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**COMPLAINING TO THE STATE:
GRIEVANCE REDRESS AND
INDIA'S SOCIAL WELFARE PROGRAMS**

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Abstract:

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 for social welfare programs in the Indian states of Madhya Pradesh and Bihar. It argues that the idea of accountability regimes, which has been developed in the administrative law literature, provides a more useful framework for understanding grievance redress than commonly invoked alternatives, such as a purely rights-based approach or an ad hoc analysis of the costs and benefits of specific redress mechanisms. While not rejecting either of these alternatives, it claims that an accountability regime approach that focuses on how officials are monitored and controlled through grievances is both more descriptively complete and more likely to generate a wider range of useful policy prescriptions.

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's 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 30-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 with tightly sinewed muscles 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 men pushing vegetable carts and women shopping on a crowded street lit up by fluorescent lights. Beneath a small storefront is one of the 70 ward offices in the city. A couple 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 British-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

¹ Observations from visit to Jabalpur in March 2012

² *Id.*

*are dying while giving birth. A lawyer from a local non-government organization stands next to her. Other lawyers – mostly men, all in black jackets – mill around the courtroom listening to the arguments and waiting for their cases. One of the judges asks government counsel why certain public health centres 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

The Indian Constitution lays out a transformative vision of social change. Its directive principles provide guidance to the government to promote social welfare.⁴ The Constitution's section on fundamental rights has been amended to include a right to education⁵ and the Indian Supreme Court has interpreted this section more generally to mandate many other social and economic rights.⁶ The government has created far-reaching social welfare programs to further these rights and otherwise improve the well being of the population.⁷

Yet, like in many developing countries, in India there is often a chasm between the law on the books and the reality on the ground.⁸ Teachers do not show up to work.⁹ Ration shops do not give allotted grain.¹⁰ Corruption and apathy are common in a bureaucracy well known for its insularity and officiousness. One commentator has gone so far to call countries like India

³ Observations as accounted by lawyer in attendance. Interview 63. Extracts of the order in the case, *San Bansal v. Union of India (PIL) W.P. 9061/2008*, available at <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.pdf>

⁴ See generally CONST. OF INDIA part IV

⁵ CONST. OF INDIA art. 21A

⁶ CONST. OF INDIA art. 21 and art. 14. 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 (2013 Sunil Khilnani, Vikram Raghavan, and Arun K. Thiruvengadam eds.); Nick Robinson, *Expanding Judiciaries: India and the Rise of the Good Governance Court*, 9 WASH. U. GLOBAL STUDIES L. REV. 1 (2009); SP SATHE, JUDICIAL ACTIVISM IN INDIA: TRANSGRESSING BORDERS AND ENFORCING LIMITS (2002)

⁷ For example, the Public Distribution System which provides subsidized grain to India's poor. Public Distribution System portal of India, (July 13, 2013), <http://pdsportal.nic.in/main.aspx>; the Mahatma Gandhi National Rural Employment Guarantee Act (2005) provides 100 days of employment to every family in rural India. The Right of Children to Free and Compulsory Education Act (2009) guarantees primary education for every child in India, the National Social Assistance Program (NSAP) provides pensions to below poverty seniors, widows, and handicapped persons, and the Indira Awaas Yojana provides housing for the poor. NSAP website, (July 26, 2013), <http://nsap.nic.in/>; Indira Awaas Yojana website, (July 26, 2013), <http://iay.nic.in/netiay/home.aspx>

⁸ Lant Pritchett, *Is India a Flailing State? Detours on the Four Lane Highway to Modernization*, HKS FACULTY RESEARCH WORKING PAPER SERIES RWP09-013, 1, 16 (2009)

⁹ *Id.* at 4

¹⁰ CMS TRANSPARENCY, INDIA CORRUPTION STUDY 2010: IS THE SITUATION CHANGING? 9-13 (2010)

“flailing” states (as opposed to “failing” states), given the disconnect between the government’s declared policy goals and their meager implementation.¹¹

In India, the possible culprits of such widespread implementation failure are numerous—including not just poor public administration or policy design, but also a myriad of social, political, and economic factors including deep societal inequality,¹² corruption,¹³ and significant resource constraints.¹⁴ Such a multi-causal problem does not lend itself to simple meta-explanations or single-prong solutions.

That said the policy space in India has been alive with initiatives designed, at least in part, to help overcome the country’s historic implementation failures. A 1992 constitutional amendment gave local governments new powers in an attempt to create local control and oversight over many development programs.¹⁵ The Right to Information Act (2005) has allowed citizens sweeping rights to demand information from the government that they can then use to monitor its activities. 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.¹⁶ Increasingly proactive ombudsmen (called lokayuktas) in India’s states have investigated high profile corruption cases.¹⁷ And several state chief ministers have begun routinely holding weekly public hearings to listen to constituents’ grievances and have demanded high-level administrative officials do the same.¹⁸

¹¹ Pritchett, *supra* note 8; See also Devesh Kapur, *The Political Economy of the State*, THE OXFORD COMPANION TO POLITICS IN INDIA 444 (2010, Niraja Gopal Jayal and Pratap Bhanu Mehta) (“[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.”)

¹² For example, India’s Gender Inequality Index was .610 in 2012, making it the worst performer in South Asia outside Afghanistan. UNITED NATIONS DEVELOPMENT PROGRAM, HUMAN DEVELOPMENT REPORT: THE RISE OF THE SOUTH 158 (2013)

¹³ In 2012, India ranked 94th in Transparency International’s Corruption Perceptions Index, in a tie with countries like Djibouti, Benin, and Greece. TRANSPARENCY INTERNATIONAL, CORRUPTION PERCEPTIONS INDEX (2012) *available at* <http://www.transparency.org/cpi2012/results>

¹⁴ Government social sector expenditure in India was approximately \$123 billion in 2012-2013 (almost a fivefold increase from just a decade before – not inflation adjusted). Despite the huge increases in spending on the social sector in India, it still averaged out to only about \$100 per person per year in 2012-13 for all welfare programs (health, education, rations, housing, etc). *Trends in Social Sector Expenditure – Statewise*, 48(6) EC. AND POL. WEEKLY 87 (2013)

¹⁵ The Constitution (Seventy-Third Amendment) Act, 1992 (enshrining panchayat (i.e.) village governance into the Indian Constitution); The Constitution (Seventy-Fourth Amendment) Act, 1992 (enshrining the power of municipalities in the Indian Constitution).

