



## Proposals for the global Access to Justice Index

**A**s stated before, this is Part II of the Index which is proposed to be used for our Global Rankings in 2018. *The objective of including this Chapter and briefly describing the Qualitative (Survey) Indicators as proposed to be used under Part II of the Index in the 2018 Rankings, is to invite the readers' suggestions on the indicators/criteria proposed, and to be suggested newer methodologies for calculating and assessing the common man's experiences and perception, and to gauge the effectiveness of the judiciary, government, legal profession and legal education in facilitating, providing and ensuring access to justice.*

There might be some indicators which are vaguely worded, without reference to an example; there might also be some questions which do not have any proximity to the accessibility movement. Such indicators were intentionally kept open-ended in order to allow for and invite the broadest levels of participation. The purpose of Part II is not to cover all the subjects and be "lost in translation" but to cover the most affected section of the society and to record their experiences; with due weightage given to other sections without deviating from the primary objective of the Index. In this segment of the Report, we will attempt to provide the readers

with a brief outline of our plans for the 2018 Global Rankings and the intended assessment criteria proposed to be used therein. At the end of this section we will provide the list of survey questions to be utilized for the Global Rankings.

First, is to highlight what measure(s) the government has taken in pursuance of making accessibility to legal aid and justice-delivering institutions easier for the common man. This is purely a quantitative/ objective assessment where we assess the existing policies in place to evaluate the best practices, policies in place for facilitating 'access,' and the infrastructural gap(s) amongst other indicators. This part (i.e., Part I of the Index), thus, assesses the law/policies on the paper.

The second objective is to address the loophole(s) identified from the above mentioned (first) method, as it (Part I) does not evaluate the people's awareness component, and the component regarding the views people have on the laws: that is the component which addresses the question that if the institutions exist, then whether people have been able to 'access' these institutions, and what is their satisfaction with it. These shortcomings will be covered through a survey for the common man and experts in Part II of the Index. Part II (survey/ qualitative component) will thus assess the law in practice.

Therefore, the design of the Index includes two sets of assessment criteria: Quantitative and Qualitative (Survey). While deciding the respective weightage for each criteria, our aim was to award substantial points to the survey-based data as it portrays the experience of the people, and thus, to an extent, the ground-reality of the jurisdiction. The quantitative and qualitative indicators have been further divided into four categories (Government, Judiciary, Legal Profession, and Legal Education), several sub-categories and assessment indicators. This is to done to engage and assess all the actors involved in the access-to-justice movement.

The 2016 Inaugural Index is aimed at receiving constructive inputs for our 2018 Global Index metrics. Our aim is to cover a wide range of respondents for our Global Index scheduled for release in 2018 wherein we attempt to evaluate more than eighty (80) countries. The Global Index will capture multiple viewpoints. It will be prescribing the number and type of respondents for each category to be interviewed in order to cover the diversity aspects.

## **Indicators under Part II: Qualitative (Survey) Component**

Part II (Qualitative) of the Questionnaire for the Index involves testing the perception and awareness, and

effectiveness of the legal system and justice-dispensing mechanisms. Towards this end, we have carried out sample surveys among members [These surveys, however, currently do not form part of the rankings, it is proposed to be used (with additional surveys conducted) for the Global Rankings in 2018]. The different stake-holders covered by the Survey are:

- i. **Government** (legislative members, executive and administrative officers, bureaucratic officers, law enforcement officers)
- ii. **Judiciary** (judges, judicial clerks and other judicial officers), members of the Legal Profession (litigating and non-litigating lawyers from various areas of practice)
- iii. **Legal Education** (law professors and law students)
- iv. **Common-man** (with diversity accounted for)

The questions asked in Part II attempt to find out: (1) the extent of awareness of the respondent regarding the access to justice mechanism; (2) the respondent's perception, positive or negative, of various justice dispensing mechanisms (both formal and informal); (3) The effectiveness of a legal policy through expert survey.

## Responses to the Survey Questionnaire

Questions are in the form of positive statements which can be answered in terms of “Agree” (1 point) and “Disagree” (0 points). Questions in Part II can additionally also be answered with “Do Not Know” (0 points), “Maybe” or “Not sure”.

The survey intends to note details such as age, location, gender, profession, caste/race, income, etc. Surveyors will be instructed to ensure diversity among their respondents. In this manner, by trying to get responses from a diverse cross-section of society, attempting to bring to the fore the perception of the people.

