

Overall Score:

75 - Moderate

Legal Framework Score:

87 - Strong

Actual Implementation Score:

65 - Weak

Category I. Civil Society, Public Information and Media

I-1. ⁷⁵Civil Society Organizations

1. Are anti-corruption/good governance CSOs legally protected?

100

1a. In law, citizens have a right to form civil society organizations (CSOs) focused on anti-corruption or good governance.

YES | NO

Comments:

Article 19 grants citizens the right to form associations (including civil society organizations) that focus on any issue (including fighting against corruption and ensuring good governance) as long as the goals of the association are not antithetical to the Constitution and the laws of the state.

References:

Article 19 of the Indian Constitution

YES: A YES score is earned when freedom to assemble into groups promoting good governance or anti-corruption is protected by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent group is legally prohibited from organizing to promote good governance or anti-corruption. These groups may include non-violent separatist groups, political parties or religious groups.

1b. In law, anti-corruption/good governance CSOs are free to accept funding from any foreign or domestic sources.

YES | NO

Comments:

They are free to accept funding from any source but are required to declare it if it is from a foreign source.

References:

Newspaper Reports. Right To Information Act

YES: A YES score is earned if anti-corruption/good governance CSOs face no legal or regulatory restrictions to raise or accept funds from any foreign or domestic sources. A YES score may still be earned if funds from groups with a history of violence or terrorism (within last ten years) are banned.

NO: A NO score is earned if there any formal legal or regulatory bans on foreign or domestic funding sources for CSOs focused on anti-corruption or good governance.

1c. In law, anti-corruption/good governance CSOs are required to disclose their sources of funding.

YES | NO

Comments:

They are required to disclose their source of funding in the case of funding received from abroad. Further, if the CSOs want to claim exemption from taxation on the grounds of being a non-profit organization, they must apply for specific permissions.

References:

Foreign Exchange Regulation Laws

YES: A YES score is earned if anti-corruption/good governance CSOs are required to publicly disclose their sources of funding.

NO: A NO score is earned if no such public disclosure requirement exists.

2. Are good governance/anti-corruption CSOs able to operate freely?

75

2a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance CSOs.

Comments:

Many CSOs have been formed to fight corruption and promote good governance. Because many of the CSOs are located in specific regions/cities, they have formed federative organizations across the country to coordinate their activities. In reality, the government is often a little apprehensive of such organizations and both the political leadership and the bureaucracy often see these CSOs as being breaks from the “independent functioning.” There have been instances in which the government has taken recourse to quoting laws, rules and regulations when dealing with CSOs. This has often made the smooth functioning of CSOs more difficult. From another perspective, it could be argued that some measure of accountability with regard to the CSOs is important and critical.

References:

Newspapers reports / Right to Information Act

100: CSOs focused on promoting good governance or anti-corruption can freely organize with little to no interaction with the government, other than voluntary registration.

75:

50: CSOs focused on promoting good governance or anti-corruption must go through formal steps to form, requiring interaction with the state such as licenses or registration. Formation is possible, though there is some burden on the CSO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Other than pro-government groups, CSOs focused on promoting good governance or anti-corruption are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

2b. In practice, anti-corruption/good governance CSOs actively engage in the political and policymaking process.

Comments:

CSOs are gaining increasingly high visibility in the political and policy-making process. There is a resistance to their entry from the conventional players who dominated this arena. The reluctance to accept the role of the CSOs also comes from the “contest over space” argument. CSOs claim to represent the citizen voice. The traditional players in the political and policy-making process gain their legitimacy too from being the voice of citizens, most times being elected through democratic channels. They see the participation of the CSOs as a challenge to the legitimate space they claim as being their very own. Increasingly, CSOs that have been able to gain both greater legitimacy and visibility, have begun carving out a space for themselves in the political/policy-making process.

References:

Newspaper reports. World Bank position papers.

100: Civil society organizations focused on anti-corruption or good governance are an essential component of the political process. CSOs provide widely valued insights and have political power. Those CSOs play a leading role in shaping public opinion on political matters.

75:

50: Anti-corruption/good governance CSOs are active, but may not be relevant to political decisions or the policymaking process. Those CSOs are willing to articulate opinions on political matters, but have little access to decision makers. They have some influence over public opinion, but considerably less than political figures.

25:

0: Anti-corruption/good governance CSOs are effectively prohibited from engaging in the political process. Those CSOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

2c. In practice, no anti-corruption/good governance CSOs have been shut down by the government for their work on corruption-related issues during the study period.

YES | NO

Comments:

No CSO has been forcibly shut down by the government. There may be instances of CSOs having faced various forms of harassment from state agencies for their fight against corruption.

References:

Newspaper reports

YES: A YES score is earned if there were no CSOs shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period.

NO: A NO score is earned if any CSO has been effectively shut down by the government or forced to cease operations because of its work on corruption-related issues during the study period. The causal relationship between the cessation of operations and the CSO's work may not be explicit, however the burden of proof here is low. If it seems likely that the CSO was forced to cease operations due to its work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3. Are civil society activists safe when working on corruption issues?

33

3a. In practice, in the past year, no civil society activists working on corruption issues have been imprisoned.

YES | NO

Comments:

There have been reports of activists of civil society groups fighting different forms of corruption being imprisoned for their peaceful protests. One example that of the activists of the Narmada Bachao Andolan

References:

News reports.

YES: A YES score is earned if there were no CSO activists imprisoned related to work covering corruption.

NO: A NO score is earned if any activist was jailed in relation to work covering corruption. The causal relationship between the official charges and the person's work may not be explicit, however the burden of proof here is low. If it seems likely that the p

3b. In practice, in the past year, no civil society activists working on corruption issues have been physically harmed.

YES | **NO**

Comments:

Reports have suggested that civil society activists have been harmed by both by those they were investigating and also by the state machinery.