¹⁶ Nick Robinson, *Expanding Judiciaries: India and the Rise of the Good Governance Court*, 8(1) WASH. U. GLOBAL STUDIES L. REV. 1, 8-10 (2009)

¹⁷ See *infra*, Section II(C)

¹⁸ See *infra*, Section II(A)

In general, Indian public administration has seen increasing emphasis on direct and local governance, rights, transparency, and stricter limitations on administrative discretion.¹⁹ These shifts are in part the consequence of an increasingly empowered—and demanding—public, whose voices are heard not just at the ballot box or in the media, but also in the form of grievances to the government.²⁰

This article explores the forums and mechanisms by which the government hears and responds to these citizen complaints concerning social welfare programs. Despite the large number of people affected, there is surprisingly little theorization, or even description, of grievance redress in the developing world, including India.²¹ India has had democratic elections for over sixty years, but that has not ensured the delivery of key social welfare services.²² On a day-to-day basis, many citizens view Indian officials as neither responsive nor accountable. Recent changes in public administration, like the development of grievance redress mechanisms, are aimed at fundamentally altering the relationship between citizens and government officials, arguably thickening and operationalizing Indian democracy, while simultaneously building the capacity of the state.²³ Although a responsive grievance redress

¹⁹ These trends have also been commented upon by others. For example, *see*, Pratap Bhanu Mehta, *How India Stumbled*, FOREIGN AFFAIRS (July 1, 2012)

²⁰ Although it is difficult to quantify changes in Indians' demands on their government, certainly 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 1951-2011. Meanwhile, GNP per capita has increased from 8594 Rs in 1981 to 33,731 Rs in 2010. GOVERNMENT OF INDIA, UNION BUDGET AND ECONOMIC SURVEY 2010-2011, STATISTICAL APPENDIX (2011)

²¹ Varun Gauri, *Redressing Grievances and Complaints Regarding Basic Service Delivery*, WORLD BANK POLICY RESEARCH WORKING PAPER 2 (2011) (noting a literature review found “few descriptions, and almost no thematic reviews or evaluations, of redress procedures in developing countries.”) However, there is some emerging work in this area. For example, Gabrielle Kruks-Wisner provides a survey in rural Rajasthan of different avenues by which citizens make claims on the state. Gabrielle Kruks-Wisner, *Making Claims: Citizenship and Service Delivery in Rural India*, MIT RESEARCH PAPER (2011) (showing citizens with more wealth and access to more networks make more claims) 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 AND HOWARD N. FENTON, USING ADMINISTRATIVE LAW TOOLS AND CONCEPTS TO STRENGTHEN USAID PROGRAMMING (Feb. 2008) (Describing how administrative law can be used in the developing world to limit discretion, provide administrative rights for citizens, and increase transparency and available information). More generally, there is relatively little work done on understanding what brings about positive state functioning. As Francis Fukayama describes, “everyone is interested in studying political institutions that limit or check power—democratic accountability and rule of law—but very few people pay attention to the institution that accumulates and uses power, the state.” Francis Fukayama, *What is Governance?*, CENTER FOR GLOBAL DEVELOPMENT WORKING PAPER 314 (2013)

²² JEAN DREZE AND AMARTYA SEN, INDIA: HUNGER AND PUBLIC ACTION (2002)

²³ Edward Rubin, *Getting Past Democracy*, 149(3) U. OF PENN. L. REV. 711 (2001) (arguing that democracy as commonly understood actually relies not on checks by elected representatives on administrative action, but on administrative procedure); Ann Abraham, who was the UK 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

system will certainly not solve all implementation failures, it is the type of mid-level solution with the potential for significant impact.²⁴

This article provides a holistic framework to make sense of what can often seem like a confusing hodge-podge of grievance redress mechanisms and initiatives. Part I argues low-level officials are embedded in different accountability regimes of public governance, whether these are administrative, political, or legal, each of which provides different possibilities for redress.²⁵ It analyzes the relative merits of administrative, political, and legal redress in India for those with complaints concerning social welfare programs. In particular, drawing on fieldwork conducted by the author, it focuses on some significant innovations over the last twenty years in these three forms of redress in the Indian states of Madhya Pradesh and Bihar, specifically in the districts of Jabalpur and Patna.²⁶

After laying out this broader framework, Part II analyzes three specific (and prominent) grievance redress strategies developed in India in recent years: level jumping, rights to implementation, and implementation advocates. Each of these strategies is designed to strengthen one or more of the three accountability regimes discussed in Part I by helping make legible instances of non-implementation to higher-level officials.

The article concludes by describing how looking holistically at how citizens complain to the state ensures policymakers, academics, and activists do not become myopic in their search for solutions to implementation challenges. For example, social and economic rights litigation may be a well-publicized tool used for grievance redress in India and elsewhere, but it should

to detect, signs that they are viewed by the state as persons not cogs, citizens not ciphers.” Quoted in CAROL HARLOW AND RICHARD RAWLINGS, *LAW AND ADMINISTRATION* 484 (2009)

²⁴ ADRIAN VERMEULE, *MECHANISMS OF DEMOCRACY: INSTITUTIONAL DESIGN WRIT SMALL* (2007) (discussing how small scale institutional devices can make disproportionate impact on governance, and may be the only politically feasible reforms).

²⁵ As Francesca Bignami explains “. . . comparative administrative law should be framed no longer as the rules and 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.” Francesca Bignami, *From Expert Administration to Accountability Network: A New Paradigm for Comparative Administrative Law*, 59 AM. J OF COMP. LAW 859 (2011)

²⁶ The author conducted fieldwork in these two states during repeated visits in the first half of 2012 in which over sixty interviews were conducted, 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. 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: Bihar (2011), available at http://www.censusindia.gov.in/2011-prov-results/paper2/prov_results_paper2_bih.html

be understood as one amongst a wide range of complimentary or alternative grievance redress mechanisms that may have far greater impact. Although requiring further development, the idea of accountability regimes—which has been developed in the administrative law literature—arguably provides a more comprehensive theoretical basis for understanding grievance redress than other commonly used alternative frameworks, such as a purely rights-based approach or an ad hoc analysis of the costs and benefits of specific grievance mechanisms.²⁷

Given the constraints of space this article only focuses on the forums in which Indians complain directly to the state concerning social welfare programs. Conspicuously, it does not examine grievance redress mechanisms for outsourced public services. It does not put forward a theory about how grievances are created—for instance, examining how civil society or the media produce 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. Forums for Grievance Redress

When we conceptualize how government controls lower level officials it is useful to categorize the different networks of accountability in which these individuals are embedded. In other words, who in the state can exercise control over these workers and how do they do it.

As Jerry Mashaw and others have noted there are at least three forms of accountability regimes in public governance: administrative, legal and political.²⁸ These accountability regimes each answer differently the questions: Accountable to whom? About what? Through

²⁷ For an overview of the rights based approach to development, see Brigitte I. Hamm, *A Human Rights Approach to Development*, 23(4) HUMAN RTS. QUARTERLY 1005 (2001) (describing the development of a human rights based approach to development); Emma Harris-Curtis, *Rights-Based Approaches: Issues for NGOs*, 13(5) DEV'T IN PRACTICE, 558, 560 (2003) (Noting “The rights discourse is challenging because it asserts the individual person living in poverty as active agent rather than a passive recipient.”)

