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LESSONS FOR INDIA'S LAW COMMISSION: A STUDY OF INTERNATIONAL BEST PRACTICES

—Krishna Sumanth* and Prashant Narang**

Abstract – The Law Commission of India has often been criticized for being an ineffective body with limited powers for driving legislative change. Less than fifty percent of the Commission's recommendations have been implemented and there is no mechanism to ensure the consideration of these recommendations. The Commission is hardly able to function as the reformative body that it was intended to be. This limited impact can be attributed to a variety of institutional and structural shortfalls facing both the Commission itself and the framework within which it operates. This paper inquires into the functioning of Law Commissions from four countries. These countries have been selected based on their performance on global indices assessing regulatory quality and their circumstantial similarity with India. Through a comparative analysis of the performance of these Law Commissions, using various good governance metrics, the paper presents a variety of lessons to improve the functioning of the Law Commission of India.

I. INTRODUCTION

The Indian legal system is often criticised on a variety of grounds. The framework of laws in the country is often described as superfluous, archaic,¹

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¹ Press Trust of India, 'Too Many Laws Unnecessarily Cause Problems, Lead to Corruption: Debroy' *Business Standard* (New Delhi, 9 January 2020) <https://www.business-standard.com/article/pti-stories/too-many-laws-unnecessarily-cause-problems-debroy-119111501857_1>.

complex² and inaccessible,³ and numerous critics claim that these laws are the result of opaque⁴ processes. In this context, the role of bodies which exist to facilitate law reform and remedy these myriad problems gains greater prominence. The Law Commission of India is one such body.

In India, the earliest Law Commissions, established prior to independence by the British Government, were constituted for the purpose of recommending legislative reforms, codifying laws, and ensuring greater clarity in governance. The first Law Commission of independent India was established in 1955 under the chairmanship of the former Attorney General for India M. C. Setalvad.⁵ This Commission was created for a period of three years and this practice has persisted ever since then, resulting in the reconstitution of Law Commissions every three years via executive orders. The executive orders that constitute the Law Commissions also specify their scope and purpose, and thus these fluctuate periodically. However, the Law Commissions broadly seek to carry out a consistent role within the legal framework of the country.

This consistent role of the Law Commission is primarily to enquire into the quality of legislation and recommend modifications to ensure that Indian legislations are relevant, clear, and consistent. The quality of legislation can be assessed on several metrics and these go hand in hand with the regulatory framework around which these laws are made and implemented. Legislations and the process of rule making must contain certain safeguards in order to ensure that good regulatory hygiene is maintained while preventing any scope for autocratic or undemocratic results. Firstly, there must be democratic safeguards, which serve as procedural checks to ensure that the process of law

html> accessed 30 December 2021; *See also*, 'The Burden of too Many Laws' (*Takshashila*, Jul 2011) <<https://takshashila.org.in/pragmatic-the-burden-of-too-many-laws/>> accessed 30 December 2021; 'The 100 Laws Project: Compendium of Laws to be Repealed' (*Centre for Civil Society*, August 2014) <<https://ccs.in/sites/default/files/100laws.pdf>> accessed 30 December 2021.

- ² Aarefa Johari, 'The Indian Justice System is too Slow, too Complex and too Costly, says New Study' (*Scroll*, 24 January 2018) <<https://scroll.in/article/866158/the-indian-justice-system-is-too-slow-too-complex-and-too-costly-says-new-study>> accessed 30 December 2021.
- ³ 'Justice Inaccessible to Many' *The Hindu* (10 September 2010) <<https://www.thehindu.com/news/national/tamil-nadu/lqquoJustice-inaccessible-to-manyrdquo/article15900333.ece>> accessed 30 December 2021; *See also*, Prashant Reddy, 'Making the Language of the Law Comprehensible' *The Hindu* (23 September 2020) <<https://www.thehindu.com/opinion/lead/making-the-language-of-the-law-comprehensible/article32672083.ece>> accessed 29 December 2021.
- ⁴ Anam Ajmal, 'Rules Framed in 'Opaque' Manner, may Lead to Censorship: Activists', *Times of India* (New Delhi, 26 February 2021) <<https://timesofindia.indiatimes.com/business/india-business/rules-framed-in-opaque-manner-may-lead-to-censorship-activists/articleshow/81219017.cms>> accessed 30 December 2021; *See also*, Maansi Verma, 'Why the Growing Lack of Consultation in Law-making is Damaging Democracy' *The Indian Express* (10 June 2021) <<https://indianexpress.com/article/opinion/why-the-growing-lack-of-consultation-in-law-making-is-damaging-democracy-7352004/>> accessed 30 December 2021.
- ⁵ 'Post-Independence Developments' (Law Commission of India) <<https://lawcommissionofindia.nic.in/post-independence-developments/>> accessed 29 December 2021.

making is participatory, transparent, and accessible to the public, thus holding law making bodies accountable for their work. Secondly, legal safeguards must ensure that too much power is not delegated to the discretion of the executive. Finally, resource safeguards must ensure that superior incentive structures are provided for by the legislation.⁶

The Law Commission seeks to facilitate the improvement in the quality of Indian legislations, by ensuring that they are clear, serve their intended purpose and account for current realities. In doing so, the Commission resultantly engages in both *ex-ante* and *ex-post* analyses. An *ex-ante* analysis utilises a forward-looking approach, where laws are framed and assessed based on their potential effectiveness. An *ex-post* analysis involves analysing the performance of a pre-existing legislation and making recommendations based on the same.⁷ This body also attempts to ensure that public opinion is represented and considered in the legislative recommendations that it makes and that these recommendations contain the necessary safeguards. Public opinion is sought to be represented through periodic open calls to the public, inviting them to comment on, and suggest amendments to, proposed Bills and Reports. However, there is limited transparency in assessing how many of the comments received are actually considered and incorporated into the final drafts circulated by the Commission. Additionally, this body seeks to ensure that an *ex-post* analysis of the existing framework is conducted, and accounted for before recommendations are made for the modification of the same.⁸

This broad role of the Law Commission can be seen through the terms enshrined in the executive order constituting the Commission as well. For instance, the order constituting the twenty-first Law Commission in 2015 stipulated that the Commission would engage in a multitude of activities. This would include reviewing and repealing obsolete laws, examining and enhancing the effectiveness of poverty-alleviation legislations, examining existing gender equality laws and suggesting amendments thereto, among others.⁹

⁶ Bhuvana Anand and others., 'How does India Fare on Quality of Regulation?' (2017) 8 JILS 69-84; See also, Prashant Narang and others 'What does a Framework of Regulatory Quality and Hygiene Entail?' (October 2019) <<https://ccs.in/sites/default/files/what-does-a-frame-work-of-regulatory-quality-and-hygiene-entail.pdf>> accessed 30 December 2021.

⁷ Law Commission of India, 'Assessment of Statutory Frameworks of Tribunals in India' (Law Com No 272, 2017) <https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880f_b464895726dbdf/uploads/2022/08/2022081632-2.pdf> accessed 30 December 2021 serves as an example of an *ex-post* analysis. Law Commission of India, 'The Judges (Inquiry) Bill, 2005' (Law Com No 195, 2006), <https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880f_b464895726dbdf/uploads/2022/08/2022081013-1.pdf> accessed 30 December 2021 serves as an example of an *ex-ante* analysis.