References:

News reports.

YES: A YES score is earned if there were no documented cases of CSO activists covering corruption being assaulted in the specific study period. A YES score can be earned if there was an attack but it was clearly unrelated to the activist's work.

NO: A NO score is earned if there were any documented cases during the study period of assault to an activist who covers corruption. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3c. In practice, in the past year, no civil society activists working on corruption issues have been killed.

YES | NO

Comments:

There are no documented and verified instances of a civil society activist being killed for specifically investigating corruption issues.

References:

News reports.

YES: A YES score is earned if there were no documented cases of CSO activists being killed related to a corruption case in the specific study period.

NO: A NO score is earned if there were any documented cases during the study period where a person was killed related to a corruption trial, scandal or investigation. The relationship between a mysterious death and an individual's history may not be clear, however the burden of proof here is low. If it is reasonable that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

4. Can citizens organize into trade unions?

88

4a. In law, citizens have a right to organize into trade unions.

YES | NO

Comments:

Article 19 of the constitution allows citizens to form associations (including trade unions). Further, the Trade Unions Act also guarantees the right. However, the act covers registered trade unions only. The act defines a trade union, outlines provisions for its registration, cancellation and dissolution and also enumerates the rights and obligations of unions. With globalization and economic reforms, there has been a movement to amend the Labor/ Trade Union Laws to bring it in consonance with the provisions of the World Trade Organization.

References:

Article 19 of the Constitution.

YES: A YES score is earned when trade unions are allowed by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent trade union is legally prohibited by the government from organizing.

4b. In practice, citizens are able to organize into trade unions.

100 | 75 | 50 | 25 | 0

Comments:

In practice, a very small percentage of the Indian labor force is in the organized sector and thus has the protection of its own unions. The organized sector has extremely powerful trade unions, many of which are part of national affiliates. The organizing of a trade union today requires legal support, professional time, expertise and experience. As a result, many of those who hold leadership positions in trade unions are professional trade unionists.

References:

Trade Union Acts. Newspaper reports.

100: Trade unions are common and are an important part to the political process and political discourse. Trade union organizers have widely understood rights. Trade unions are free from intimidation or violence.

75:

50: Trade unions exist, but are not always relevant to politics or policy debates. Barriers to organizing trade unions exist, such as intimidation at work, or retribution firings. Trade union organizers have some rights, but these may not be commonly known, or are difficult to defend.

25:

0: Trade unions are rare. Significant barriers to organization exist, including direct violence. Rights of union organizers are not widely known, or are ineffective in protecting organizers.

I-2. Media

5. Are media and free speech protected?

100

5a. In law, freedom of the media is guaranteed.

YES | NO

Comments:

Freedom of the press is part of the wider freedom of expression as guaranteed by Article 19 of the Constitution. There are “reasonable” restrictions to the enjoying of this right.

References:

Article 19 of the Constitution.

YES: A YES score is earned if freedom of the press is guaranteed in law, including all political parties, religions, and ideologies.

NO: A NO score is earned if any specific publication relating to government is legally banned, or any general topic is prohibited from publication. Specific restrictions on media regarding privacy or slander are allowed, but not if these amount to legal censorship of a general topic, such as corruption or defense. A NO score is earned if non-government media is prohibited or restricted.

5b. In law, freedom of speech is guaranteed.

YES | NO

Comments:

It is guaranteed under the provisions of Article 19 of the Constitution with “reasonable restrictions.”

References:

Article 19 of the Constitution.

YES: A YES score is earned if freedom of individual speech is guaranteed in law, including all political parties, religions, and ideologies.

NO: A NO score is earned if any individual speech is legally prohibited, regardless of topic. Specific exceptions for speech linked with a criminal act, such as a prohibition on death threats, are allowed. However, any non-specific prohibition earns a NO score.

6. Are citizens able to form media entities?

69

6a. In practice, the government does not create barriers to form a media entity.

100 | 75 | 50 | 25 | 0

Comments:

There are no specific restrictions on forming media entities. They need to conform to the laws that are in place with regard to formation of such entities.

References:

Press freedom legislation. Media reports.

100: Media entities can freely organize with little to no interaction with the government. Media groups have equal access to broadcast bandwidth through a reasonably fair distribution system.

75:

50: Formation of media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur. Division of broadcast bandwidth is widely viewed to be somewhat unfair.

25:

0: Media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. Division of broadcast bandwidth is widely viewed to be used as a political tool.

6b. In law, where a media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | NO

Comments:

There is a legal mechanism.

References:
Media legislation.

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied media license. A YES score is also earned if no license is necessary.

NO: A NO score is earned if there is no appeal process for media licenses.

6c. In practice, where necessary, citizens can obtain a media license within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

In practice, there is a maze of bureaucratic procedures involved and ordinary citizens can encounter delays in procuring media licenses within a reasonable time period.

References:
Newspaper reports. Government Web site.

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

6d. In practice, where necessary, citizens can obtain a media license at a reasonable cost.

100 | 75 | **50** | 25 | 0

Comments:

In practice, there is a maze of bureaucratic procedures involved and ordinary citizens can encounter delays in procuring media licenses within a reasonable time period.

References:
Newspaper reports. Government Web site.

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

7. Are the media able to report on corruption?

83

7a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

YES | NO

Comments:

The provisions of equality before law have ensured that the media enjoys unfettered rights to report, even if it damages the reputation of a public figure. This is subject to the laws of defamation. The media has been exposing cases of corruption relating to ministers, elected representatives and the bureaucracy. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

References:

Freedom of the media regulations.

YES: A YES score is earned if it is legal to report accurate information on public figures regardless of damage to their reputations. Public figures are defined broadly, including anyone in a position of responsibility in the government or civil service; any political leader; leaders of civil society groups including religious groups, trade unions, or NGOs; leaders or officers of large businesses. A YES score can still be earned if a reckless disregard for the truth (i.e. slander) is prohibited.

