Vidhi

Centre For Legal Policy

BETTER LAWS. BETTER GOVERNANCE

LAW IN NUMBERS

EVIDENCE BASED APPROACHES TO LEGAL REFORM

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The Vidhi Centre for Legal Policy is an independent think-tank doing legal research and assisting government in making better laws.

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INTRODUCTION

A British judge who served in India is said to have told a young British civil servant:

> *"When you are a bit older, you will not quote Indian statistics with that assurance. The government are very keen on amassing statistics—they collect them, add them, raise them to the nth power, take the cube root and prepare wonderful diagrams. But what you must never forget is that every one of those figures comes in the first instance from the chowty dar (sic) [village watchman], who just puts down what he damn pleases."*

(Darrell Huff, How to Lie With Statistics, 1954 cited in Philip Delves Broughton, "Pity Greece's statistician bearing blame for errors of others", Financial Times, 05 August, 2016)

For a nation that prides itself on the invention of the "0", there is a curious lack of interest in understanding the actual state of affairs in India through numbers. Collecting statistics in India, despite the significant passage of time since British rule ended, has remained an arduous exercise. There are many areas where statistics are generated on the basis of the inputs received by persons untrained in maintaining records and data. Even worse, when they are recorded, they are maintained so poorly that they are all but useless to the researcher or policy-maker.

It is thus no surprise that law-making and reform, which has traditionally scoffed at data and statistics, continues to be made on the basis of anecdote, intuition and common sense. While there is much to commend each of these as foundations for law-making, without the necessary empirical evidence, laws often fail to achieve their desired results. The history of modern India is littered with failed legal interventions that took no note of, or actively disregarded, data-based research that showed that the measure being attempted would fail.

We believe that there are proper and improper ways to use data in public policy. Even with all the caveats about the quality of data, numbers can tell a story. Apart from relying on abstract principles or anecdote, a law-maker who wishes to make the maximum intended impact through the law ought to be informed by facts borne out by empirical evidence. Currently however, such evidence is largely conspicuous by its absence.

This Briefing Book seeks to plug this gap in public policy. It takes 20 topics of contemporary legal relevance and on the basis of empirical evidence either suggests reforms or approaches towards reform of the law. It covers five broad themes—crime and society, the legislature, the judiciary, the financial sector, the environment and human capabilities—and shows how in each of them numbers can form the plot lines of a powerful reform story.

Some of these entries bring nuance, or add depth to a well-known issue. The true extent of the widely-discussed drug problem in the state of Punjab cropped up starkly when we plotted the number of registered cases under the Narcotic Drugs and Psychotropic Substances Act, 1985 in all states in India. Others contradict perceived notions about proposed solutions. We found, for instance, that there is nothing "special" about Special Courts set up under various laws–they are often regular courts designated as "special" in name only, and unable to dispose cases quickly as intended. Some also throw up startling results regarding the manner in which laws are implemented. We found that waivers of the requirement to undertake local clinical trials, based on an "unmet clinical need", have been granted disproportionately to trials relating to cancer and rare diseases. Worryingly, however, clinical research on diseases like tuberculosis is comparatively inadequate, and not proportionate to its higher mortality rate in India.

The British Prime Minister Benjamin Disraeli said that there were three kinds of lies—lies, damned lies and statistics. This Briefing Book by presenting statistics in an accessible and compelling form, questions Disraeli's trinity. We hope that at least in these 20 areas, in view of what we have presented, positive legal reform will be seriously considered by governments. Even if not, if this Book spurs further empirical research to ground public policy and law-making, it will have served its purpose.

THEMATIC AREAS

THE JUDICIARY	THE FINANCIAL SECTOR	CRIME & SOCIETY	THE LEGISLATURE	ENVIRONMENT & HUMAN CAPABILITIES
Regional Benches of High Courts	SEBI's Enforcement of Insider Trading Regulations	The Persistence of Manual Scavenging	Implementation of Laws Enacted by Parliament	Appointment of Vice-Chancellors in Central Universities
Post-retirement Appointment of Supreme Court Judges	Women Directors on Boards of Companies	Rising Instances of Missing Children	Ordinance-making by State Governments	Judicial Enforcement of the Right to Education Act
Governmental Litigation and Taxation Appeals	Mutual Funds and Transparency in the Financial Market	Enforcement of the Narcotic Drugs and Psychotropic Substances Act	Measuring Quality of Legislative Debates	Pharmaceutical Regulation and Public Health Need
Working of Special Courts		Deterring Sexual Harassment in Public Places		Grant of Environmental Clearances
		Tackling Cyber Crime under the Information Technology Act		Regulation of Electronic Cigarettes

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THE JUDICIARY

REGIONAL BENCHES OF HIGH COURTS

THE QUESTIONS

The twenty-four High Courts of India are the apex of the judiciary at the State level, above the trial courts and below the Supreme Court of India. As of March, 2016, there were almost 40 lakh cases pending across all the High Courts.

Article 214 of the Constitution mandates that there should be a High Court for every State. At present, at least eight High Courts exercise jurisdiction over multiple States and Union Territories (Bombay, Calcutta, Gauhati, Gujarat, Hyderabad, Kerala, Madras, and Punjab and Haryana High Courts).

Additionally, some High Courts sit in more than one place, with eight of them having multiple regional benches across a State or States. There are two broad reasons for the establishment of these benches: historical reasons (such as those necessitated by re-drawing of State boundaries) and pragmatic reasons (demand from the local Bar or ensuring easier access to the High Court in remote regions). Recent examples include Gulbarga and Dharwad for the Karnataka High Court and Madurai for the Madras High Court.

Regional benches present advantages in improving access to justice. Reducing the cost and expense of travelling to the capital city to litigate a case might mean fewer adjournments and delays in disposal, since proceedings will not be contingent on the lawyers' and parties' ability to travel to the High Court.

However, there are limits to the number of regional benches a High Court can have. First, there are high initial infrastructure costs involved in setting up the building and recruiting staff for the regional bench. Second, there may be a loss of efficiency as the High Court cannot take advantage of scale in hiring. Finally, there may be an increase in filings, which the High Court may not be able to address, given the perennial vacancy problem in judge posts.

Apart from regional benches, there may also be a principled and practical case for carving out new High Courts from existing ones. This has been done recently in the case of the Gauhati High Court.

Given the enormous powers of judicial review that High Courts exercise under Article 226 of the Constitution and their role as appellate fora in most cases, the questions that this entry is therefore interested in are:

- Which High Courts can benefit from more regional benches?
- Where can a case be made for carving out new High Courts from existing ones?

ANALYSIS

There is a very high correlation between the population of a State and the number of cases filed in the High Court in that State. Since exact district-wise data of pendency and filing of cases is not available across all courts, we have used population as a proxy to determine the "jurisdictional burden" of the specific benches in each High Court.

FIG. I

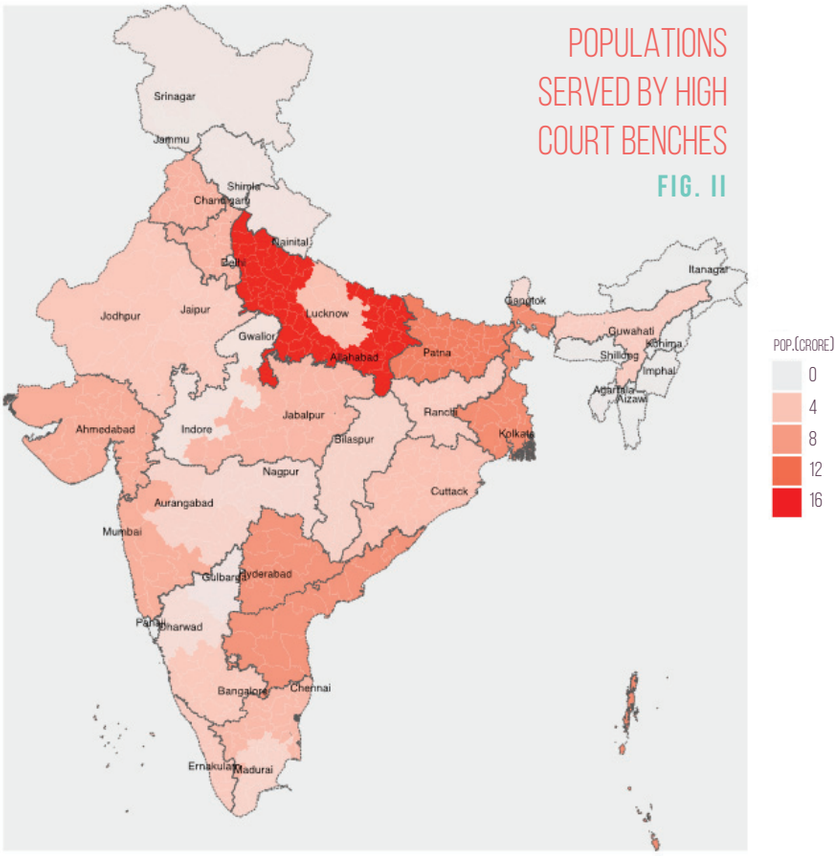
HIGH COURT	PERMANENT BENCH	AREAS COVERED	POPULATION COVERED
Allahabad High Court	Allahabad	Rest of Uttar Pradesh not under jurisdiction of Lucknow Bench	15,62,98,292
Patna High Court	Patna	Bihar	10,40,99,452
Calcutta High Court	Kolkata	West Bengal + Andaman and Nicobar Islands	9,17,27,680
Hyderabad High Court	Hyderabad	Andhra Pradesh and Telangana	8,45,80,777
Gujarat High Court	Ahmedabad	Gujarat	6,04,39,692
Bombay High Court	Mumbai	Mumbai, Kolhapur, Nashik, Pune, Raigad, Ratnagiri, Satara, Sangli, Sindhudurg, Solapur, Thane, Dadra & Nagar Haveli, Daman, Diu	5,87,65,326
Punjab and Haryana High Court	Chandigarh	Chandigarh + Haryana + Punjab	5,41,12,003
Madhya Pradesh High Court	Jabalpur	Rest of Madhya Pradesh not under jurisdiction of Gwalior and Indore Benches	5,11,48,803
Madras High Court	Chennai	Rest of Tamil Nadu not under jurisdiction of Madurai Bench	4,78,28,052
Allahabad High Court	Lucknow	Lucknow, Faizabad, Sultanpur, Rai Bareli, Pratapgarh, Barabanki, Gonda, Baharaich, Sitapur, Kheri, Hardoi and Unnao	4,32,83,185
Orissa High Court	Cuttack	Odisha	4,19,74,218
Rajasthan High Court	Jodhpur	Rest of Rajasthan not under jurisdiction of Jaipur Bench	3,55,71,346
Karnataka High Court	Bangalore	Rest of Karnataka not under jurisdiction of Gulbarga and Dharwad Benches	3,50,52,413
Kerala High Court	Ernakulam	Kerala + Lakshadweep Islands	3,34,52,106

HIGH COURT	PERMANENT BENCH	AREAS COVERED	POPULATION COVERED
Rajasthan High Court	Jaipur	Ajmer, Alwar, Bharatpur, Dhaulpur, Kota, Bundi, Jhalawar, Baran, Jaipur, Jhunjhun, Sawaimadhopur, Karauli, Sikar, Tonk and Dausa	3,30,49,666
Jharkhand High Court	Ranchi	Jharkhand	3,29,66,238
Gauhati High Court	Guwahati	Assam	3,11,69,272
Chhattisgarh High Court	Bilaspur	Chhattisgarh	2,55,40,196
Bombay High Court	Aurangabad	Ahmednagar, Aurangabad, Beed, Dhule, Jalna, Jalgaon, Latur, Nanded, Osmanabad, Parbhani	2,50,08,515
Madras High Court	Madurai	Kanniyakumari, Tirunelveli, Tuticorin, Madurai, Dindigul, Ramanatahapuram, Virudhunagar, Sivaganga, Pudukottai, Thanjavur, Tiruchirapalli and Karur	2,43,10,906
Bombay High Court	Nagpur	Akola, Amravati, Bhandara, Buldhana, Chandrapur, Nagpur, Wardha, Yavatmal	1,94,12,339
Delhi High Court	Delhi	NCT of Delhi	1,67,53,235
Karnataka High Court	Hubli-Dharwad	Bagalkot, Bellary, Belgaum, Dharwad, Gadag, Haveri, Uttara Kannada-Karwar and Koppal	1,65,40,521
Madhya Pradesh High Court	Gwalior	Gwalior, Shivpuri, Datia, Guna, Vidisha, Bhind and Morena	1,09,10,585
Madhya Pradesh High Court	Indore	Alirajpur, Barwani, Dewar, Dhar, Indore, Jhabua, Mandsaur, Neemuch, Ratlam, Rajgarh, Shajapur, Ujjain and Khargone	1,05,38,177
Uttarakhand High Court	Nainital	Uttarakhand	1,00,86,292

HIGH COURT	PERMANENT BENCH	AREAS COVERED	POPULATION COVERED
Karnataka High Court	Gulbarga	Bidar, Bijapur, Gulbarga, Yadgir and Raichur	83,64,785
Jammu and Kashmir High Court	Srinagar	Rest of Jammu and Kashmir not under jurisdiction of Jammu Bench	71,98,115
Himachal Pradesh High Court	Shimla	Himachal Pradesh	68,64,602
Jammu and Kashmir High Court	Jammu	Jammu, Doda, Kishtwar, Rajouri, Reasi, Udhampur, Ramban, Kathua, Samba and Poonch	53,50,811
Tripura High Court	Agartala	Tripura	36,73,917
Meghalaya High Court	Shillong	Meghalaya	29,66,889
Manipur High Court	Imphal	Manipur	25,70,390
Gauhati High Court	Kohima	Nagaland	19,78,502
Bombay High Court	Panaji	Goa	14,57,723
Gauhati High Court	Itanagar	Arunachal Pradesh	13,83,727
Gauhati High Court	Aizawl	Mizoram	10,97,206
Sikkim High Court	Gangtok	Sikkim	6,10,577
		Median Population	**2,46,59,711**
		Average Population	**3,16,48,218**

The data immediately shows up why there is merit in a demand for separate benches in the State of Uttar Pradesh, especially in the Western and Eastern regions given the location of the Allahabad High Court and the large population over which it has jurisdiction. Likewise, a bench in North Bengal might make the Calcutta High Court more accessible to litigants there. A separate High Court for Andhra Pradesh is already on the cards so the Hyderabad High Court may be less burdened in the future. After decades of sharing a High Court, perhaps Punjab and Haryana may have a legitimate claim to more regional benches in each State, if not separate High Courts altogether. Even within High Courts which have multiple benches, there is a case for re-distributing districts that are covered by the principal bench in the Bombay High Court and the Madhya Pradesh High Court so that they are not disproportionately overburdened.

- A single bench of the Allahabad High Court exercises jurisdiction over more than 15 crore people, while the Sikkim High Court exercises jurisdiction over a little over 6,00,000 people.
- The Bihar High Court has only a single bench despite exercising jurisdiction over more people (10,40,99,452) than the combined High Courts of Jharkhand, Kerala and Chattisgarh (9,92,71,351).
- The Mumbai and Jabalpur benches of the Bombay and Madhya Pradesh High Courts respectively (both of which have multiple regional benches) each exercise jurisdiction over more people (5,87,65,326 for the Mumbai Bench and 5,11,48,303 for the Jabalpur Bench) than the other two benches in their respective states (Aurangabad and Nagpur [Maharashtra]; Gwalior and Indore [Madhya Pradesh] combined).



THE WAY FORWARD

The data immediately shows the disproportionate jurisdictional burden of some High Courts and benches over others. Separate benches and separate High Courts may be called for along the following lines:

- The Western and Eastern regions of Uttar Pradesh merit a demand for separate benches, given the location of the Allahabad High Court and the large population over which it has jurisdiction.
- Similarly, a bench in North Bengal might make the Calcutta High Court more accessible to litigants there.
- For High Courts with multiple benches like the Bombay and Madhya Pradesh High Courts, there is a case to be made for re-distributing the districts that are covered by the principal benches so that they are not disproportionately overburdened.
- A separate High Court for Andhra Pradesh is already on the cards so the Hyderabad High Court may be less burdened in the future. After decades of sharing a High Court, perhaps Punjab and Haryana may have a legitimate claim to more regional benches in each State, if not separate High Courts altogether.

NOTES TO DATA

- The exact number of cases pending across the High Courts, according to the latest available data is 38,91,076. See <http://supremecourtofindia.nic.in/courtnews/2016_issue_1.pdf>.
- The figures for the State-wise population were obtained from the Census of India (2011).
- Information about the areas covered under a High Court and its benches was obtained from a combination of sources, namely, the laws setting up various High Courts, relevant notifications and circulars.

POST-RETIREMENT APPOINTMENT OF SUPREME COURT JUDGES

THE QUESTIONS

The need for an independent judiciary has dominated news cycles in the wake of the stillborn National Judicial Appointments Commission, struck down by the Supreme Court as an unconstitutional method for appointing judges. Scant attention however has been paid to post-retirement employment of judges in government-appointed positions, arguably a more direct and perverse threat to an independent judiciary.

This entry takes a step towards addressing this by asking:

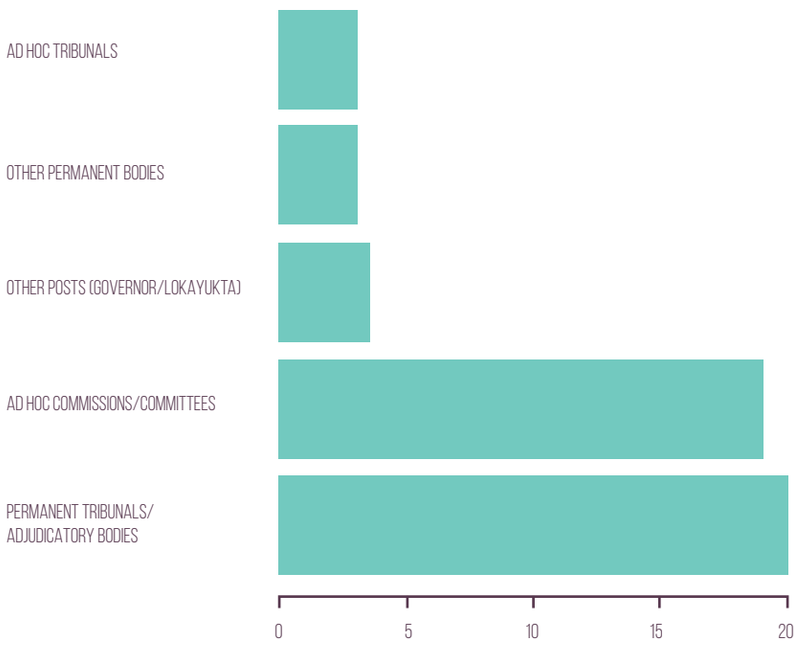
- How widespread is the phenomenon of post-retirement appointment of judges to government positions?
- Where does the responsibility for its incidence lie?
- What are the possible causes for its pervasiveness?

ANALYSIS

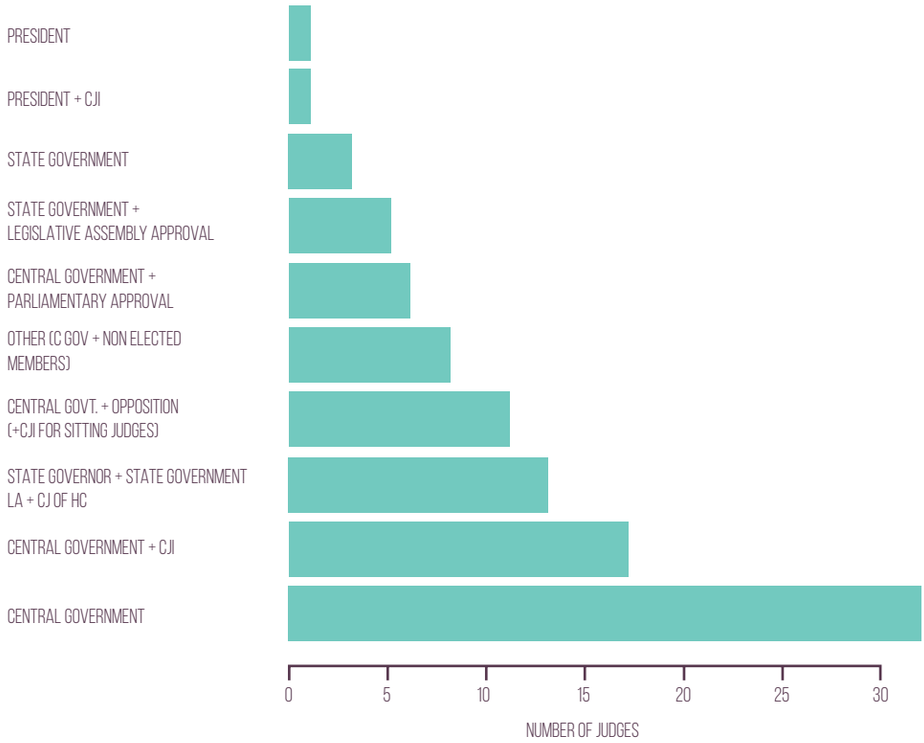
We collected the following information for the last 100 retirees of the Supreme Court (see notes to data for cut-offs): the body to which the judges were appointed post-retirement, the appointing authority, whether the appointment of a retired judge to the position was required by the law, and the duration after their retirement within which the appointment was made. The most fundamental finding was that incidence of post-retirement employment of judges in government-appointed positions is high, with 70% of the last 100 retirees being appointed.