⁸ Law Commission (n 5), 'Post-Independence Developments'.

⁹ Government Order for the 'Constitution of Twenty-first Law Commission of India for a Period of Three Years from 1st September 2015 to 31st August 2018', Ministry of Law and Justice, 14 Sep. 2015, F. No, A-45012/3/2015-Admn III (LA).

Similar terms have been provided in the 2020 notification calling for the creation of the twenty-second Law Commission as well.¹⁰

The Indian Law Commission was thus established to play a vital role in ensuring that the quality of laws in the country is of a satisfactory standard and these laws truly serve their purpose. However, the Indian Law Commission has been riddled with problems and resultantly, has had its influence limited in independent India. Though the Commission should be influencing the Indian legislative landscape significantly through its recommendations, less than 50% of these recommendations have been implemented, with several of these recommendations having been pending consideration for several years.¹¹ This is owing to not only a variety of institutional limitations that the Commission faces but also due to the legislative ecosystem – including the parliamentary power exercised over the Commission – in which it operates. More fundamentally, no chairperson or members have even been appointed to the Law Commission since the issuance of the 2020 notification calling for its creation.¹² As a result, the Law Commission has, in the eyes of many, failed to live up to its intended purpose.¹³

This paper seeks to compare the functioning of the Indian Law Commission as an institution, as well as the framework within which it operates, with the law reform bodies of four other countries. The rationale behind the selection of the four countries will be presented in ‘Section II’, which deals with the research methodology adopted by the paper. This Section will also present various features of institutions which have been widely accepted as characteristics of good regulatory hygiene. This will create a structure by which the Law Commissions can be subsequently analysed. ‘Section III’ will delve into the functioning of the Law Commissions (as well as their supporting ecosystem) of the selected countries in order to highlight their institutional and operational framework. A comparative analysis of the frameworks present in these

¹⁰ Government Order for the ‘Constitution of Twenty-second Law Commission of India for a Term of Three Years’, Ministry of Law and Justice, 21 February 2020, F. No. A-45012/1/2018-Admn III (LA). The Commission however has still not been constituted – over 20 months subsequent to the issuance of this notification.

¹¹ Prachi Shrivastava, ‘How Laws have been Getting Better’, *Mint* (4 May 2015) <<https://www.livemint.com/Politics/9vX3JeYApFnGllm5vHpHIN/How-laws-have-been-getting-better.html>> accessed 28 December 2021.

¹² Press Trust of India, ‘No Time Limit Fixed for Law Commission Chairperson Appointment: Centre’ *NDTV* (New Delhi, 22 July 2022) <<https://www.ndtv.com/india-news/no-time-limit-fixed-for-law-commission-chairperson-appointment-centre-3184929>> accessed 2 August 2022.

¹³ Soibam Rocky Singh, ‘No Reports from Headless Law Commission’ *The Hindu* (New Delhi, 27 May 2022) <<https://www.thehindu.com/news/national/no-reports-from-headless-law-commission/article65466828.ece>> accessed 2 August 2022; See also Tahir Mahmood, ‘Reforming the Law Commission: Govt should Enshrine in Law, the Composition, Tenure, Functions and Work Procedure of the Panel’ *The Indian Express* (29 August 2019) <<https://indianexpress.com/article/opinion/columns/reforming-the-law-commission-of-india-cji-5945797/>> accessed 2 August 2022.

four countries will be conducted, and recommendations for India's path ahead will be made, in 'Section IV'. The conclusions reached will be expressed in 'Section V'.

II. RESEARCH METHODOLOGY

In order to better understand the limitations of the Indian Law Commission, this paper will be conducting a comparative analysis of the Law Commission of India with the law reform bodies of four other countries. It is acknowledged that the comparative method has come under criticism from a variety of scholars owing to its numerous shortfalls¹⁴ – including the unique circumstances of the subjects being compared, the limited ability to sort out rival explanations, and the significant number of variables that could lead to a particular outcome.¹⁵ These shortfalls, however, only detract from the value of the comparative method to the extent that it cannot be seen as a single cut-and-dried solution to the problems plaguing the Indian Law Commission. There is still extensive value to relying on the comparative method, such as its ability to facilitate concept formation and structural comparisons, heighten the power of description, and illustrate potential institutional solutions to problems.¹⁶ This method can therefore still be a useful tool in ascertaining how the law reform bodies of other countries operate, how they perform on various parameters measuring regulatory quality, what principles and values they prioritise, and what institutional mechanisms they possess to ensure compliance with these principles. This analysis is conducted by taking into consideration the diversity in circumstances and operational capabilities of countries as well as their law reform bodies and attempting to partially account for the same. In order to try and ensure that the lessons learnt from the other countries would likely be applicable in the Indian context, two categories of countries have been chosen – the first being countries with capabilities and circumstances (economically, socially, and politically) similar to those of India, who have performed better than India on indices measuring the quality of their regulatory framework; and the second being countries which are top performers on these indices.

Since there is no index measuring the quality of law commissions in particular, the indices used in the assessment of the regulatory quality within the country are the World Bank's Global Indicators of Regulatory Governance

¹⁴ Lant Pritchett, 'Fragile States: Stuck in a Capability Trap?' (November 2010) <https://openknowledge.worldbank.org/bitstream/handle/10986/9109/WDR2011_0001.pdf?sequence=1&is-Allowed=y> accessed 30 December 2021; See also Pratik Datta and Ajay Shah, 'How to make Courts Work' (*The Leap Blog*, 22 February 2015) <<https://blog.theleapjournal.org/2015/02/how-to-make-courts-work.html>> accessed 30 December 2021.

¹⁵ Arend Lijphart, 'Comparative Politics and the Comparative Method' (1971) 65(3) *APSR* 682-693.

¹⁶ Ada W Finifter, ed, 'Political Science: The State of the Discipline II' (1993) *APSA*. See also, Reza Azarian, 'Potentials and Limitations of Comparative Method in Social Science' (2011) 1(4) *IJHSS* 113-125.

Index, the World Justice Project's Rule of Law Index, and the World Economic Forum's World Information Technology Report (specifically their findings on the effectiveness of law-making bodies). These reports broadly indicate the regulatory framework and effectiveness of the institutional bodies operating in the legislative system of the country. Based on the performance on these rankings, two top-performing countries and two countries with similar 'circumstances' (primarily GDP per capita, population density, diversity, political systems, and limited harmony among communities) to India, but who have performed better than India, have been chosen.

The two top-performing countries selected are the United Kingdom ('UK') and New Zealand. The UK is a country that features in the top 15 of nearly all of these rankings. It has a robust framework surrounding its law commission, and this has served as a template for the law commissions of numerous other Commonwealth nations. Additionally, since the first three Indian law commissions were established whilst under British rule and India follows the common law system pioneered by the British, a comparison with the law commission of the UK would be particularly prudent. New Zealand is also one of the highest-ranked countries on most of these indices and it too has an established law commission mechanism. The only countries that consistently feature higher than New Zealand on these indices are Scandinavian countries, and these nations do not have clear-cut bodies that carry out the same role as a law commission.