²⁸ Jerry Mashaw, *Accountability and Institutional Design: Some Thoughts on the Grammar of Governance* in PUBLIC ACCOUNTABILITY, DESIGNS, DILEMMAS AND EXPERIENCES 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*, AUSTRALIAN NATIONAL UNIVERSITY (ANU) (2003); See also, 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); Richard Stewart, *Accountability and the Discontents of Globalization: US and EU Models for Regulatory Governance*, NYU DISCUSSION PAPER (2006) (Discussing five types of accountability “mechanisms”: fiscal, legal, electoral, hierarchical, and supervisory)

what process? By what standards? And with what effects?²⁹ 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.³⁰

What such a categorization of accountability makes clear is that lower level officials are in fact answerable to multiple authorities, who often judge the acceptability of their actions by different criteria. In turn, 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, or by bringing a complaint to a politician or a judge. Any of these three avenues of redress triggers a different process and each has its own potential costs and benefits for a potential complainant, as well as for the functioning of the system overall. For a complainant some forums for redress might be more accessible, others might be more impartial towards them or the local administration respectively, while different actors in different accountability regimes will vary in their power to remedy a grievance and cost the state different amounts of money to maintain. The below matrix shows one possible way one might chart the potential merits of different forums for redress in relation to these variables.

A Grievance Redress Matrix

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

²⁹ Mashaw calls the necessary logic of these questions the grammar of governance. Jerry Mashaw, *supra* note 28 at 121

³⁰ According to Mashaw political accountability might also be the accountability of politicians to voters. *Id.*

One should note that the above matrix is highly context driven and is meant only to be illustrative – showing that different forums for redress potentially have different strengths, not what they in fact are in any given situation. For example, politicians are often seen as more accessible in that complainants are frequently more familiar with the local politician, the costs of approaching the politicians are generally low, and the process one goes through is informal. That said, how the politician will react to your complaint may depend on how you voted in the last election or your perceived political importance in the community. Importantly, the introduction of different grievance redress mechanisms can also affect how accessible, impartial, or powerful a regime is. A very insular and difficult to approach bureaucracy could be made much more accessible with the introduction of social workers or something as simple as a clearly demarcated help desk or a telephone hotline for complaints.

While context can shape how some of these variables are experienced there are also likely inevitable tradeoffs. For example, ensuring that the actor receiving a complaint is impartial to the complainant and the local administration may require that they generally be independent of both the political and administrative process. Creating such a post – whether it's a judge or another type of independent arbitrator– inevitably costs more than simply allowing citizens to complain to politicians or administrators who already exist.

In Madhya Pradesh and Bihar, there have been significant changes in the forums for administrative, political, and legal redress over the last twenty years in relation to social welfare programs. Some of the most notable are examined below in order to help illustrate how these redress regimes have functioned and evolved in these two states.

A. Administrative Redress

In India most major social welfare schemes are legislated and funded from the center, but implemented by state and local officials who are under the control of state politicians.³¹ The British divided India into a series of districts with a district collector, who had wide

³¹ Kapur, *supra* note 11; 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, PUBLIC ADMINISTRATION IN INDIA REPORT OF A SURVEY 22 (1953)

discretionary authority, as the administrative head of each district.³² Today, districts remain the chief unit of administrative coordination in India and the district collector the most powerful administrator at the local level. There are 640 districts in India, and each of these districts is typically then further sub-divided into between five and twelve blocks (a district contains on average about 1.9 million people).³³

Top level bureaucrats in a state – like secretaries of different 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. Indian civil servants, whether state or central, are mostly career officials and seniority is an overriding factor in promotion, crowding out other factors like merit.³⁴

Several provisions of the Indian Constitution protect Indian civil servants, particularly Article 311, which makes it difficult to remove or sanction them.³⁵ Bureaucrats are well known for pressing their claims in court and these civil servant litigants have disproportionately shaped and benefitted from administrative law 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.”³⁶

Twenty years ago someone in India who had a complaint about a government social service would have had few places to turn within the local administration. Although grievance redress cells were introduced starting in the late 1960’s, they lacked sustained support or

³² For an excellent history of local level administration in British India, *See*, BB 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)

³³ There are 5924 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)

³⁴ 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 also tend to be younger and less well paid. However, there are several problems with this contract worker approach. There is little long-term stability for these workers leading to a decrease in morale and effectiveness. Further, systems to promote well performing contract workers are rarely in place, and instead contract workers tend to be fired or regularized en masse. For more on contract workers and service law in India, *see generally*, Nick Robinson and Varun Gauri, *Education, Labour Rights, and Incentives: Contract Teacher Cases in the Indian Courts* 32 COMP. LABOR LAW & POL’Y J. 991 (2011)

³⁵ 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. CONST. OF INDIA part XIV

³⁶ Upendra Baxi, *Introduction*, in I.P. MASSEY, ADMINISTRATION LAW XXXVII (2008)

motivated staff.³⁷ As one former high ranking bureaucrat said, who was a district collector in the 1970's, "The 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."³⁸ 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."³⁹ 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 grievance redress mechanisms that are available.⁴⁰ For example, in a mostly tribal village outside Jabalpur, residents complained that when they went to the block office to attempt to claim their scheduled tribe cards, which entitle them to a set of special benefits, that they were chased off by low-level employees and did not know what to do in response.⁴¹ 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."⁴² 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."⁴³

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.⁴⁴ These high-ranking 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.

³⁷ For example, the 1st 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)

³⁸ Interview 24; Similarly, Interview 57 (with a Public Grievance Officer) ("Before if you complained to an officer you could never track and never find out what happened.")

³⁹ Interview 26

⁴⁰ 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 . . .")

⁴¹ Interview 53

⁴² Interview 4

⁴³ Interview 26

⁴⁴ Interview 43; Interview 54

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 1000 or so complaints received each month in the district.⁴⁵ 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.⁴⁶ 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 more reluctant to become very activist in their new role.⁴⁷ A telephone hotline has also been created to take complaints that are then processed in a similar manner.⁴⁸

In an attempt to more strictly regulate lower officials, Chief Ministers have passed right to public service acts in over a dozen Indian states since 2010, including in Bihar and Madhya Pradesh.⁴⁹ These acts build off of the Citizen's Charter movement of the late 1990's and early 2000's, which saw hundreds of such charters that demarcated what services citizens could expect from different departments of government.⁵⁰ However, many felt these charters lacked the triggered penalties necessary to be effective.⁵¹ Under Right to Public Service Acts a time limit is set for specific services– like applying for a Below Poverty Line card or an income or residency certificate –by which one can expect the service to be provided or denied. The reasons for all rejections must be recorded in writing. If the service is not given in the stipulated time or a citizen feels they have been wrongly rejected they can appeal to an

⁴⁵ 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 57

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ See, Bihar Public Grievance Redressal System website, (July 26, 2013) <http://www.bpgrs.in/>

⁴⁹ NICK ROBINSON, RIGHT TO PUBLIC SERVICE ACTS IN INDIA: THE EXPERIENCE FROM BIHAR AND MADHYA PRADESH (2012)

⁵⁰ INDIAN INSTITUTE OF PUBLIC ADMINISTRATION. CITIZEN'S CHARTERS IN INDIA: FORMULATION, IMPLEMENTATION, AND EVALUATION (2008)

⁵¹ As an Administrative Reforms Commission sponsored report found, "Almost 41% of the Charters under consideration did not indicate any timeframe for redress of public grievances. 61% of them did not indicate any timeframe for acknowledging the receipt of public grievances and nearly 43% of them did not have the timeframe for responding to the petitioners. None of the Charters reviewed specified whether a petitioner would be conveyed the reasons for rejection of his grievance." *Id.* at 12

appellate authority who can then fine the official.⁵² Either the petitioner or the bureaucrat can then appeal from the appellate authority 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.⁵³ In practice, there have actually been few appeals and fewer penalties given, with the number of appeals being in the low hundreds in both Madhya Pradesh and Bihar.⁵⁴