NO: A NO score is earned if privacy laws protect any public figures (as defined in the YES coding) from accurate information.

7b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

It must be stressed that censorship of the press is not specifically prohibited by any provision of the Constitution. Like other restrictions, reasonable limits can be prescribed. The question of the validity of censorship has been a matter that has attracted the attention of the judiciary often. The position taken by the government has been that if censorship is imposed in the interest of

public order, it cannot at once held to be unconstitutional and a fetter upon the freedom of the circulation. However, a reasonable restriction can determined by the circumstances.

References:

Media reports.

100: The government, its proxies, or media ownership/distribution groups make no attempt to restrict media coverage of corruption-related issues through unofficial means.

75:

50: The government, its proxies, or media ownership/distribution groups make some attempts to restrict media coverage of corruption-related issues through unofficial means, such as restricting access by disfavored media outlets, or other short-term consequences. Violent reprisals against media outlets are rare.

25:

0: The government, its proxies, or media ownership/distribution groups actively use illegal methods to restrict reporting of corruption-related issues. This may include harassment, arrests, and threats. Journalists and publishers take a personal risk to report on corruption, and media outlets who commonly report on corruption face long-term consequences or violent reprisals.

7c. In practice, there is no prior government restraint on publishing corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

In the recent past, there have been several examples of what has now become known as “sting journalism.” The electronic media has increasingly been carrying out video recordings/audio recordings of alleged corrupt practices by elected representatives, ministers and senior bureaucrats. These exposes have received a lot of media coverage and have also resulted in action being taken against the guilty. An investigative report, which exposed corruption among elected representatives who took a monetary compensation for posing questions in Parliament, resulted in their losing their membership of Parliament.

References:

News reports.

100: The government never prevents publication of controversial corruption-related materials.

75:

50: The government prevents publication of controversial corruption-related material in cases where there is a strong political incentive to suppress the information. In countries where illiteracy is higher, the government may allow a free print press but censor broadcast media.

25:

0: The government regularly censors material prior to publication, especially politically sensitive or damaging corruption-related material.

8. Are the media credible sources of information?

8a. In law, media companies are required to disclose their ownership.

YES | NO

Comments:

The law mandates that media companies disclose and make public the nature of the trust that owns the media company.

References:

Companies Act.

YES: A YES score is earned if media companies are required by law to disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain type of entities or agents from being disclosed.

8b. In practice, journalists and editors adhere to strict, professional practices in their reporting.

100 | 75 | 50 | 25 | 0

Comments:

While journalists and editors do adhere to professional practices in their reporting, there are often instances of biased reporting. This has especially emerged in the present time, with intense competition both within the print and electronic media. The desire to sensationalize news has often resulted in the reporting of developments often without verifying the facts fully and before a thorough investigation of details. There has been a debate on adherence to greater professional ethics by the media. The Press Council of India has also been active in this debate. Some newspapers have appointed internal ombudsman to investigate complaints of biased reporting and coverage of news.

References:

News reports. Press commission reports.

100: Editors and journalists at the major media outlets abide by a strict journalistic code of conduct and are unwilling to alter their coverage of a particular issue, event or person in exchange for money, gifts, or other favors or remuneration.

75:

50: Editors and journalists at the major media outlets generally avoid altering coverage in exchange for favors but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct.

25:

0: Editors and journalists are widely known to sell" favorable or unfavorable coverage in exchange for money, gifts, or other remuneration. The major media outlets do not abide by any formal journalistic code of conduct.

8c. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

100 | 75 | 50 | 25 | 0

Comments:

Given the intense competition within both the electronic and print media, political parties do generally receive fair media coverage. Regional political parties have sometimes voiced apprehensions about the limited and, at times, biased coverage they receive. Often their grievances appear justified. Independent candidates receive media attention, but the spotlight of attention is clearly on the party-sponsored candidates.

References:

Press reports. Press Council reports. Election Commission reports.

100: All political parties and independent candidates have some access to media outlets. Individual media outlets may have biases, but on balance, the national media coverage reflects the interests of the electorate. Media groups generally act as disinterested parties in an election. In places where a government is popular with the public, opposition viewpoints can access the public via media outlets.

75:

50: Major popular media outlets have a persistent bias regarding some parties or independent candidates. Some major parties may be partially excluded from media coverage, or draw more negative coverage. Media sectors may have distinct biases, such as newspapers favoring one party, while radio favors another.

25:

0: The mass media, on balance, have clear preferences in election outcomes and coverage is driven to achieve these goals. Some major parties or independent candidates are excluded or consistently negatively portrayed by mass media. Dissenting political opinions are only found on fringe or elite media outlets, such as Web sites.

8d. In practice, political parties and candidates have equitable access to state-owned media outlets.

100 | 75 | 50 | 25 | 0

Comments:

A distinction must be made between access to state-owned media outlets at the time of elections and during non-election periods. During non-election periods, the complaint is often that the ruling party/coalition is the one who is projected on the state-owned media outlets. During elections, there is a much more fair coverage of all political parties. They are allotted time for their election campaign on the state-owned media outlets on the basis of their classification as national or state based parties. Individual candidates have limited access to state-owned media outlets. Time sharing is on a party basis.

References:

Press reports.

100: The government ensures that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media. This obligation extends to news reports, editorial comment, and all other content.

75:

50: The government generally ensures equal access and fair treatment of all candidates and parties by state-owned media outlets but some exceptions exist. State-owned media may occasionally discriminate against particular parties or candidates and advertising rates may be confusing or non-transparent.

25:

0: The government uses state-owned media to routinely discriminate against opposition candidates and parties. Advertising space may be denied to opposition candidates and parties or higher rates may be charged.