The countries selected with comparable 'circumstances' are Rwanda and South Africa. Rwanda is a country with both a significantly lower GDP per capita and a higher population density than India. Additionally, the country's society is famously diverse and has seen horrifying instances of genocide in the last thirty years, thus showing deep-rooted social divisions. Despite these factors, Rwanda is nearly twenty ranks ahead of India on the GIRG Index for Regulatory Quality, nearly ten ranks ahead on the 'Rule of Law' metric, and fares much better than India (as well as several highly 'developed' countries) on the World Economic Forum's indices. South Africa has been chosen owing to its comparable GDP per capita, its place in global affairs as a large developing country, and the extensive diversity and divisions which exist in South African society (with the apartheid only ending around thirty years ago). Despite these circumstances, South Africa is around twenty-five places higher than India on the World Bank's GIRG Index for Regulatory Quality and performs better on most other indices as well. Both these countries have law commissions functioning within their state, with extensive frameworks surrounding these bodies.

In the conduct of the substantive analysis, the performance of the chosen countries will be assessed on a variety of metrics which serve as indicators of good governance. These indicators have been chosen from a 2013 report of

the Government of India's Financial Sector Legislative Reforms Commission,¹⁷ the Organisation for Economic Cooperation and Development's Guiding Principles for Regulatory Quality and Performance,¹⁸ the World Bank's Global Indicators for Regulatory Governance,¹⁹ the United Nations Economic and Social Commission for Asia and the Pacific's guide on good governance,²⁰ and reports by the Centre for Civil Society on regulatory quality and hygiene. Each of these sources provides for certain indicators of good governance, along with structural criteria and practices which would amount to the best practices in that regard. Though these reports specifically deal with regulatory bodies, relevant criteria which are applicable to bodies in the nature of a law reform commission have been specifically selected. This has been done so that this paper not only enumerates the structural differences between these law commissions but also contextualises these differences such that the correlation between the features of their framework and the existence of a robust regulatory mechanism are clearly visible.

Drawing from these studies, the law commissions have been compared on their:

- a. Principle-based approach – whether their statutory frameworks, if any, work at the level of high principles, or whether they embed specific details.²¹ This involves an enquiry into whether or not detailed features of processes and requirements are embedded in the laws.
- b. Accessibility and transparency – whether their reports and other work are easily accessible and whether the functioning of the Commission is carried out with public consultations, etc. in a transparent manner.
- c. Independence – whether the functioning of the Commissions is separate from governmental and other private bodies within the country, whether they have a mechanism to deal with conflicts of interest, etc.
- d. Accountability – whether the objectives, responsibilities, and scope of activities were clearly stipulated by their parent legislation.

¹⁷ Government of India, 'Report of the Financial Sector Legislative Reforms Committee' (March 2013) <https://www.icsi.edu/media/webmodules/linksofweeks/fslrc_report_vol1.pdf> accessed 27 Dec 2021.

¹⁸ OECD, *OECD Guiding Principles for Regulatory Quality and Performance* (OECD 2008).

¹⁹ The World Bank, 'Global Indicators of Regulatory Governance' (*World Bank*) <<https://rule-making.worldbank.org/en/methodology>> accessed 28 December 2021.

²⁰ UNESCAP, 'What is Good Governance?' <<https://www.unescap.org/sites/default/d8files/knowledge-products/good-governance.pdf>> accessed 30 December 2021.

²¹ Government of India (n 17).

- e. Performance assessment – whether the performance of these bodies is regularly assessed, whether their budgeting process is clearly stipulated, and whether their accounts are routinely audited.
- f. Inclusive and non-discriminatory – whether their process considers the views of all the relevant stakeholders, including those who are impacted by the report being prepared.
- g. Agile and responsive – whether the Commissions are required to publish their reports and carry out other obligations within a prescribed time frame.
- h. Effectiveness – whether the reports published by the Commissions are mandatorily required to be implemented by parliament, and if not, what is the process by which these reports must be dealt with, after their publication.

III. ANALYSIS OF LAW COMMISSIONS

This section will firstly be enquiring into the law commissions of the four countries chosen, to assess both the institutional structure of these bodies and the ecosystem within which they operate. Following this, a comparative analysis of these law commissions will be conducted.

A. The UK

1. Introduction

In the UK, the Law Commission is an advisory and non-departmental public body that has been functioning since 1965. It was created by the Law Commissions Act, 1965 to ensure that the laws in England and Wales are ‘fair, modern, simple and cost-effective’. This includes eliminating anomalies in the law, repealing obsolete provisions, and reducing the number of separate statutes in legislation. For this purpose, the Law Commission is empowered to conduct research and consultations and submit recommendations before the Parliament. In more than 50 years of its functioning, the Commission has produced more than 350 sets of law reform recommendations and around two-thirds have been implemented in whole or in part.²²

²² Law Commission, ‘Implementation of Our Reports’ (*Law Commission*) <<https://www.lawcom.gov.uk/our-work/implementation/>> accessed 30 December 2021.

2. *Institutional Structure*

The Commission consists of five commissioners, including a chairperson, a chief executive, less than three non-executive members, a head of legal services, and a head of corporate services.²³ The chairperson is required to be a judge at the High Court or the Court of Appeal and is appointed to the Commission for a period of up to three years. This individual leads the Commission and represents its views before the Ministers and other stakeholders. Besides the chairperson, the other commissioners are appointed for a period of five years, and this tenure can be subsequently extended. These commissioners are required to ensure that the Commission operates within its statutory authority and serves its purpose. They also have to liaison with other parties including the chief executive (the budget holder), in their responsibilities for the organisation, management and allocation of resources to the Commission. All the chairpersons are appointed full-time and the commissioners, besides the chairperson, are statutorily required to be either experienced judges, barristers, solicitors or teachers of law.

The non-executive members were added to this framework subsequent to the recommendations of the 2013 triennial Law Commission review and these posts are meant to provide support, independent challenge, and expertise on issues of management and governance. In addition to these members, parliamentary counsels attend the meetings of the Commission in an advisory capacity, as they are the individuals who draft the Bills to reform the law itself. The Law Commission also has an economist who serves as an advisor to the body who specifically provides input facilitating the impact assessment of any reform proposal.²⁴

²³ Law Commission, 'Who are We' (*Law Commission*) <<https://www.lawcom.gov.uk/about/who-we-are/>> accessed 30 December 2021.

²⁴ *Ibid.* See also, 'Terms of Reference' (Law Commission Board) <<https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jxou24uy7q/uploads/2019/10/Board-Terms-of-Reference-Final-24-10-19.pdf>> accessed 30 December 2021; 'Code of Best Practice for Law Commissioners' <https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jxou24uy7q/uploads/2015/03/Commissioners_code_of_practice_2014.pdf> accessed 30 December 2021; Law Commissions Act 1965, cl 22, s 3; Law Commission, 'Annual Report 2020-21' (July 2021) <https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jxou24uy7q/uploads/2021/07/6.7452_LC_ARAccounts_202021_WEB.pdf> accessed 30 December 2021.

