukta’s office new powers and staff to both investigate and prosecute.¹²⁸ The Bihar Lokayukta now also has the ability to investigate instances of maladministration, although it may only prosecute violations of the Prevention of Corruption Act. Essentially these changes allow the Bihar Lokayukta to operate more like a prosecutor’s office rather than an ombudsman’s.

The Madhya Pradesh Lokayukta, created in 1981, has historically been more active than the one in Bihar as it has had its

125. Krishnadas Rajagopal, *A Watchdog Without Teeth*, INDIAN EXPRESS (June 29, 2010), <http://indianexpress.com/article/news-archive/web/a-watchdog-without-teeth/>.

126. Interview with a Bihar Lokayukta official (Apr. 3, 2012) (on file with author).

127. The Bihar Lokayukta Act, 2011, No. 22, eGazette of Bihar, 2011 (India), available at <http://www.gad.bih.nic.in/News/NEWS-01-08-11-2011.pdf>; *Bihar Cabinet Approves Notification of Lokayukta*, THE NEW INDIAN EXPRESS (May 1, 2013), <http://www.newindianexpress.com/nation/Bihar-cabinet-approves-notification-of-Lokayukta-Bill/2013/05/01/article1570020.ece>.

128. *New Lokayukta Act Comes into Force*, TIMES OF INDIA, Jan. 2, 2012, available at <http://timesofindia.indiatimes.com/city/patna/New-Lokayukta-Act-comes-into-force-in-Bihar/articleshow/11340437.cms>.

own investigative police force.¹²⁹ In recent years, it has investigated and brought cases for corruption against the director of the state's health program and low-level land and forest officials.¹³⁰ However, like the newly empowered Bihar Lokayukta, its mandate is limited to investigating corruption, and it does not investigate cases of simple non-implementation of programs.¹³¹

Since the 1960s, the central government has debated whether or not to create a *lok pal* ("people's protector" in Hindi), or national ombudsman, who would investigate and potentially prosecute corruption at the central level.¹³² In the spring of 2011, noted national activist, Anna Hazare, went on a hunger strike to attempt to force the government to pass a lok pal bill.¹³³ This action, on the heels of several highly publicized corruption scandals, sparked mass protests in Delhi and across the country in support of a lok pal bill, and even led to the creation of a new political party called the Aam Admi Party (or ordinary man's party). Towards the end of 2013, the government, facing upcoming nationwide elections in which corruption was a central campaign issue and the victory of the Aam Admi party in elections in Delhi, passed the Lokpal and Lokayuktas Act.¹³⁴ The bill mandates lokayuktas are created in each state and a lok pal in the center.

2. Rights Commissions

The Central government has created several types of central and state rights commissions in an attempt to address claims of rights abuses in the country. The National Human Rights Commissioner and the equivalent state commissioners examine not only civil and political rights violations, such as prison conditions or violence against lower caste Hindus, but also complaints about poor quality

129. See *Sanctioned Posts & Vacancy Position of Lokayukt Organization as on 30 Oct. 2014*, <http://mplokayukt.nic.in/Sanctioned%20Strength%20Vacancy%20Position.pdf> (last visited Jan. 13, 2015).

130. See *Lokayukta Raid on Patwari Unearths Rs 2.5 cr Assets*, TIMES OF INDIA (Mar. 29, 2012, 4:02 AM), <http://timesofindia.indiatimes.com/city/indore/Lokayukta-raid-on-patwari-unearts-Rs-2-5-cr-assets/articleshow/12448898.cms>.

131. The Madhya Pradesh Act of 1981, No. 37, § 2(b), Madhya Pradesh Gazette, 1981 (India) (listing allegations that the Lokayukta can investigate); *Id.* § 7 (limiting the Lokayukta's investigatory authority to allegations made against public officials).

132. Rajagopal, *supra* note 125.

133. Paul de Bended, *Anna Hazare's Campaign Awakens Middle Class*, REUTERS, Aug. 24, 2011, <http://in.reuters.com/article/2011/08/24/idINIndia-58938520110824>.