BODY TO WHICH JUDGES HAVE BEEN APPOINTED

FIG. 1



- The maximum number of such appointments are to tribunals or adjudicatory bodies, with ad hoc commissions or committees a close second.



APPOINTING AUTHORITIES

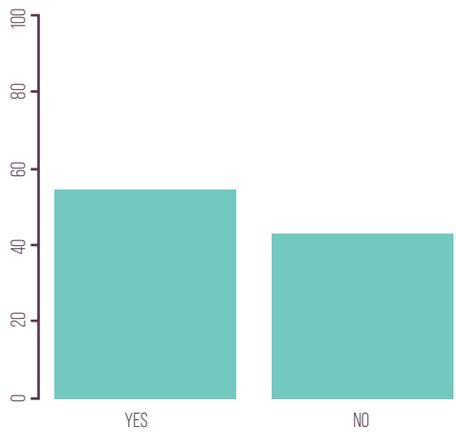
FIG. II

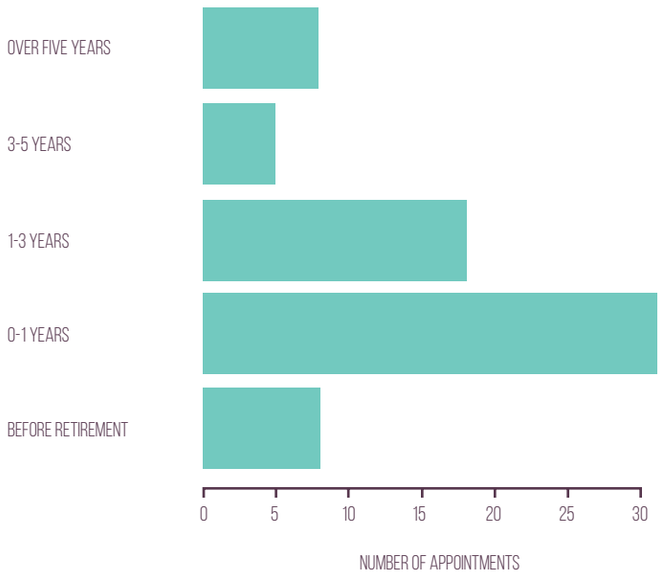
- 36% of appointments are made exclusively by Government (Central and State), highlighting a significant independence concern.
- Where there are checks and balances to appointment, these are primarily through judicial involvement, with 43% of appointments requiring the involvement of the Chief Justice of India or the Chief Justice of a High Court.

PROPORTION OF APPOINTMENTS REQUIRED BY LAW

FIG. III

- In 56% of post-retirement appointments, the appointment of judges was required by the law. This questions the popular myth that post-retirement appointments are only a symptom of supplicant judges and governments seeking to buy their independence; instead, it is a structural phenomenon.





DURATION AFTER RETIREMENT

FIG. IV

- A significant majority of appointments takes place within 1 year of retirement, with the process often having been initiated at a time the judge is holding office.

CAUSES FOR PERVASIVENESS

There are several reasons why the incidence of post-retirement employment is significant today. Reasons pertaining to increase in demand for judges, owing to creation of new tribunals and commissions, are significant, but beyond the remit of this entry. Reasons pertaining to the supply side, i.e. the motivations underlying the willingness of several judges to accept employment post-retirement are however equally significant.

The latest increase to judges' salaries was made in 2006, with the Chief Justice and judges of the Supreme Court receiving a monthly salary of INR 1,00,000 and 90,000 respectively. In contrast, the cap on pensions is 50% of the basic wage plus certain allowances. This indicates that pensions and post-retirement perquisites of a judge are clearly insufficient to maintain a semblance of the standard of living a judge previously enjoyed. When this is coupled with the fact that life expectancy in India has increased, while the retirement age of Supreme Court judges remains stagnant, the increasing willingness of judges to work post-retirement is obvious. Article 124 of the Indian Constitution, which came into force in 1950, stipulated 65 as the retirement age for Supreme Court judges. In 1960 ten years after its enactment, the combined (female and male) life expectancy at birth in India was 41.1 years; in 2013 it was 67.6. However, Article 124 has not been amended.

THE WAY FORWARD

The data demonstrates the pervasiveness of post-retirement employment of judges and two possible reasons for its high incidence. It also underlines the baneful impact on judicial independence, given governmental involvement in such employment and the short time lags between retirement and post-retirement office. To rectify this, the following approach may be adopted:

- Increase retirement ages of Supreme Court judges to 70 years;
- Increase pensions to match last- drawn salary;
- Bar post-retirement employment of judges to government-appointed positions, except ad-hoc committees and commissions of inquiry.
- Amend all relevant statutes to set up specialised tribunal and commission services to create a specialised cadre of judges.

Similar steps may also be considered for retired High Court justices. These recommendations will ensure three objectives: protection of judicial independence, creation of genuine specialisation in tribunals and commissions and a life of dignity after retirement for Supreme Court and High Court justices.

NOTES TO DATA

- The cut-off date for consideration of the last 100 retired judges from the SC is 12/02/2016.
- The data is restricted to post-retirement appointments made by Government, both Central and State.
- The data on life expectancy was obtained from <http://data.worldbank.org/indicator/SP.DYN.LE00.IN?locations=IN>

GOVERNMENTAL LITIGATION AND THE GROWING PROBLEM OF TAXATION APPEALS

THE QUESTIONS

Pendency is arguably the single biggest problem that the judicial system faces today. One of the first steps in tackling this is understanding who litigates, in what areas, and how often. It has routinely emerged that the Government is the biggest litigant, borne out again through a status note issued by the Department of Justice (Status Note on National Litigation Policy). This stated that of the 61,300 cases pending before the Supreme Court in March 2015, a significant number had been filed in the first instance or on appeal by the Government.

In this entry, we aim to further break down this data to ask:

- What are the main subject areas of Government litigation?
- What is the rate of disposal of cases in the most commonly litigated areas?

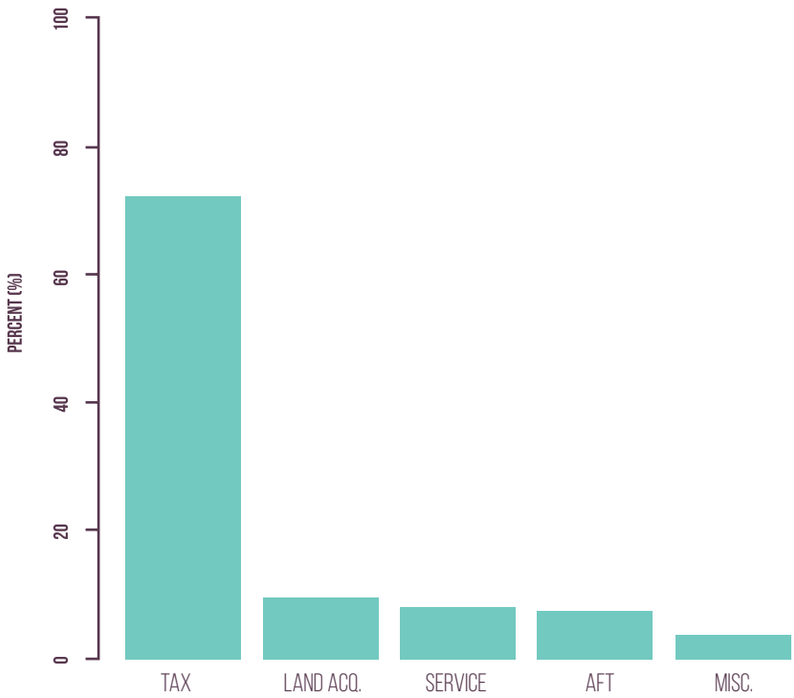
Through this, we hope to understand the kinds of cases that Government brings before the Supreme Court and their success rate. A low rate of success is likely to indicate that the Government needs to rethink its litigation strategy.

ANALYSIS

Through an empirical review of 5000 randomly sampled special leave petitions ("SLPs") filed in 2014, we found that 857 (constituting a little over 17%) were filed by Central and State Governments. Litigation is fairly evenly split between the Centre and the States, with the former accounting for 51% of such filings and the latter 49%.

SUBJECT-WISE CLASSIFICATION OF CENTRAL GOVERNMENT SLPS

FIG. 1



- Of the 857 Government SLPs, 435 have been filed by the Central Government. Of these, 392 have been classified into particular subject matter categories.
- 282 of these 392 classified SLPs (approximately 72%) deal with direct and indirect taxation issues, representing the single largest subject matter category.
- Other prominent categories include land acquisition (37, or approximately 9%), service matters (30, or approximately 8%), and appeals against orders issued by the Armed Forces Tribunal (29, or approximately 7%).

- The remaining 4% of classified SLPs comprise miscellaneous matters like arbitration appeals, ordinary civil matters, labour matters, etc. These constitute around 4% of the Central Government SLPs with proper subject matter classification.

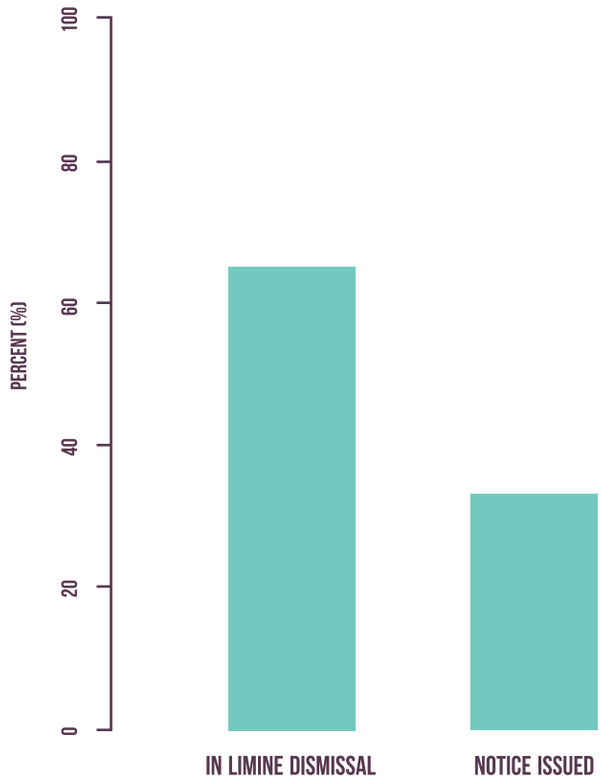
Given the overwhelming dominance of tax cases, the next figure focuses on the rate of disposal of these cases by the Supreme Court.

DISPOSAL OF TAXATION SLPS

- Of the 857 Government SLPs, 173 have been disposed of.
- 60 of these 173 SLPs or approximately 34% are taxation SLPs.
- Of the 60 taxation SLPs that were disposed, 39 or 65% were dismissed at the outset itself after an in limine hearing (summary dismissal). No notice was issued in any of these 39 cases, evident from the absence of any advocate appearing on behalf of the respondents.

This high rate of summary dismissal, despite the absence of the opposing party's advocate suggests that these taxation SLPs were filed as a matter of course, without weighing the merits of the individual case. If this particular sample of SLPs is at all representative of other Government tax litigation, this has troubling implications for the manner in which the Government is framing its litigation strategy as well as for the utilisation of the Supreme Court's time and resources, given that taxation SLPs constitute almost three-fourths of all Central Government SLPs that have been classified.

FIG. II



THE WAY FORWARD

The Central Board of Direct Taxes has already issued instructions (Circular No. 21/2015, dated 10 December 2015) to the Tax Department prescribing minimum monetary limits for filing appeals. In addition to this, measures to enhance the accountability of tax officials and a more strategic approach to government litigation in general are necessary to curb the frivolous and mechanical filing of appeals. Some suggested measures are:

- Require officials to record their reasons for filing an appeal in writing, as part of file-notings.
- Take necessary action against officials when such reasons are unsatisfactory or uncorroborated by the facts of the case.
- Frame normative standards exclusively for tax appeals, as a part of the review and reformulation of the National Litigation Policy.

NOTES TO DATA

- All data has been scraped from the website of the Supreme Court of India using a self-developed software.
- Since the analysis is based on 5000 randomly-sampled SLPs filed in 2014, the emerging trends are only indicative, not conclusive.

THE WORKING OF SPECIAL COURTS

THE QUESTIONS

Parliament has frequently enacted a variety of laws with provisions for special courts. One of the reasons for setting up these courts is to enable the speedy and efficient disposal of cases. The main aim of this entry is to study the functioning of these courts in order to determine whether this objective is being fulfilled. In order to do this, we ask the following questions:

- How often do laws provide for special courts?
- To what extent are these laws implemented? In particular, when laws distinguish between the 'creation' and the 'designation' of special courts, to what extent is this distinction observed?
- What are the pendency rates in special courts?

ANALYSIS

Our data set comprised 764 laws enacted and amended by Parliament between 1950 and 2015 that provided for 'special' or 'designated' courts or judges with the powers of district or sessions courts. We have only examined laws that provide for 'special' or 'designated' courts or judges, i.e., courts or judges established to ensure effective trial, which have powers of district or sessions courts.

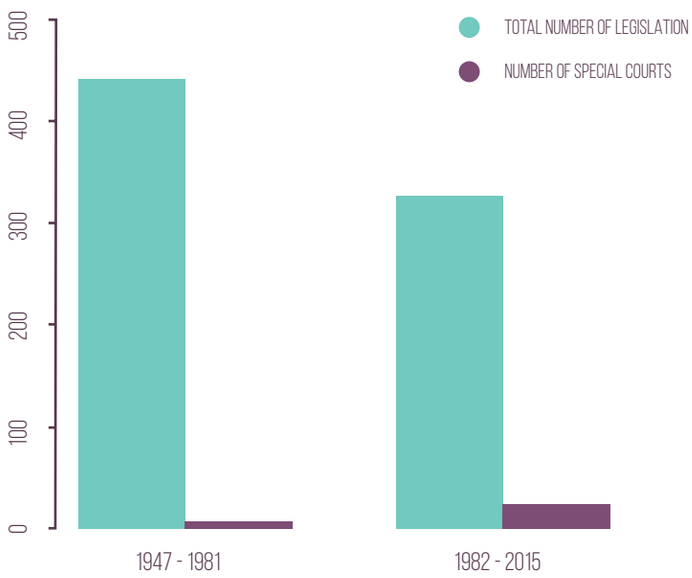
FREQUENCY OF OCCURENCE

- Only 3 statutes provided for special courts between 1950 and 1981.
- In contrast, between 1982 and 2015, 25 statutes were enacted mandating special courts.
- 1982-87 and 2012-15 were particularly prolific periods, with 10 and 7 laws respectively providing for special courts.

Particular spurts might be related to specific incidents, such as the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992, which was enacted in response to the 1992 securities scam.

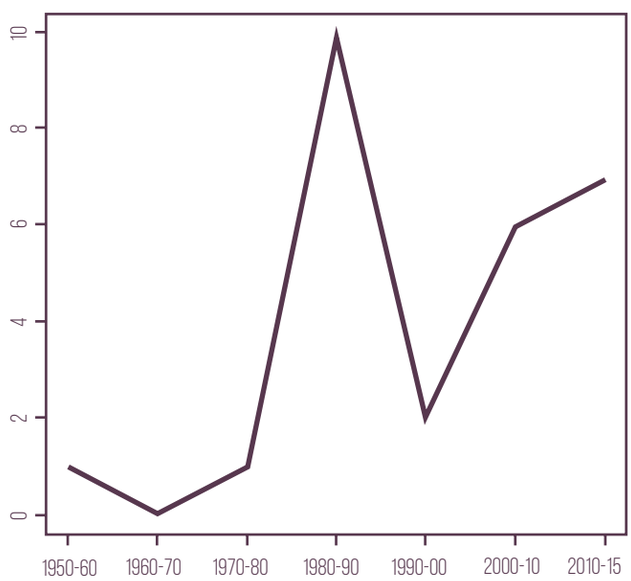
FREQUENCY OF OCCURENCE

FIG. I



NUMBER OF SPECIAL COURTS

FIG. II



Some laws 'set up' special courts, while others 'designate' them. This distinction is important because setting up a special court requires fresh infrastructure and facilities, while designation merely imposes additional responsibilities on an existing court. We studied the extent to which this distinction was observed in the 28 statutes enacted between 1950 and 2015 that provided for special courts.

- 15 of the 28 statutes provided only for setting up special courts; 10 empowered the competent authority to designate a court; while 3 provided for both.
- Of the 15 statutes that mandated setting up special courts, only in one instance—the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989—were special courts actually set up, and that too, only in 12 States.

Figure III presents this information in detail for 3 statutes from 3 distinct subject areas—social justice, national security, and economic offences.

IMPLEMENTATION

FIG. III

LEGISLATION	RELEVANT PROVISION	SPECIAL COURT	DESIGNATED COURT
The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ("POA")	S.14 mandates creation of special courts; court of sessions to be designated in districts where incidence of cases under POA is less.	12 states have exclusive special courts.	17 states have designated existing courts as POA courts.
National Investigation Agency Act, 2008 ("NIA Act")	S.11 mandates creation of special courts by Central Government.	NIL	West Bengal has 2 NIA courts and Tamil Nadu has designated the Bomb Blast Court as NIA Special Court.
Prevention of Corruption Act, 1988 ("POCA")	S.3 provides for power to appoint special judge.	46 courts of Special Judges and 10 courts of Special Magistrate. In line with the recommendation of the Chief Justice, Central Government decided to set up 71 additional courts, of which 66 are operational.	

PENDENCY

The number of special courts set up under different statutes do not necessarily reflect existing pendency problems. For instance, although the total number of cases registered under POCA is only 1/10th that of those under POA, more special courts have been set up under the former than the latter. The pendency rates in trial courts for cases filed under POA are massive. Despite this, special courts under POA have not been set up in Maharashtra and West Bengal, with pendency rates in trial courts of 90.7% and 90.4% respectively, well above the national average of 84.1%.

THE WAY FORWARD

The analysis demonstrates that special courts have not actually been created in most cases; only existing courts have been designated. Given that designation only adds to the existing burden of courts, it might partially explain why special courts have also failed to speedily dispose cases, thereby failing to meet their objective. In order to understand the rationale and effectiveness of these courts in greater depth, and to guide future decisions creating or designating them, their functioning needs to be monitored closely. However it can safely be said that as on date, special courts are special in name only.

NOTES TO DATA

- We studied the laws as available on <www.indiacode.nic.in>
- Laws that were repealed between 1950 and 2015 or amended after 2015 have been excluded.
- Quasi-judicial bodies, tribunals and commissions that lack the full powers of civil or criminal courts have been excluded.
- The official websites of various nodal ministries often did not carry the latest versions of statutes; therefore, information about the number of special courts created or designated was not always available.
- The information pertaining to implementation was sourced from <http://socialjustice.nic.in/excourt.php>, <http://nia.gov.in/nia-special-court.htm> and <http://pib.nic.in/newsite/PrintRelease.aspx?relid=90084>
- Pendency rates for trial courts under POA were obtained from <http://pib.nic.in/newsite/PrintRelease.aspx?relid=115777>

THE FINANCIAL SECTOR

SEBI'S ENFORCEMENT OF INSIDER TRADING REGULATIONS

THE QUESTIONS

Insider trading refers to dealing in securities or other capital market instruments while in possession of unpublished information likely to influence the price of securities. The underlying objective of prohibiting insider trading is the promotion of market fairness and efficiency.

In India, the Securities and Exchange Board of India ("SEBI") plays the central role in the regulation of insider trading, under the regulatory framework set out in the SEBI (Prohibition of Insider Trading) Regulations, 2015 ("Insider Trading Regulations").

The Insider Trading Regulations empower SEBI to initiate investigations either suo motu or upon receiving information from sources like 'stock exchanges, SEBI's integrated surveillance department, other government departments and information submitted by market participants and complainants.' Investigations are geared towards identifying any irregularity by a person or entity with the objective of facilitating further regulatory action, which may take the form of both administrative and criminal proceedings.

The different options available to SEBI under the Securities and Exchange Board of India Act, 1992 ("SEBI Act") are:

- Directions or prohibitive orders under ss. 11, 11B or 11D of the SEBI Act requiring entities to act in a particular manner in the interest of investors and securities markets or restraining them from accessing such markets or dealing in securities.
- Enquiry proceedings which may result in the issuance of a warning and in more serious instances, the suspension or cancellation of the certificate of registration of an intermediary.
- Adjudication proceedings under Chapter VIA of the SEBI Act, in which SEBI may appoint an adjudicating officer for conducting enquiry and imposing penalties.
- Prosecution proceedings before criminal court under s. 24 of the SEBI Act for a contravention of any provision of the Act.
- Summary proceedings in specific cases under Chapter VA of the SEBI (Intermediaries) Regulations, 2008.