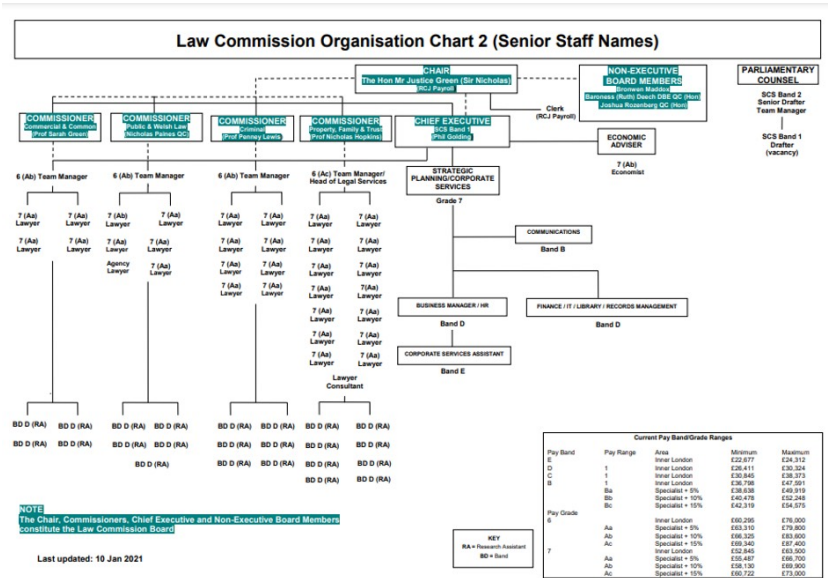


Figure 1: Organisational chart and pay ranges of present Law Commission members in the UK²⁵

The duty of the Law Commission is not limited to merely the formulation of new legislation, but also includes ex-post facto analysis of laws. The Commission's scope extends to the review of all laws, with its aim being to facilitate systematic development and reform – particularly through the codification of fresh laws, elimination of anomalies, reduction in separate enactments, and repeal of unnecessary enactments. The act of legislative consolidation, within specific branches of law, in order to simplify the legal landscape is another task entrusted to the Commission. Finally, the Commission also has the duty to prepare an annual report on its activities and present the same to the Lord Chancellor.

After the Law Commission has decided to review an area of law, it follows an elaborate process before the finalisation of its report. First, at the initiation stage, the remit of the project is decided along with the concerned government department. Second, at the pre-consultation stage, a study is conducted into the area of law, in order to identify its defects. This process also includes an assessment of other jurisdictions (to understand how they deal with such issues) as well as consultations with area specialists and interest groups. Third, at the consultation stage, a consultation paper which outlines the existing law, the defects, and potential solutions, is issued and comments are invited on this

²⁵ 'Law Commission Organization Chart 2' (*Law Commission*) <https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2019/12/2021.01.08_WhosWho-senior-staff-names.pdf> accessed 29 December 2021.

document. This paper is circulated among the public, through open consultations as well as media organisations, so that all interested parties may provide their thoughts or highlight issues with any proposal. Fourth, the responses to the consultation process are analysed and new draft papers are issued, which may subsequently be subject to another round of consultation. Finally, based on these consultations a final report is prepared and presented to the Lord Chancellor. These usually include draft Bills that legislatively enshrine their suggestions. Throughout this process, the Commission also seeks an impact assessment of its suggestions from its economic advisor as well as from academics.²⁶

3. *Ecosystem*

The members of the Law Commission are appointed by the Lord Chancellor and the Secretary of State for Justice, who must ensure that the criteria for selecting such candidates are met. The Lord Chancellor is accountable to the Parliament for the activities of the Law Commission.

The Law Commission is required to submit programmes for the examination of different branches of law, to the Lord Chancellor and obtain his approval before proceeding with a project. These programmes are selected and drafted after consultations with lawyers, judges, the business sector, as well as the general public, and are usually developed every three to four years. Projects are selected mainly on the basis of their importance, the suitability of the Law Commission to conduct the review, and the resources available. Additionally, the Law Commission also takes on projects referred to it by various Government Departments.

Pursuant to Section 3 of the Law Commissions Act, both the programmes preceding a project, as well as the final reports prepared by the Commission must be laid before the Parliament. Additionally, the Commission must prepare an annual report on its proceedings over the course of that year, and this too must be presented before the Parliament.²⁷

Further, in order to increase the prospects of implementation of these reports, several steps have been put in place over the last decade or so. Firstly, a requirement has been imposed on the Lord Chancellor to deliver an annual report to the Parliament outlining the progress of the Government in implementing the proposals of the Commission. This report is required to not only present the plans for dealing with the proposals but also any decisions to not implement them along with reasons for the same. Secondly, in 2010, a protocol was agreed upon, stating that the Law Commission will take on projects only

²⁶ *Ibid.*

²⁷ *Ibid.*

after it receives an undertaking from the relevant Minister stating that there is a serious intention to carry out legal reform in that area. The Minister is also subsequently required to provide an interim response within six months of the report being published and a final response within a year. Finally, a special parliamentary procedure has been put in place to ensure that certain ‘uncontroversial’ bills drafted by the Commission are considered in a timely manner.²⁸

B. New Zealand

1. Introduction

The Law Commission of New Zealand is an independent crown entity which was set up pursuant to the Law Commission Act, 1985.²⁹ The role of the Commission is primarily to make the laws of New Zealand simpler and more accessible while considering the multicultural nature of New Zealand society. The Act setting up this Commission was enacted to promote the systematic review and development of the laws of New Zealand.³⁰

2. Institutional Structure

As per section 9 of the Law Commission Act, the Commission must comprise three to six members, including a President. The President is required to be either a Judge of the High Court or Court of Appeal or a barrister or solicitor with more than seven years’ experience in the profession. The President is the chief executive of the Commission and is empowered to supervise and direct the work of the Commission. They are also empowered to designate another member of the Commission as their Deputy President. These commissioners are appointed by the Governor-General for a term of five years. Additionally, the Commission has a team of legal and policy advisors, as well as law clerks who support the commissioners in their research and consultations. A team of corporate staff, as well as a General Manager, are also a part of the institutional structure of the Law Commission, and these individuals ensure compliance with legislations that impose compliance obligations on the Commission (such as the Crown Entities Act, 2004 and the Public Finance Act, 1989).³¹

The Law Commission primarily reviews the laws of New Zealand and makes recommendations to the government on how to improve these laws. It also advises ministers and government agencies on how to make the law more

²⁸ Michael Zander, *The Law-Making Process* (8th edn, Bloomsbury 2020).

²⁹ Law Commission Act 1985, No 151.

³⁰ *Ibid* 3.