134. The Lokpal and Lokayuktas Act, 2013, No. 1, Acts of Parliament, 2014 (India).

mid-day meals in schools or the improper functioning of hospitals.¹³⁵ The National Commission for the Protection of Child Rights and its state equivalents similarly look at civil and political rights violations like accusations of child soldiers being used by para-military groups in the country, but also at social welfare issues like health care for children.¹³⁶ It also is the enforcement agency under the Right to Education Act.¹³⁷

These rights bodies take individual complaints, while also often investigating cases on the basis of media reports. However, they have difficulty systematically investigating all complaints due to limited resources and personnel, and so their work is frequently heavily influenced by the predilections of the commissioners or the ability of some in civil society to more effectively leverage these institutions. Further, these commissions primarily make recommendations to the legislature or executive and rarely bring cases to court (although they are empowered to do so).¹³⁸

3. NREGA Ombudsmen

The National Rural Employment Guarantee Act (NREGA), enacted in 2005, is a massive centrally-funded social welfare program that provides 100 days of work at a rate of 60 rupees or more to every family in rural India.¹³⁹ If one applies for work and does not receive it within fifteen days the state is mandated to provide the worker with an unemployment allowance.¹⁴⁰ The program has provided work to millions of Indians, making a substantial improvement to the quality of their lives, but in many states NREGA is plagued with problems relating to the non-

135. Press Release, National Human Rights Commission, NHRC Notices to Three MCDs and Delhi Govt. on Poor Quality of Mid-Day Meal Served in Schools (Mar. 28, 2013), available at <http://nhrc.nic.in/dispArchive.asp?fno=12824>; Press Release, National Human Rights Commission, NHRC Issues Notice to Chandigarh Administration on Allegations of Malfunctioning in Emergency Services of Three Hospitals (Feb. 20, 2013), available at <http://nhrc.nic.in/disparchive.asp?fno=12784>.

136. See generally NATIONAL COMMISSION FOR THE PROTECTION OF CHILD RIGHTS, <http://ncpcr.gov.in/> (last visited Jan. 13, 2015).

137. The Right of Children to Free and Compulsory Education Act, 2009, ch. VI, No. 35, Acts of Parliament, 2009 (India).

138. The Commissions for Protection of Child Rights Act, 2005, ch. III, §15, No. 4, Acts of Parliament, 2006 (India).

139. The National Rural Employment Guarantee Act, 2005, ch. II, § 3(1), ch. III, § 6(1), No. 42, Acts of Parliament, 2005 (India).

140. *Id.* ch. III, § 7(1).

availability of work, embezzlement of funds, or the state failing to pay an unemployment allowance if work is not given.¹⁴¹ To respond to the large number of complaints concerning the early implementation of the Act in 2009 the center ordered the states to create ombudsmen in each district to hear complaints and take measures to remedy them.¹⁴² However, few of these ombudsmen have been appointed and their work has suffered because they are given few resources and low pay.¹⁴³ The Rural Development Minister has found that even those ombudsmen who were appointed “failed to address the grievances” of complainants.¹⁴⁴

4. Design Considerations

Horizontal accountability requires not just isolated agencies to act as a check on the acts and omissions of government, but networks, or clusters, of agencies working to upholding the rule of law.¹⁴⁵ Implementation advocates can potentially be an important part of these clusters, which can then hold officials answerable. Yet, several challenges are confronted when designing these implementation advocates, including determining their composition, what types of complaints they may investigate, and their ability to then act on these investigations. The below table describes these different variables for several well-known implementation advocates.

141. Andrew MacAskill, Unni Krishnan, & Tushar Dhara, *India's Job Program Scam Pays Wages to Dead Workers*, BLOOMBERG (April 5, 2013, 2:30 PM), <http://www.bloomberg.com/news/2013-04-04/india-jobs-program-scam-pays-wages-to-dead-workers.html>.