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, which is a Dalit community just beyond the outskirts of Patna, Bihar, local villagers organized an agitation in which about three hundred of them went to the Block Development Officer's Office together. They demanded from the officer that they be given rights to the land they lived on; that the Public Distribution System shop give rations regularly; that the middle man be cut out of a local government housing scheme; and that their children receive school scholarships that they were entitled to. The Block Development Officer met with them on several occasions and addressed, some but not all of these grievances.⁵⁵

Despite the continuing presence of such public agitations, in Bihar and Madhya Pradesh there are now more developed grievance redress options within public administration for a citizen than twenty years ago. They are more formalized, redress officials have greater powers, and, importantly, there is also more clarity in what the public should expect from the state. Yet, challenges remain in maintaining the independence of redress forums, the willingness of officials to penalize other officials, and in giving grievance redress officers enough power and resources to actually investigate what caused a problem. Within the bureaucracy there is often a deep sense of comradery between officials, which sometimes limits the willingness of officials to penalize those they are suppose to be scrutinizing.

⁵² Bihar Right to Public Service Act, Sect. 5 and 6 (2011); The Madhya Pradesh Lok Sew Aon Ke Pradan Ki Guarantee Adhiniyam, Sect. 6 (2010); The equivalent to a national right to public service act is also being considered. *See* PRS LEGISLATIVE SERVICES, THE RIGHT OF CITIZENS FOR TIME BOUND DELIVERY OF GOODS AND SERVICES AND REDRESSAL OF THEIR GRIEVANCES BILL, 2011, LEGISLATIVE BRIEF (2012)

⁵³ *See* Bihar Right to Public Service Act, appendix one (2011)

⁵⁴ 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. Interview 16; Interview 28

⁵⁵ Interview 61

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.⁵⁶ Yet, if someone has trouble accessing a 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 Legislative Assembly (MLA), or perhaps even their Member of Parliament (MP) or Chief Minister. MPs field complaints about roads. 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.⁵⁷ 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.⁵⁸ 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 72 wards), "We take complaints from constituents all the time. From 6 am to 10 pm. Even 11 pm. I would say I get 5 to 6 complaints a day."⁵⁹ A ward member in Jabalpur, Madhya Pradesh (where there are 60 wards), recounted "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. . ."⁶⁰ 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.⁶¹

⁵⁶ There are exceptions in the literature. For example, John M. Ackerman, *Social Accountability in the Public Sector: A Conceptual Discussion*, SOCIAL DEVELOPMENT PAPERS No. 82 (2005) ("In addition to holding legislators accountable through their vote, citizens can also work side by side with legislators to hold the executive and judicial branches accountable. Indeed, 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 21 (describing grievances to local politicians). The experience in democracies with more developed economies is that elected officials handle large numbers of complaints. In the United Kingdom, for example, Members of Parliament can handle up to 3 million complaints annually. Harlow and Rawlings, *supra* note 23 at 445

⁵⁷ Interview 59

⁵⁸ *Id.*; Nick Robinson, *MPs need help with homework too*, INDIAN EXPRESS, Sept. 9, 2009

⁵⁹ Interview 58

⁶⁰ Interview 38

⁶¹ Interview 58

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

Politicians have also arguably 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 their states for many days each month holding public hearings in which citizens can complain about governance issues. These complaints are then followed up with by administrative staff. In Bihar, the Chief Minister receives around 10,000 complaints a month either in person or in writing.⁶² Although there is arguably some bias towards wealthier persons attending these hearings, many complaints involve those that affect 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.⁶³ 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.⁶⁴

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 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 ministers and others in the executive exercise over specific bureaucrats. If a local politician, particularly if they are in the opposition, is upset with the operation of the local

⁶² Interview 14

⁶³ *Id.*

⁶⁴ *Id.*

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 “Practically 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 . . .”⁶⁵ In a more charitable characterization, many officials say they closely pay attention to politicians as they see them as representatives of the people and so an important source of information. 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.”⁶⁶

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 view these leaders as a “politicizing” and corrupting influence on policy.⁶⁷ Politicians are accused of transferring bureaucrats not based on competence, but on perceived party loyalty or their malleability to colluding in corruption.⁶⁸ Politicians are antithetical to both a 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.⁶⁹ There is no standardized training required to become a

⁶⁵ Interview 59

⁶⁶ Interview 54

⁶⁷ AKHIL GUPTA, RED TAPE: BUREAUCRACY, STRUCTURAL VIOLENCE, AND POVERTY IN INDIA 187 (2012) (Finding in his study in Uttar Pradesh that “Bureaucrats 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.”); 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 politicizing administration.)

⁶⁸ Gupta, *supra* note 67 at 179 (Reporting that lower level bureaucrats complain that politicians lodge baseless complaints against administrative staff. He notes that politicians are often more likely to file complaints against bureaucrats than citizens because they have a certain comfort level and understanding of the system that most citizens do not.) 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 bureaucrats partaking in corruption once in office to recoup the cost. Interview 27; Lakshmi Iyer and Anandi Mani, *Traveling Agents: Political Change and Bureaucratic Turnover in India*, 94(3) THE REV. OF ECONOMICS AND STATISTICS 723 (2012) (documenting politicized transfer of bureaucrats in India).

⁶⁹ Interview 31 (explaining how he has witnessed some politicians in Madhya Pradesh ignore the complaints of constituents they believe vote for the opposing party); Interview 53 (with villagers outside Jabalpur, Madhya Pradesh, complaining that their local MLA had blatantly asked them why she should help them since she knew few in their (predominantly tribal) village had voted for her) Jayanth Krishnan et al., *Grappling at the Grassroots: Litigant-Efforts to Access Economic and Social Rights*, HARVARD HUMAN RIGHTS JOURNAL 36 (forthcoming 2014) (finding that citizens expressed the belief that politicians only aided those who had voted for them in the previous election)

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. Sometimes this is required by the bureaucracy for proof of address, but often it is an added extra step that increases the ability of politicians to dole out favors.⁷⁰ 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.⁷¹

While more politicians have gained power to affect administration, the opportunity for direct citizen engagement has also increased. The Gram Sabha – essentially a town hall meeting of a village – has wide powers under the panchayati raj act, as well as under many other pieces of legislation. For example, social audits of the National Rural Employment Guarantee Act are conducted by the Gram Sabha in which the entire village reviews the accounts of this employment scheme. Grievances about the implementation of this massive job program may be brought during these meetings and the Gram Sabha can issue a recommendation.⁷² However, this form of direct engagement has been handicapped by the constrained powers of these bodies to penalize officials and local elites who dominate the body. Ordinary citizens often remain unaware of these bodies or their functions and lack the capacity to actively engage with them even when they do take place. For example, a 2009-2010 study in Madhya Pradesh that involved 12,000 households from across rural areas in the state showed

⁷⁰ Interview 58 (with a local politician) (“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.”)