³¹ Law Commission of New Zealand, ‘Annual Report: 1 July 2020 – 30 July 2021’ (December 2021) <<https://www.lawcom.govt.nz/sites/default/files/NZLC%20-%2020ANNUAL%20REPORT%202020%20-%202021.pdf>> accessed 28 December 2021.

accessible and easier to understand. This thus involves both an *ex-post* analysis of existing laws, as well as an enquiry into potential legislation that would strengthen the legal landscape of the country. In carrying out these functions, the Commission has the power to initiate proposals for reform; receive and consider proposals referred to it; initiate and carry out research as is necessary for this purpose and conduct public consultations and publicize certain portions of the work as necessary.³²

The Commission is also obligated to submit to the Ministry, at least once a year, programmes for the review of various aspects of the law in New Zealand. Additionally, under section 150 of the Crown Entities Act, 2004, the Commission is required to annually prepare a report on its affairs and specifics of this report are stipulated under section 151 of the same legislation.³³

The process of report preparation is as follows: First, programmes are discussed and projects are decided upon by the Minister and the Commission by July of each year. Subsequently, the Commission conducts research into that project area, reviews the policy, and consults with experts in the field and interested persons. This information is incorporated into an Issue Paper which provides the background information on the issue and raises questions for people to consider. These Issue Papers are then publicly consulted and submissions are called for in this regard. The responses from the public and the experts are then considered and the final report is prepared. This is then presented to the Minister who lays the report before the Parliament.³⁴

3. *Ecosystem*

There are two ways in which the Commission takes on projects. Firstly, it must submit a proposed work programme to the Minister responsible for the Commission annually. These programmes normally factor into account the government's priorities at the time and the departmental resources available for the same. When these programmes are approved, the Commission can commence the process of preparing the report. Alternatively, the Parliament or the Minister at times may require the Commission to review a law. Thus, though the Commission can initiate proposals for reforms on its own, the government is generally able to decide the scope of the Commission's work based on governmental priorities.³⁵

³² Law Commission of New Zealand, 'How We Conduct Projects' (*lawcom.govt.nz*) <<https://www.lawcom.govt.nz/how-we-conduct-projects>> accessed 28 Dec 2021. *See also*, Law Commission of New Zealand, 'Our Role in Law Reform' (*lawcom.govt.nz*) <<https://www.lawcom.govt.nz/our-role-law-reform>> accessed 28 December 2021; *Ibid*.

³³ Law Commission of New Zealand, 'Annual Report: 2011-2012' <<https://www.lawcom.govt.nz/sites/default/files/nzlc%20annual%20report%202011-2012.pdf>> accessed 28 December 2021.

³⁴ Law Commission of New Zealand (n 32).

³⁵ Law Commission of New Zealand (n 31). *See also*, Law Commission of New Zealand, 'Statement of Performance Expectations' (June 2021) <<https://www.lawcom.govt.nz/>>

As soon as reports are prepared, as per section 16 of the Law Commissions Act, the Commission must submit a copy of the report to the relevant Minister and the same must also be published. The Minister is subsequently required to lay a copy of the report before the Parliament. Once this process is complete, the Government is required to respond to the report, under cabinet guidelines, within a period of six months. The recommendations that the Government accepts go into a bill and this is then subject to the normal parliamentary procedure.³⁶

C. South Africa

1. Introduction

The South African Law Reform Commission is an advisory body established under the South African Law Reform Commission Act, 1973.³⁷ The body was set up in order to facilitate the continuous reform of South African laws, such that they are in accordance with the values of the Constitution and meet the needs of South African society.³⁸

2. Institutional Structure

The Commission comprises less than nine individuals, including a chairperson. The chairperson is required to be a judge of the Constitutional Court, Supreme Court of Appeal, or a High Court, while the other members can either hold judicial office, or possess experience as advocates or professors of law. The chairperson designates one of the members of the Commission as a vice-chairman. Of these members, only three or fewer members hold their posts in a full-time capacity. All of these members are appointed by the President for a period of less than five years, and the President may appoint additional members based on a need-for basis, for any period so determined.³⁹

Through section 7A of the South African Law Reform Commission Act, the Commission was empowered to create committees to facilitate the proper performance of its functions. In furtherance of the same, a working committee and advisory committees have been set up. The former is constituted by members of the Commission and serves as the executive committee of

sites/default/files/LAWCOM%20-%20STATEMENT%20OF%20PERFORMANCE%20EXPECTATIONS%202021-2022.pdf> accessed 28 December 2021.

³⁶ *Ibid.* See also, Law Commission of New Zealand, 'How a Project Happens' <<https://indd.adobe.com/view/8cdef512-9d5a-4550-8788-8a2ca2181033>> accessed 28 December 2021.

³⁷ South Africa Law Reform Commission Act 1973, Act 19 of 1973.

³⁸ South African Law Reform Commission, 'Objects, Constitution and Functioning' <<https://www.justice.gov.za/salrc/objects.htm>> accessed 29 Dec 2021. See also, South African Law Reform Commission, 'Vision, Mission and Value Statement' <<https://www.justice.gov.za/salrc/vision.html>> accessed 29 December 2021.

³⁹ *Ibid.*; South Africa Law Reform Commission Act 1973 (n 37).

the Commission. The advisory committees consist of members external to the Commission, such as experts, who assist with investigations and provide advice to the Commission when required. The Commission is also aided in research and drafting by its secretariat which consists of officials from the Department of Justice and Constitutional Development.⁴⁰

The goals of the Commission are to carry out research on the laws in South Africa, and make recommendations for reform including repeal of obsolete and anomalous provisions, bring about uniformity in the law, consolidate various branches of the law and increase its accessibility. Its scope thus extends beyond merely *ex-post* reviews and will include enquiries into future legislations as well. In fact, a slogan commonly invoked by the Commission is 'Review the past – Reform the Present – Anticipate the Future', highlighting the broad scope of its functions. The Commission is also required to submit an annual report on the activities it carried out over the year, within five months of the end of a financial year, to the Minister of Justice. The same is subsequently laid upon the Table in the Parliament.⁴¹

Following the approval of a programme by the Minister, research is conducted into the existing legal position, to ascertain its shortcomings. At this stage, extensive consultation takes place between the Commission and the general public, stakeholders, and experts with special knowledge on the subject. Additionally, comparative studies are conducted to benefit from a global perspective on the issue. Based on this information, an Issue Paper is drafted and subsequently circulated to the public for their response. After collating responses, a discussion paper is prepared which outlines potential solutions to the problems, as well as – in several cases – a draft bill. This too is made available to the public and copies are distributed to organisations which specialise in that field of work. After taking into account the responses of these parties and hearing the oral evidence, the final recommendations are enumerated in a comprehensive report which is submitted to the Minister of Justice.⁴²

3. *Ecosystem*

As per section 5 of the South African Law Reform Commission Act, the Commission is required to draw up programmes periodically and submit the same to the Minister of Justice.⁴³ These programmes may include suggestions made by any person and any individual or body is free to submit proposals to

⁴⁰ South African Law Reform Commission (n 38). *See also*, South African Law Reform Commission, 'Report on Activities of the South African Law Reform Commission: 2019/2020' <https://pmg.org.za/files/SALRC_Annual_Report_-_2019-2020.pdf&sa=D&source=-docs&ust=1667506190722278&usg=AOvVaw2ugEPIQrVJNMJUEIgCxZaM> accessed 29 December 2021.