142. Order Under Section 27(1) of the National Rural Employment Guarantee Act for Establishment of the Office of Ombudsman for Redressal of Grievances in a Time Bound Manner, No. J-11011/21/2008-NREGA (Sept. 7, 2009), *available at* http://nrega.nic.in/Ombudsman_Order.pdf (order issued by Ministry of Rural Development, Government of India).

143. Sreelatha Menon, *NREGA Ombudsmen Fail to Take Off*, BUSINESS STANDARD (June 26, 2011, 12:42 AM), http://www.business-standard.com/article/economy-policy/nrega-ombudsmen-fail-to-take-off-111062600041_1.html.

144. The Rural Development Minister recommended that the ombudsmen should be appointed by the center instead of the states to provide more accountability. *Ombudsmen of states on NREGA failed, need central body: Jairam*, DECCAN HERALD, July 18, 2011, *available at* <http://www.deccanherald.com/content/177328/content/217654/F>.

145. O'Donnell, *supra* note 123, at 123.

Body	Composed of	Appointed by	Investigate	Power to Penalize	Refer to
Right to Food Comm'n'er (S. Ct orders)	Civil Society Member/ Former Bureaucrat	Supreme Court	Individual Complaints and Systemic Failures	No	Supreme Court
State Right to Food Comm'n'er (National Food Security Act)	Current of Former Bureaucrat / Civil Society Member	State Government	Individual Complaints	No	Judiciary (local magistrate)
Lokayukta (Madhya Pradesh) ¹⁴⁶	Former High Court or Supreme Court Judge	State Government with Consultation of Opposition and State Chief Justice	Individual Complaints	No	Judiciary
Grievance Redress Officer (Bihar)	Former Bureaucrats	State Government	Individual Complaints	Yes and refer	Bureaucracy
NREGA Ombudsman ¹⁴⁷	Civil Society / Former Bureaucrat / Former Judge	State government, bureaucracy, and civil society	Individual Complaints	No (but may issue directions)	Judiciary or Bureaucracy

146. The Madhya Pradesh Act of 1981, No. 37, Madhya Pradesh Gazette, 1981 (India).

147. Letter from Ministry of Rural Development Regarding Revised Instructions on Ombudsman (May 24, 2013), available at http://nrega.nic.in/Netnrega/WriteReaddata/Circulars/Revised_instructions_on_ombudsman.pdf.

National Human Rights Comm'n ¹⁴⁸	Former Supreme Court Judge	Mixture of Majority and Minority Leadership	Individual Complaints and Systemic Failures	No (but may recommend actions)	Government (executive) or Judiciary
National Comm'n for Protection of Child Rights ¹⁴⁹	Civil Society Member / Former Bureaucrat	Central Government	Individual Complaints and Systemic Failures	No	Legislature or Judiciary

Getting the right balance in the appointment and composition of these implementation advocates is not simple. The government appoints some of these implementation advocates, while a mixture of the government, the opposition and even the judiciary appoints others, while some are created and appointed by only the judiciary. Individuals holding these posts may come from the judiciary, bureaucracy, civil society, or the public more generally, a design consideration that also may impact the effectiveness of these institutions. For example, many lokayuktas and commissioners are former judges. They are selected for their perceived independence from both the politicians and bureaucrats. However, they are often not trained for an investigatory or prosecutorial role, and since they are retired they are older and sometimes not eager to take on the task of institution building or effective at using the media to amplify the power of their institution.

Lokayuktas, grievance redress officers, and NREGA ombudsmen all largely investigate individual complaints. Right to food commissioners, human rights commissioners, and children's right commissioners may also investigate individual complaints, but they spend significant time examining large-scale failures in governance or systemic rights abuses. Investigations that are aimed at addressing individualized instances of maladministration or illegality perhaps can better ensure that a remedy is brought in a particular instance, but they also tend to be more legalistic and expensive than investigations that aim to understand and address widespread governance failures and remedy them through policy

148. The Protection of Human Rights Act, 1993, ch. II, No. 10, Acts of Parliament, 1993 (India), *amended by* the Protection of Human Rights (Amendment) Act, 2006, No. 43, Acts of Parliament, 2006 (India).