9. Are journalists safe when investigating corruption?

33

9a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

YES | NO

Comments:

Journalists have not been imprisoned for investigating corruption. However, with the electronic media increasingly conducting “sting operations,” there are cases of journalists involved in such operations being harassed by the state

References:

Press reports.

YES: A YES score is earned if there were no journalists imprisoned related to work covering corruption during the study period.

NO: A NO score is earned if any journalist was jailed because of his/her work covering corruption during the study period. The causal relationship between the official charges and the journalist’s work may not be explicit, however the burden of proof here is low. If it seems likely that the journalist was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

9b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

YES | NO

Comments:

Journalists involved in “sting operations” have been harmed both by those being exposed, and also by the law agency of the state.

References:

News reports.

YES: A YES score is earned if there were no documented cases of journalists being assaulted during the specific study period for their work covering corruption issues.

NO: A NO score is earned if there were any documented cases of assault to a journalist covering corruption during the study period. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

9c. In practice, in the past year, no journalists investigating corruption have been killed.

YES | **NO**

Comments:

The Committee to Protect Journalists reports that Prahlad Goala was murdered near his home, after writing a series of articles on corruption in the Assamese-language daily Asomiya Khabar that linked local forestry service officials to timber smuggling.”

References:

<http://www.cpj.org/killed/killed06.html>

YES: A YES score is earned if there were no documented cases of journalists being killed because of their work covering corruption-related issues during the study period.

NO: A NO score is earned if there were any documented cases where a journalist was killed in relation to his or her work covering corruption-related issues in the study period. The relationship between a mysterious death and an individual’s work may not be clear, however the burden of proof here is low. If it is a reasonable guess that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

75
I-3. Public Access to Information

10. Do citizens have a legal right of access to information?

100

10a. In law, citizens have a right of access to government information and basic government records.

YES | NO

Comments:

The Right to Information Act read with Article 19 of the Constitution enables citizens to exercise their fundamental right to free speech and information. The act enables citizens to access information under the control of public authorities.

References:

Right to Information Act. Article 19 of the Constitution.

YES: A YES score is earned if there is a formal right to access any government documents. Exceptions can be made for national security reasons or individual privacy, but they should be limited in scope. All other government documents should be available upon a public request. There should be a formal process for requesting this information.

NO: A NO score is earned if there is no such right.

10b. In law, citizens have a right of appeal if access to a basic government record is denied.

YES | NO

Comments:

The Right to Information Act makes a provision for appeal. However, the rules and procedures to use the right to appeal (as provided in the act) are so cumbersome and “bureaucracy friendly” that they have proved to be serious stumbling blocks to citizens exercising their right to appeal.

References:

Right to Information Act.

YES: A YES score is earned if there is a formal process of appeal for rejected information requests.

NO: A NO score is earned if there is no such formal process.

10c. In law, there is an established institutional mechanism through which citizens can request government records.

YES | NO

Comments:

The Right to Information Act and the rules and regulations made under the law, provide for specific procedures by which citizen can seek access to these records.

References:

Right to Information Act and related regulations.

YES: A YES score is earned if there is a formal government mechanism/institution through which citizens can access government records available under freedom of information laws. This mechanism could be a government office (or offices within agencies or ministries) or an electronic request system.

NO: A NO score is earned if there is no such formal mechanism or institution.

11. Is the right of access to information effective?

55

11a. In practice, citizens receive responses to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

As the Right to Information Act and the rules and regulations therein have been passed/framed recently, there are still several procedural hiccups and attempts by the bureaucracy to stonewall them and deny information.

References:

Right to Information Act and related regulations.

100: Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information. Legitimate exceptions are allowed for sensitive national security-related information.

75:

50: Records take around one to two months to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

25:

0: Records take more than four months to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records. National security exemptions may be abused to avoid disclosure of government information.

11b. In practice, citizens can use the access to information mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The cost could be termed as reasonable for the middle class. However because a large section of the society lives below average economic conditions, it may be a cost they could not afford.

References:

Right to Information Act

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

11c. In practice, citizens can resolve appeals to access to information requests within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

As a result of the recent introduction of the provisions, citizens have experienced delays and bottlenecks in securing information.

References:

Right to Information Act and related regulations.

100: The agency/entity acts on appeals quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: The agency/entity acts on appeals quickly but with some exceptions. Some appeals may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity does not resolve appeals in a timely fashion quickly. Appeals may be unacknowledged for many months and simple issues may take more than three months to resolve.

11d. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | 75 | **50** | 25 | 0

Comments:

It is often not fiscally viable for a large section of the society who lives below the poverty line and who has other priorities in terms of expenditures.

References:

Right to Information Act.

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge an access to information determination.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge an access to information determination.

25:

0: The prohibitive cost of utilizing the access to information appeals mechanism prevents middle class citizens from challenging access to information determinations.

11e. In practice, the government gives reasons for denying an information request.

100 | 75 | 50 | 25 | 0

Comments:

The government does give reasons for refusing information. However, they are often not satisfactory to the information seeker.

References:

Right to Information Act.

100: The government always discloses to the requestor the specific, formal reasons for denying information requests.

75:

50: The government usually discloses reasons for denying an information request to the requestor, with some exceptions. The reasons may be vague or difficult to obtain.

25:

0: The government does not regularly give reasons for denying an information request to the requestor.

Category II. Elections

II-1. ⁷⁸Voting & Citizen Participation

12. Is there a legal framework guaranteeing the right to vote?

12a. In law, universal and equal adult suffrage is guaranteed to all citizens.

YES | NO

References:

Article 326 of the Indian Constitution

YES: A YES score is earned if the right to vote is guaranteed to all citizens of that country. A YES score can still be earned if voting procedures are, in practice, inconvenient or unfair.