⁷¹ In 1993, the Constitution was amended to create standardized local government institutions. CONST. OF INDIA, Art. 243. However, the powers given to panchayat and municipal authorities (and their politicians) 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. With their power under threat with the rise of local government many state legislatures have been hesitant to surrender many powers to local government. Even when they do MLAs will frequently serve on local and district committees to assert their authority. Interview 30; 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 upheld as Constitutional by the Supreme Court. *Bhim Singh v. Union of India & Ors.* (May 6, 2010)

⁷² National Rural Employment Guarantee Act (2005) Ch. 4 Art. 17

that less than 5% of sampled villagers claimed social audits were even occurring in their community.⁷³

In summary, politicians are often seen by citizens as the most accessible way to complain to the government. The process of approaching them is less formal, they are known to the community, and they are frequently more responsive than the bureaucracy to 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. They are accused of complicity in or outright corruption – using the levers of the state for their own advantage. Also, politicians who do want to exert influence on the administration to improve service delivery find their power to do so is limited depending on their own political standing and relationship to the local bureaucracy.

C. Legal Redress

Legal redress can be either through the judiciary 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 powers to penalize officials themselves.

The Judiciary

The lower judiciary in India is not routinely involved in redressing grievances about the implementation of social welfare programs.⁷⁴ It is simply too expensive, confusing, and time consuming for someone to go to court to petition for rations or an old age pension they believe they were wrongly denied. Nor are there the equivalent of administrative courts in India that deal with grievances concerning social welfare programs.

⁷³ SAMARTHAN, IMPACT ASSESSMENT STUDY OF MNGREGS IN MADHYA PRADESH 69-72 (2011)

⁷⁴ See Jayanth Krishnan et al., *supra* note 69 (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.)

Instead, the Indian judiciary has seen the emergence of public interest litigation as a method by which litigants, frequently from civil society, move the High Courts and the Supreme Court to attempt to better implement social welfare programs on the behalf of the poor.⁷⁵ The largest and best known such instance of this strategy is the “Right to Food” case. In this case, the Supreme Court found the right to food to be part of the right to life (Article 21 of the Constitution) and ordered 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 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).⁷⁶ In a 2003 order the Court summed up its perspective: “the 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.”⁷⁷ Collectively the programs that come under the Right to Food case represent a large fraction of the core social welfare schemes operating in India today.

The Court continually monitors the progress of the implementation of its orders in the Right to Food case and issues follow up orders as it sees fit. It has even expanded the scope of the issues involved in the case in later orders (for example, in 2010 the Court declared that the government must provide shelter to homeless people in the country).⁷⁸ 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 like ombudsmen for the social welfare programs covered by the case.⁷⁹ Given these

⁷⁵ See generally, Robinson, *supra* note 16

⁷⁶ *PUCL v. Union of India* (2001) Supreme Court orders, available at <http://www.righttofoodindia.org/orders/interimorders.html>

⁷⁷ *PUCL v. Union of India* (2001) March 2, 2003 Supreme Court order, available at <http://www.righttofoodindia.org/orders/interimorders.html>

⁷⁸ See generally, *PUCL v. Union of India* orders related to “homeless” on Right to Food website, available at <http://www.righttofoodindia.org/orders/interimorders.html>

⁷⁹ Interview 60 (“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.”)

commissioners lack of resources, they usually focus their efforts on a few of the most vital aspects of the orders. 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 they will be held in contempt for not following the orders (a punitive power the Court rarely uses), but instead, "They are afraid they will get negative remarks in their record and it will effect their promotions if they cross the Court."⁸⁰ Meanwhile, the media plays an important role in publicizing the orders in the Right to Food case and so increases the pressure on the government to follow them.

Through its orders and the creation of right to food commissioners the Supreme Court has essentially created a nation-wide 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. Instead, the right to food case, like much public interest litigation, has acted more like an alarm bell pointing to widespread implementation failures that the Court has then demanded that the government correct with the media frequently helping amplify the judiciary's voice.⁸¹

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 30 days.⁸² If the request is not responded to within 30 days or illegitimately denied, the PIO can be fined by using an appeal

⁸⁰ Interview 60

⁸¹ Avani Mehta Sood, *Gender Justice through Public Interest Litigation: Case Studies from India*, 41 VANDERBILT J. OF TRANSNATIONAL L. 833, 904 (2008) (Interviewing Supreme Court justice who described PIL as acting like an "alarm clock" that alerts to the government to an urgent social problem.)

⁸² Right to Information Act, Chapter II (2005)

process to the state or central information commissioner.⁸³ These commissioners are typically retired civil servants.⁸⁴

The Right to Information Act is designed only to provide information about government activities and not implement any 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 a government program.⁸⁵ 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.⁸⁶ As one Right to Information Commissioner in Bihar explained, "People often ask what happened to someone's application to go on the BPL list. After they make this request the bureaucrats then process the request faster. This gives the person leverage."⁸⁷ A randomized control trial study in Delhi found that filing a right to information act request was almost as successful a strategy as paying a bribe and a more successful strategy than having a NGO write a letter of support when applying for a ration card.⁸⁸ The Act has also been used by civil society members and concerned members of the public to help expose widespread corruption or maladministration which the government then works to remedy.⁸⁹

The Right to Information Act though has encountered problems in its implementation. Civil society groups have complained that fines are not regularly given to Public Information Officers when they should be and the appeal process takes too long for it to be an effective threat against officials for most applicants.⁹⁰ Still, the Act is seen as one of the most far-

⁸³ *Id.* at Chapter V

⁸⁴ COMMONWEALTH HUMAN RIGHTS INITIATIVE, A RAPID STUDY OF INFORMATION COMMISSIONS ESTABLISHED UNDER THE RIGHT TO INFORMATION LAWS IN INDIA 11-12 (2012) (Finding that 90% of central and state chief information commissioners were former civil servants and 53% of central and state information commissioners.)

⁸⁵ Rukmini Shrinivasan, *Paper Power*, TIMES OF INDIA CREST EDITION, April 13, 2013

⁸⁶ RTI ASSESSMENT & ANALYSIS GROUP AND NATIONAL CAMPAIGN FOR PEOPLE'S RIGHT TO INFORMATION, SAFEGUARDING THE RIGHT TO INFORMATION: REPORT OF THE PEOPLE'S RTI ASSESSMENT 2008 (July 2009) (hereinafter "RTI Assessment")

⁸⁷ Interview 15 ("People often ask what happened to my application to go on the BPL list. After they make the request the bureaucrats then they process the request faster. This gives the person leverage.")