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ South Africa Law Reform Commission Act 1973 (n 37).

the Commission for law reform. When considering these proposals from the public, the Commission often conducts a preliminary enquiry into its inclusion in the programme. If such enquiry yields positive results, then the programme submitted to the Minister will include the proposal. The Commission however also has the power to include such proposals in the programme without any prior enquiry. The Commission is required to, as far as possible, investigate matters which have been approved by the Minister.⁴⁴

Once reports are finalised, they are merely sent to the Minister of Justice. There is no obligation to present the same before the Parliament and as a result, a large number of Law Commission recommendations are not implemented or responded to with requisite details.⁴⁵

D. Rwanda

1. Introduction

The Rwanda Law Reform Commission is a permanent and independent public institution with financial and administrative autonomy.⁴⁶ This body was established by Law No. 44/2013, in 2013. This body was set up to review laws so as to facilitate development and reform within the legal landscape of Rwanda.⁴⁷

2. Institutional Structure

The Rwandan Law Reform Commission consists of three main organs: The Council of Commissioners, the Bureau of the Commission, and the Advisory Council. The Council of Commissioners is the supreme authority of the Commission and its responsibilities include the identification of laws which require reform; approval of the internal regulations of the Commission; stipulating the long-term and annual plans for the Commission; preparation of the budget; and outlining the organisational structure of the Commission. The Council consists of seven commissioners, including a chairperson, a vice-chairperson and a secretary who are required to be lawyers. The chair-person is the primary representative of the commission and is also entrusted with the duty of supervising and coordinating its activities. The secretary has the responsibility of preparing the activity reports of the commission and following up on daily matters related to the Commission's support services.

⁴⁴ South African Law Reform Commission (n 40).

⁴⁵ *Ibid.*

⁴⁶ Law No. 44/2013, art 3.

⁴⁷ Rwanda Law Reform Commission, 'Vision, Mission and Mandate' ([rlrc.gov.rw](https://www.rlrc.gov.rw)) <<https://www.rlrc.gov.rw/about/overview>> accessed 30 December 2021.

Commissioners are appointed by a Presidential Order, for a renewable period of five years.⁴⁸

The Bureau of the Commission comprises the chairperson, vice-chairperson and secretary of the Commission. The Bureau is empowered to lead the activities of the Commission, prepare meetings of the Council, and monitor relations between the Commission and other institutions.

The Advisory Council is a body which comprises the Bureau of the Commission, along with representatives from each chamber of Parliament, the Supreme Court, several state bodies, the Bar Association, public and private educational institutions, non-governmental organisations, and the Private Sector Federation. The Council is in charge of providing guidelines to the Commission and advising it periodically. Members of the Advisory Council are appointed by Presidential Order for a renewable term of seven years and are not entitled to any remuneration.⁴⁹

In addition to these three main organs, the present Council of Commissioners of the Law Reform Commission further possesses the structure explained in Figure 2.⁵⁰

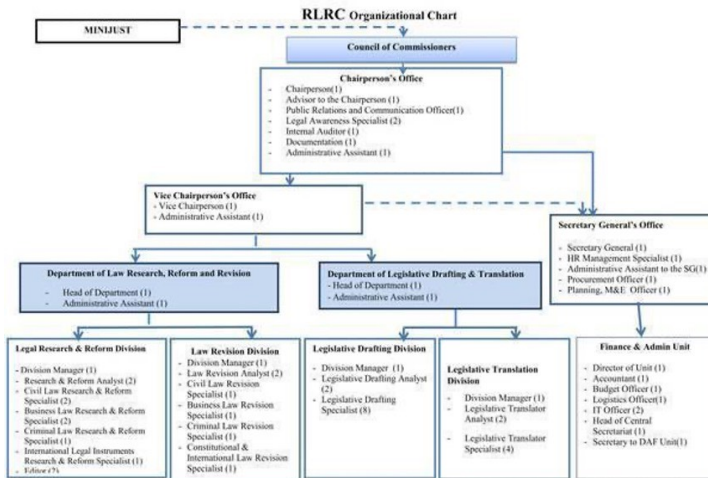


Figure 2: Structure of the Law Reform Commission in Rwanda

⁴⁸ Law No. 44/2013 (n 46). See also, 'Structure' (rlrc.gov.rw), <<https://www.rlrc.gov.rw/about-rlrc/structure&sa=D&source=docs&ust=1667506190731871&usg=AOvVaw2s5y5KS-gAoO2AmJM4b1PGRF>> accessed 30 December 2021; Rwanda Law Reform Commission, *Annual Report 2018* (20 December 2018) <<https://www.rlrc.gov.rw/index.php?eID=dump-File&t=f&f=41171&token=495718a5b32c25c645954231ee37b7956c856bb5>> accessed 30 December 2021.

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

The role of the Law Reform Commission is to eliminate or amend imperfect, obsolete, or unnecessary legal provisions to simplify the legal system; adapt the laws to meet the changing needs of Rwandan society; consider proposals made by public and private institutions on law reform; and submit proposals to effectuate these changes. Thus, the role of the Commission extends beyond merely conducting an *ex-post* review of laws and includes conducting studies to assess the potential of future laws.⁵¹

At the initiation stage of each new Council of the Commission, a performance contract must be concluded between the Ministry and the Council of Commissioners.⁵² This contract is valid for the entire term of office of the commissioners and stipulates the powers, rights, and obligations of each party within the Commission. The Act itself provides only for periodic meetings of the various organs of the Commission and the roles they are expected to play broadly. No formal research processes are provided for and there is scarcely any concrete structure that is followed during the conduct of this research process. No fixed timelines or public consultation requirements exist and the finalised reports themselves are merely sent to the Ministry. Thus, the process of report drafting is rather unstructured or at least lacks the necessary transparency.

3. *Ecosystem:*

The identification of laws which require reform is the responsibility of the Council of Commissioners. The Commission as a whole is under the supervision of the Ministry of Justice and most of its functioning is determined by the performance contract which is executed between the Ministry and the Council of Commissioners. There is no procedure stipulated for the consideration of a project in the Act and the internal rules and regulations do not prescribe any particular mechanism to facilitate the selection of reform areas either. Thus, the performance contract which is entered into at the time of the formation of the new board determines the scope of the Commission's activities.

The Commission is required to forward draft laws that it has initiated, to the Ministry of Justice for consideration, following which it is to be sent to the Cabinet for approval. There is no responsibility for the Ministry or the Cabinet to respond within a particular time period or to provide reasons for their rejection of the recommendations, should they choose to do so.⁵³

⁵¹ Law No. 44/2013 (n 46), arts 5 and 10.

⁵² Law No. 44/2013 (n 46), art 8.

⁵³ Law No. 44/2013 (n 46), art 7.