NO: A NO score is earned if suffrage is denied by law to any group of adult citizens for any reason. Citizen is defined broadly, to include all ethnicities, or anyone born in the country. A NO score is earned if homeless or impoverished people are legally prohibited from voting.

12b. In law, there is a legal framework requiring that elections be held at regular intervals.

YES | NO

Comments:

The Constitution mandates the maximum term of the elected legislative bodies. An independent agency, the Election Commission, is entrusted with the responsibility of conducting the elections.

References:

The Indian Constitution.

YES: A YES score is earned if there is a statutory or other framework enshrined in law that mandates elections at reasonable intervals.

NO: A NO score is earned if no such framework exists.

13. Can all citizens exercise their right to vote?

100

13a. In practice, all adult citizens can vote.

Comments:

It is important to note that in India, the government takes responsibility for registering voters. At regular intervals there is a door-to-door survey of eligible voters and the voters list is updated. However, studies have found errors (names that should be included, being deleted and those who should be deleted, either due to death or transfer, being included). The errors are occur more often in urban areas where there is greater migration and mobility. Photo identification cards have been issued to most voters. There are rare cases of people who are eligible to vote not finding their names on the voters list. However, if these individuals had exercised care there are opportunities available much before the election to verify whether their name is on the voters list. On voting date, there are cases reported of a few voters being prevented from voting. These cases are few and rare.

References:

Article 326 of the Constitution guarantees to every adult citizen (above the age of 18) the right to vote.

100: Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers.

75:

50: Voting is often open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers, with some exceptions.

25:

0: Voting is not available to some demographics through some form of official or unofficial pressure. Voting may be too dangerous, expensive, or difficult for many people.

13b. In practice, ballots are secret or equivalently protected.

Comments:

With the introduction of electronic voting machines in all elections since 2004, the secrecy of the ballot is more or less ensured. Instances of fraud and manipulation are on the decline and the Election Commission has often ordered a re-poll in polling booths where malpractices have been detected.

References:

The election process and vigilance exercised by the Election Commission have ensured secrecy.

100: Ballots are secret, or there is a functional equivalent protection, in all cases.

75:

50: Ballots are secret, or there is a functional equivalent protection, in most cases. Some exceptions to this practice have occurred. Ballots may be subject to tampering during transport or counting.

25:

0: Ballot preferences are not secret. Ballots are routinely tampered with during transport and counting.

13c. In practice, elections are held according to a regular schedule.

100 | 75 | 50 | 25 | 0

Comments:

The Election Commission has played an extremely proactive role in this regard and in recent years (especially since the mid 1990s) elections have been held per a predetermined schedule. The Election Commission has, on occasion, rescheduled the dates of polls in specific constituencies if and when the need arises, with the sole objective of ensuring a free and fair poll.

References:

The Election Commission is entrusted with the responsibility and they have ensured strict adherence to a schedule.

100: Elections are always held according to a regular schedule, or there is a formal democratic process for calling a new election, with deadlines for mandatory elections.

75:

50: Elections are normally held according to a regular schedule, but there have been recent exceptions. The formal process for calling a new election may be flawed or abused.

25:

0: Elections are called arbitrarily by the government. There is no functioning schedule or deadline for new elections.

14. Are citizens able to participate equally in the political process?

100

14a. In law, all citizens have a right to form political parties.

YES | NO

Comments:

Article 19 of the Constitution gives citizens the right to form associations (including political parties).

References:

Article 19 of the Constitution.

YES: A YES score is earned if citizens have the right to form political parties without interference from government. A YES score may still be earned if groups or individuals with a history of violence or terrorism (within last ten years) are banned from forming political parties. Non-discriminatory minimal criteria (e.g. minimum age) are also allowed.

NO: A NO score is earned if there are any legal or regulatory restrictions or prohibitions barring any types of political parties from being formed.

14b. In law, all citizens have a right to run for political office.

YES | NO

Comments:

In the past, party-sponsored and independent candidates have contested elections. It must be mentioned that in 1996, legislation was brought into force to discourage non-serious, independent candidates from contesting elections. This included listing independent candidates after the names of all registered party candidates on the ballot paper. Subsequent to this change, the number of independent candidates has been drastically reduced. The eligibility criteria to run in elections for various legislative and other elected positions share a common element – requirement to be an Indian citizen.

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) have the right under law to run for political office. A YES score may still be earned if Individuals with a history of violence, terrorism, or criminality are banned from running for office.

NO: A NO score is earned if there are any legal restrictions barring certain individuals or groups from running for political office.

14c. In practice, all citizens are able to form political parties.

100 | 75 | 50 | 25 | 0

Comments:

The large number of political parties registered with the Election Commission is proof of the fact that citizens have exercised the right to form political parties.

References:

Article 19 of the Constitution.

100: While there is no guarantee of electoral success, political parties can form freely without opposition.

75:

50: Some barriers to formation are present, such as burdensome registration requirements that may not be fairly applied. Some parties' political viewpoints may draw pressure from the government, such as surveillance or intimidation. Some political parties or organizations may have extra barriers to getting on a ballot.

25:

0: Some political parties are effectively barred from forming through some manner of official or unofficial pressure. This may include threats, arrest, or violence from competing parties or other groups.

14d. In practice, all citizens can run for political office.

100 | 75 | 50 | 25 | 0

Comments:

The eligibility criteria mandates that the candidate must be a citizen and not occupy a private office.

100: While there is no guarantee of electoral success, anyone can run for office under transparent and equitable guidelines. There is a formal process for access to the ballot which is fairly applied. The costs of running a campaign are reasonable and do not deter candidates from entering a race.

75:

50: Some barriers exist to getting on the ballot and bureaucratic or regulatory requirements for doing so may be unfairly applied. The costs of running a political campaign are significant and result in dissuading some candidates from running for office.