⁸⁸ Leonid Peisakhin and Paul Pinto, *Is Transparency an Effective Anti-Corruption Strategy? Evidence from a Field Experiment in India*, REGULATION AND GOVERNANCE, 4: 261 - 280 (2010)

⁸⁹ 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 31

⁹⁰ RTI Assessment, *supra* note 86

reaching and successful new initiatives of the last two decades in promoting more accountability in government.⁹¹

II. Creating Legibility and Control: Mechanisms of Grievance Redress

In *Seeing Like a State* James Scott argues that the modern state has brought more “legibility” to society by using such tactics as creating uniform measures, counting populations through a census, and cartographic representations that detail property boundaries. He writes, “Where 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 aspired to ‘take in charge’ the physical and human resources of the nation and make them more productive.”⁹² 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 more than many to bring a minimum amount of legibility over a tremendously diverse population. Its notorious problems with successfully targeting social welfare programs for the poor perpetually show its limited capability to even effectively distinguish the relative wealth of its citizens.⁹³

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 with the legibility necessary to effectively monitor and control them. Neither do politicians, the courts, or the public.

Today many of the most heralded public administration innovations are those that can bring new legibility to administration. 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 it to account. E-governance “solutions” promise to allow both citizens and officials to track the status of applications,

⁹¹ *Id.*

⁹² JAMES SCOTT, *SEEING LIKE A STATE: HOW CERTAIN SCHEMES TO IMPROVE THE HUMAN CONDITION HAVE FAILED* (1998); See also, Gupta, *supra* note 67 at 262 (“Enumeration is a critical modality of governmentality; it is through the collection of statistics that the conduct of conduct can be affected.”)

⁹³ Jean Dreze, *Poverty Targeting and Food Security*, SEMINAR (June 2012) (Describing practical and political challenges of targeting programs for the poor in India.)

complaints, and administrative action with a new level of legibility, and so potential for control.⁹⁴ Social audits enable citizens to directly report whether they have received public services or not.⁹⁵ These new innovations sit side-by-side with older techniques that had been developed to gain legibility over state actors like systematized standard setting, outside audits performed by third-parties,⁹⁶ or bureaucratic self-reporting like status reports from inferiors to superiors, annual reports, or receipt giving.⁹⁷

Like these other techniques, grievance redress mechanisms also allow for the production of more legibility over the actions of low-level officials. Administrators in both Madhya Pradesh and Bihar stated that public hearings were vital in how they monitor the bureaucracy with one district collector declaring, “It’s the biggest feedback I use to assess performance.”⁹⁸ Politicians also speak about how one of the primary methods they learned about problems with the implementation of programs is through the grievances and feedback of constituents. The judiciary, meanwhile, intervenes in and monitors actions of the bureaucracy almost entirely on the basis of complaints.

Importantly, in order for these grievance redress mechanisms to work, citizens must understand clearly what they should expect from officials.⁹⁹ Right to Service Acts and Citizen

⁹⁴ Perhaps the best known E-governance initiative is Aadhar which aims to give all Indians a Unique Identification number as well record their biometric data so that participants in government programs can be more accurately tracked. See About UIDAI, UIDAI website, (July 26, 2013) <http://uidai.gov.in/about-uidai.html>; Proposals have also been put forward to deliver as many services electronically as possible. See, PRS LEGISLATIVE SERVICES, THE ELECTRONIC DELIVERY OF SERVICES BILL, 2011 LEGISLATIVE BRIEF (2011)

⁹⁵ 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. These sorts of mandatory public displays for verification purposes seem to outpace privacy concerns in low trust environments. Anne Marie Goetz and Rob Jenkins, *Hybrid Forms of Accountability: Citizen engagement in institutions of public-sector oversight in India*, 3(3) PUBLIC MANAGEMENT REV. 363 (2001) (Discussing public boards displaying PDS rations in Maharashtra and other experiences in India of citizens overseeing public functioning.)

⁹⁶ These outside parties might be civil society or a more formal outside auditor like the Comptroller and Auditor General’s office, which reports to the Indian Parliament and the state legislatures. See generally, Chapter III, Comptroller and Auditor General’s Duties, Powers, and Conditions of Service Act (1971) (August 1, 2013) http://saiindia.gov.in/english/home/about_us/mandate/DPC_act/DPC_act.html

⁹⁷ 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, one often would have to apply for a service multiple times. 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 also track each application while sitting at the district office and in the state capital. Interview 16

⁹⁸ Interview 54; See also, Interview 43 (“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. I can understand from a complaint that an official isn’t doing well.”)

⁹⁹ Susan Rose-Ackerman, *Establishing the Rule of Law*, in WHEN STATES FAIL: CAUSES AND CONSEQUENCES 197 (2004) (“A precondition of citizen influence is information. It is easy to underestimate the importance of posters, fliers, and videotapes that tell people what they can expect from honest officials and how to make a complaint.”)

Charters detail out what government services citizens are entitled to. Single window help desks allow applicants to know exactly where to go to receive services and who to speak with. Meanwhile, simplifying rules and procedures means fewer hurdles for those trying to access state services.¹⁰⁰

This section looks at three mechanisms – level jumping, rights to implementation, and implementation advocates – that have been developed in recent years in India to not only encourage complaints, but ensure that these complaints are legible to higher level officials and, if appropriate, acted upon. The respective merits of these mechanisms are analyzed, including examining when these mechanisms might be most successful.

A. Level Jumping

As we have seen, in Madhya Pradesh and Bihar public hearings have become regular features of both politicians and top bureaucrats activities. Public interest litigation jurisprudence 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 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.

¹⁰¹

These different types of level jumping perform several functions. At one level, 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 not just to their immediate supervisors or to local grievance redress officers (who might do little), but directly to the top of the leadership hierarchy. It communicates to the public that officials work for citizens and they should not be intimidated in complaining. If a Chief Minister can sit and hear complaints from villagers and take them seriously than surely the block development officer should be able to do the same. Level jumping also allows high-ranking administrators,

¹⁰⁰ Interview 5 (“It use to be in the same department you would need 3 documents for a license in one part of the state and 5 documents in another part of the state. Now we have a common approach.”)

¹⁰¹ Interestingly, this was a mechanism the British used while they were in India as well, the British government encouraged district collectors to go on tour to hear feedback and grievances from the local population. Mason, *supra* note 32 at 68

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.”¹⁰² Notably, in a society where there is still low functional literacy oral complaints are an important avenue of gathering information about implementation.¹⁰³

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.¹⁰⁴ Top-level officials can often 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 potentially divert resources and attention from more local level solutions. For example, in Bihar, where public hearings are common, almost as many people complain at public hearings directly to the Chief Minister as all the district collectors combined.¹⁰⁵ 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. . . .”¹⁰⁶

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. Such a strategy should be undertaken in conjunction with other efforts such as

¹⁰² Interview 43

¹⁰³ Gupta, *supra* note 67 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.)

¹⁰⁴ Interview 14

¹⁰⁵ *Id.*

¹⁰⁶ Interview 60

building local level grievance redress authorities. Otherwise, level jumping might inadvertently result in centralizing power around the personalities of a few top-level officials, meaning that implementation is only done effectively when they cast their attention to a problem.