149. The Commission for Protection of Child Rights Act, 2005, No. 4, Acts of Parliament, 2006 (India).

prescriptions.

Some of these implementation advocates bring formal complaints to court, either acting as a prosecutor or asking the court to intervene. Others report to the legislature, executive, or just high-ranking officials in the bureaucracy. This may sometimes lead to limitations in their power to rigorously push forward their recommendations. For example, a grievance redress officer may recommend to a district collector that an official be fined, but the district collector can ignore this advice without having to give a reason or have their decisions be reviewed.¹⁵⁰

At present, implementation advocates are rarely sufficiently independent or empowered with enough resources or prosecutorial powers to be effective. Models like the *Ministerio Publico* in Brazil provide an example the *lokayuktas* and potentially the *lok pal* could follow.¹⁵¹ The *Ministerio Publico*, which is staffed by prosecutors selected from a prestigious cadre, are present in each district in Brazil and given wide powers, substantial resources and independence.¹⁵²

In conceptualizing India's implementation advocates it would be useful to further study when hard prosecutorial power is necessary and when a softer investigatory advocacy function that can aid in facilitation is preferred. This choice in the role of an implementation advocate will in turn help determine staffing and resource requirements as well as their formal powers. It may also indicate when the offices of different implementation advocates could be combined to save resources since their goals and the tools necessary to complete them are sufficiently similar.

CONCLUSION

This article has advocated looking holistically at grievance redress by analyzing the relative strengths and weaknesses of different grievance redress regimes, and then examining how specific grievance redress mechanisms might impact their effectiveness. This framework presents a more comprehensive picture than alternatives such as a rights-based approach—which focuses on complaints that have been formalized as rights and the mechanisms for hearing

150. See Interview with a Grievance Redress Officer in Patna, Bihar, *supra* note 33.

151. LESLEY K. MCALLISTER, *MAKING LAW MATTER: ENVIRONMENTAL PROTECTION AND LEGAL INSTITUTIONS IN BRAZIL* (2008) (describing the independence of the *Ministerio Publico* in Brazil and how it enforces environmental legislation against third parties and the government).

152. *Id.*

them¹⁵³—or an ad hoc cost-benefit analysis of grievance redress mechanisms—which narrowly examines the merits of just one tool for redress.¹⁵⁴

A grievance redress regime approach can generate useful strategies for grievance redress and implementation that might not otherwise be obvious. For example, once the high costs to those complaining has been identified as a problem in a legal accountability regime this may indicate that implementation advocates could help address such access problems, allowing the government to pick up some of the costs of the investigation and prosecution of grievances. When one documents that many complaints are brought directly to politicians, who are seen as relatively accessible, but potentially more biased, this may indicate a reform strategy in which resources are given to help professionalize constituent services or to create an ombudsman who politicians may refer complaints to that may then independently follow up on these grievances.¹⁵⁵

This more holistic approach also allows policymakers to better focus on ensuring that actors in different grievance redress regimes properly check and compliment, not undermine or entangle, each other. Politicians can and should help monitor administration, but if they become directly involved in sanctioning officials this may inadvertently create more opportunities for corruption or political favoritism. Courts can act like an alarm bell, letting the government know about implementation failures, but if judges attempt to micromanage administration this may produce a disincentive or obstacle for government to correct systematic underperformance. The framework advocated for in this article may not create a formula for the exact demarcation of duties between different actors, but by recognizing that officials are answerable to different accountability

153. Importantly, pointing to the merits of an accountability regime approach is not the same as arguing that rights advocates should stop promoting rights with the public. Accountability regimes may be a more robust framework for understanding grievance redress for policymakers, but the language of rights may be more useful when trying to empower citizens to make claims against the government.

154. Another proposed framework for understanding grievance redress is supply and demand. See Gauri, *supra* note 17. The benefit of this approach is that, unlike an accountability regime approach, it does take into account the demand for grievance redress from the public. However, by conflating grievance redress mechanisms together under the heading of supply, it does not adequately differentiate the regimes in which these different mechanisms may operate.