25:

0: Citizens can effectively be barred from the ballot through government abuse of official rules and/or unofficial pressure. The costs of running a campaign are extremely high and result in most average citizens being unable to run an effective campaign for office.

14e. In practice, an opposition party is represented in the legislature.

100 | 75 | 50 | 25 | 0

Comments:

In recent years, with the rise of coalition politics and governments, the numerical strength of the opposition is often significant in the legislature. To be recognized as a formal opposition party, a political party must not be part of the ruling coalition and must have at least 10 percent of the members of the House.

References:

The Rules of Procedure for the Conduct of Business in the Legislature.

100: The opposition party always has some influence on the proceedings of the legislature. The opposition party can introduce legislation or bring pending matters to a vote without the consent of the ruling party.

75:

50: The opposition party has influence on the proceeding of the legislature, but it is limited in scope. The opposition's ability to force votes or publicly debate certain topics may be limited.

25:

0: The opposition party has only token participation in the legislature's proceedings and cannot advance legislation or force a debate.

II-2. Election Integrity

15. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

100

15. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

YES | NO

Comments:

The Election Commission has asserted its independence, especially since the 1990s. It was originally a single-member commission and became a multi-member commission in 1993. It now has a Chief Election Commissioner (CEC) and two Election Commissioners (EC) and all decisions are arrived at by a majority. The CEC and EC's are appointed by the president on the advice of the Council of Ministers. There has been a suggestion that the process of recommending the names of the CEC and EC's to the president should be more broad based and not left only to the ruling party/coalition. This has, however, not yet been implemented.

References:

Article 324 mandates the creation of an independent Election Commission to supervise and conduct elections at the national and state level.

YES: A YES score is earned if there is an agency or set of agencies/entities formally assigned to ensure the integrity of the election process.

NO: A NO score is earned if no agency or set of agencies/entities that monitors elections. A NO score is earned if elections are only monitored by an agency informally, such as poll booth monitoring by the police.

16. Is the election monitoring agency effective?

100

16a. In law, the agency or set of agencies/entities is protected from political interference.

YES | NO

Comments:

The Commission is mainly insulated from political interference. If there were wider consultation in the process of appointing the CEC and EC, the independence and impartiality would be more transparent.

References:

Article 324.

YES: A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies being contested in the election. A YES score is still earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the election monitoring agency or set of agencies/entities is legally tied to bodies contesting the election (i.e. an executive branch agency such as the Interior Ministry, or a committee of the legislature). A NO score is automatically earned if there is no election monitoring agency.

16b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

The Commission is mainly insulated from political interference. If there were wider consultation in the process of appointing the CEC and EC, the independence and impartiality would be more transparent.

References:

Article 324.

100: Appointments to the agency or set of agencies/entities are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. However, individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

16c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The Election Commission has a full-time staff at the headquarters and draws the personnel who work with them at the time of elections from the government service. While on election duty, they are directly accountable to the Election Commission and not to the government.

100: The agency or set of agencies/entities has staff sufficient to fulfill its basic mandate.

75:

50: The agency or set of agencies/entities has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency or set of agencies/entities has no staff, or such a limited staff that is clearly unqualified to fulfill its mandate.

16d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

100 | 75 | 50 | 25 | 0

Comments:

The Election Commission submits a report once every five years, or after an election, to the lower house of the Indian Parliament (Lok Sabha). It is a public document open to any citizen to access.

100: Reports are released to the public on a predictable schedule, without exceptions.

75:

50: Reports are released, but may be delayed, difficult to access, or otherwise limited.

25:

0: The agency or set of agencies/entities makes no public reports, issues reports which are effectively secret, or issues reports of no value.

16e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The Election Commission (EC) has quasi-judicial functions. Under the law, the EC can disqualify a candidate who has not filed an account of election expenditure within the time limit prescribed. Cases involving malpractice often come up before the EC and it is empowered to make decisions on whether a person should be disqualified and for what time period. The EC also has an advisory role and is consulted by the president when important decisions relating to the disqualification of elected representatives is to be taken.

References:

Representation of Peoples Act 1950, 1951.

100: When rules violations are discovered, the agency or set of agencies/entities is aggressive in penalizing offenders and/or in cooperating with other agencies in penalizing offenders.

75:

50: The agency or set of agencies/entities enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or set of agencies/entities does not effectively penalize offenders and/or cooperate with other agencies in penalizing offenders. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

17. Are elections systems transparent and effective?

92

17a. In practice, there is a clear and transparent system of voter registration.

100 | 75 | 50 | 25 | 0

Comments:

The government in India takes the responsibility register eligible voters at periodic intervals. Despite he efforts to ensure that all eligible voters are included, there have been reports of omission and addition. While there are opportunities for individuals to verify whether their names are listed on the voters list, it may often be inaccessible or prospective voters are not sufficiently motivated to check. As a result on election day, some voters realize that their names are not on the electoral roll.

References:

Representation of Peoples Act 1950, 1951.

100: There is a transparent system of voter registration that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote.

75:

50: There is a transparent voter registration system that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote but there are some problems. Voters may have not access to registration lists with sufficient time to correct errors before voting or registration lists may at times be inaccessible.

25:

0: The system of voter registration is incomplete or does not exist. Government may routinely falsify registration lists to affect voting patterns and limit access to the polls. Double voting and ghost^o voting by non-existent voters is common.

17b. In law, election results can be contested through the judicial system.

YES | NO

Comments:

The law permits recourse to the legal system if there is any contention to the fairness of the election process.

References:

Representation of Peoples Act 1950, 1951.

YES: A YES score is earned if citizens or political parties can challenge allegedly fraudulent election results through the courts or other judicial mechanisms.

NO: A NO score is earned if there is no legal right for citizens or political parties to challenge allegedly fraudulent election results in the courts or other judicial mechanisms.