IV. COMPARATIVE ANALYSIS OF BEST PRACTICES AND INDIA'S PATH AHEAD

A. Principles-based approach

On this metric, the parent legislation of all four law commissions provided for a mixture of high principles – such as provisions that guide the manner in which the commissions decide upon an issue to analyse and those that dictate how they conduct their enquiries. They also contained specific details – such as provisions that stipulate the composition of the commissions. The level of specification was perhaps least in the case of Rwanda, where a significant amount of regulatory power was taken away from the Act and delegated to the performance contract.

In India, however, there exists a glaring lack of any permanent parent legislation at a fundamental level. As we have pointed out in the introduction to this paper, the Law Commission of India is constituted through an executive order every three years. There is no overarching framework governing the constitution of the Commission, and even the act of appointing members to the Commission is unregulated. This has been illustrated by the Commission having remained without a chairperson or members since 2020. In light of the same, it is evident that one of the main flaws of the present Indian system is that there exists no permanent legislative framework governing the functioning of the Commission. As a result, the principles that each Law Commission seeks to achieve are regulated solely through the executive orders constituting them. However, these executive orders also provide for a rather minimalistic mix of principles and specifics. The specifics that they provide are limited to the basic composition of the Commission and the remuneration of its members. Its remaining provisions only lay down broad principles that govern the functioning of the Commission, such as the general nature of the work that it is to undertake.

In this context, it is therefore strongly urged that a permanent legislation be enacted that would not only ensure the continuous functioning of a Law Commission, but also enshrine both the high principles and the specific requirements governing its functioning.

B. Accessibility and transparency

The proposals and reports prepared by the commissions were easily accessible on their websites in three of the four countries. The UK, South Africa and New Zealand also make available drafts of the report made during the research process (be it Discussion Papers or Issue Papers), as these were subsequently subject to consultations. Rwanda was the only country which did

not make these project reports, as well as their preliminary drafts, accessible through their website – which has several blank pages and is in dire need of an update. All four commissions do publish their annual performance report on their websites. However, these do contain information regarding the organisational structure of the Commissions, their budgeting and spending, as well as their activities throughout the year.

The UK, South Africa, and New Zealand also conduct widespread public consultations during the process of drafting their proposals, and this happens at various stages in the drafting process. There is no requirement in Rwanda as per law to conduct such consultations, and there is little information available to suggest that they conduct them. In the other three countries, however, stakeholders who are impacted by the proposals are specifically consulted and the draft proposals are made available to the public for a wider consultation process as well. The UK's process of public consultation is particularly noteworthy for its transparency, as the agendas and minutes of the meeting of Commissioners, along with a summary of the responses from the consultation process are available on the website of the Law Commission.

The Indian Law Commission also publishes all of its Reports on its website. However, there is no formalised requirement for either these final reports or their preliminary drafts to be made available to the public. As a result, even in cases where preliminary drafts are circulated to the public for their comments, there is little transparency in what responses are received or whether these are incorporated into the final draft. Additionally, there is no consistency in the pipeline of a report, with processes such as public consultations varying based on the project. In this regard, it is to be noted that the information furnished by the Law Commission on its website, under the Right to Information Act, illustrates the lack of uniformity in this process.⁵⁴ Though the Law Commission has appointed a Transparency Officer,⁵⁵ given that no commission has functioned for more than a year since this appointment, the effectiveness of this officer is yet to be seen.

Going forward, once a legislation permanently enshrining the obligations of the Law Commission is enacted, it would be prudent to include within it, provisions ensuring consistency in the report-making process. In addition to this, mandatory public consultations and documentation of the discussions wherein these public comments are considered could be provided for in this legislation. This would not only be prudent policy advice but would also ensure that the functioning of the Law Commission is in line with the principles of

⁵⁴ Law Commission of India, 'Suo Moto Disclosure' (lawcommissionofindia.nic.in, 7 September 2022) <<https://lawcommissionofindia.nic.in/suo-moto-disclosure/>> accessed 30 December 2021.

⁵⁵ Law Commission of India, 'Office Order F. No. A-37011/12/2015-LC', 10 July 2019.

transparency and open governance that have been sought to be furthered by legislations such as the Right to Information Act.

C. Independence

The two top-performing countries have put in place specific measures to address conflicts of interests among members of their commissions.

In the UK, the Code of Practice for the Commissioners requires disclosure of any personal or business interests which may conflict with their duties as commissioners. The English Law Commission also maintains a register of the interests of the commission members in order to ensure transparency in the pecuniary and non-pecuniary interests of their members, so as to avoid conflicts of interest.⁵⁶ Further, Commissioners are prohibited from accepting gifts or services from any person who would, or would appear to, place them under an obligation. Any such gift received would have to be recorded in a register which is open to public inspection. In New Zealand, pursuant to a board meeting in July 2017, every six months a process of declaring perceived conflicts of interests and contracts entered into by the commissioners is initiated. Rwanda and South Africa have no such provisions to account for such conflicts.

Law commissions in all four countries are, however, dependent on the government and relevant Ministries, since the appointments are carried out by them and the process of initiating projects is in consonance with the priorities or approval of the government. Thus, none of these bodies is truly politically insulated within their present frameworks.

In this regard, the Indian Law Commission falls short as well. No mechanism regulates potential conflicts of interest and the manner in which appointments are made to the Law Commission leaves much to desire in terms of the body's independence. Though Public Grievance Officers have been appointed towards the end of the last Commission's tenure, their effectiveness is yet to be seen. To remedy this glaring issue, Codes of Conduct that would impose mandatory disclosures of potential conflicts of interest could be implemented, in line with the approach adopted by the UK. However, it is vital to note that given the extent of the government's influence on the constitution of the commission and the matters that it takes up for consultation, there would necessarily exist a level of dependence that would be maintained, despite safeguards.

⁵⁶ Law Commission, 'Register of Interests of Law Commission Board Members' (June 2021) <[https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jxou24uy7q/uploads/2021/07/ Register-of-Interests-June-2021.pdf](https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jxou24uy7q/uploads/2021/07/Register-of-Interests-June-2021.pdf)> accessed 30 December 2021.

D. Accountability

All four countries did have their objectives, as well as their responsibilities and scope of activities (as well as those of its members) clearly stipulated by their parent legislations. In the case of Rwanda, the extent to which this was enumerated, however, was more limited, since several of these factors were left to be determined by the performance contract, which was to be entered into at a later stage. As a result, in the case of Rwanda, the objectives and scope of the commission's activities were not clearly articulated in the parent legislation.

As noted above, India's Law Commission is regulated solely through the executive order constituting the body. This does, however, stipulate the objectives, responsibilities, and scope of the Commission, albeit in a rudimentary manner. Once again, however, crystallising these governing principles through a more permanent legislation would improve India's performance on this metric.

E. Performance Assessment

All four countries studied do have an obligation to conduct performance assessments periodically as per their governing legislations. In the case of the UK, there is both an annual review of its own functioning with is to be submitted to the Lord Chancellor, as well as a triennial substantive review conducted by the Ministry of Justice. The metrics of such analysis, however, are scarcely specified, with the only country providing something resembling this feature being New Zealand through section 151 of the Crown Entities Act.⁵⁷ Even this provision, however, merely provides for the range of documents and information which is required to be presented in the annual report, but no metrics of assessment are provided.