Since the prohibition of insider trading is the cardinal tenet of modern capital market regulation, it is imperative that it is enforced effectively. The questions that this entry therefore asks are:

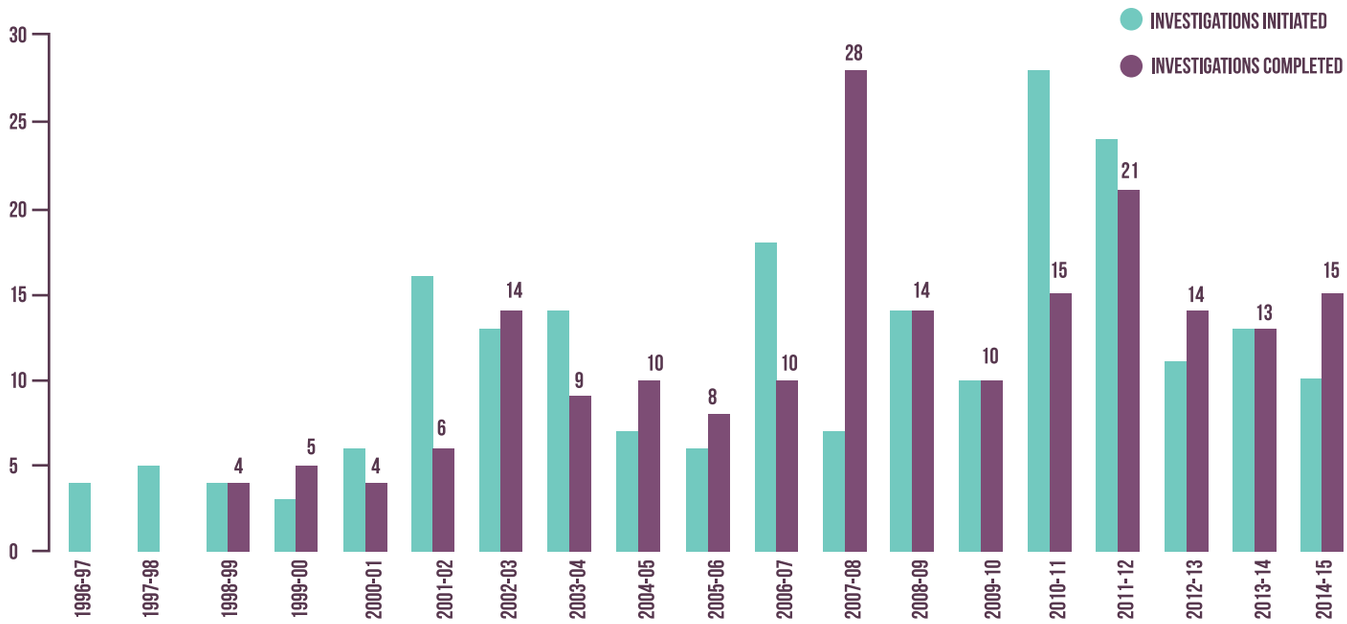
- Has SEBI effectively exercised its powers under the Insider Trading Regulations?
- Given the different kinds of powers available to SEBI under these Regulations, are there any differences in the manner in which they are exercised?

ANALYSIS

We analysed data available regarding the investigative and enforcement actions conducted by SEBI between 1996 and 2015 under the Insider Trading Regulations.

INSIDER TRADING INVESTIGATIONS INITIATED AND COMPLETED BETWEEN 1996-2015

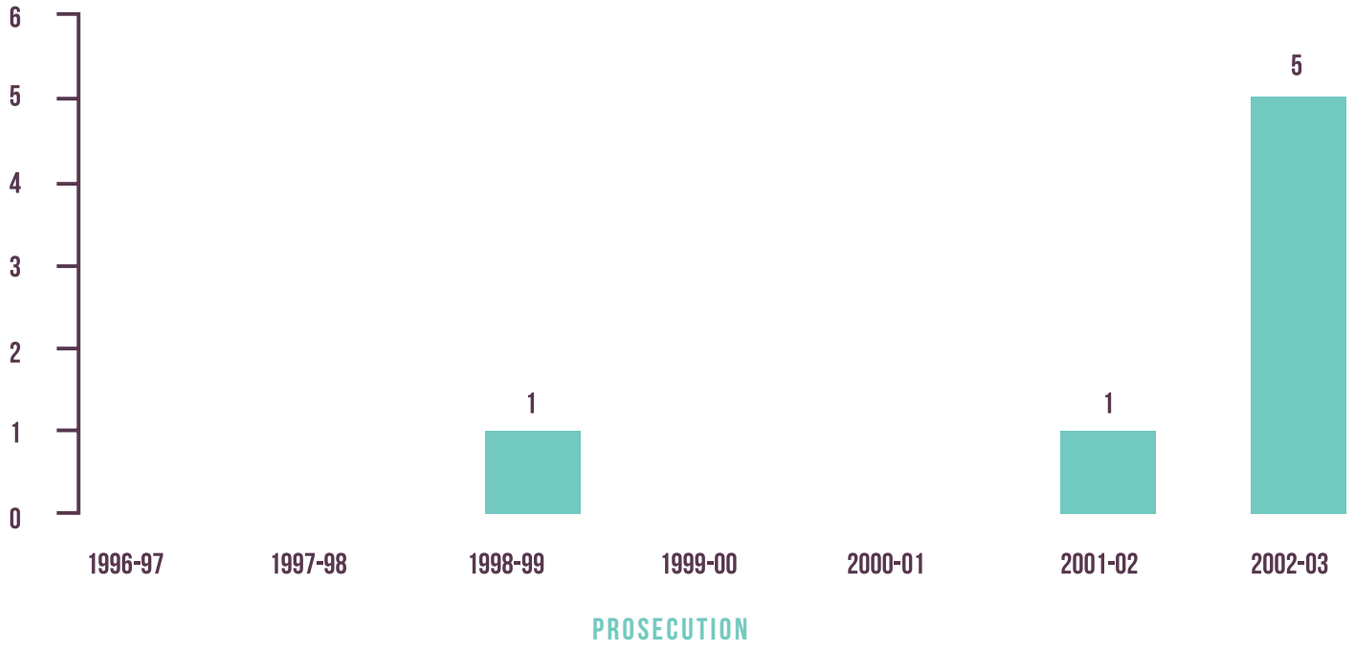
FIG. I



- Only 213 investigations were initiated in relation to insider trading over nearly two decades.
- 200 out of 213 (93%) of these investigations were completed.

PROSECUTIONS INITIATED BETWEEN 1996-2003

FIG. II



- Of the 33 investigations that were completed between 1996 - 2003 (see Fig. I), only 7 prosecutions were initiated.
- No prosecutions at all were initiated in 4 of the 7 years.

FINES IMPOSED FROM 2012 TO 2015

FIG. III

YEAR	FINE
2012-13	₹ 1.84 crore
2013-14	₹ 20.5 crore
2014-15	₹ 37.6 crore

- The increase in the quantum of fines imposed between 2012-13 and 2013-14 is almost ten-fold.
- The fines imposed in 2014-15 are almost twice of those imposed in the previous year.

THE WAY FORWARD

Despite a sound and internationally comparable framework for the regulation of insider trading in India, its enforcement has been largely ineffective. Only 213 investigations over 20 years that have translated into an even lower number of prosecutions suggests that there is something fundamentally deficient in the manner in which SEBI has exercised its powers. Such trends have also been observed in similarly placed economies such as China and Brazil. This requires:

- Gathering of concrete empirical evidence on the prevalence of insider trading practices in India, which is widely acknowledged informally.
- More comprehensive disaggregation of data according to the nature of proceedings employed by SEBI in relation to insider trading.
- Investigating the underlying reasons for the minimal use of criminal sanctions like fines and imprisonment to counter insider trading despite their availability.

NOTES TO DATA

- All information regarding the number of investigations, prosecutions as well as the quantum of fines imposed was obtained from the Annual Reports of SEBI available on its website.
- Data on ss. 11, 11B and 11D proceedings as well as adjudication and enquiry proceedings in relation to insider trading was unavailable. For prosecutions under s. 24 of the SEBI Act, only data up to 2003 was available.
- SEBI Annual Reports provide consolidated data of all proceedings, but do not break this down by subject matter.
- The data available does not provide information about the nature of proceedings in which the fines were imposed.
- The fines represented in Figure III might have been revised in appellate proceedings under the SEBI Act. These have not been accounted for.

WOMEN DIRECTORS ON BOARDS OF INDIAN COMPANIES

THE QUESTIONS

The Companies Act, 2013 and subsequent guidelines issued by the Securities and Exchange Board of India ("SEBI") made it mandatory for all listed companies to have at least one woman on their boards — either as an executive or a non-executive director — before April 1, 2015. With this requirement, India moves a step closer to similar requirements in Western countries, although their gender diversity rules are far more stringent. Countries like Norway, Spain, Germany and Canada require at least 40% of boards to be female. In France, a law passed in 2011 requires all CAC 40 companies (those listed on the benchmark French stock index) to meet the 40% requirement by 2017. Israel has an even stricter requirement—as far back as 1993, it passed a Government resolution mandating that 50% of boards comprise female directors.

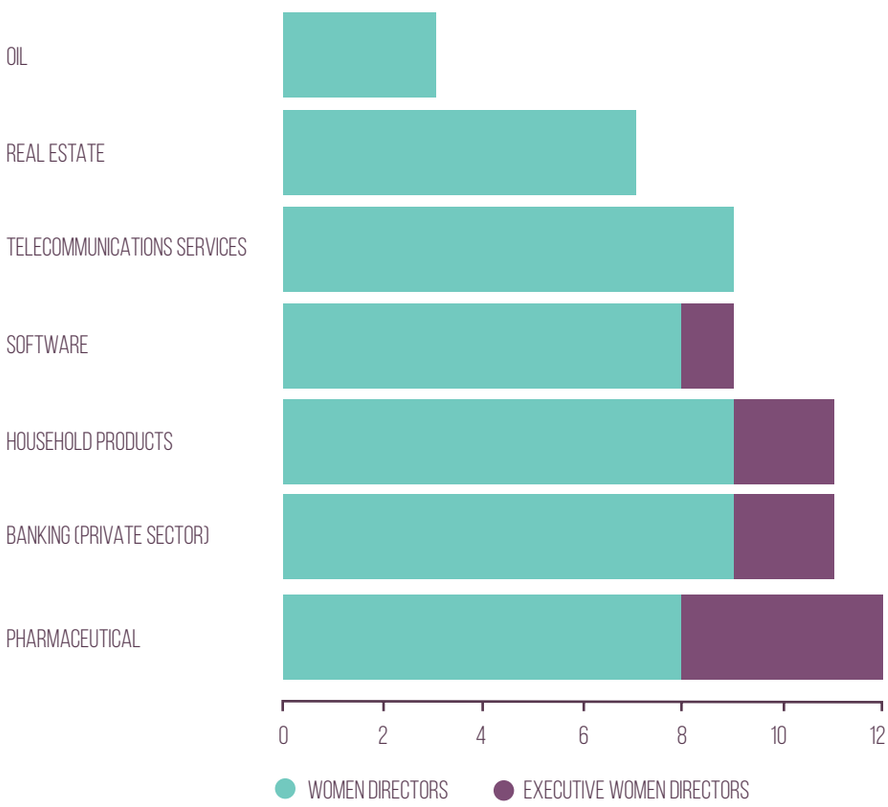
India ranks 26th globally in terms of presence of women in boardrooms. The overall percentage of women in Indian boardrooms is merely 6.91%. This is in contrast to the widely acknowledged trend-setter, Norway, where it is 40%. However, it is not just Western countries that are ahead in terms of gender equality. The number of women in Indian boardrooms is lower than the average of developing countries. (Women on Board 2016: India ranks a lowly 26th, Norway leads, The Economic Times, March 7, 2016)

This indicates that there is a pressing need for the effective implementation of the requirement to have at least one woman on the boards of Indian companies. In this context, we ask:

- What is the extent of compliance with this requirement and does it vary across sectors?
- What proportion of women directors are executive directors?

NUMBER OF WOMEN DIRECTORS AND EXECUTIVE WOMEN DIRECTORS

FIG. 1



ANALYSIS

We examined the presence of women on the boards of the top five companies (in terms of net profits) across seven randomly selected sectors—software, real estate, private sector banking, household products, telecommunications services, pharmaceuticals, and the oil industry. The adjoining figure represents the absolute number of women directors and women executive directors across these 35 companies.

- The total percentage of women directors (executive and non-executive) ranges from 6.12% to 18.75%.
- However, the percentage of women executive directors is much smaller. Three out of the 7 sectors have no women executive directors, while the

highest percentage is only 7.69% in the pharmaceutical industry.
- Industry sectors like pharmaceuticals, software and real estate appear to have a higher proportion of women directors.

Our analysis also reveals that when women occupy the position of executive director, they are often members of the family of the founder or Chief Executive Officer of the company, thereby fuelling the frequently parroted industry excuse that there are not enough qualified women to occupy positions of responsibility.

Apart from this analysis, information released by SEBI and the Bombay Stock Exchange as of 31 March 2016 shows that nearly a quarter (1,375) of the 5,451 companies listed on the Bombay Stock Exchange have not complied with the requirement, failing to appoint a single woman director on their boards. Similarly, 191 companies on the National Stock Exchange have failed to comply. (Women Directors: 1,375 BSE, 191 NSE companies fined for non-compliance, The Economic Times, May 6, 2016). This non-compliance continues in the face of notices mandating compliance issued by SEBI.

THE WAY FORWARD

The data presents a sobering picture. Not only is there a lack of gender diversity, but also there are worryingly low numbers of women in decision-making roles i.e. executive directors. The numbers are low despite the fact that the study focuses on market leaders from each industry sector, which are expected to be trendsetters and adopt best practices. In order to create gender diverse boardrooms, both in letter and spirit, and to genuinely shatter the glass ceiling, we need:

- Market leaders to make more conscious efforts to make their boards more gender-diverse, thereby encouraging smaller companies to follow suit.
- Stricter enforcement by the Government of the requirement in the Companies Act, 2013.

NOTES TO DATA

- Information on the top 5 companies in each sector (based on net profits) was obtained from the National Stock Exchange website.

- Information about the number of women directors and women executive directors was obtained from the official websites of the respective companies.

MUTUAL FUNDS AND TRANSPARENCY IN THE FINANCIAL MARKET

THE QUESTIONS

The issue of executive compensation, especially to senior management, came under intense scrutiny in the wake of the global financial meltdown in 2008, the argument being that excessive risk-taking and exorbitant pay packets had also contributed to the crisis. Globally accepted disclosure norms on corporate governance that were developed after 2008 are grounded in the idea that optimally structured remuneration packages can align the interests of the top executive with those of shareholders. These norms have translated into legislative reforms in other jurisdictions, including the United States of America, requiring information on executive remuneration to be made publicly available, thereby enabling shareholders to associate executive remuneration with the firm's financial performance.

In India, the Securities and Exchange Board of India ("SEBI"), issued a notification on the 18 March 2016, effective from the 1 April 2016, extending disclosure requirements relating to annual remuneration from listed companies to Mutual Funds. Mutual Funds must now make the following information available to the public: annual remuneration equal to or above INR 60 lakhs; if the employee is employed for only a part of the financial year, monthly remuneration in the aggregate not less than INR 5 lakhs per month; the ratio of the CEO's remuneration to median remuneration; and the Fund's total assets under management ("AUM"), both debt and equity.

The disclosure of this information is likely to lead to a more nuanced understanding of the relationship between remuneration, risk taking and the financial performance of a firm and enable the regulator to make more efficient micro and macroeconomic regulations for the market.

Given the importance of this information, we ask:

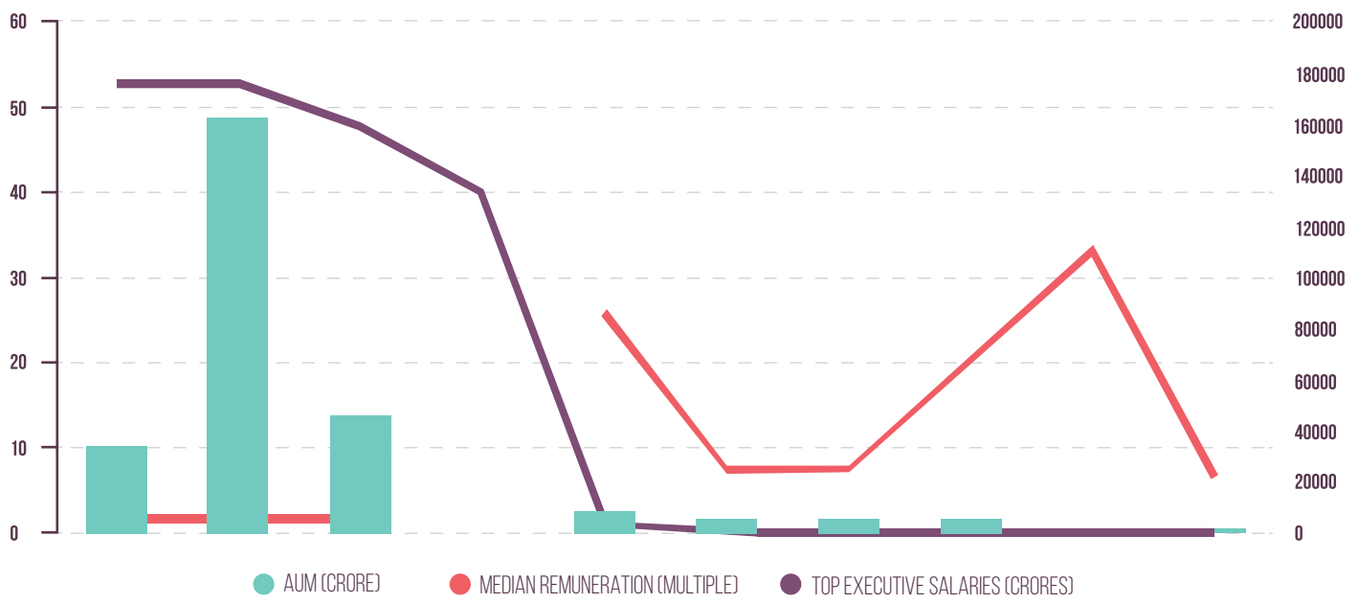
- What is the extent of compliance with these disclosure requirements since the SEBI notification became effective, and the consequence of non-disclosure?
- What correlations can be drawn between remuneration and the size of the funds?

ANALYSIS

We compiled information for Mutual Funds for 2015-16 along three parameters: 'top executive remuneration', 'median remuneration' and the Fund's AUM (this was used as an indicator of the size of the Fund). Information for the first

MAPPING AUM WITH MEDIAN REMUNERATION & TOP SALARIES

FIG. I



two parameters was correlated with the third, in the manner represented in the figure above.

In the graph above, the AUM (crores) is represented on the x-axis, whereas the median remuneration (multiple), and the top executive salaries (crores) are represented on the y-axis.

In the graph above, the AUM represents ordinal values and the bar graphs are for representational purposes only. The numbers on the x-axis do not reflect particular fund houses; instead each number represents a range of Funds, grouped according to their AUMs. Key observations are:

- There is some positive correlation between the size of the funds and the top executive salaries, for both the top funds and the smaller ones.
- Based on the previous year's data, AUMs have decreased in the industry, but this has had no demonstrable impact on executive remuneration.
- Median remuneration seems to be independent of AUM, with no clear linear relationship between the two.

THE WAY FORWARD

The market is plagued by a lack of transparency. Most Mutual Funds have not complied with the SEBI notification, and amongst those that have, most have made the data very difficult to access, by requesting folio numbers, registered phone numbers, PAN card details etc., making publicly available data extremely limited.

Without this information, the creation of a central repository with SEBI is a distant goal, making it difficult for investors and other stakeholders to monitor financial performance, and thwarting the objective of the 18 March notification. Although SEBI declared that the disclosure requirements were non-negotiable and in May 2016, urged the Funds to comply immediately, information still remains extremely limited. In an increasingly globalized world working towards more transparency and accountability, it is essential that such information be made available to the public. It remains to be seen if:

- SEBI will impose penalties on non-compliant Funds. The SEBI Act, 1992 and leading Supreme Court judgments have vested SEBI with the power to impose penalties for failure to furnish information within the time specified.
- The complete disclosure of information will ultimately lead to a closer correlation between executive remuneration and financial performance. Until such disclosure, however, we can only play around with half-stories and the ineffectual morals drawn from them.

NOTES TO DATA

- All conclusions in this entry are drawn from information for fifteen Mutual Funds that was publicly available, including on the websites of the companies, in articles and other analytical pieces on the companies.
- Some of these were larger funds (in terms of AUM), while the majority were smaller firms.
- SEBI has not issued subsequent notifications to enforce stricter compliance, and details of the discussions with the Association of Mutual Funds of India regarding the 18 March notification have not been made public.

CRIME AND SOCIETY

THE PERSISTENCE OF MANUAL SCAVENGING

THE QUESTIONS

The Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013 ("the Act") is the latest in a series of laws that have attempted to eradicate a dehumanising practice which requires persons from lower castes to clean excrement from toilets and open drains. The National Commission for Safai Karamcharis Act, and the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, both enacted in 1993, similarly aimed to eradicate such practices that are rooted in untouchability.

The key to the successful implementation of the Act lies in identifying manual scavengers and eliminating insanitary latrines. Without these, the other provisions of the Act, which create entitlements to one-time cash assistance, the allotment of residential plots, and vocational training, cannot come into play. Ss. 11 and 14 of the Act require the Chief Executive Officers of Municipalities and Panchayats to conduct surveys in order to ascertain the number of manual scavengers within their jurisdiction, while ss. 12 and 15 also enable manual scavengers themselves to make an application for identification.