B. Rights to Implementation

One way to encourage complaints and make them more legible is to create rights to the delivery of specified services. For example, the Indian Parliament has passed acts that guarantee a right to education, a right to information, a right to rural employment, and is currently considering a sweeping act that would provide rights concerning food security.¹⁰⁷ Meanwhile, state legislatures in India have started enacting right to public service acts that guarantee designated government services will be delivered within set time frames, and if they are not, the responsible officials will be fined.¹⁰⁸

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. Indeed, one frequently cited reason for the poor implementation of social welfare programs is that those being targeted are inadequately empowered.¹⁰⁹ Rights have increasingly been seen as an answer to this challenge by the government. 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

¹⁰⁷ The Right to Information Act (2005); Mahatma Gandhi National Rural Employment Guarantee Act (2005); The Right of Children to Free and Compulsory Education Act (2009); The National Food Security Bill (2013) (currently an Ordinance)

¹⁰⁸ Robinson, *supra* note 49

¹⁰⁹ For example, the government has a Ministry of Social Justice and Empowerment to help empower traditionally marginalized groups like lower castes and the disabled, *see* Ministry of Social Justice and Empowerment website (August 1, 2013) <http://www.socialjustice.nic.in/>

judges) to monitor and control the bureaucracy by encouraging complaints from citizens and then penalizing erring behavior.¹¹⁰

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 30 days after an application is submitted then the concerned Public Information Officer will be fined.¹¹¹ 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 2010.¹¹²

The development of these triggered monetary penalties come out of the perceived failure of other tools, like service law, 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.¹¹³ 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 appeal lies to independent commissioners.¹¹⁴ 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

¹¹⁰ Rose-Ackerman, *supra* note 99 at 200 ("Limiting 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.")

¹¹¹ Right to Information Act (2005)

¹¹² These acts provide that if a service is not given or a reason for not providing it within a set time frame then the relevant official will be fined. A similar, if somewhat different, trigger has been built into NREGA. If a person does not receive work after a designated period they are entitled to an automatic employment allowance. Robinson, *supra* note 49

¹¹³ Interview 62 (Official 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.)

¹¹⁴ Robinson, *supra* note 49; Right to Information Act, Ch. III and IV (2005)

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 seen as more independent and more likely to penalize uniformly, but is also more costly to maintain.

Rights are one useful technology to 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 it. Their successful invocation often requires a level of knowledge and resources that is unrealistic for most Indians, while automatically triggered penalties to enforce rights may be too blunt an instrument to appropriately penalize errant behavior.

C. Implementation Advocates

As has already been indicated, those who bring grievances to the state over the lack of implementation of the law often find that if the government is not immediately responsive that 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.¹¹⁵ If the government does not immediately provide information, Right to Information Act requests can last years before they are answered, after multiple levels of appeal.¹¹⁶ The National Rural Employment Guarantee Act 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 in Guillermo O'Donnell's words "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

¹¹⁵ Sood, *supra* note 81

¹¹⁶ RTI Assessment, *supra* note 86

unlawful actions or omissions by other agents or agencies of the state.”¹¹⁷ However, in recent years, India has seen the birth of many 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.¹¹⁸ 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 (such as in the right to food case). Legislatures have created human rights and other commissions to follow up on reports of rights 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”.

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.¹¹⁹

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, and so were essentially a “glorified post box.” Not surprisingly, in early 2012 the Bihar Lokayukta only received about 5-10 complaints a day (in a state of 100 million people), mostly from former bureaucrats about not getting their pension.¹²⁰

In December 2011, a new Bihar Lokayukta Act was passed, ushering in a potentially new era in the life of the institution.¹²¹ This act gives the Lokayukta’s office the power and staff to both investigate and prosecute (neither of which they had before).¹²² The Bihar lokayukta now

¹¹⁷ O’Donnell argues that accountability is best conceptualized as horizontal and vertical. Vertical involves how the citizen controls government through elections, while horizontal accountability involves internal checks and balances in government. Guillermo O’Donnell, *Horizontal Accountability in New Democracies*, 9(3) J. OF DEM. 112, 116 (1998)

¹¹⁸ Few of these complaints have been successfully resolved. Interview 60

¹¹⁹ Krishnadas Rajagopal, *A watchdog without teeth*, INDIAN EXPRESS June 29, 2010

¹²⁰ Interview 64

¹²¹ The Bihar Lokayukta Act of 2011

¹²² *New Lokayukta Act Comes into Force*, THE TIMES OF INDIA, Jan. 2, 2012

also has the ability to investigate instances of maladministration although it may only prosecute violations of the Prevention of Corruption Act. Essentially, the new Bihar Lokayukta theoretically operates much more like a prosecutor's office 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 own investigative police force.¹²³ 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.¹²⁴ However, like the newly empowered Bihar lokayukta, its mandate is limited to only investigating corruption and it does not investigate cases of simple non-implementation of programs.¹²⁵

Since the 1960's, 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.¹²⁶ 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.¹²⁷ 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. Since then the anti-corruption movement has become a central force in Indian politics and there are currently several draft lok pal bills in circulation, including one that has been passed by the Lok Sabha, but not the Raj Sabha, in the Indian Parliament.¹²⁸

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 mid-day meals in schools or the improper functioning

¹²³ Sanctioned Posts & Vacancy Position Lokayukt Organization Ason, Aug. 7, 2012, available at <http://mplokayukt.nic.in/Sanctioned%20Strength%20Vacancy%20Position.pdf>

¹²⁴ *Lokayukta Raid on Patwari Unearths 2.5 crore assets*, THE TIMES OF INDIA, March 29, 2012

¹²⁵ The Madhya Pradesh Act No. 37 of 1981, Sect. 2(b) (Listing allegations that the Lokayukta can investigate)

¹²⁶ Rajagopal, *supra* note 118

¹²⁷ See generally, India Against Corruption website, (July 26, 2013), <http://www.indiaagainstcorruption.org/>; Paul de BERNIERI, *Anna Hazare's Campaign Awakens Middle Class*, REUTERS, Aug. 24, 2011, available at <http://in.reuters.com/article/2011/08/24/idINIndia-58938520110824>

¹²⁸ PRS LEGISLATIVE SERVICES, ALL ABOUT THE LOK PAL BILL (2012) available at <http://www.prsindia.org/pages/all-about-the-lok-pal-bill-137/>

of hospitals.¹²⁹ The National Commission for the Protection of Child Rights and its state equivalents similarly looks at civil and political rights violations like accusations of child soldiers being used by para-military groups in the country, but also social welfare issues like health care for children. It also is the enforcement agency under the Right to Education Act.¹³⁰

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).¹³¹

NREGA Ombudsmen

The National Rural Employment Guarantee Act, enacted in 2005, is a massive centrally-funded social welfare program that provides 100 days of work at a rate of 60 Rs or more to every family in rural India.¹³² If one applies for work and does not receive it within 15 days the state is mandated to provide the worker with an unemployment allowance.¹³³ 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-availability of work, embezzlement of funds, or the state failing to pay an unemployment allowance if work is not given.¹³⁴ To respond to the large number of complaints concerning the early implementation of the Act in 2009 the centre ordered the states to create ombudsmen in each district to hear complaints and take measures to remedy them.¹³⁵ However, few of these ombudsmen have been appointed and their work has suffered because they are given few

¹²⁹ National Human Rights Commission, NHRC notices to three MCDs and Delhi Govt on poor quality of mid-day meal served in schools, March 28, 2013, *available at* <http://nhrc.nic.in/dispArchive.asp?fno=12824>; NHRC issues notice to Chandigarh Administration on allegations of malfunctioning in emergency services of three hospitals, February 20, 2013, *available at* <http://nhrc.nic.in/disparchive.asp?fno=12784>