## Tabulation

In Part II, we will be taking into account the survey responses per category and per country. The survey needs to ensure diversity among these respondents. The points per question (either 0 or 1) for each of the responses will be totalled. This score will be multiplied by the weightage assigned to each question, and then divided by the number of respondents. This weighted score will be calculated for each question. Such weighted score for each of the questions in that category is added together to give the score for the whole category. Based on this, we propose to rank each country per category. Summing up all the weighted scores yields the score per category for Part II of the Index. We will be ranking countries based on this final score. The index for each country consists of totalling the final scores per country from both Parts I and Parts II in a 30:70 ratio.

# Survey Questions for 2018 Global Index

# Category I:

## The Government & Judiciary

*The Respondents within this Category will be: Police/Law Enforcement, Government Officials, Judges, Judicial Workers (like clerks and other officers working in the judiciary).*

1. There is a separate bench/judge to deal with rights-based issues at any level of the judiciary.
2. There is no court fees for cases where either (or both) parties are women, children, disabled persons or persons from marginalised/backward backgrounds. (Socio-economic, racial backwardness, etc.)
3. The Constitution allows for guaranteed access to forums for dispute redressal and rights issues.
4. The government always reimburses the court fees charged from litigants in rights-based litigation.
5. There is citizen-participation in government institutions while drafting policies or schemes on access to justice issues.
6. The Government provides free legal aid when I cannot afford it.
7. There are separate courts for children-related issues.
8. The Government or courts allow for separate courts to be established for greater accessibility in cases of special nature or exceptional circumstances.
9. The ratio between number of Courts to population is adequate.
10. Sexual minorities are able to access legal institutions without any discrimination.
11. The Government is empowered to hand over adjudicatory powers to its subordinates (government officers) to adjudicate on routine/administrative matters.
12. There is separate police and institutions (for women & children) which provide them with speedy access to legal institutions.
13. The State/National Legal Services Authority resorts to technology use for providing greater access to legal resources.
14. I would prefer Alternative Dispute Resolution (ADR), such as Mediation, Negotiation, and Conciliation instead of Civil/Criminal Courts.
15. \*Police are trained on and bound by applicable human rights laws and standards.
16. \*Updated laws, rules or regulations govern the powers and conduct of law enforcement officers.
17. \*There is a mechanism for the monitoring and oversight of police conduct and performance, including a specific reference to corruption.
18. \*There are regular consultative (formal/informal) mechanisms in place allowing for consultation with the public, or their representatives, on local policing issues.
19. \*There is an accessible and publicized complaint system which enables members of the public to file complaints about police services or the behaviour of officers.
20. \*The police service is fully and adequately staffed.
21. \*Police stations have facilities where confidential matters will not be overheard by others.

22. \*Police stations have appropriate and necessary equipment (electricity, furniture, telephones, computers, etc.).

23. \*Detainees are advised of their legal rights upon arrival.

24. Uniformed police officers do not apprehend accused aged below 18 years.

25. I am confident that the National Authority on Legal Aid (or any equivalent State body) is sufficient to provide legal aid when needed, and I do not see a reason to replace it.

26. Employees and staff at the above mentioned Authority are present whenever the indigent/poor require legal assistance.

27. The judiciary updates the parties about the status and progress of their case.

28. Legal aid office is attached to either/both lower or appellate judicial authorities.

29. The abovementioned legal aid office(s) is functional and I am able to approach it with relative lack of hindrance.

30. The judiciary often uses its inherent powers to take up cases (on its own accord) on rights issues when the court has notice of rights violation or such events.

31. The judiciary provides assistance to such individuals, such as by publishing simplified court procedures.

32. These procedures are published online on the Courts/Government institutions websites.

33. The language of these above mentioned procedures is simple to understand, with relative lack of complicated legal terminology.

34. The litigant is not fined for procedural lapses (whether intentional or otherwise).

35. The judiciary has mechanisms to assist those who are disadvantaged due to language issues.

36. The judicial system provides for in-house/behind the camera/non-public adjudication.

37. I have the option to choose the same.

38. All court records are made accessible for the disabled.

39. Court records are made available online free of cost.

40. \*Court employees, including judges and support staff, maintain regular work hours and are present during full court hours.

41. \*Judges demonstrate knowledge and understanding of applicable law, including relevant international human rights treaties/norms.

42. \*Judges comply with any legal obligations to conduct regular inspections of detention facilities.

43. \*Judges display independence and do not respond to interference, inducement or intimidation.

44. \*Judges enforce requirements regarding legal aid/assistance: They promote access to legal aid lawyers during all phases of case.

45. \*Punishments/sentences are issued according to legally relevant grounds and not based on impermissible factors such as the race, gender, caste or socio-economic status of the accused.

46. \*Court proceedings are open to the public and media.