Given the failure of the previous laws, in this entry, we ask:

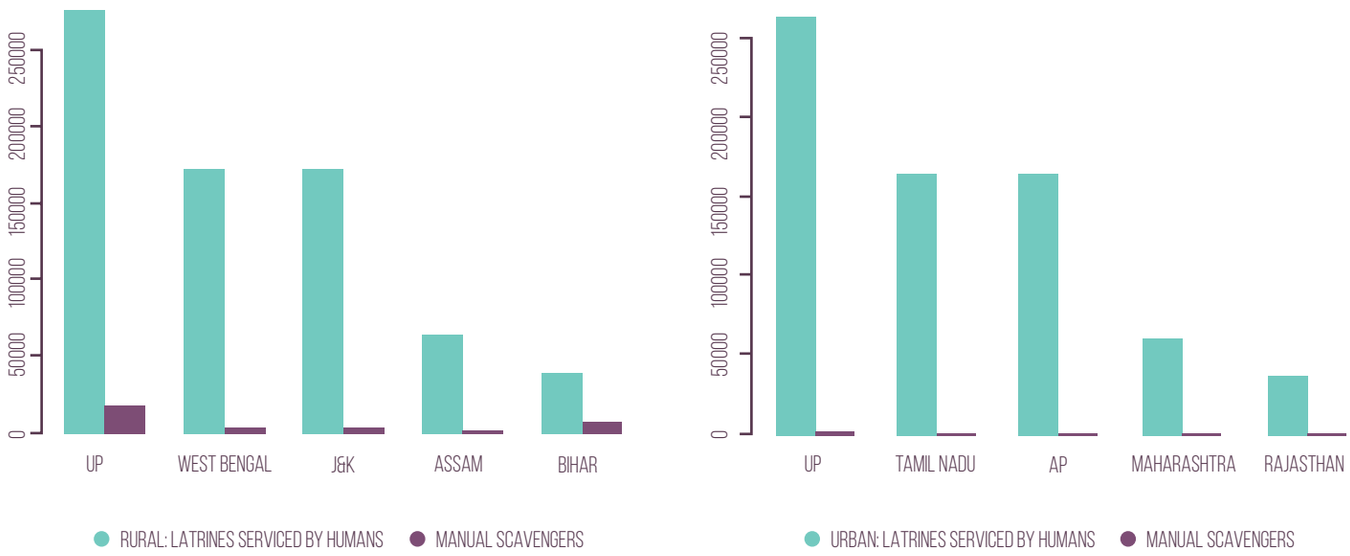
- What are the preliminary trends in the implementation of the 2013 Act?
- In particular, what is the gulf between the prevalence of the practice (as documented by non-governmental organisations) and the statutorily mandated identification of manual scavengers?

ANALYSIS

We used data on manual scavengers identified in urban and rural areas released by the Ministry of Social Justice and Empowerment ("the Ministry") and the Socio-Economic and Caste Census 2011 ("Caste Census") respectively. We compared this with existing numbers of insanitary latrines that are serviced by humans, as set out in the Houselisting and Housing Census 2011 ("Housing Census"). We have chosen the five States with the highest numbers of insanitary latrines.

MANUAL SCAVENGERS IDENTIFIED V/S NUMBERS OF INSANITARY LATRINES

FIG. I & II

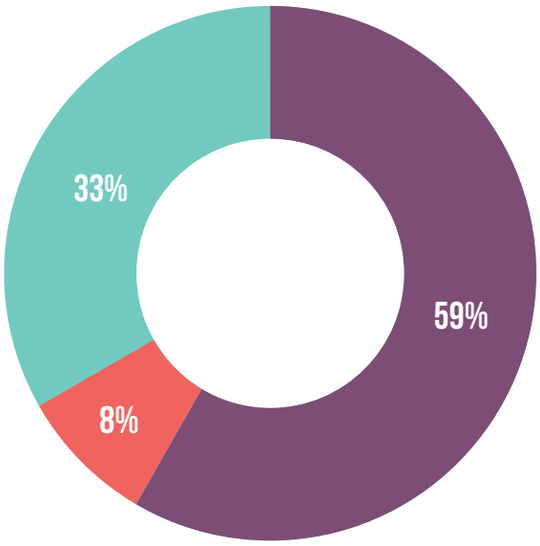


- Uttar Pradesh has the highest numbers of insanitary latrines in both rural and urban areas. It has also identified the highest number of manual scavengers in rural and urban areas, but these numbers form little more than 6% and 1% respectively of the total number of insanitary latrines in these areas.
- The proportion of manual scavengers identified is similarly low for the other States depicted in Figures I and II, in no case exceeding 2% of the total number of insanitary latrines.
- Assam and Maharashtra, despite having the fourth highest number of insanitary latrines in rural and urban areas respectively, have identified no manual scavengers at all under the Act.

Although the numbers of insanitary latrines obviously cannot be an exact match for the actual number of manual scavengers, the glaring gap between identification of manual scavengers and insanitary latrines in Figures I and II provides sufficient evidence of the Act's non-implementation.

MANUAL SCAVENGERS IDENTIFIED IN STATES RECEIVING FUNDS FOR IDENTIFICATION

FIG. III



States/UTs that have identified 0 manual scavengers in urban areas (Assam, Maharashtra, Arunchal Pradesh, Goa, Gujarat, Haryana, Himachal Pradesh, J&K, Jharkhand, Kerala, Manipur, Meghalaya, Puducherry, Tripura)

States/UTs that have identified less than 100 manual scavangers in urban areas (Chattisgarh, Madhya Pradesh)

States/UTs that have identified more than 100 manual scavangers in urban areas (Bihar, Karnataka, Odisha, Rajasthan, Tamil Nadu, Uttar Pradesh, Uttarakhand, West Bengal)

- Of the 24 States and Union Territories that were allocated almost 40% of the ₹10.31 crores to identify manual scavengers in urban areas, more than half of them (14) failed to identify even one manual scavenger.
- Of these 14 States, 6 of them have more than 10,000 insanitary latrines in their urban areas.

THE WAY FORWARD

The Act cannot serve its intended purpose until a more concerted effort is made to identify manual scavengers. A combination of factors appears to be contributing to this non-identification—a lack of coordination between censuses and surveys conducted by different Ministries (with the Census proving marginally more successful at identifying manual scavengers than the statutory surveys mandated under the Act), the under-utilisation of funds by State Governments/UTs, and the virtual absence of criminal prosecutions of the occupiers of insanitary latrines, and the employers of manual scavengers under the Act.

The following measures are recommended to strengthen implementation:

- State Governments must order local authorities to conduct house-to-house surveys by enumerators as required by clause (6) of Rule 11 of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Rules, 2013.
- Levying fines on local bodies for their failure to conduct the

statutorily required surveys should also be considered.

- This must simultaneously be accompanied by stronger capacity-building measures for local authorities, and funds should be allotted specifically to improve the capability of such authorities to conduct surveys under the Act.

NOTES TO DATA

- Figures for manual scavengers identified in urban areas were obtained from the Survey of Manual Scavengers in Statutory Towns conducted by the Ministry (the most recent figures accessed were as on 2 June 2016). Although the Caste Census also compiled figures on manual scavengers in urban areas, these have not yet been released.
- Figures in the Caste Census were released by the Ministry of Rural Development on 3 June 2015.
- Although State Governments and Union Territory Administrations were expected to verify the data in the Caste Census on manual scavengers in rural areas, and then upload this list on the website of the Ministry, this exercise appears to have been undertaken only in Uttar Pradesh and Punjab.
- Information about the utilisation of funds by State Governments was obtained from the Rajya Sabha website, where the Minister of State for Social Justice and Empowerment, Shri Vijay Sampla, had appended these figures to his written reply to a question.

RISING INSTANCES OF MISSING CHILDREN

THE QUESTIONS

Across the country, alarmingly large numbers of children go missing every year, and remain untraced. While there are multiple reasons for this, some of the more alarming ones are kidnapping, organised crime, begging and human trafficking for sexual exploitation or child labour (Answers to Lok Sabha Unstarred Questions No. 809-1 March 2016 and 2522- 4 August 2015).

India has laws and schemes to help trace these children as well as to tackle the underlying reasons for their disappearance. Two key laws are the Immoral Traffic (Prevention) Act, 1956 and the Child Labour (Prohibition and Regulation) Act, 1986. A website called "trackthemissingchild.gov.in" was launched in 2015 by the Ministry of Women and Child Development, in collaboration with State Governments to track missing children in real time and monitor progress on their cases. Anti-human-trafficking units in police stations in all states have been set up and also strengthened, following a Supreme Court order in Bachpan Bachao Andolan vs. Union of India (Writ Petition No. (Civil) 75 of 2012).

The following questions enquire into the effectiveness of these multiple mechanisms that have been put in place:

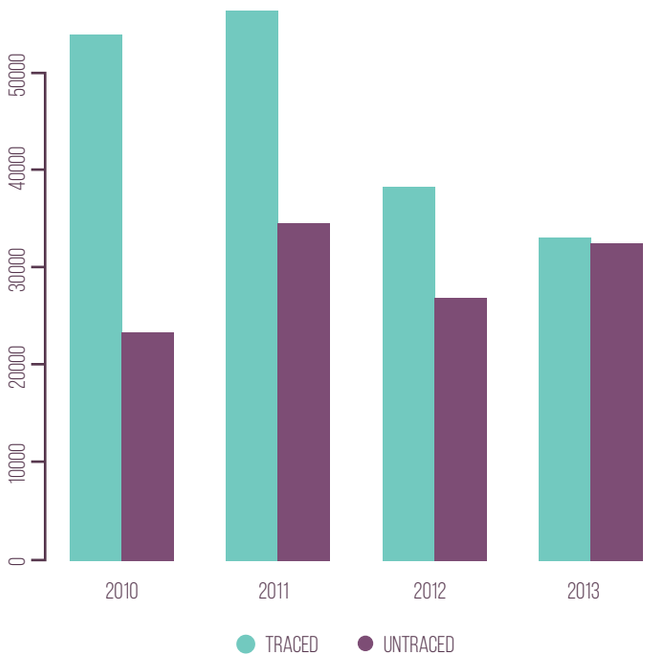
- What are recent trends in the cases of missing children?
- Can links to these trends be drawn with human trafficking?

ANALYSIS

Using data from the National Crime Records Bureau ("NCRB"), we examined country-wide trends in missing children for four years, from 2010 to 2013 (Figures I and II). 'Missing' children refers to the total number of children who went missing; 'traced' children refers to those that were eventually found, while 'untraced' children represent those that are still missing. Figure III specifically represents trends in missing children in Delhi.

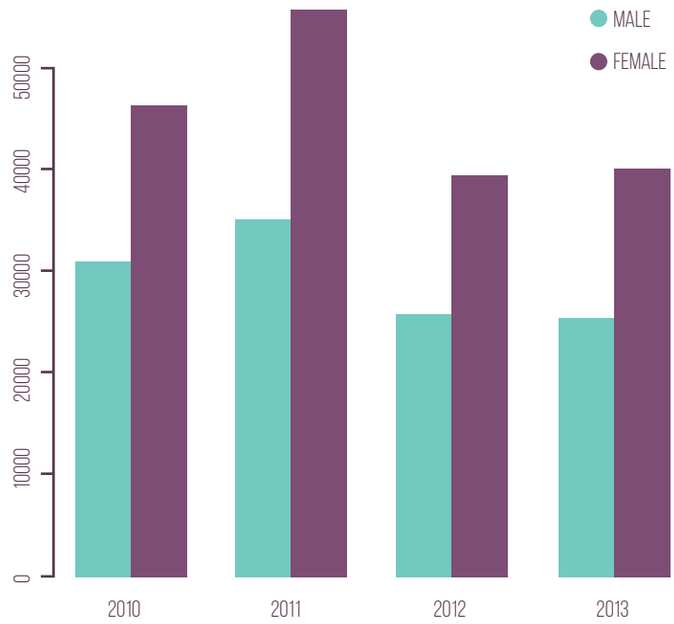
TRACED AND UNTRACED CHILDREN

FIG. I



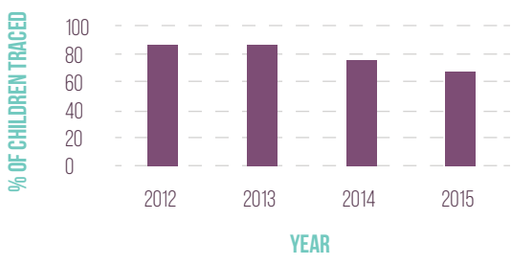
- The absolute number of untraced children was at its highest (34,406) in 2011, dropping in 2012, but rising again in 2013 nearly to 2011 levels.

MISSING GIRL CHILDREN
FIG. II

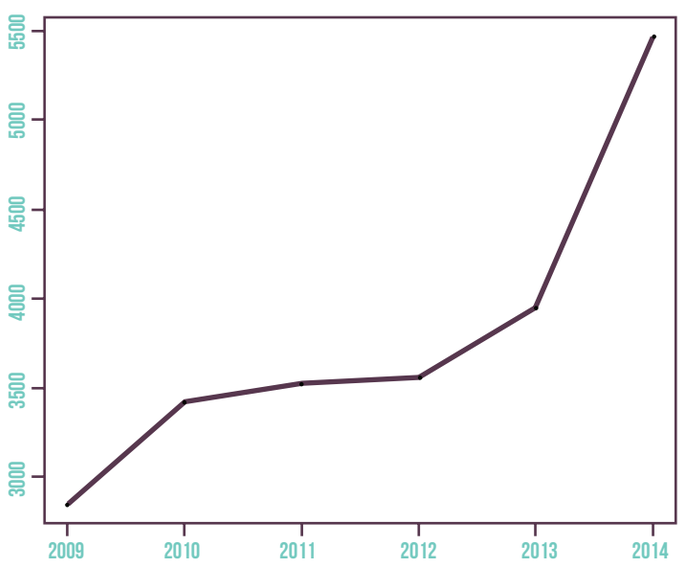


- Figure II demonstrates that the numbers of female children who went missing are consistently higher than those of male children for each of the years analysed. This is a cause for concern, especially in light of the rising instances of human trafficking in the country (See Figure IV).

CHILDREN TRACED IN DELHI
FIG. III - % OF CHILDREN TRACED OVER THE YEARS



- Figure III shows that the percentage of children traced in 2014 and 2015 in Delhi has declined in comparison to the previous two years.

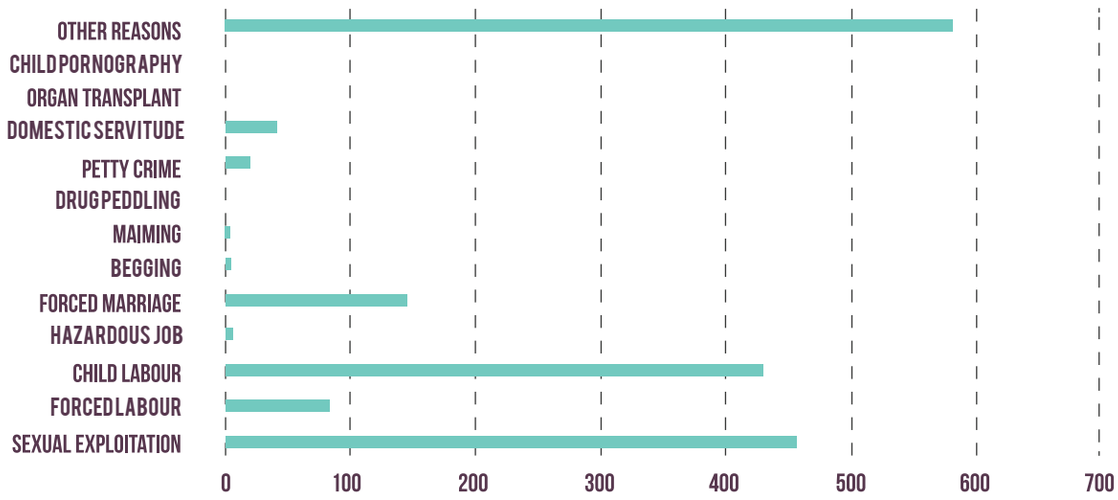


RISING INCIDENTS OF HUMAN TRAFFICKING
FIG. IV

We also examined data released by the NCRB on human trafficking cases between 2009 and 2014, presented in Figure IV. Figure V represents data from a report of the NCRB published in July 2015, setting out the different reasons for human trafficking.

PREVALENT REASONS FOR HUMAN TRAFFICKING IN INDIA

FIG. V



- There is a steady rise in cases since 2009, with the highest jump between 2013 (3,940 cases) and 2014 (5,466 cases).
- Sexual exploitation and child labour are two of the three most common reasons for human trafficking. However, the maximum cases (581) related to human trafficking have been grouped under the heading 'other reasons'. What these reasons refer to are *prima facie* unclear.

THE WAY FORWARD

The data suggests close links between human trafficking and missing children. For one, a high proportion of human trafficking cases are related to child labour. Secondly, it is likely that the 'other reasons' for human trafficking include many cases of missing children, which are not usually reported using an official First Information Report.

Addressing the problem of missing children requires better engagement with the reasons for their disappearance in the following manner:

- There is a lack of uniformity in the data collection and presentation regarding missing children. There are different statistics available relating to human trafficking, missing children, kidnapping cases registered under the Indian Penal Code and other such data relating to missing children. A linear study over time to identify these major reasons would enable State Governments to develop targeted action plans to trace missing children.
- A specialised data collection mechanism could be developed by the NCRB, focusing specifically on missing children and the reasons for their disappearance, and coordinating different agencies that collect and analyse data relating to crimes against minors.

NOTES TO DATA

- The timelines for the data have been selected on the basis of the latest available figures from official departments like the NCRB and Ministry of Home Affairs.
- The information on missing children in Delhi is based on data provided in an answer to a question in the Rajya Sabha (Answer to Unstarred Question No. 2772, 23 December, 2015, available at <http://mha1.nic.in/par2013/par2015-pdfs/rs-231215/2772.pdf>)

ENFORCEMENT OF THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT

THE QUESTIONS

The Narcotic Drugs and Psychotropic Substances Act, 1985 ("NDPS Act") was enacted to fulfil India's obligations under a series of international conventions it had ratified. The objective of the legislation was to reiterate India's commitment towards eradication of the drug problem across the country through deterrent punishments.

Offences under the Act are strict liability offences, there is a reverse onus of proof, the provisions for bail are rigid, a mandatory minimum is prescribed for possession of commercial quantity of drugs and the death penalty is prescribed for certain categories of repeat offenders.

The harshness of these provisions necessitates a closer scrutiny of the law to examine whether they have the desired effect. In this entry, the questions we ask are:

- What are the country-wide patterns in the implementation of the Act?
- Is the Act being used to clamp down on commercial traffic in drugs?

ANALYSIS

We examined data from the National Crime Records Bureau ("NCRB") on the district-wise cases registered in India in 2014 under the NDPS Act. Figures for the top 15 districts are set out in the table below.

CASES REGISTERED UNDER THE NDPS ACT (DISTRICT-WISE) IN 2014

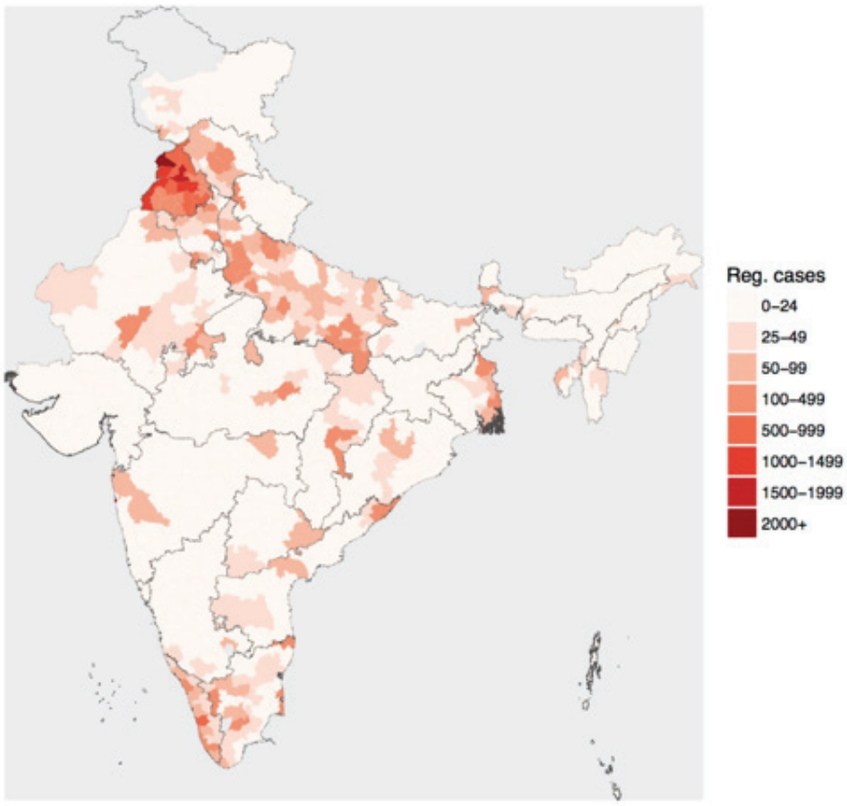
FIG. I

DISTRICT	STATE	NUMBER OF CASES REGISTERED
Mumbai	Maharashtra	14,314
Amritsar	Punjab	2,411
Jalandhar	Punjab	1,627
Firozpur	Punjab	1,249
Ludhiana	Punjab	1,165
Tarn Taran	Punjab	1,147
Patiala	Punjab	931
Ernakulam	Kerala	769
Kapurthala	Punjab	653
Sangrur	Punjab	636
Moga	Punjab	625
Gurdaspur	Punjab	590
Hoshiarpur	Punjab	519
Bathinda	Punjab	490
Mansa	Punjab	397

- Of the 46,923 cases registered in India in 2014 under the NDPS Act, 14,622 cases were registered in Maharashtra and 14,483 cases were from Punjab.
- Of the top 15 districts by cases registered, 13 were from Punjab alone, with Mumbai (Maharashtra) and Ernakulam (Kerala) being the other two.