155. For more information on such an ombudsman in the United Kingdom, see PARLIAMENTARY AND HEALTH SERVICE OMBUDSMAN, <http://www.ombudsman.org.uk/> (last visited Jan. 13, 2015).

regimes it forces policymakers to examine alternatives and tradeoffs between grievance redress strategies.

Comparative research—both between countries and across states in India—could help policymakers bring greater definition to how grievance redress mechanisms operate in different political contexts and stages of development. For example, level jumping, where high-level officials take an interest in low-level individual complaints, may make sense in contexts where the bureaucracy has traditionally not implemented policy effectively, but would otherwise be an inefficient use of these officials' time.¹⁵⁶ The recent revitalization of the comparative administrative law literature, which already invokes accountability regimes, may be a useful place to ground such further study.¹⁵⁷

Many of the grievance redress mechanisms discussed in this article increase the legibility and control higher-level officials have over lower officials. They increase state power. Importantly, they do so in a way that arguably, and to varying extents, builds thicker citizenship.¹⁵⁸ Grievance redress mechanisms empower the state and citizens in what can be considered a joint quest to increase legibility and control over officials in order to implement the social welfare programs of a democratically elected government. Properly designed grievance redress mechanisms can encourage claim-making, raise expectations about how the state should respond to those claims, and perhaps even incentivize other forms of participation that are of benefit to democracy and governance more broadly.¹⁵⁹ Importantly,

156. In general, with limited resources it is unclear how many should go into grievance redress architecture and how many into actual services. ROSE-ACKERMAN, *supra* note 116, at 52 (making a similar point about investment in anti-corruption safeguards: “[T]he optimal amount of corruption is not zero . . . [o]nce one takes the costs of prevention into account, the level of deterrence expenditures should be set where the marginal benefits equal the marginal costs”).

157. For an overview of the comparative administrative law literature, see SUSAN ROSE-ACKERMAN & PETER LINDSETH, *COMPARATIVE ADMINISTRATIVE LAW* (2011); Janina Boughey, *Administrative Law: The Next Frontier for Comparative Law*, 62 *INT’L & COMP. L.Q.* 55 (2013).

158. Ann Abraham, who was the U.K. Parliamentary Commissioner for Administration and Health Service, emphasized the importance of administrative justice in a 2007 speech: “It is after all in the daily encounters between citizen and state that most people experience the Executive at first hand. It is in those encounters that most people get a sense of the sort of administration they are dealing with. It is in the quality of those encounters that most people either detect, or more often fail to detect, signs that they are viewed by the state as persons not cogs, citizens not ciphers.” HARLOW & RAWLINGS, *supra* note 53, at 484.

159. A grievance redress system can help shape what is perceived as an injury, expectations about how the state can respond, and an understanding of who to address the complaint to. Importantly, a grievance is not a mere “grumbling” but rather a belief by a

grievance redress mechanisms may shape the preferences and professional identities of bureaucrats themselves.¹⁶⁰ Officials may at times view responding to grievances as an unwelcome annoyance or distraction, but the process can also mold their sense of duty towards citizens and help define the contours of the professional culture in which they work. A properly designed grievance redress system can have wide-ranging impacts on the implementation of social welfare and other government programs as well as citizens and bureaucrats understanding of themselves and the state in which they operate.

citizen that their complaint can be redressed and an expectation that the state should redress it. William L. F. Felstiner, Richard L. Abel & Austin Sarat, *The Emergence and Transformation of Disputes: Naming, Blaming and Claiming*, 15 LAW & SOC'Y REV. 631 (1980).

160. JOHN BREHM & SCOTT GATES, WORKING, SHIRKING, AND SABOTAGE: BUREAUCRATIC RESPONSE TO A DEMOCRATIC PUBLIC 197–202 (1997) (finding that bureaucrats' performance in the United States is chiefly influenced by the bureaucrats' own preferences, with management having only marginal impact, and so emphasizing the importance of proper recruitment and indoctrination).