47. \*Cases are heard at the time they are set on the court calendar.

48. \*Cases are begun and completed within applicable statutory time limits.

49. \*There are no excessive backlogs of pending cases.

50. \*The courts are located where it can easily be reached by public transportation.

51. \*The court is accessible to the disabled.
52. Courts for juvenile delinquents are functional.
53. There are no incidents of torture at the juvenile homes.
54. \*Juvenile records are kept confidential.
55. \*The prison system is under civilian (not military) management.
56. Judicial/state officers regularly conduct legal awareness camps/training/workshops in backward regions.
57. On average there is no delay in appointing judges.
58. On average courts are adequately staffed.



# Category II:

## The Legal Profession

*The Respondents within this Category will be: advocates/lawyers and other individuals who are involved in access to justice movement.*

1. The regulator of the profession (For eg., Bar Councils/Associations) is active within the access to justice movement.
2. The regulator of the profession (For eg., Bar Councils/Associations) mandates *pro bono* work to be undertaken by members of these councils and associations.
3. A law graduate is required to serve in underdeveloped / backward areas (for any period) before obtaining license to practise.
4. A lawyer generally provides *pro bono* legal assistance in case of clients unable to afford their services.
5. The regulator of the profession recognises and considers *pro bono* work while promoting an advocate from junior position to a senior position.
6. If promoted as senior counsel/senior lawyer/public prosecutor, you are required to spend a certain number of hours providing *pro bono* service.
7. The advocate is mandated to undergo some ethics/access to justice course after being enrolled as an advocate.
8. The advocate is allowed to assist the court as its friend, i.e. as *amicus curiae*.
9. The advocate is recognised for his/her work relating to *pro bono*/rights issues while considering him or her for elevating to the judiciary/higher judiciary.
10. The State has consultations with general public/necessary stakeholders before framing policies concerning access to justice.
11. There is a penalizing mechanism for lawyers who refuse to provide *pro bono* legal assistance.
12. The regulator of the profession (For eg., Bar Councils/Associations) or the government imposes legal aid obligations on law firms.
13. \*As soon as counsel is retained, counsel begins a detailed file including, but not limited to, interviews, detailed notes, statements, potential pieces of evidence, case law to begin building theory of defense and maintains this file until completion of case.
14. \*The Legal Aid Lawyer/Counsel presents self at place of detention/legal aid seeker at earliest stage possible, upon notification that client is detained/is in need of legal aid.
15. \*Counsel does not unduly influence client's decision to plead guilty.
16. The Bar Council / Advocates Association or any other related body regularly publishes legal aid material (concerning legal awareness, *pro bono* services etc.)
17. There is a lack of sufficient incentive/lack of recognition for advocates to take up *pro bono* work.
18. The judiciary is independent; it faces negligible external (or internal) influences/pressures/inducements/threats, etc.
19. On an average, there is no delay in enforcing court orders.
20. There are negligible loopholes in the laws themselves. They do not serve as a barrier to justice.

# Category III:

## Legal Education

*The Respondents within this Category will be law students.*

1. We do have course(s) on legal ethics/access to justice in the university/law school curriculum, mandated by the Bar Council/Association or the respective regulator of legal education.
2. The above mentioned course is a graded course.
3. We (the students) do serve as as paralegals before graduating.
4. It is mandatory to enrol for clinical courses while pursuing undergraduate studies.
5. Students are credited (grades/otherwise) for work relating to access to justice.
6. While admitting students for post-graduation, there is a preference given to those with prior experience in legal aid and access to justice programmes.
7. Legal aid clinics/societies/committees are established and functional on my campus.
8. The regulator of legal education supervises and advises student-run legal aid institutions/clinics.
9. Training is conducted by the college/university for members of student-run legal aid institutions.
10. Training is conducted by the concerned regulators (Bar Councils/Associations, Legal Aid Authorities etc.) for the members of such student-run legal aid institutions.
11. The regulators (Bar Councils/Associations, Legal Aid Authorities etc.) or State authorities have laid down guidelines on handling cases at the aforementioned student-run legal aid institutions.
12. There are no unnecessary legal/other hurdles in establishing legal aid clinics or institutions which provide legal services by the students.
13. Law students are allowed to argue a case before the judge (at any level)
14. Law students are allowed to give legal opinions as part of their clinical legal aid programmes.
15. The faculty spends certain specified number of hours of their academic time doing *pro bono* legal work.
16. The faculty usually receives credits/rewards for this.
17. The university considers involvement of the faculty in *pro bono* activities as a criterion while promoting that faculty member.
18. Law syllabus in college/university level (whether undergraduate or postgraduate) is mandated to have a certain percentage of clinical/trial component or on-site client visits.
19. *Pro bono* assistance from advocates is provided for cases referred from student-run legal aid institutions.
20. Advocates participate/contribte to access to justice programmes initiated by student-run legal aid institutions.
21. The state/national regulator of legal education institutions lays empahsis on access to justice programmes while drafting legal education curriculum/course outlines/syllabi.
22. Legal education institutions provide opportunities to study courses on access to justice.