COUNTRY-WIDE TRENDS

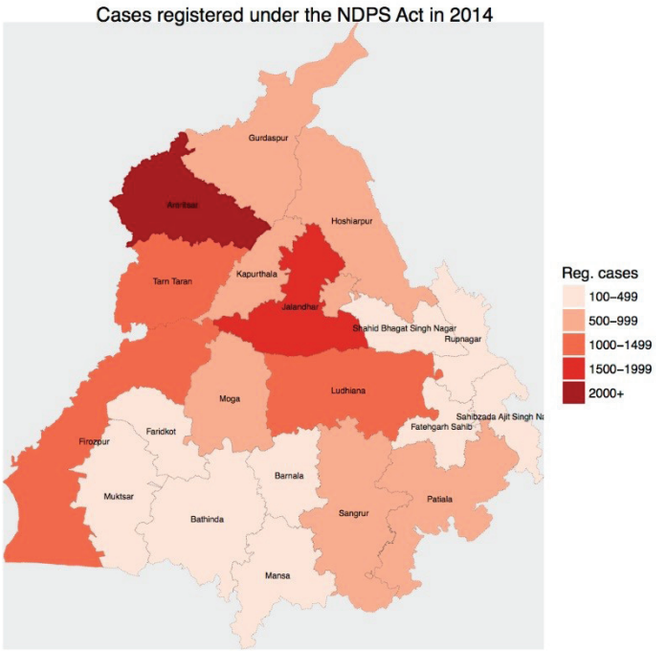
FIG. II



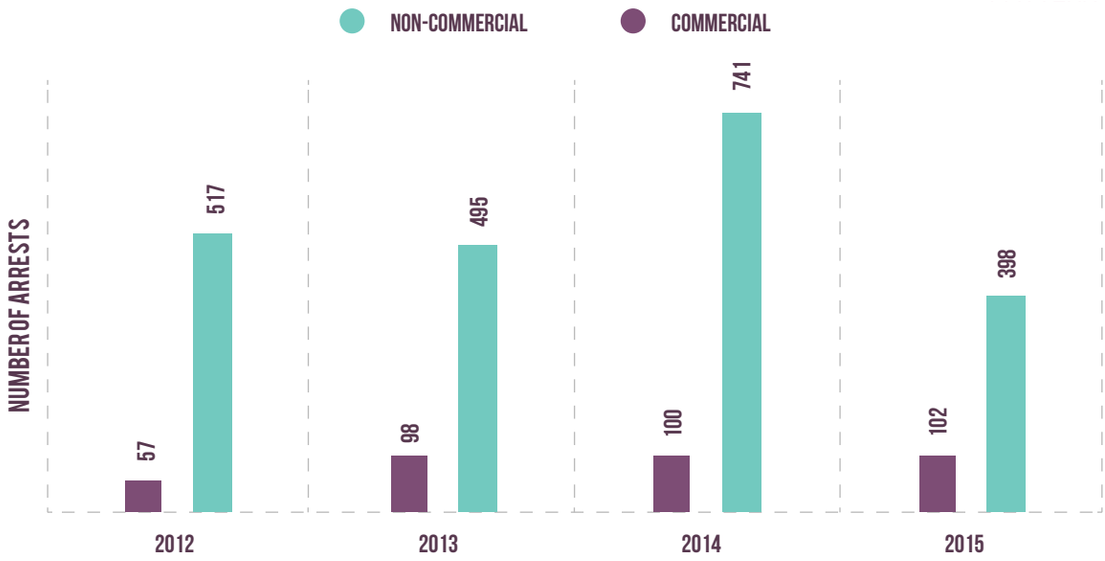
DISTRICT-WIDE TRENDS IN PUNJAB

FIG. III

- The district-wise information (as revealed in the map above) makes one salient fact apparent – while other states witness drug abuse in pockets, the large spread of cases across the state of Punjab reveals that the vulnerability to drugs is not restricted to just one or two cities.



PATTERN OF ARRESTS IN PATIALA
FIG. IV



• Using Patiala as an example, another fact becomes clear—most people who are arrested and brought before the courts are either users or small peddlers who sell drugs to feed their own habit. A quick scan of the arrest data from Patiala between 2012 and 2015 reveals that the police is arresting people for carrying relatively small quantities of drugs.

THE WAY FORWARD

It is too early to draw firm conclusions about the nature of the drug problem in India as a whole. However, the pervasiveness of the problem in Punjab suggests that the issue is predominantly that of addiction. Addicts are regularly imprisoned; few arrests are made for traffickers and thus the Act is skewed in its implementation.

Moreover, as witnessed from the arrest data from Patiala, the Act, in the manner it is implemented, disproportionately penalises users and petty peddlers.

Thus, it can be observed that despite its stringent provisions, the law has been unable to curtail drug abuse in Punjab. The solution may lie, perhaps, in:

- Re-imagining the problem of drug addiction as one requiring social intervention rather than criminalisation.
- Demand reduction, de-addiction and rehabilitation, using Punjab as a starting point for this approach, and re-centring the focus on treatment. Instead of punishment and imprisonment for drug users, the criminal justice system ought to focus on traffickers and commercial quantities being supplied and purchased.

NOTES TO DATA

- The information represented in Figures I, II and III was obtained from the NCRB.
- The information represented in Figure IV was obtained from the Commissionerate of Police, Patiala.

DETERRING SEXUAL HARASSMENT IN PUBLIC PLACES

THE QUESTIONS

S. 509 of the Indian Penal Code ("IPC") criminalises the uttering of words, making of sounds or gestures, exhibition of objects or intrusion on the privacy of a woman with the intention of outraging her modesty. This provision covers sexual harassment in public places, or what is commonly known as 'eve–teasing' (Deputy Inspector General of Police v. S Samuthiram, (2013) 1 SCC 598). It also extends to sexual harassment at the workplace, adding to the criminalisation of such harassment by the Sexual Harassment at the Workplace (Prevention, Prohibition and Redressal) Act, 2013.

Such sexual harassment may cause great psychological harm and violates a woman's right to dignity. The 2013 Justice JS Verma Committee Report on Amendments to Criminal Law ("Verma Committee Report") also highlighted that if left unchecked, such sexual harassment might escalate to more serious offences like sexual assault.

Given the importance of the effective enforcement of this section, we ask:

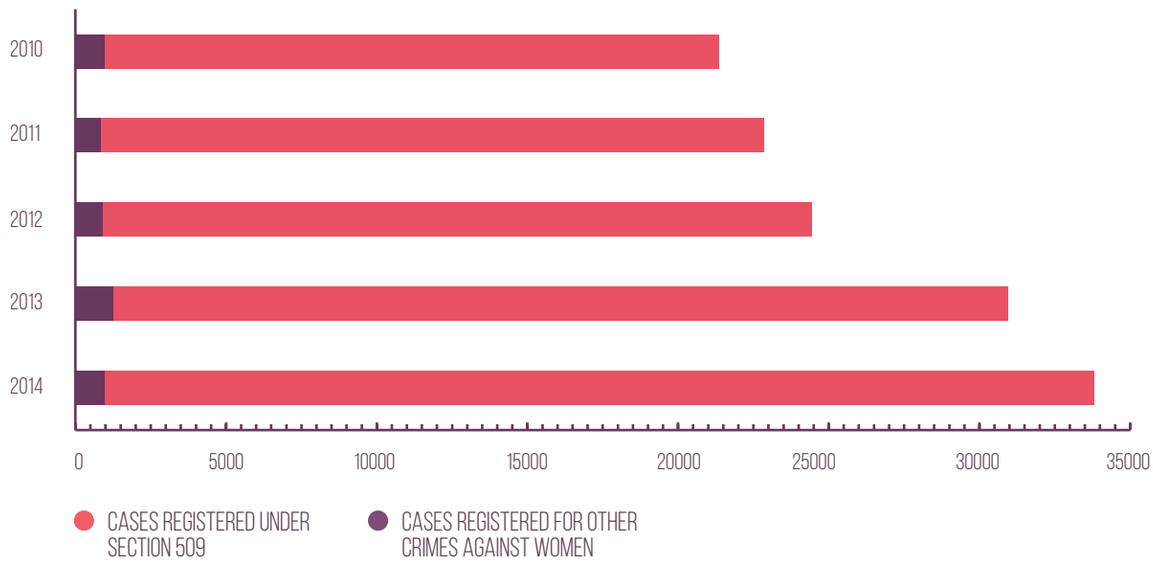
- What are the trends in registering cases and securing convictions under s 509?
- How do these compare with other crimes, including other crimes against women?

ANALYSIS

We analysed data from the National Crime Records Bureau ("NCRB") between 2010 and 2014.

COMPARISON OF S. 509 WITH OTHER CRIMES AGAINST WOMEN

FIG. 1



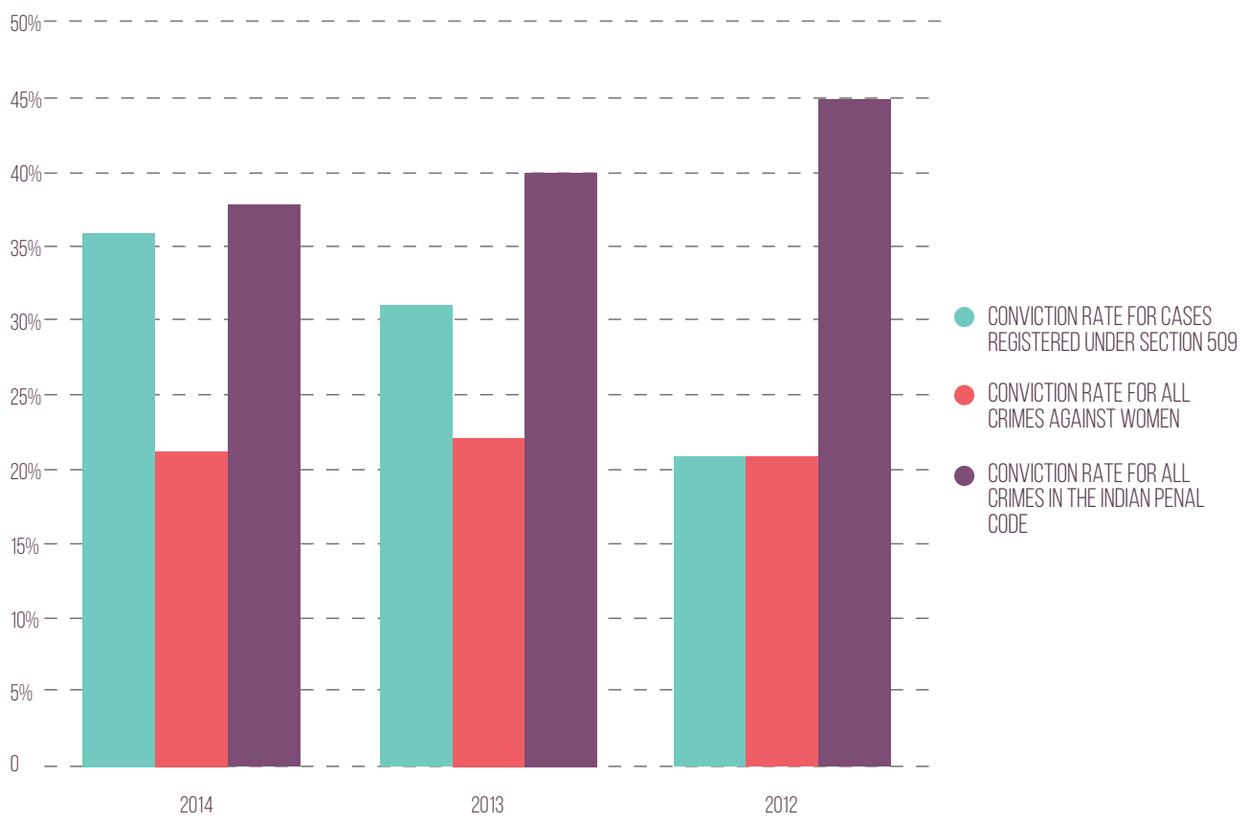
- Over a five year period, an average of 10,005 cases were registered under s. 509.
- Such cases form only 3.75% of the average number of cases registered for crimes against women.

This low proportion of cases registered under s 509 ought to be contrasted with studies that indicate that more than 70% of women in India have faced sexual harassment with 72% of women in Delhi facing it in public places. However, only about 1% of women report such harassment to the police (Jagori Report, 2011). The Supreme Court has observed that one of the reasons for this might be the fact that filing a complaint and undergoing a criminal trial cause even more agony to the complainant (Deputy Inspector General of Police v. S Samuthiram, (2013) 1 SCC 598). Another reason noted by the Verma Committee Report is that the victims themselves, as well as the police, perceive sexual harassment of this nature to be a minor indiscretion, despite its lasting adverse impact.

We analysed data from the NCRB on cases registered and disposed between 2012 and 2014 across three categories: s 509, other crimes against women, and all crimes in the IPC.

COMPARISON OF CONVICTION RATES

FIG. II



- The average conviction rate for crimes in the IPC is about 150% to 200% higher than the average conviction rate for crimes against women.
- The conviction rate for crimes registered under s 509 has been at least equal to, and usually higher than the conviction rate for crimes against women.
- On the whole, however, it has dropped from 36% in 2012 to 21% in 2014.

Given the abysmally low rate of reporting of crimes under s 509, conviction rates do not adequately reflect the effectiveness of this provision in curbing such crimes. Instead, lower instances of reporting might actually explain higher conviction rates—if only aggravated cases of harassment are reported under this section, then obtaining a conviction might be easier in such cases.

THE WAY FORWARD

The Verma Committee Report recommended the repeal of s 509, one of the grounds being the inappropriate reference to 'outraging the modesty of women'. Instead, the Report suggested that all 'words, acts or gestures…which create an unwelcome threat of a sexual nature' ought to be classified as a type of sexual assault. However, Parliament has retained s 509 and increased the penalty. The acts of demanding sexual favours, passing sexually coloured remarks or showing pornography to a woman against her will are now criminalised separately as sexual harassment under the newly introduced s 354A. It is difficult to see the distinction between these acts specifically classified as sexual harassment and other sexually coloured gestures that fall under s 509, but not s 354A.

The effectiveness of these amendments in prosecuting sexual harassment in public places remains to be seen. In the meantime, the enforcement of s 509 may be made more effective by:

- Building confidence that approaching the police will not lead to harassment, but action against perpetrators (Jagori Report, 2011). This will require greater sensitization of police personnel on handling cases of sexual harassment (Mathu, 2008), as well as speedier action on various Central and State government promises to create special women desks and increase the staffing of women police officers, which currently constitute only 6.11% of the total police force (CHRI Report, 2015).
- Bringing clarity to the scope of the offence itself. The term 'outraging the modesty' is both extremely vague, and a manifestation of everyday sexism, imposing an unduly moralistic view of which acts are permissible (Rajan, 1990).

NOTES TO DATA

- Figure I represents the number of cases registered under s 509 as a proportion of the total cases registered for crimes against women, including crimes other than those criminalised in the Indian Penal Code.
- Figure 2 represents the rates of conviction of persons accused for crimes under s 509, for crimes against women, and for crimes under the Indian Penal Code. The rates of conviction have been calculated based on data providing the number of cases tried, number of cases ending in discharge of the accused and the number of cases ending in conviction of the accused.

TACKLING CYBER CRIME UNDER THE INFORMATION TECHNOLOGY ACT

THE QUESTIONS

India stood third amongst countries with high levels of malicious activity on the internet (Symantec Internet Security Threat Report, 2015). Incidents of cyber crime have been growing steadily over the past decade. While 481 cases were reported in 2004, the figure has grown to 9,622 in 2014, exhibiting a quantum leap of 2000% (Source: National Criminal Records Bureau data, 2014). Given the increasing thrust towards transforming India into a digital economy, tackling cyber crime must figure prominently as a focus area for law enforcement. Currently, cyber crime offences are reported under: (i) the Information Technology Act, 2000 ("IT Act"); (ii) the Indian Penal Code, 1860 ("IPC"); and (iii) special and local laws such as the Narcotic Drugs and Psychotropic Substances Act, 1985 ("NDPS Act").

This entry examines the enforcement of remedies under the IT Act-the statute under which most number of cyber crime cases are reported (7201 out of a total of 9622 cybercrime cases). The chief offences under the IT Act are:

- Dishonestly or fraudulently causing damage to computers, computer systems, etc. (S.66)
- Obscene publication/ transmission in electronic form (S.67)
- Tampering computer source documents (S.65)
- Breach of confidentiality/ privacy (S.72)
- Fraud digital signature certificate (S.74)

Additionally, the IT Act also provides for civil penalties, which can be awarded by 'adjudicating officers' specially appointed for this purpose in cases of damage to computer, computer systems, etc. (which is also otherwise an offence when committed dishonestly or fraudulently) and for failure to protect data (S.43A).

In this entry, we ask:

- How efficient is the process of dealing with cyber crime offences under the IT Act?
- How does this compare with the disposal of cases under the IPC?
- How effective has the IT Act's regime on civil penalties been?

ANALYSIS

We examined data from the National Crime Records Bureau ("NCRB") on the investigation and prosecution of offences under the IT Act for 2014 (Figure I) and compared it with cognizable offences under the IT Act for the same period (Figure II).

- The rate of completion of investigation and the conviction rate for IT Act offences are all lower than those for general IPC offences.
- The rate at which cases are disposed (trials completed) to fresh cases registered is also significantly worse off for IT Act offences.

The low rates could be indicative of the inadequacy of the local police in investigating computer-related offences, which requires specialised knowledge and training. There have been news reports of police officers punching floppy disks to file them and pouring hot wax on hard discs to seal them. (Internet Immunity? Why does India have an abysmal 0.7% conviction rate for cyber crimes? Firstpost.in, December 31, 2015)
While cyber crime cells are stated to have been established in all States and Union Territories (Mr. Ravi Shankar Prasad, Lok Sabha query, 25.02.2015), their capacities are yet to catch up with the ever-increasing internet coverage and computer use in the country. Analogously, a possible reason for the poor conviction rate could be lack of specialised knowledge at the trial court level, amongst both prosecutors and judges, resulting in a higher rate of acquittal.

CIVIL PENALTIES

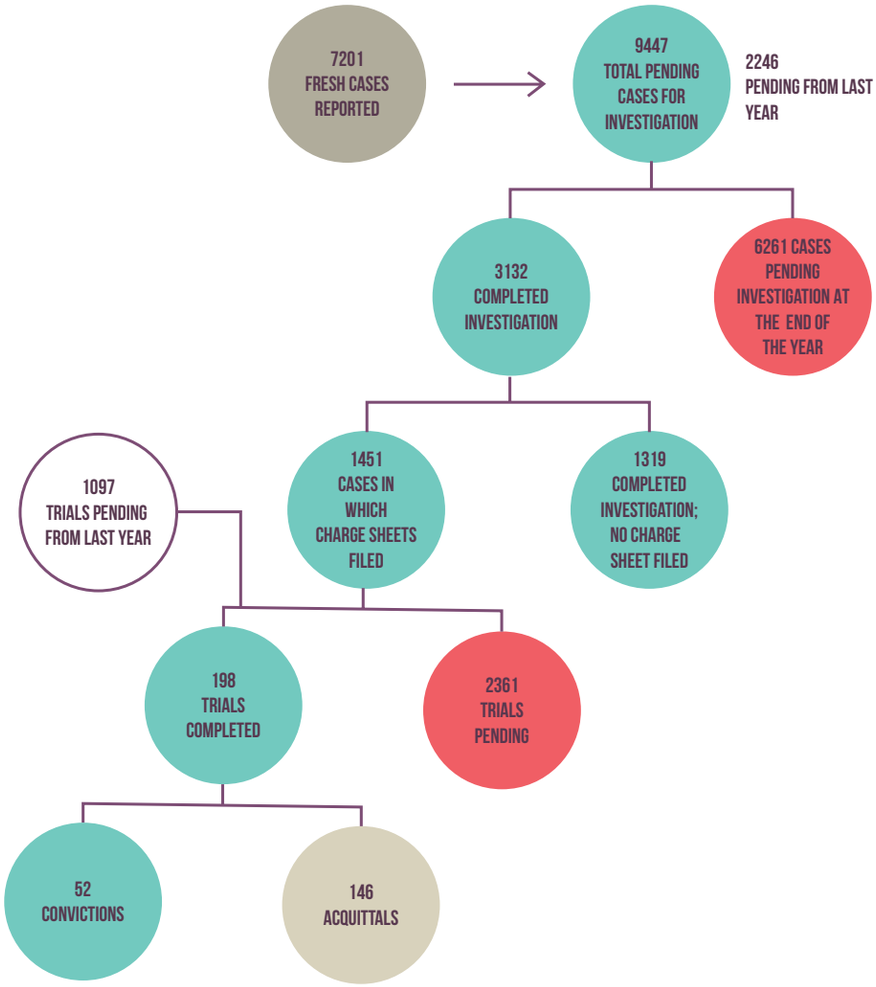
While the figures for criminal prosecutions under the IT Act are not comforting, the civil penalties regime contemplated under the IT Act is also not faring well.