17c. In practice, election results can be effectively appealed through the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

There are clear procedures for a candidate who suspects foul play or unfairness at any stage of the electoral process to seek judicial remedy. The results have often been contested in the courts and often the court has declared a seat vacant when they have been convinced of the genuineness of a complaint. However, there is a feeling that the process is excruciatingly slow and the relief often comes very late.

References:

Representation of Peoples Act 1950, 1951.

100: The electoral appeals mechanism takes cases from both candidates complaining of flaws in the electoral process as well as citizens bringing complaints related to denial of suffrage or registration errors. There is an expedited process for resolving such complaints to avoid delaying a timely announcement of electoral results.

75:

50: The electoral appeals mechanism takes complaints from both candidates and voters but may not always act on complaints promptly. The appeals mechanism may be abused at times by parties or candidates seeking to delay the announcement of electoral results.

25:

0: The electoral appeals mechanism rarely or never acts on complaints brought by candidates or citizens. Citizens may not be able to bring complaints related to denial of suffrage or voter registration errors.

17d. In practice, the military and security forces remain neutral during elections.

100 | 75 | 50 | 25 | 0

Comments:

The election process is known to be insulated from the military and security forces.

References:

Representation of Peoples Act 1950, 1951. Election Commission reports.

100: The military, military officers, and other security forces refrain from overtly supporting or opposing political candidates or commenting on elections. The military or security forces refrain from physically interfering with political campaigns, rallies, or voting.

75:

50: The military, military officers, and security forces may be known to unofficially support or oppose particular candidates or parties. The military or security forces generally refrain from the use of force to support or oppose particular candidates or parties but there are exceptions.

25:

0: The military or other security forces are an active and explicit player in politics and overtly support or oppose particular candidates or parties. The military or security forces routinely exercise the use of force to support or oppose parties or candidates.

17e. In law, domestic and international election observers are allowed to monitor elections.

YES | NO

Comments:

In recent times, independent citizen groups have been monitoring the fairness of the election process. The media has also played a major role in this regard. International observers have also been observing the electoral process.

References:

Election Commission reports. Media reports.

YES: A YES score is earned if domestic and international election observers are allowed to monitor the electoral process.

NO: A NO score is earned if there are any legal or regulatory prohibitions on the monitoring of the electoral process by domestic or international election observers.

17f. In practice, election observers are able to effectively monitor elections.

100 | 75 | 50 | 25 | 0

Comments:

In recent times, independent citizen groups have been monitoring the fairness of the election process. The media has also played a major role in this regard. International observers have also been observing the electoral process.

References:

Election Commission reports. Media reports.

100: Election observers have unfettered access to polling sites, counting stations, and voters themselves. The government does not interfere with the observers' activities.

75:

50: Election observers generally have access to polling sites, counting stations, and voters but encounter restrictions in certain areas. The government may impose burdensome regulatory or bureaucratic requirements on observers to discourage their involvement.

25:

0: Election observers' movements are significantly limited by the government and many polling and counting sites are restricted or barred from observers. The government imposes so many bureaucratic or regulatory burdens on the observers that their mission is rendered ineffective.

97
II-3. Political Financing

18. Are there regulations governing political financing?

50

18a. In law, there are regulations governing private contributions to political parties.

YES | NO

Comments:

There are regulations, but many believe that they are woefully inadequate.

References:

Election commission Web site. Election commission reports.

YES: A YES score is earned if there are any formal rules (by law or regulation) controlling private contributions to political parties.

NO: A NO score is earned if there is no regulation of private contributions to political parties.

18b. In law, there are limits on individual donations to candidates and political parties.

YES | NO

Comments:

There are limits but most donations are made without receipts being issued.

References:

Election Commission Web site. Companies Act.

YES: A YES score is earned if there are any limits, regardless of size, on individual contributions to political candidates and political parties. A YES score is earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition parties/candidates in a discriminatory manner.

18c. In law, there are limits on corporate donations to candidates and political parties.

YES | NO

Comments:

Section 293 of the Companies Act 1956 states that donations can be made by corporations to political parties, but they cannot exceed 50,000 rupees (approximately US\$1,000) or 5 percent of the average net profit determined under specific provisions of the Companies Act for three immediately preceding financial years. Such contributions need to be backed by a resolution of the board of directors of the company.

References:

Companies Act. News reports.

YES: A YES score is earned if there are any limits, regardless of size, on corporate contributions to political candidates and political parties. A YES score is earned if contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to candidates or political parties. A NO score is also earned if limits are applied by the government on opposition parties/candidates in a discriminatory manner.

18d. In law, there are limits on total political party expenditures.

YES | NO

Comments:

There are no limits on how much a party can spend. Limits are prescribed on how much an individual candidate can spend for his/her election campaign, but there are no limits prescribed for party expenditure.

References:

News reports.

YES: A YES score is earned if there are any limits, regardless of size, on political party expenditures. A YES score is earned if all party expenditures are prohibited.

NO: A NO score is earned if there are no limits on political party expenditures. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

18e. In law, there are requirements for disclosure of donations to political candidates and parties.

YES | **NO**

Comments:

There is no law requiring mandatory disclosure of donations made to political candidates or parties.

References:

News reports. Government reports. Reports on Committees on Election Reforms.

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to political parties or candidates.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties or candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

18f. In law, there are requirements for the independent auditing of the finances of political parties and candidates.

YES | **NO**

Comments:

The Election Commission can monitor the expenditure of candidates and limits are fixed as to how much a candidate can spend. There is no restriction on how much a party can spend. Thus, the restriction of an individual candidate expenditure is hardly of any significance, as there is no cap on party expenses

References:

Election Commission Web site and reports.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of candidate and party finances. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of political parties and candidates or if such requirements exist but allow for candidates or parties to self-audit.