# Category IV:

## Non-legal members of Community

*The Respondents within this Category will be the Layman/Common man (Women, Men, Transgender, Sexual minorities, children, senior citizens, rich and poor etc).*

1. The cost of litigation is not burdensome- right from filing stage to concluding stage.
2. The procedure (civil, criminal and public interest litigation/class-action suits) is fair and just.
3. I would approach the official judicial process for dispute redressal.
4. I would rather approach the informal justice system (ADR, ODR) for dispute redressal.
5. Non-citizens access these courts without any prejudice to their race, caste, language, sex or origins.
6. The procedure to navigate through the judicial process is manageable, and the court assists me through this process.
7. The average time period for delivering verdict in a social action litigation is reasonable.
8. The average time lag between admission of a case and the first hearing is reasonable.
9. The average adjournment period is reasonable.
10. The quality of legal aid lawyers provided by the State is adequate.
11. \*Legal aid lawyer provided by the State presents self at place of detention at earliest stage possible, upon notification that client is detained.
12. \*Legal aid lawyer provided by the State does not participate in any form of corruption/collusion with judicial officials or police to obtain confession or release of Accused.
13. The association of advocates conducts legal awareness camps in my state/territory/region/locality.
14. On a scale of 1 to 5: How much do you award the State in terms of implementation of various justice projects/schemes or State-sponsored programmes on access to justice.
15. While listing cases for hearing at the courts, there is priority given to cases involving marginalized groups (senior citizens, women, children, socially/economically backward etc.).
16. \*Domestic laws protect all citizens equally without distinction of any kind, such as race, colour, gender, caste, language, religion, political or other opinion, national or social origin, property, birth or other status.
17. \*I am protected from being subjected to arbitrary arrest or detention and from being deprived of their liberty except on such grounds and in accordance with such procedure as is established by law.
18. \*Those arrested are informed, at the time of arrest, of the reasons for their arrest and they hold the right to be promptly informed of any charges against them.
19. \*Those arrested or detained on a criminal charge are brought promptly before a judge or other officer authorized by law.
20. \*Those who are charged with a criminal offence are tried within a reasonable time or are released on bail.

21. \*Those charged with a criminal offence are presumed innocent until proved guilty according to law.
22. The judiciary is not lacking in efficiency.
23. The delay in case disposal is a deterring aspect of approaching the judicial system.
24. I am unaware of procedures to approach State/other authorities to obtain legal aid.
25. The judiciary does not consider access to justice a major issue. This issue is often subordinated to other ostensibly non-essential ones.
26. The State considers access to justice a major issue. It is given primary importance.
27. I am aware of the fact that I can avail free legal services from law school/college-based legal aid clinics.
28. Law school based clinics are easily accessible (physical access/through phone/online access).
29. There is a concept of Mobile Courts in my community (Mobile Courts are adjudicators/adjudicatory mechanisms who resolve disputes on-the-go; they have no fixed place for sitting).
30. Mobile Courts have visited my area at least once in the past to resolve disputes.
31. I am free to approach government officers without the need to bribe them or offer any kind of inducement.
32. \*Police stations are easily accessible by all members of the public without discrimination to any gender, race, caste or socio-economic class.
33. \*Police stations are open to the public at all times.
34. \*Visitors are not required to wait an excessive amount of time before being seen.
35. Police stations display sign boards/instructions on rights of the accused/arrested/juveniles in clear and understandable manner.
36. Women police officers are present at police stations all the time to assist women and children who approach the police station.
37. Registering a police complaint is easy and the police usually acts upon complaints without delay.
38. I am allowed to argue in vernacular language if my national/state language is not fluent.
39. The judiciary allows individuals to represent themselves before the bench if need be.
40. I am able to access simplified court procedures published by the judiciary/government in my vernacular language. I am not disadvantaged due to lack of competence with national/state language.
41. \*Counsel conducts adequate legal research with critical thought.
42. The amount of compensation awarded by courts, on an average, is adequate.

*Acknowledgements: All the questions prefixed (or suffixed) with asterix mark (\*) have been borrowed-with permission-from the 'Criminal Justice System Score Cards' designed by International Bridges to Justice-Geneva.*