There is a serious dearth of publicly available information on the adjudicating officers appointed for each State and the manner in which complaints can be filed with them. The orders passed by the adjudicating officers are also not readily available, other than Maharashtra, which has a total of 77 orders, listed from December 15, 2009 to January 15, 2015. With the exception of a few scattered orders, no other information is available on orders passed in other States.

A Cyber Appellate Tribunal is constituted under the Act to dispose of appeals from orders passed by adjudicating officers. The Tribunal has been lying defunct since 2011 as no Chairperson has been appointed after the first Chairperson's retirement.

INVESTIGATION AND PROSECUTION OF OFFENCES UNDER THE IT ACT (2014)

FIG. I



COMPARISON BETWEEN COGNIZABLE IPC OFFENCES AND OFFENCES UNDER THE IT ACT: DISPOSAL OF CASES (2014)

FIG. II

	IPC OFFENCES	IT ACT
Rate of completion of investigation	Investigation was completed in nearly 78 cases out of every 100.	Investigation was completed in 33 cases out of 100.
Proportion of completion of trials to fresh cases reported	For every trial that is completed, approximately 2 fresh cases were registered.	For every trial that is completed, approximately 36 fresh cases were registered.
Percentage of convictions out of total trials completed	45.1%	26.3%

THE WAY FORWARD

The machinery appears to have failed insofar as civil remedies are concerned. The data for investigations and prosecutions is indicative of the need to better equip police officers through regular training in evolving cyber investigation techniques and to augment the functioning of cyber crime cells. Two key suggestions emerge from the above analysis:

- Increasing the number of specialised cyber crime cells in the country, augmenting existing capacities, and adopting improved training methods for all law enforcement officers.
- Better enforcement of the existing civil penalties regime so as to ensure effective, direct redressal for certain acts.

NOTES TO DATA

- The information in Figures I and II is sourced from National Crime Records Bureau data available at <https://data.gov.in/>.
- A detailed break-down of cases investigated, trials pending and completed, for offences under the IT Act was available for the year 2014; consequently, our analysis in Figures I and II is limited to 2014.
- The data in Figure I does not include cases withdrawn, compounded, disposed of by plea bargaining, etc.

THE LEGISLATURE

IMPLEMENTATION OF LAWS ENACTED BY PARLIAMENT

THE QUESTIONS

Once a law receives Presidential assent, its Parliamentary journey is complete. However, its implementation still requires two additional steps. The first and necessary step is bringing it into force by a notification to that effect in the Official Gazette. The second step, not strictly essential, but integral to the practical working of the law, is the framing of rules in exercise of the rule-making power under the law. At this stage, Parliament comes into play again, since most laws contain a standard 'laying provision' that requires rules framed by the Central Government to be laid before each House as soon as they are made. This allows a legislative check on excessive delegation.

While public discourse tends to focus on Parliamentary delay in enacting laws, less attention is devoted to its implementation. Therefore, in this entry, we ask:

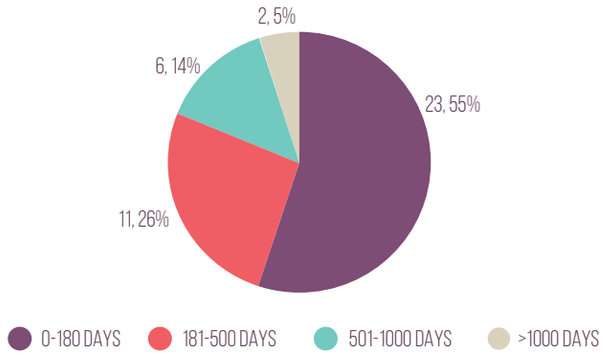
- How long do laws enacted by Parliament take to enter into force?
- How long does the Central Government take to frame rules and subject these to Parliamentary scrutiny?

ANALYSIS

We analysed a data set of 44 laws enacted by Parliament between 2006 and 2015 and calculated the average number of days that elapsed between a law receiving Presidential assent and coming into force.

TIME TAKEN FOR LAWS TO ENTER INTO FORCE

FIG. I

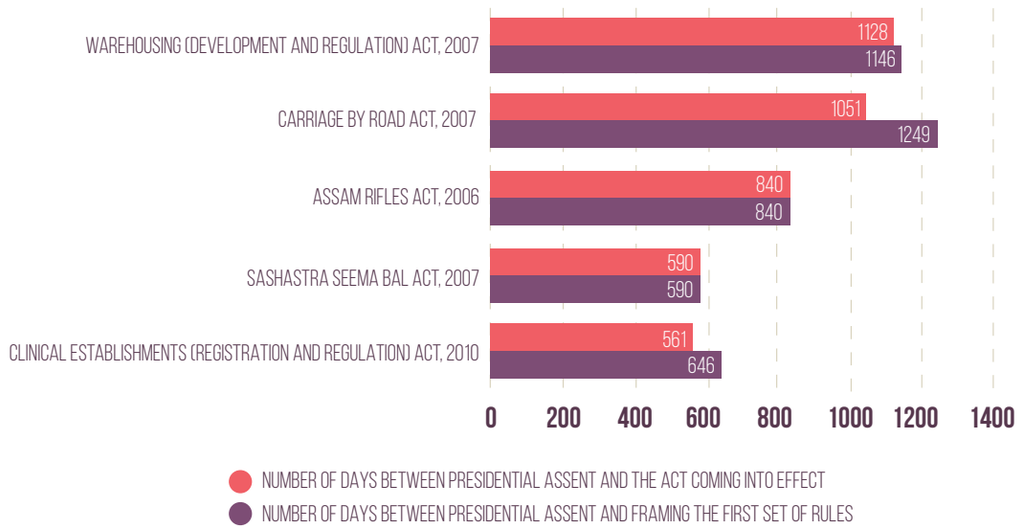


- The average duration for a law to enter into force was 261 days.
- 55% of laws took less than half a year (0-180 days) to enter into force.
- 26% took up to 500 days, while 14% took up to 1000 days.

Figure II represents the number of days taken to publish the first set of rules for the 5 laws that took the longest time to enter into force.

TIME TAKEN FOR FIRST RULES TO BE PUBLISHED

FIG. II

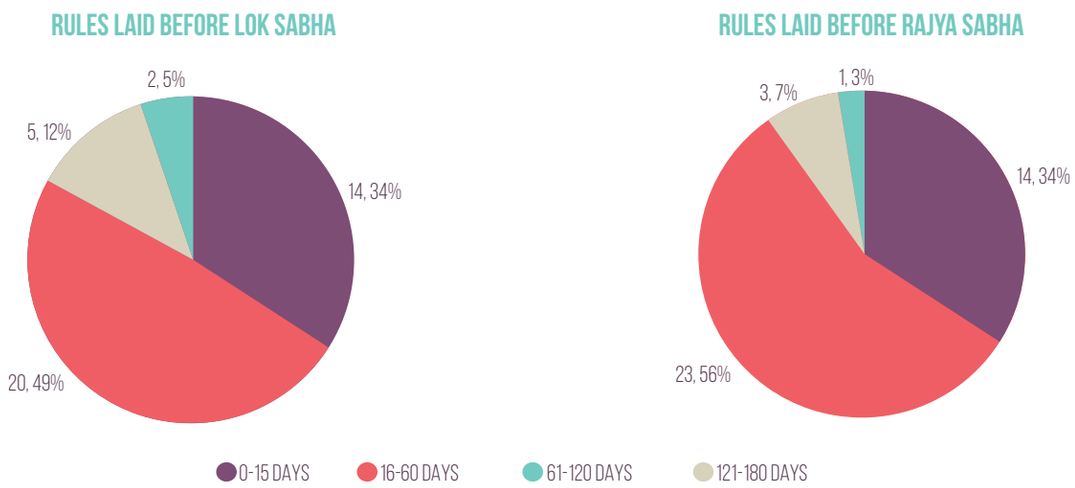


- In 1 instance, the time taken to publish rules exceeded the period recommended in the Manual of Parliamentary Procedure ("Manual"), which is 6 months from the date of entry into force of the law.
- In 2 instances, the date of entry into force of the law coincided with the date of publication of the first rules in the Official Gazette.
- In fact, for 15 of the 44 laws analysed (nearly 34%), the date of entry into force either coincided with the date of publication of the rules or the two dates were separated from each other only by 20 days or less.

This seems to suggest that the entry into force awaits the framing of rules in several cases. The framing of rules, although not required by law to be completed within a prescribed time period, appears to be the decisive moment for the implementation of the Act.

TIME TAKEN FOR FIRST RULES TO BE LAID BEFORE PARLIAMENT

FIG. III



We analysed rules framed under 41 laws that were laid before Parliament. The time taken to lay the rules before each House was calculated from the date on which they were published in the Official Gazette (if the House was in session) or from the date of commencement of the next session (when the House was not in session).

- The time limit of 15 days prescribed in the Manual for the laying of rules was adhered to for only 34% of the rules laid before each House.
- 2 rules (National Commission for Protection of Child Rights Rules, 2006 before the Lok Sabha and Science and Engineering Research Board Rules, 2010 before the Rajya Sabha) had lengthy delays of 174 and 166 days respectively.

THE WAY FORWARD

The accessibility of the law is integral to the rule of law. One of the components of accessibility is knowing which laws are in force and from which date. We found that this data was not easily available, and certainly out of reach of the layman.

As for the second part of our analysis, there is more to the Parliamentary scrutiny of delegated legislation than adherence to recommended timelines. The kind of scrutiny that these rules are subject to is also important; however, our analysis of the texts of Lok Sabha and Rajya Sabha debates between 2006 and 2015 did not reveal any substantive discussion of rules.

The accessibility and implementation of laws and Parliamentary scrutiny of delegated legislation may be strengthened by:

- Communicating the entry into force of law through more commonly-used media, in addition to notification in the Official Gazette.
- Speedier setting-up of administrative machinery, since this often delays the framing of rules and consequently, the implementation of the law.
- Stricter compliance with time limits set out in the Manual for framing and laying rules.
- Ensuring regular Parliamentary discussion and debate on the substance of rules.

NOTES TO DATA

- The laws were sourced from <www.indiacode.nic.in>.
- The selected laws met the following criteria: they empowered the Central Government to frame rules; they required these rules to be laid before Parliament; and the Government had exercised this rule-making power at least once.
- All relevant dates, viz., the date of Acts receiving Presidential assent, coming into effect, publication of the first set of rules in the Official Gazette, and laying of first set of rules before each House of Parliament, have been sourced from the official websites of the Lok Sabha <www.loksabha.nic.in> and the Rajya Sabha <www.rajyasabha.nic.in>.
- For Figure III, six laws in total (three for each House) were excluded from the analysis because the date of laying of these laws before the House could not be located on the official websites of the Lok Sabha and the Rajya Sabha.

ORDINANCE-MAKING BY STATE GOVERNMENTS

THE QUESTIONS

Much has been written about the President's and Governors' power to promulgate ordinances, and how the framers of the Constitution intended this to be a 'necessary evil' (Constituent Assembly Debates, Vol. VIII) to be used to meet extraordinary situations. Much has also been written about the unvarying abuse of this power through every decade since independence.

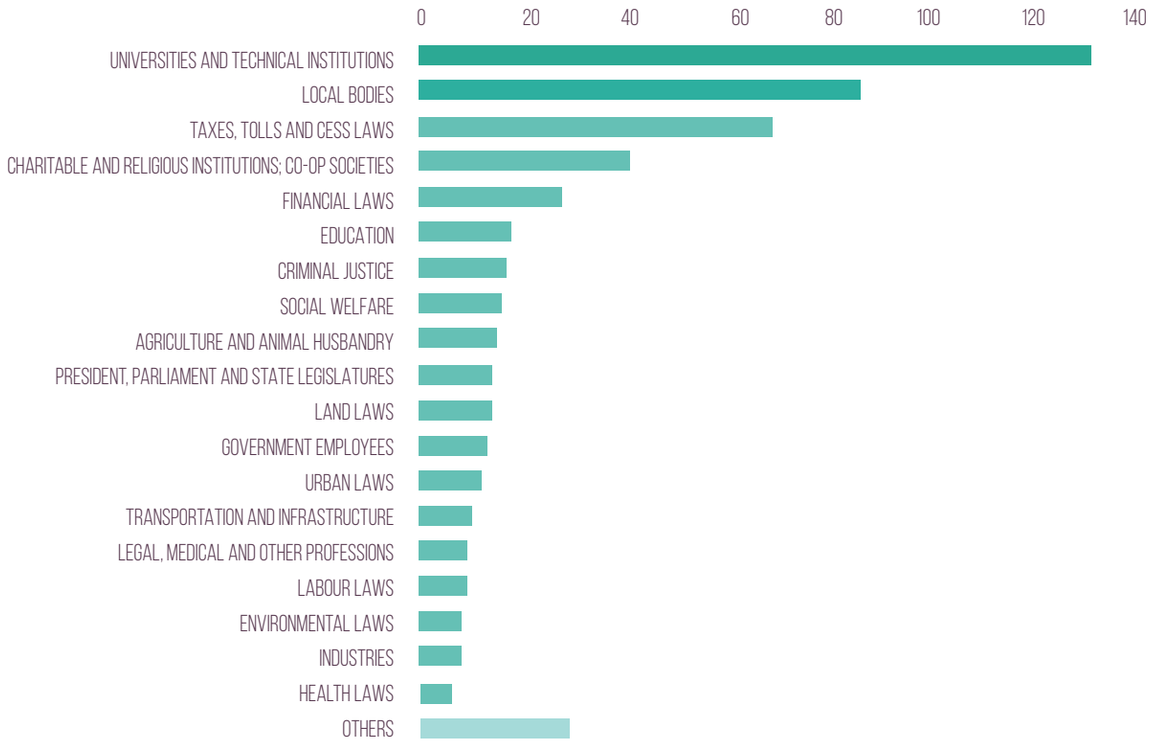
Studies of the practice of ordinance-making, however, have largely been confined to either Union-level ordinances (Dam, 2013), or close analysis of a particular State's ordinance-making practice (Wadhwa, 1983). Comprehensive analysis of ordinance-making at the State-level is challenging, due to uneven documentation of promulgated ordinances, particularly after they have lapsed.

This entry intends to take a small step towards assessing State-level ordinances. It asks:

- How frequently do States make use of ordinances?
- What are the most common subjects on which ordinances are promulgated at the State level?

STATE-LEVEL ORDINANCES 2010-2015

FIG. 1



ANALYSIS

We categorised all the readily available State-level ordinances promulgated between 2010 and 2015. We were able to identify 553 in total.

Even from this limited study, it is immediately clear that ordinances are a frequent and popular tool of governance in States, and the wide range of subject matters indicates that the precondition that it is 'necessary to take immediate action' is largely ignored.

The three most common subjects on which ordinances are promulgated are a) Universities & Technical Institutions, b) Local Bodies, and c) Taxes and Tolls and Cess Laws, while ordinances on subject matters such as primary education, social welfare laws and labour laws are far less common. In 12 States, the highest or second highest number of ordinances fell in the 'Universities & Technical Institutions' category.

The first category consists of ordinances either setting up such institutions, or amending provisions relating to the functioning of such institutions. The second consists of ordinances relating to municipalities, panchayats and other local authorities such as housing boards, development authorities etc. The third deals with State-level taxes and cesses.

While the frequency of ordinances on local bodies and taxes was not unexpected, the finding that universities are such a popular concern deserves closer scrutiny. In India, there are three main legal routes to setting up private universities – first, the legislative route, with States either requiring a separate Act per university, or an umbrella legislation; second, a university deemed by the Central Government under the University Grants Commission Act, 1956; and third, a private college affiliated to a government university. (Centre for Civil Society, 2014) The first route is the most popular - this can explain a skew of a higher number of individual ordinances in particular States, where the structure requires a separate Act for every institution.

It is difficult, however, to see how urgent situations regularly arise in the realm of higher education, especially when further analysis of these ordinances reveal that nearly 40% deal with the setting up of new institutions, rather than amending laws relating to existing ones. The fact that ordinances lapse after 6 months, while universities should take longer to establish, complicates the matter further.

THE WAY FORWARD

Analysing large numbers of ordinances passed by States, therefore, reveals that the pre-requisite of urgency has been seriously diluted over time. The text of the ordinances themselves do not set out grounds explaining the urgency, and, as shown above, the subject-matter they commonly deal with does not readily indicate the need for such a measure either. This suggests the need for greater constraint on this power through:

- Heightened public scrutiny
- Stricter standards of judicial review than have been applied so far.

NOTES TO DATA

Due to uneven record-keeping practices by States, a claim to exhaustiveness cannot be made by the set of ordinances identified. Since an ordinance only lasts for six months if not approved by the legislature, States have frequently omitted to exhaustively catalogue lapsed ordinances that are no longer in force. Therefore, this entry is limited to identifying the most common subjects on which ordinances are promulgated, rather than attempting to identify which States make the most use of this instrument.

MEASURING QUALITY OF LEGISLATIVE DEBATES

THE QUESTIONS

Enacting high-quality laws are a necessary condition for the nation's progress. Since speeches are central to a parliamentary democracy, the quality of legislative debates is an indicator of the efficacy of the legislative process through which a Bill is enacted.

In India, there is a general perception that the quality of parliamentary debates has deteriorated over time. However, hardly any systematic studies exist. Worldwide too, debates remain an under-studied form of legislative behaviour. First, it is difficult to measure quality objectively. Second, conventional wisdom holds that parliamentary debates are symbolic in nature with little impact on policy-making. In the last few decades, scholars have challenged this assumption. Broadly, three approaches have emerged in the study of legislative debates. The rational-choice or formal approach shows that speeches vary based on different institutional arrangements, intra-party politics and the political culture of a country. The deliberative approach posits that legislative speech can be reasoned, respectful, informed and agreement-oriented. The discourse approach focuses on the underlying rules and conventions and how they impact the content of the debates.

Although India is also subject to the constraints of a parliamentary democracy, it is fair to assume that at least normatively the speeches that Members of Parliament ("MPs") make in Parliament ought to be deliberative rather than symbolic. The questions that this entry attempts to answer are:

- What framework can be used to analyse the content of speeches made on the floor of Parliament while debating a Bill?
- In particular, what qualitative and quantitative indicators can be used to provide useful insights about the legislators' knowledge of the subject, the depth of their scrutiny of Bills, and their inclination for evidence-based research?

DEVELOPING A FRAMEWORK

Before developing a framework, some caveats are necessary. Clearly, there is no single, objective way to judge the quality of legislative debates. The metrics could differ widely based on political or ideological priorities or difference in understanding of the role of an MP or other factors. Taking the deliberative approach to legislative debates as the norm, a list of metrics, both qualitative and quantitative, has been developed in the table below. These metrics can be used to develop an index for measuring the quality of debates in Parliament. Each of the metrics can be assigned a different weight based on importance in the index.

METRIC	OBSERVATIONS
QUANTITATIVE	
Legislative journey of a Bill - Type of Bill - Date of introduction and reference to Standing Committee - Date of report submission - Date of debate, enactment, Presidential assent - Number of days of debate	Provides a snapshot of the time taken for a Bill to become an Act. Variations indicate government preferences, time-lags between amendments and extent of scrutiny (reference to Standing Committee).
MP Activities in Parliament - Opposition during Bill introduction - Time allotted for discussion - No. of MPs who spoke & their party affiliations - Disruptions during debate - No. of amendments introduced by government and/or MPs - No. of amendments accepted/rejected - No. of divisions called - Total time taken to pass Bill	Documents the activities of MPs in Parliament regarding the Bill. The extent of their participation indicates their level of interest.
QUALITATIVE	
Objectives of the Bill - No. of MPs who raised concerns about the SOR - Concerns raised: (a) lack of clarity about purpose; (b) mismatch between contents of the Bill and SOR; (c) other - Sources cited (if any) (a) news articles; (b) government reports; (c) independent expert reports; (d) journal; (e) anecdotes; (f) other	The Statement of Objects and Reason ("SOR") provides the background information and purpose of the Bill.
Financial Memorandum - No. of MPs who questioned the financial allocation - Issue raised related to (a) total allocation; (b) state-level allocation; (c) cost to the exchequer; (d) other - Sources cited (if any) (a) news articles; (b) government reports; (c) independent expert reports; (d) journal; (e) anecdotes; (f) other	The Financial Memorandum provides an estimate of the recurring and non-recurring expenditure involved and the specific clauses.
Broad issues regarding the Bill - No. of MPs who supported/opposed the Bill - Concern about the constitutional validity of the Bill - Concern raised about the implementability of the Bill - Concern raised about state-capacity - Concern raised about excessive delegation to the executive - Sources cited (if any) (a) news articles; (b) government reports; (c) independent expert reports; (d) journal; (e) anecdotes; (f) other	Certain issues seem endemic to many laws such as implementation gaps, state-capacity, and constitutional issues. Whether MPs highlight these crucial but basic issues is a measure of their scrutiny.
Specific issues regarding the Bill - Issue that was most frequently highlighted by the MPs - No. of MPs who cited specific clauses - No. of MPs who cited data from any source - Sources cited (if any) (a) news articles; (b) government reports; (c) independent expert reports; (d) journal; (e) anecdotes; (f) other - No. of articles with expert commentary in the media - Availability of credible and comprehensive data	Each Bill has its own strengths and weaknesses, which may be identified by experts and activists. Whether MPs are able to identify these specific problems is a measure of their scrutiny.