¹³⁰ The Right of Children to Free and Compulsory Education Act, Chapter VI (2009)

¹³¹ The Commissions for Protection of Child Rights Act, Sect. 15 (2005)

¹³² National Rural Employment Guarantee Act, Sect. 6(1)

¹³³ *Id.* at Sect. 7(1)

¹³⁴ Andrew MacAskill, Unni Krishnan, and Tushar Dhara, *India's Job Program Scam Pays Wages to Dead Workers*, BLOOMBERG, April 5, 2013

¹³⁵ Ministry of Rural Dev.'t, 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, Sept. 7th 2009, *available at* http://nrega.nic.in/Ombudsman_Order.pdf

resources and low pay.¹³⁶ The Rural Development Minister has found that even those ombudsmen who were appointed “failed to address the grievances” of complainants.¹³⁷

Design Considerations

As Guillermo O’Donnell writes, “Effective horizontal accountability is not the product of isolated agencies, but of networks of agencies (up to and including high courts) committed to upholding the rule of law.”¹³⁸ Implementation advocates can potentially be an important part of developing watchdog clusters who can hold officials answerable. Yet, several design challenges are confronted when creating these implementation advocates, including determining their composition, what types of complaints they may investigate, and their ability to then act on these investigations.

Body	Composed of	Appointed By	Investigate	Power to Penalize	Refer to
Right to Food Comm’ner	Civil Society Member/Former Bureaucrat	Supreme Court	Individual Complaints and Systemic Failures	No	Supreme Court
Lokayukta (Madhya Pradesh) ¹³⁹	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 ¹⁴⁰	Civil Society/Former Bureaucrat/ Former Judge	State government, bureaucracy, and civil society	Individual Complaints	No (but may issue directions)	Judiciary or Bureaucracy
National	Former Supreme	Mixture of	Individual	No (but may	Government

¹³⁶ Sreelatha Menon, *NREGA Ombudsmen Fail to Take Off*, BUSINESS STANDARD, June 26, 2011

¹³⁷ He recommended that the ombudsmen should be appointed by the Centre instead of the states to provide more accountability. *Ombudsmen of states on NREGA failed, need central body: Jairam*, DECCAN HERALD, July 18, 2011

¹³⁸ O’Donnell, *supra* note 116 at 119

¹³⁹ The Madhya Pradesh Act no. 37 (1981), available at <http://mplokayukt.nic.in/Adhinyam1981.pdf>

¹⁴⁰ Ministry of Rural Development, Instructions on Ombudsman, May 24, 2013, available at http://nrega.nic.in/Netnrega/WriteReaddata/Circulars/Revised_instructions_on_ombudsman.pdf

Human Rights Commission ¹⁴¹	Court Judge	Majority and Minority Leadership	Complaints and Systemic Failures	recommend actions)	(executive) or Judiciary
National Commission for Protection of Child Rights ¹⁴²	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 and 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 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

¹⁴¹ The Protection of Human Rights Act, Ch. 2 (1993)

¹⁴² The Commission for Protection of Child Rights Act (2005)

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.

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.¹⁴³ 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.¹⁴⁴

In conceptualizing India's implementation advocates it would be useful to further study when hard prosecutorial power is necessary and when softer investigatory power that can aid in negotiation and 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 improve their effectiveness. Such an approach does not reject a rights-based approach—indeed, many of the merits of a rights-based approach to grievance redress in India have been pointed to in this article.¹⁴⁵ Nor does this approach dismiss analyzing the costs and benefits of specific grievance redress mechanisms. Such balancing has also been used in this article. Instead, the argument has been for placing these approaches to grievance redress within the framework of accountability regimes.

¹⁴³ 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.)

¹⁴⁴ *Id.*

¹⁴⁵ 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.

This framework presents a more comprehensive picture than either a rights-based approach—which focuses on complaints that have been formalized as rights and the mechanisms for hearing them—or an ad hoc cost-benefit analysis of grievance redress mechanisms—which narrowly examines the merits of just one tool for redress.¹⁴⁶ In being more descriptively complete the accountability regime approach arguably is more likely to generate productive strategies for grievance redress and implementation. 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 may be one way to 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 that reports to Parliament that may independently hear complaints from constituents.¹⁴⁷

This 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 correct demarcation of duties between different actors, but by assuming that officials will be answerable to different accountability regimes it forces policymakers to recognize that there will need to be a demarcation and weigh the value of different options.

Although an accountability regime approach has clear strengths, it requires additional development. Comparative research—both between countries and across states in India—could

¹⁴⁶ Another proposed framework for understanding grievance redress is supply and demand. *See*, Gauri, *supra* note 21. 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.

¹⁴⁷ For more information on such an ombudsman in the United Kingdom, *see*, Parliamentary and Health Service Ombudsman website (July 26, 2013) <http://www.ombudsman.org.uk/>

help policymakers understand how grievance redress mechanisms and accountability regimes operate in different contexts. 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.¹⁴⁸ The recent revitalization of the comparative administrative law literature, which already invokes accountability regimes, may be a useful place to ground such further study.¹⁴⁹

The three accountability regimes—administrative, legal, and political—used in this article seemingly help bring conceptual clarity to our understanding of grievance redress, but further sub-dividing these regimes or adding new regimes could also be beneficial. For instance, focusing on the operation of financial accounting mechanisms, including auditors, may reveal that these accounting mechanisms operate differently enough in some contexts that they should be described as part of a separate financial accountability regime.¹⁵⁰ Addressing these larger conceptual issues will require more empirical and theoretical work.

Finally, the impact of grievance redress on the creation of a certain type of citizenship requires more rigorous analysis. 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. Grievance redress mechanisms empower not only the state, but also 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.¹⁵¹

¹⁴⁸ In general, with limited resources it is unclear how many should go into grievance redress architecture and how much into actual services. Susan-Rose Ackerman makes a similar point about investment in anti-corruption safeguards. SUSAN ROSE-ACKERMAN, CORRUPTION AND GOVERNMENT 52 (1999) (“The optimal amount of corruption is not zero Once one takes the costs of prevention into account, the level of deterrence expenditures should be set where the marginal benefits equal the marginal costs.”)

¹⁴⁹ For an overview of the comparative administrative law literature see SUSAN ROSE-ACKERMAN AND PETER LINDSETH, COMPARATIVE ADMINISTRATIVE LAW (2011); Janina Boughey, *Administrative Law: The Next Frontier for Comparative Law*, 62 INT’L AND COMP. L. QUARTERLY 55 (2013)

¹⁵⁰ Similarly, implementation advocates perhaps would be more productively understood as not merely an extension of legal, administrative, or political accountability regimes, but as distinct and separate from them.

¹⁵¹ Drawing on Felstiner, Abel and Sarat, 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 citizen that their complaint can be redressed and an expectation that the state should. W. Felstiner, R. Abel and A. Sarat, *The emergence and transformation of disputes: Naming, blaming and claiming* 15 L. AND SOC’TY REV. 631 (1980-1)