All four countries receive funding from their respective governments through the budget allocation process. None of the countries has a mechanism by which funds are allocated for a particular function of the commission, as this allotment is done as a lump sum. Rwanda and South Africa also obtain funding from donations made to the commission. Though no project-wise breakup of expenditure is provided by any of the countries, three of them do contain detailed financial statements accounting for general expenditures and revenues in their annual reports, along with audit reports. The only Law Commission which does not go into this level of detail when presenting its financial statements is the South African Commission which merely provides basic information regarding the revenue and expenditure in a year.

In the UK, however, additional accountability for finances is maintained through a process by which the commissioners may occasionally be called to

⁵⁷ Crown Entities Act 2004 No 115.

provide evidence to Departmental Select Committees or the Public Accounts Committee on the expenditure and administration of the Law Commission. Rwanda provides for quarterly audit reports to be prepared in order to ensure financial transparency. The annual performance reports of all four countries are available on their websites. Audit reports are also available for the three countries excluding South Africa.

On this metric, the Indian Law Commission severely lags behind these other nations. Not only are there no provisions mandating the periodic assessment of the commission's performance, even the mechanism for funding the commission and auditing its expenses is minimal. The commission's funding is required to be obtained through grants voted upon by the parliament, periodically,⁵⁸ but beyond this, there is little clarity on the source of the commission's funding. Additionally, beyond the salary disclosures made under the obligations imposed on the commission by the Right to Information Act,⁵⁹ there is no information regarding the expenses of the commission which have been made public in the recent past. It is therefore clear that this sphere of the commission's operation is almost entirely unregulated. Mandatory periodic performance assessments, fixed grant timelines, mandatory audits by bodies such as the Comptroller and Auditor General, and publication of these audit reports on the Commission's websites are all steps that are necessary to bring the India Law Commission's operating framework closer to global standards.

F. Inclusive and non-discriminatory

As we have already seen, the UK, South Africa, and New Zealand conduct widespread public consultations at various stages in their process of drafting proposals. There is no requirement in Rwanda as per law to conduct such consultations and there is little information available to suggest the conduct of the same. In South Africa and New Zealand, there is no explicit information to assess what the responses to the consultation were. However, this can be implied since the preliminary documents prior to consultation, as well as the revised drafts subsequent to the consultation process, are both made available. In the case of the United Kingdom, the responses to the consultations as well as the agendas and minutes of the meeting of commissioners where they were discussed, are specifically made available on the website of the Law Commission. The UK even has guidelines in place to ensure that the consultations are conducted in a proper manner and the commission is required to comply with these while conducting the consultations.⁶⁰

⁵⁸ Government of India (n 21), s. 11.

⁵⁹ Law Commission of India (n 54).

⁶⁰ Government of the United Kingdom, 'Consultation Principles 2018' (2018) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691383/Consultation_Principles__1_.pdf> accessed 30 December 2021.

The Indian Law Commission, through its public disclosures and references in the constituent executive orders, has stressed the importance of public consultations while formulating its reports. However, no legislative requirement exists for the conduct of these consultations and the impact of these consultations on the final reports is uncertain. Therefore, a formalisation of this consultation requirement and an articulation of a process or the principles that would govern these consultations would aid in ensuring inclusivity in the formulation of all reports drafted by the commission.

G. Agile and responsive

None of the countries analysed provides for a statutorily-prescribed time limit for reports to be completed. Several projects are undertaken by all of these commissions at the same time, with the various stages of different projects being conducted simultaneously. The Australian Law Commission however does try to ensure a time frame for projects, with the commission typically taking on two enquiries at any point in time. It implements staggered timetables established for both these projects and seeks to complete one or two enquiries every year.⁶¹

Given the constitution of the Indian Law Commission for only three years at a time, there is a temporal constraint within which these commissions have to operate and attempt to complete their reports. However, there does exist no fixed timeline for individual projects themselves. Rather than imposing a standardised timeline for all projects – a practice that none of the four countries analysed carry out – it may be more prudent to require preliminary timelines to be established for each project undertaken, so as to ensure that the requirements of each project are accounted for.

H. Effectiveness

None of the four commissions studied issue binding reports which must be compulsorily implemented. However, the two top-performing countries require the final reports to be placed before the Parliament. These two countries also have several checks in place to ensure that their Commissions receive prompt intimation as to whether their proposals are being accepted, or, if not, the reasons for rejection. New Zealand, for instance, imposes a time limit of six months within which the government must respond to the report submitted by the commission. In the case of Rwanda, the commission must forward the draft to the Ministry of Justice for consideration, following which it is to be sent to the cabinet for approval. South Africa imposes no such obligations, and thus reports are often not placed before the Parliament or engaged with at all.

⁶¹ Australian Law Reform Commission, 'Law Reform Process' (*alrc.gov.au*), <<https://www.alrc.gov.au/about/law-reform-process/>> accessed 30 December 2021.

In the Indian context, there is no requirement for such mandatory tabling of the commission's reports. However, requiring that the Parliament mandatorily considers these reports and provides reasons for rejection of the same, might not be practical, given the extreme shortage of time within which the Parliament functions.⁶² In light of the same, it may be more practical to require the Parliament to consider only those reports that they have specifically requested the Law Commission to prepare. In such situations, the Law Commission may be empowered to present the report before the Parliament which would have to consider the same within a fixed time period. In cases where this report is subsequently rejected, the reasons for such rejection would have to be provided to the Law Commission, in a manner similar to that present in the UK and New Zealand. This would not only ensure greater effectiveness of the Law Commission itself but would also limit the amount of time it spends on inconsequential reports that are never seriously considered.

V. CONCLUSION

This paper has enquired into the framework and functioning of numerous law commissions globally. By exploring the nuances of these law commissions, their performance as regulatory bodies have been assessed on various metrics of quality control. From our findings, it is clear that there are several differences in the ways in which these law commissions have functioned and they have resultantly had differing levels of effectiveness as bodies. The law commissions of more 'developed' nations such as the UK and New Zealand have broadly performed better on conventional standards of regulatory quality when compared to Rwanda and South Africa.

However, even the latter two countries have fairly robust frameworks in place to ensure that their law commissions are able to carry out their functions effectively. Despite their numerous shortfalls, these commissions too have been able to perform reasonably well on the metrics chosen, especially on a comparison with India, whose Law Commission's framework is unjustifiably skeletal. It is therefore clear that the resource gap which exists between these nations does impact their ability to build an effective framework for the functioning of law commissions, but the same cannot be treated as the sole determining factor in this regard. India's inability to develop an effective framework for the operation of its law commission must therefore be scrutinised in greater detail, with lessons being drawn from nations such as Rwanda and South Africa, so that the varying fault lines can be remedied.

⁶² Akhilesh Singh, 'Parliament Worked for 18 Hours Out of 107 in 2 Weeks' *The Times of India* (New Delhi, 1 August 2021) <<https://timesofindia.indiatimes.com/india/parliament-worked-for-18-hours-out-of-107-in-2-weeks/articleshow/84935076.cms>> last accessed 3 August 2022.