THE WAY FORWARD

Are our legislators performing their roles as law-makers? How closely are they scrutinising Bills? These are some questions that can be answered with a Quality of Legislative Debates Index. As a step towards creating this index, we have listed a number of related metrics that provide a snapshot of the activities that lead to the enactment of a Bill. The quantitative metrics give an idea of the priorities of the government and the level of engagement of MPs in the process. The qualitative metrics probe the content of the speeches for depth of understanding, level of knowledge and inclination towards evidence-based research. An index should integrate these metrics and a legislative debate should be graded by the index on its quality.

THE ENVIRONMENT AND HUMAN CAPABILITIES

APPOINTMENT OF VICE-CHANCELLORS IN CENTRAL UNIVERSITIES

THE QUESTIONS

The report of the T.S.R. Subramanian Committee on the new National Education Policy (2016) recognises that the process of selecting Vice-Chancellors ("VCs") for universities is often marred by political considerations, resulting in questionable appointments. Another recurring issue is that of long delays in appointments of VCs, during which the academic and administrative functioning of a university is compromised.

For Central universities i.e. those established or incorporated under a Central statute, the process for selecting VCs is specified in the statute governing the university in question. This remains largely uniform. A Selection Committee, comprising three or five members is set up. In some cases, the Visitor appoints all members; in others, the Visitor appoints some, while the rest are appointed by the university's academic or executive council. The Committee recommends three names, of which the Visitor may choose one or reject all and call for new names.

These statutes do not usually prescribe any qualifications for the VC. The Ministry of Human Resources Development ("MHRD") however prescribes some criteria, such as outstanding academic record and a minimum of 10 years' experience as a university professor, while advertising vacant posts.

A capable and competent VC is central to the successful functioning of a university. In this context, this entry asks:

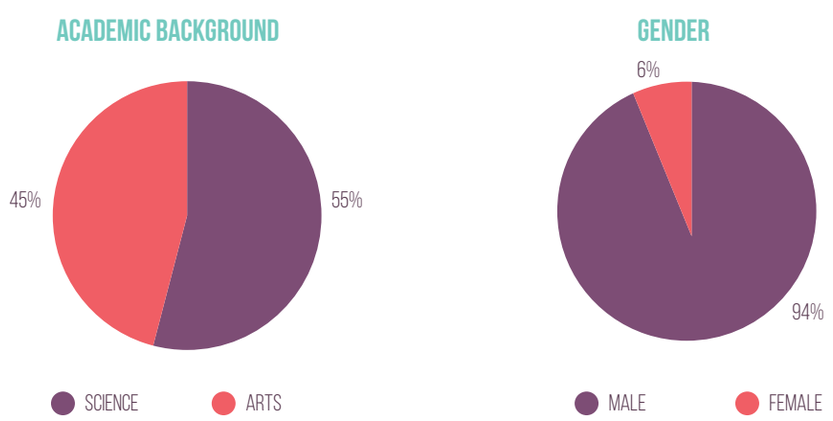
- What can the appointment of VCs tell us about the state of administration of higher education in India?
- In particular, what are the trends in the appointment of VCs as measured through indicators like their academic profile, gender distribution, delay in appointments and allegations of misconduct?

ANALYSIS

We have collected and analysed data for a total of 84 appointments that were made to 40 Central universities in the period 2006-2016.

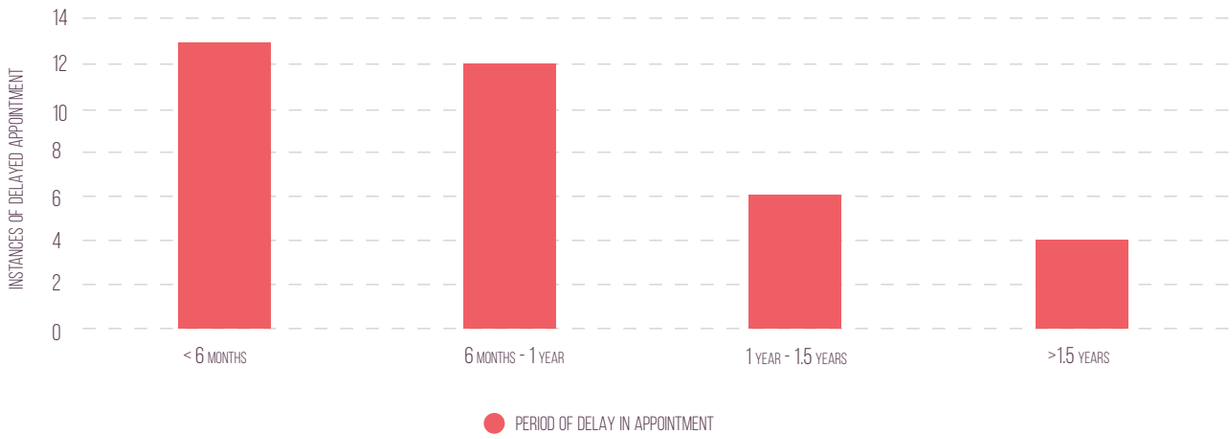
DISTRIBUTION OF VCS ACCORDING TO ACADEMIC BACKGROUND AND GENDER

FIG. I & II



- More persons from the Science background than the Arts have been appointed as VCs, although the difference is not excessively large.
- Only 5 women, accounting for 6% of all appointments, have been appointed as VCs in the last ten years.

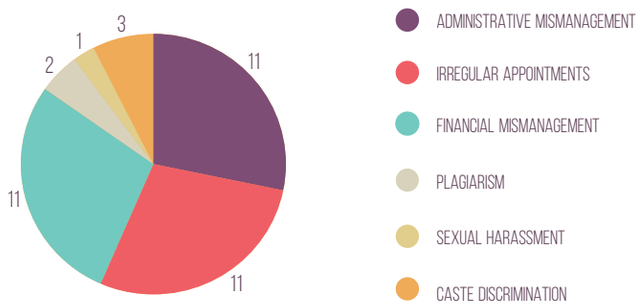
DELAY IN APPOINTMENT
FIG. III



- In 35 instances, there was a gap between the end of tenure of one VC and the appointment of the successor, with an 'acting' or 'officiating' VC taking over the post during such period.
- The average period of delay in appointing a regular VC is 9 months.
- Shockingly, in 10 instances, the appointment of a new VC took a year or more.

Although not represented in Figure III, 11 VCs left their post before the completion of their term, with 7 of them taking up different posts such as Lieutenant Governor or Director of National Accreditation Council. The remaining 4 left for personal reasons or were asked to go on leave. 1 VC was sacked midway through the term.

ALLEGATIONS OF MISCONDUCT
FIG. IV



- 29 out of the 84 VCs who were appointed were embroiled in controversies involving allegations of administrative mismanagement, financial irregularities or others.
- 39 instances of reported allegations have been documented. The number of allegations is higher than 29 because some VCs had 2 or more allegations made against them.
- The three most common allegations are irregular staffing appointments (nepotism, violating eligibility rules), administrative mismanagement (violation of statutes to create new courses, mistreatment of staff) and financial mismanagement (diversion of funds, other corruption).
- In 4 of these cases, a probe or inquiry was initiated against the concerned VC by the MHRD. In 5 cases, some action was taken by the Central Bureau of Investigation ("CBI"), such as a probe or raid. In 2 cases, the VC was arrested.

THE WAY FORWARD

While the indicators presented here do not cover the breadth of issues in the governance of higher education, they do reveal deep-seated challenges in the appointment of VCs. In particular, the long periods of delay in the appointment of new VCs reveal systemic apathy towards the management of universities. Gender disparity is an obvious problem. The data also suggests that the talent pool from which candidates are drawn is inadequate. The answer lies in:

- Bringing accountability to the office of the VC, both at the time of appointment and over the course of her term.
- Overhauling the appointment process to attract better talent.
- Instituting checks and balances to mitigate undue political influence.

NOTES TO DATA

- The data on appointments has been collected from news reports, university websites and other web portals.
- 5 Central universities have been excluded since they do not fall under the purview of the MHRD and are governed by different regulations.
- Only appointments made in 2006 or after are included. If a VC was in office in 2006, but appointed prior to 2006, she has been excluded.
- For Figure I, academic background refers to the discipline in which each VC gained her highest degree. 2 VCs have been excluded from this dataset because of the lack of information; 6 others have been excluded because they were appointed to universities specialising in a particular discipline - English and Foreign Languages University, Mahatma Gandhi Antarrashtriya Hindi Vishwavidyalay and Maulana Azad National Urdu University.

JUDICIAL ENFORCEMENT OF THE RIGHT TO EDUCATION ACT

THE QUESTIONS

Courts, being demand-driven institutions, are important barometers in assessing the realisation of rights and corresponding duties. Judicial enforcement is therefore a useful way to examine the effectiveness of socio-economic welfare and rights-based legislation like the Right of Children to Free and Compulsory Education Act, 2009 ("RTE Act"). Judicial outcomes are a direct product of the selective disputes which are brought before courts. Consequently, some areas of law may receive more attention than others and some parties may tend to approach courts more than others. This entry asks the following questions:

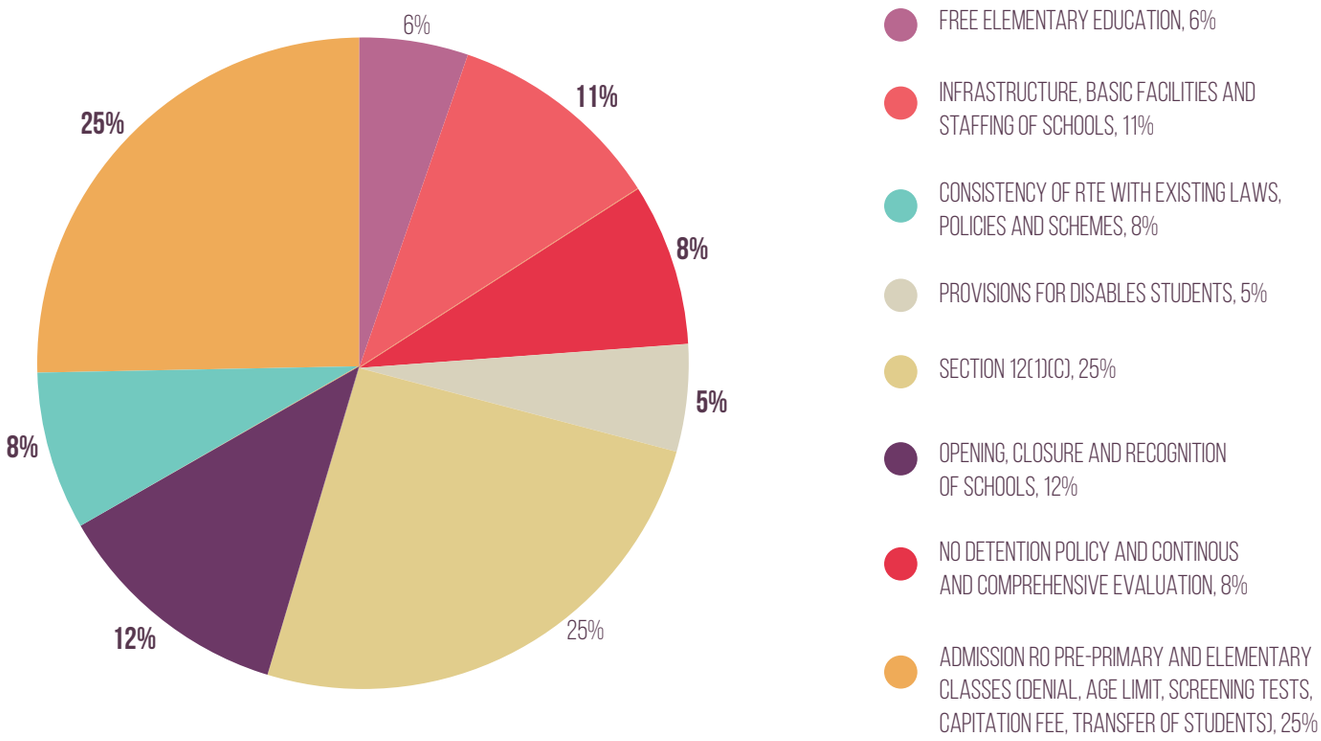
- What are the most contested provisions of the RTE Act?
- What is the role of courts in providing remedies in such cases?

ANALYSIS

We have identified all litigation under the RTE Act which has taken place in the High Courts and the Supreme Court from 2010-2016. Of this, the 75 cases that directly affect the rights of the child under the Act have been further analysed.

CATEGORY-WISE CLASSIFICATION OF RTE ACT LITIGATION

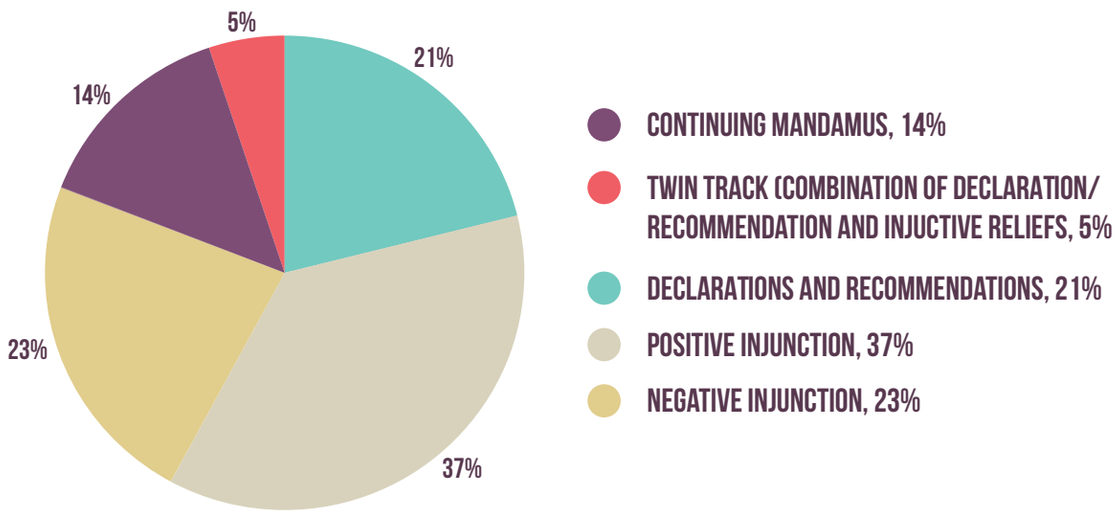
FIG. I



- Half of the litigation is related to access to education, with 25% cases dealing with general admission issues and another 25% dealing with one key provision of the Act i.e. s. 12(1)(c), which mandates all unaided private schools to reserve 25% seats at entry level for children belonging to economically weaker sections and disadvantaged groups.
- The least litigated provisions include facilities of disabled students, basic facilities and infrastructure in schools etc.
- Provisions banning corporal punishment and prescribing pupil-teacher ratio etc. have not been contested at all. Broadly, then, access to education, which is an immediately realisable right, is litigated significantly more than issues related to the quality of education.

CATEGORY-WISE CLASSIFICATION OF JUDICIAL REMEDIES

FIG. II



- Courts have issued injunctions (negative or positive) in 60% of cases, while declarations and recommendations have been made in only 21% of cases.
- The continuing mandamus- a writ issued by a higher authority in public interest to ensure time-bound performance of a task - has been used sparingly, in only 14% of cases.
- Although provisions of the RTE Act (such as the ban on screening procedures and capitation fees) attract monetary penalties, courts have not ordered monetary compensation in any of these.

Injunctive reliefs are court orders which direct a party to perform or refrain from performing a particular act. These reliefs form the statistically significant majority as most of the litigation pertains to direct violations of the Act. In cases involving time-bound admission and other access disputes, the interpretation of law is limited to the immediate reliefs being sought for. The courts, in very few cases, have provided orders with implications beyond the immediate relief sought for, explaining the low proportion of declarations and recommendations.

THE WAY FORWARD

In the seventh year of its existence, the implementation of the RTE Act suffers from several gaps in terms of availability of adequate infrastructure, adaptability and quality of teaching in classrooms and weak institutional structures such as the National and State Commissions for Protection of Child Rights (NCPCR and SCPCRs), to name a few. Key takeaways from the analysis in this entry are:

- The burden on the courts in handling statutory violations related to s. 12(1)(c) and general issues of access can be reduced by increasing awareness about the powers of the NCPCR and SCPCRs.
- Courts are constrained by the issues brought before them and play a limited role in providing large-scale reformative relief. Strategic public interest litigation based on broad-based reliefs such as district/state-wise implementation of the RTE Act will allow courts the opportunity to go beyond injunctions and focus on long-term reliefs involving sustained systemic reform.
- Courts will not be able to address issues related to the quality of education unless legislative and policy interventions are first made to flesh out the provisions of the RTE Act in this regard. These interventions are required to devise sustainable models for ensuring transparency and accountability of the duty-holders (teachers, headmasters, education bureaucracy) responsible for implementing the RTE Act.

NOTES TO DATA

- All judgments have been sourced from <www.manupatra.com>
- Cases relating to service law, private schools and teachers which only tangentially affect the rights of children have been excluded.
- The data set used to analyse the nature of remedies is restricted to 57 of the 75 cases identified. The remaining 18 were excluded because the petition was dismissed or no relief was awarded by the Court.

PHARMACEUTICAL REGULATION AND PUBLIC HEALTH NEED

THE QUESTIONS

In Swasthya Adhikar Manch vs. Union of India, which overhauled the drug regulatory regime in the country, the Supreme Court, in October 2013, ordered that applications for the approval of drugs and clinical trials be assessed on the grounds of 'assessment of risk versus benefit to the patients, innovation vis-á-vis existing therapeutic option and unmet medical need in the country'. Schedule Y to the Drugs and Cosmetics Rules, 1945 was also amended to require applicants seeking to conduct clinical trials or import or manufacture new drugs to submit information meeting these criteria. However, there is no guidance from the Court or from the regulator, the Central Drugs Standard Control Organisation ("CDSCO"), regarding the parameters on which 'unmet medical need' ought to be assessed.

In July 2014, CDSCO issued an order directing that waiver of local clinical trials for drugs would only be granted if such drugs had been approved outside India. It also restricted the grounds on which waivers could be granted to cases of national emergency, extreme urgency, epidemics, orphan drugs for rare diseases and drugs indicated for conditions/diseases for which there is no therapy. These grounds give some indication of the manner in which the CDSCO interprets 'unmet clinical need'.

Building on this, we attempt to develop surrogate markers of 'unmet clinical need' by asking:

- What are the kinds of drugs that the regulator approves?
- In what areas is most clinical research conducted?
- When does the regulator waive the requirement for local clinical trials to allow quicker access to drugs?

ANALYSIS

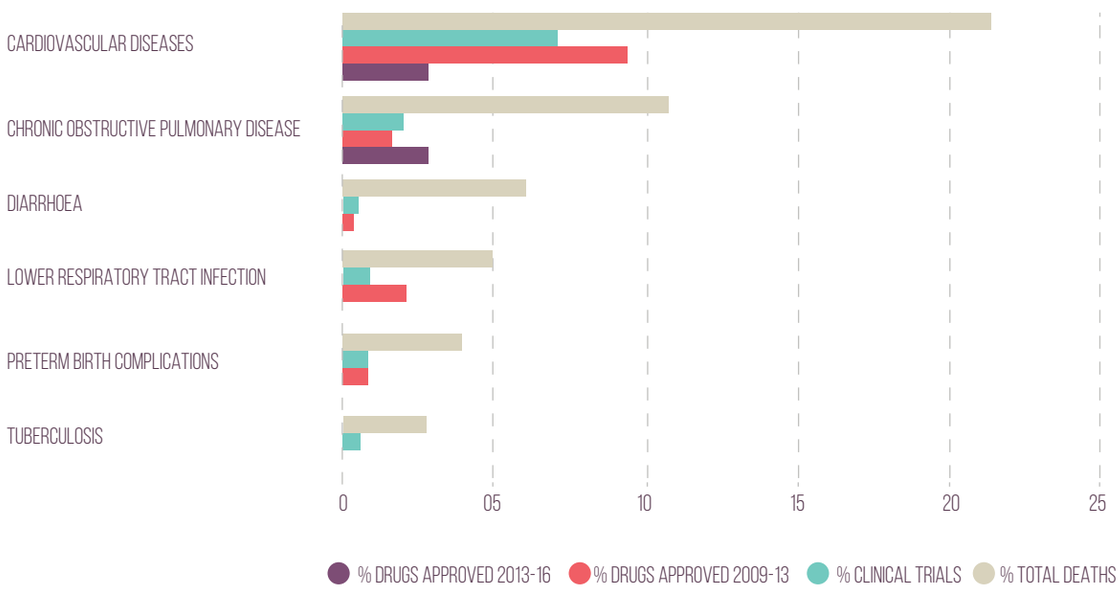
We correlated the leading causes of mortality in India (WHO 2014) with three sets of data:

- Clinical trials approved since 1 January 2013;
- Drugs approved for marketing, divided into two time-scales—from 1 January 2009 to 21 October 2013, and from 21 October 2013 to 1 May 2016, in order to examine the impact of the Supreme Court order on that date; and
- Waivers of local clinical trials granted, divided into two time-scales—before and after the July 2014 CDSCO order.

Each trial and each drug was categorised according to its primary disease area of use and percentages of the total number associated with each of the 6 leading causes of mortality calculated.

CAUSES OF DEATH, RELATED CLINICAL TRIALS AND DRUG APPROVALS

FIG. I



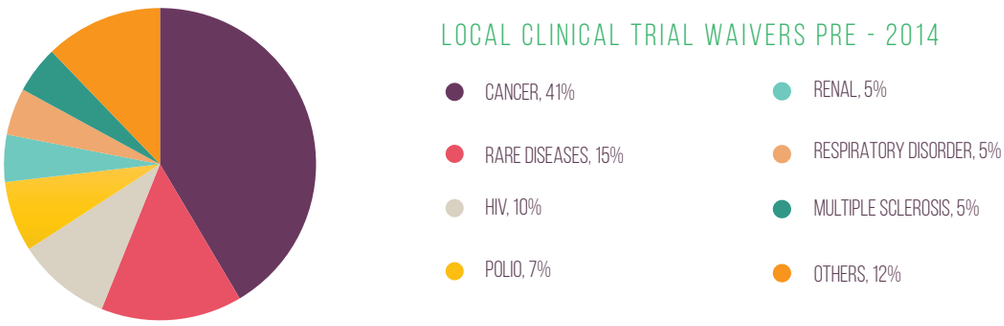
	TB	PRETERM	LRTI	DIARRHOEA	COPD	CVD
% Total Deaths	2.7	3.9	4.9	6	10.8	21.4
% Clinical Trials	0.5	0.8	0.8	0.5	1.6	7.1
% Drugs Approved 2009-2013	0	0.8	2	0.3	2	9.4
%Drugs Approved 2013-2016	0	0	0	0	2.8	2.8

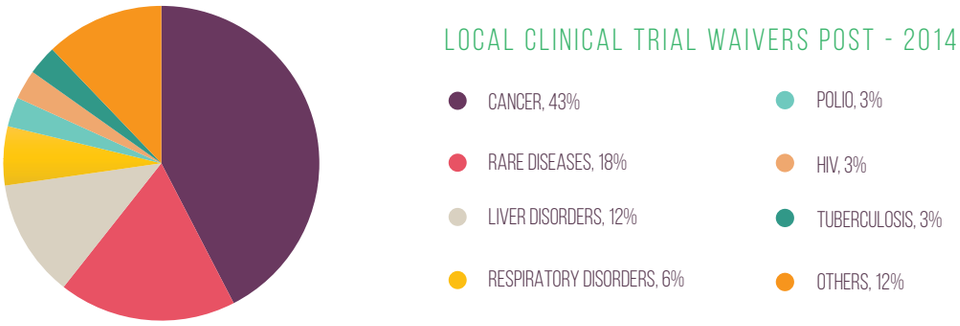
- 50% of deaths in India are attributable to 7 leading causes: Ischaemic heart disease, chronic obstructive pulmonary disease (COPD), stroke, diarrhoeal diseases, lower respiratory tract infections (LRTI), preterm birth complications and tuberculosis (TB).
- In each of the 6 areas of disease, the percentage of attributable mortality exceeds the percentage of both clinical trials and drug approvals granted primarily relating to that area.
- Although the 6 diseases in combination are responsible for an estimated 49.7% of deaths in 2012, they were only associated with 11.3% of all pharmaceutical clinical trials and 12.3% of all new marketing approvals in the total periods examined. In the period from 22 October 2013 to 1 May 2016, they were associated with only 5.6% of new marketing approvals.
- Cancer was not among the 10 leading causes of death, yet is associated with more clinical trials than the 6 leading causes combined (14.8%) and with 10.8% of all new marketing approvals in total and 13.9% of approvals since 21 October 2013 (not shown in Figure 1).

CLINICAL TRIAL WAIVERS

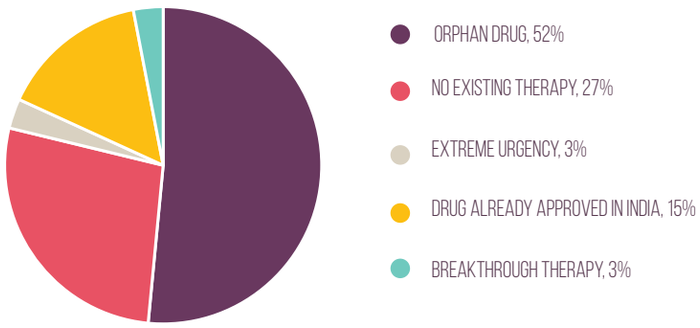
We categorised the drugs and indications for which waivers were granted between 2011 and April 2016 in Figure II. Figure III represents the grounds on which such waivers were granted post-2014.

FIG. II





GROUNDS FOR CLINICAL TRIAL WAIVERS POST 2014
FIG. III



- The categories of diseases represented in waivers of local clinical trials have remained similar before and after the restriction of waiver to five specified grounds in 2014.
- Cancer and rare diseases are over-represented categories, constituting 58% of all waivers granted.
- Once the grounds for waiver in the 2014 order began to be applied, more than half (52%) of trials have been waived on the ground of 'orphan drug for rare diseases'. 15% trials have been waived on the grounds that the drug has previously been approved in India (for a different dose or indication), and 3% for breakthrough therapies, although these two grounds have not been enumerated in the notification.
- The ground of "drugs indicated for conditions/diseases for which there is no therapy" has been broadly interpreted to include any drug that is a substantial improvement over previously existing therapy.

THE WAY FORWARD

Despite the tripartite grounds laid down by the Supreme Court to guide priority setting for drug approvals in the country, no clear correlation can be established between disease categories that require more effective medical interventions and drugs that are actually being approved for marketing in the country or those for which clinical trials in the local population are being waived. In fact, these specific (yet vague) grounds, may be discouraging drug companies with safe and effective drugs from applying for marketing approvals. For the criterion of 'unmet medical need' to serve a meaningful purpose:

- Clearer guidance about its meaning is required from the regulator.
- Reasoned explanations from expert committees based on scientific evidence regarding the grounds on which drugs are approved and clinical trials waived are required.

NOTES TO DATA

- We combined ischaemic heart disease and stroke into a single category, namely, cardiovascular disease (CVD), as the medications used for treatment and prevention of both conditions are largely the same.
- Detailed information on clinical trials approved was available only from 1 January 2013.
- All data on clinical trials approved and drugs approved for marketing was gathered from the website of CDSCO <http://www.cdsco.nic.in/forms/Default.aspx> and in the case of waivers, also from replies to questions in Parliament. See Lok Sabha Unstarred Question No. 4546 (19 December, 2014).

GRANT OF ENVIRONMENTAL CLEARANCES

THE QUESTIONS

The speedy grant of environmental clearances ("ECs") to projects is an important factor in improving India's ease of business rankings, but there are concerns that the quality and integrity of the environmental review process suffer with faster ECs.

The components and timelines of this review process are set out in the Environmental Impact Assessment Notification 2006 ("EIA Notification"). Naturally, failure to comply with the procedure prescribed in the Notification, whether by project proponents or by the reviewing authorities, the Expert Appraisal Committees ("EACs"), compromises the grant of the EC.

In this entry, we ask the following questions over 2014-16:

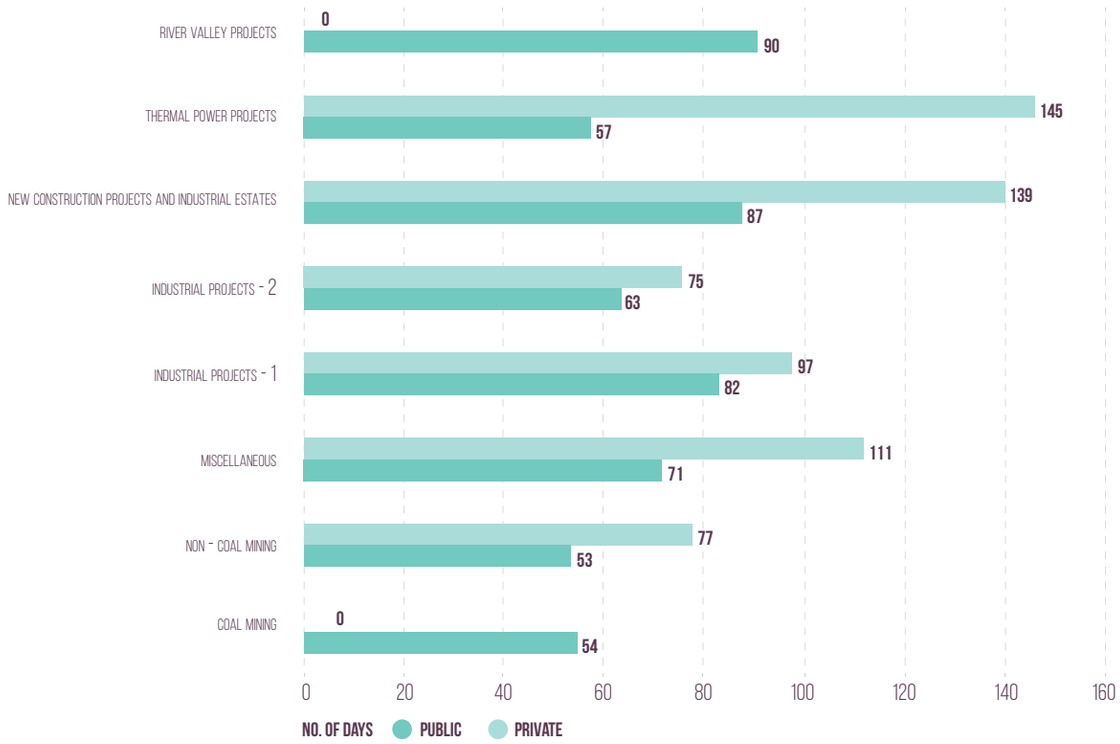
- How speedily are ECs granted and across which categories of projects?
- In how many instances was the EIA Notification flouted and by whom?

ANALYSIS

We analysed all Category A projects under the EIA Notification that were recommended and granted environmental clearance by EAC's and the Ministry of Environment, Forests and Climate Change ("MoEFCC") respectively between 1st June 2014 and 25th May 2016 (Category A projects are reviewed by the Centre, Category B projects by the States). This dataset comprised 560 projects overall.

CATEGORY-WISE SPEED OF GRANTING ECS

FIG. I



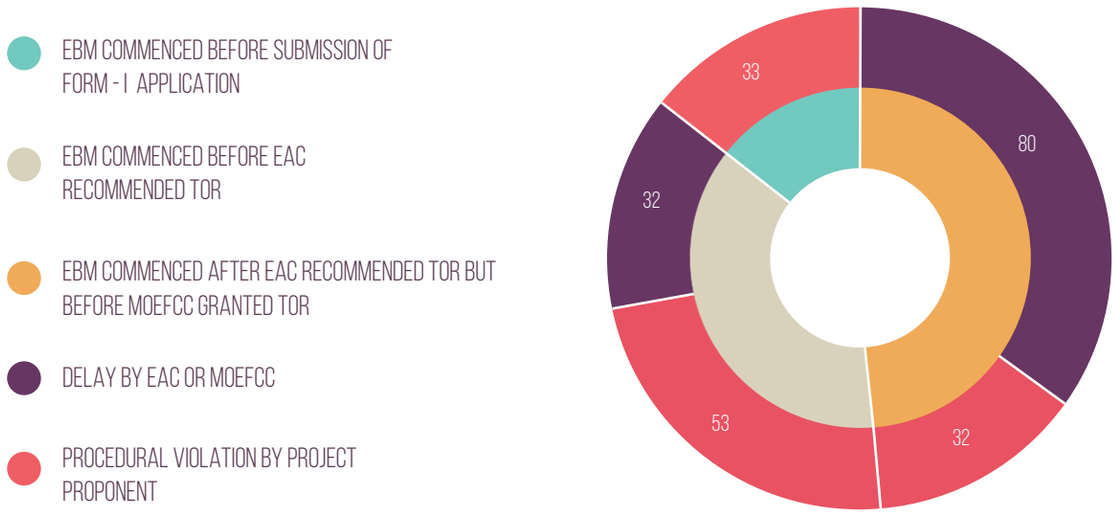
- 404 out of 551 ECs were granted to private entities.
- The median number of days taken by the MoEFCC to grant EC is 85 days, with Coal Mining projects taking the shortest time (54 days) and New Construction Projects and Industrial Estates taking the longest time (139 days).
- On the whole, the MoEFCC takes a significantly greater number of days to grant EC to private entities (96 days) than it does to public enterprises (63 days).

IRREGULARITIES IN THE CONDUCT OF EIA

Project proponents apply for EC by submitting Form-I (Appendix-I of the EIA Notification 2006), a pre-feasibility report and draft Terms of Reference ('ToR') to the MoEFCC. These ToR identify the key environmental concerns that ought to be addressed in an EIA report. EACs are expected to review draft ToR, make modifications, and ultimately issue project-specific ToR. This process is called scoping and is crucial to the EIA process because it sets out the parameters on the basis of which an EIA report is to be conducted by the project proponent. One of these is the requirement of environmental baseline monitoring ("EBM") through which a proponent collects data on relevant biophysical, social and economic aspects of a project (EIA Resource Training Manual, UNEP). This data provides reference points against which the impact of the project can be assessed and predicted by the EAC.

It is therefore imperative that the project proponent commence EBM only after ToR have been issued by the EAC (Technical EIA Guidance Manual for Thermal Power Plants, MoEF); otherwise, the objective of the scoping exercise is entirely frustrated. In Figure II, we analyse the numbers of projects in which EBM commenced before the EAC issued project-specific ToRs and the different reasons for this breach in procedure.

VIOLATIONS IN ENVIRONMENTAL BASELINE MONITORING
FIG. II



- In more than half the proposals (230 out of 421), EBM commenced before project-specific ToR were issued.
- Of these 230 proposals, there is a roughly even split between violations by project proponents and delay by the EAC or the MoEFCC. Under the EIA Notification, delay by these authorities in issuing project-specific ToR within 60 days of the EC application allowed the proponent to commence EBM on the basis of draft ToR.
- The oldest baseline data used was in the Patherdih NLW Coal Washery Project (Dhanbad, Jharkhand) where the data was collected 1323 days or more than 3 and a half years before Form-I was submitted!

THE WAY FORWARD

This analysis demonstrates that not only do project proponents regularly violate provisions of the EIA Notification, but also that EACs clearly turn a blind eye to this. Greater vigilance is required to ensure that speedier clearances do not dilute the thoroughness of environmental review. This includes:

- Using s. 16 (h) of the National Green Tribunal Act, 2010 to challenge ECs granted despite EBM violations.
- Requiring EACs to provide reasoned explanations when they recommend ECs despite EBM violations.
- Reversing the notification of 10th April 2015, which makes it the norm to issue generic/standard ToR instead of project-specific ToR. This notification permits EBM to be conducted merely with the successful online submission of Form-I and registration by the project proponent without waiting for the issuance of even these standard ToR. It has the effect of sanctioning the violations documented in this piece.

NOTES TO DATA

- All information regarding project proposals, EIA Reports and ECs was extracted from the MoEFCC website <http://environmentclearance.nic.in/>
- 9 and 139 projects have been excluded from the analysis in Figures I and II respectively because of the unavailability of certain information.
- A spreadsheet application was used to generate median values for the data set in Figure I.

REGULATION OF ELECTRONIC CIGARETTES

THE QUESTIONS

Electronic cigarettes or e-cigarettes, which are projected as 'tobacco cessation' products by various sellers, present a serious public health threat for two reasons: there is lack of concrete evidence in support of the claim that they are tobacco cessation products (Howe et al; Beard et al), and their import, sale and distribution largely takes place without regulatory approval. E-cigarettes contain nicotine, not tobacco, and therefore, do not fall within the ambit of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 ("COTPA"), and the rules framed under it, which mandate stringent health warnings on the packaging and advertisements of tobacco products. Market research indicates that the projected Compound Annual Growth Rate of the e-cigarette industry in India is 63.38% over 2013-2018 (Research & Markets Report on E-cigarette Market in India 2014-2018).

The Government of India has been slow to respond. Since the first declaration of its intention to ban e-cigarettes containing nicotine in 2014, only 3 State Governments and 1 Union Territory have implemented this ban. State Governments in India are adopting different routes—Punjab has classified nicotine as a poison, while Maharashtra treats it as an unapproved drug.
In this context, we ask:

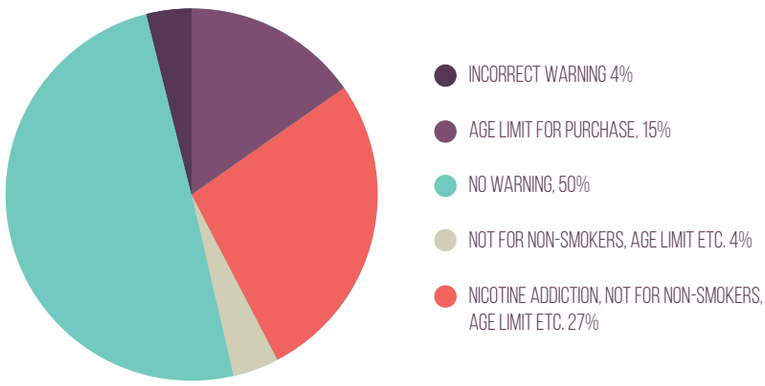
- What are the different ways in which e-cigarettes are being marketed in India?
- What are the various options for their regulation?

ANALYSIS

Most e-commerce websites sell e-cigarettes as therapeutic products that enable users to quit smoking. We went through 26 prominent and easily accessible e-commerce websites that sell e-cigarettes to study whether these products were sold with appropriate health warnings. The results of this survey are set out in Figure I.

HEALTH WARNINGS FOR E-CIGARETTES ON E-COMMERCE WEBSITES

FIG. I



- 50% of the websites have no health warnings on the consumption of e-cigarettes despite the fact that they contain nicotine.
- 8 additional websites, which comprise 30% of the dataset, display warnings in an inaccessible manner. These websites carry health warnings specifying the addictive properties of nicotine and other ill effects of e-cigarettes (including the warning that e-cigarettes are not meant for non-smokers) but do not display them as a part of the description of the product. Instead, they are displayed at the extreme bottom of the webpage or clubbed with the section on terms & conditions, unlikely to be noticed by a regular buyer.
- In one case, the health warning was even incorrect, stating that "nicotine does not pose major health issues even at a higher volume of consumption." (See <http://www.smokefree.in/>)

REGULATION OF ELECTRONIC NICOTINE DELIVERY SYSTEMS (ENDS) IN OTHER COUNTRIES

FIG. 11

- 19 countries have categorised ENDS as e-cigarettes, while 13 countries regulate them as therapeutic products, and 12 others as tobacco imitation products.
- Of the 69 countries surveyed, only 31 have banned e-cigarettes.

THE WAY FORWARD

The current unregulated sale of e-cigarettes is dangerous for a country like India where the number of smokers is on the decline (WHO Global Report, 2015) as it increases the possibility of e-cigarettes (i) becoming a gateway for smoking by inducing nicotine addiction; and (ii) perpetuating smoking by making it more attractive, thereby encouraging persons to become dual users of tobacco as well as e-cigarettes. In the absence of clearer evidence on the effect of e-cigarettes on tobacco cessation, it is imperative that their sale be accompanied by accurate health warnings.

This is especially relevant in India, where data suggests that tobacco control laws, particularly the pictorial health warnings and advertisements mandated under COTPA have been highly effective in increasing awareness of the health risks of tobacco (smoking as well as non-smoking). More than 70% of persons surveyed noticed health warnings on cigarettes, while approximately a quarter thought of quitting on seeing this warning. The effectiveness of such warnings in ultimately reducing tobacco consumption has also been confirmed by the World Health Organisation (Guidelines for Implementation of Article 11 of the WHO Framework Convention on Tobacco Control).

In light of this evidence, it is recommended that:

- The Government of India impose appropriate restrictions on the sale and advertisement, online and otherwise, of e-cigarettes, including proper health warnings, in order to plug the existing regulatory vacuum.
- Simultaneously, the Government should also commission independent scientific research on the benefits and risks posed by these products. On the basis of this research, it may then make an informed decision regarding their regulation as tobacco imitation products or as therapeutic products.

NOTES TO DATA

- Information about the regulatory status of electronic nicotine delivery systems was sourced from data compiled by the Institute of Global Tobacco Control, John Hopkins Bloomberg School of Public Health, <http://globaltobaccocontrol.org/e-cigarette/country-laws/view>
- Data on the impact of health warnings on tobacco products was obtained from replies to questions in the Lok Sabha on 18 July 2014, regarding the marketing of cigarettes. See <http://164.100.47.192/Loksabha/Questions/QResult15.aspx?qref=939&lsno=16> accessed 23 June 2016>

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