19. Are the regulations governing political financing effective?

29

19a. In practice, the limits on individual donations to candidates and political parties are effective in regulating an individual's ability to financially support a candidate or political party.

100 | 75 | 50 | **25** | 0

Comments:

Increasingly, donations to parties are unaccounted for. Parties maintain minimal records of their financial transactions and most transactions are done through cash with hardly any formal records maintained. This has encouraged the growth of a parallel economy.

References:

Election Commission reports. Press reports.

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a candidate or political party. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a candidate or political party. However, exceptions and loopholes exist through which individuals can indirectly support candidates or political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate or party; unregulated loans to candidates or parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a candidate or political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

19b. In practice, the limits on corporate donations to candidates and political parties are effective in regulating a company's ability to financially support a candidate or political party.

100 | 75 | **50** | 25 | 0

Comments:

Increasingly, donations to parties are unaccounted for. Parties maintain minimal records of their financial transactions and most transactions are done through cash with hardly any formal records maintained. This has encouraged the growth of a parallel economy.

References:

Election Commission reports. Press reports.

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a candidate or political party. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support a candidate or political party. However, exceptions and loopholes exist through which companies can indirectly support candidates or political parties above and beyond those formal limitations. Such loopholes could include making to donations to third-party groups that advocate on behalf of (or against) a particular candidate or party; unregulated loans to candidates or parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to a candidate or political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

19c. In practice, the limits on total party expenditures are effective in regulating a political party's ability to fund campaigns or politically-related activities.

100 | 75 | 50 | 25 | 0

Comments:

There are no limits on party expenditures.

References:

Election Commission reports. Press reports.

100: Existing limits represent the full extent to which political parties are able to finance their activities. Limits are reasonably low enough in the context of the total costs of running a party to be meaningful.

75:

50: Existing limits generally represent the full extent to which a political party can finance its activities. However, exceptions and loopholes exist through which parties can generate revenue or finance their activities beyond the scope of existing regulations. Such loopholes could include taking loans that are outside of the scope of regulations covering direct donations; links to revenue-generating business activities that are beyond the scope of electoral or campaign-related regulations; or accepting in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a party.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of expenditures are made outside of the formal limitation system. Limits are so high that they are meaningless in the context of the overall costs of running a party.

19d. In practice, when necessary, an agency or entity monitoring political financing independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The only monitoring that has the potential of being meaningful is of the expenditures of individual candidates in an election. Because there is no ceiling on political parties' expenditures, the question of investigating/monitoring their expenditure does not arise.

References:

Election Commission Web site and reports.

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to political financing. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power.

19e. In practice, when necessary, an agency or entity monitoring political financing imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The only penalty that can be imposed is on individual candidates who have gone beyond their expenditure limits. This is difficult to monitor as candidates can always argue that the expenditure was paid by the party and there is no ceiling or monitoring of the party expenditure.

References:

Election Commission reports.

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power.

19f. In practice, contributions to political parties and candidates are audited.

100 | 75 | 50 | 25 | 0

References:

Election Commission Web site and reports.

100: Political party and candidate finances are regularly audited using generally accepted auditing practices. This includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

75:

50: Political party and candidate finances (as defined) are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions. Contributions to the political party or candidate may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party and candidate finances are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

20. Can citizens access records related to political financing?

33

20a. In practice, political parties and candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

It is mandatory for candidates to file their expenditures.. Many time, however, these statements do not reflect the reality of expenditures. In the case of political parties, there is no mandatory requirement for the party to submit a statement of accounts relating to expenditures

References:

Election Commission Web site and reports.

100: Political parties and candidates disclose their sources of funding and expenditures at least every quarter.

75:

50: Political parties and candidates disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Political parties and candidates never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

20b. In practice, citizens can access the financial records of political parties and candidates within a reasonable time period.

100 | 75 | 50 | **25** | 0

Comments:

Citizens can access the financial statements filed by candidates regarding their expenditures. These are now increasingly being placed on the Web. However, the extent to which these statements reflect the reality of expenditures is debatable.

References:

Election Commission Web site. Right to Information Act.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

20c. In practice, citizens can access the financial records of political parties and candidates at a reasonable cost.

100 | 75 | 50 | **25** | 0

Comments:

Citizens can access the financial statements filed by candidates regarding their expenditures. These are now increasingly being placed on the Web. However, the extent to which these statements reflect the reality of expenditures is debatable.

References:

Election Commission Web site. Right to Information Act.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category III. Government Accountability

III-1. Executive Accountability

21. In law, can citizens sue the government for infringement of their civil rights?

100

21. In law, can citizens sue the government for infringement of their civil rights?

YES | NO

Comments:

As part of the provisions relating to fundamental rights, citizens have a constitutionally guaranteed right to plead for the enforcement of their rights. The Supreme Court and the High Court are empowered to issue writs in case of violation of fundamental rights against the allegedly offending agency, whether it be the legislature or the executive. All fundamental rights, including the right to constitutional remedies, stand suspended only at the time of the declaration of an emergency.

References:

Article 32 of the Constitution

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) can receive compensation or redress through the courts for civil rights violations committed by the government, such as failure to follow due process of law when detaining suspected criminals.

NO: A NO score is earned if any group of citizens is excluded from the right to sue the government, or no such mechanism exists.

22. Can the chief executive be held accountable for his/her actions?

88

22a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | 50 | 25 | 0

Comments:

The parliamentary system of governance makes it binding upon the executive to give reason for every action taken. The Council of Ministers is accountable to the Lower House of Parliament, which is directly elected by the people. The House has the power to question the actions of the executive thereby making it accountable and responsible for every action. Most major policy decisions are vigorously debated in Parliament with the opposition subjecting initiatives to careful scrutiny. The “question hour” in the Indian Parliament is a testing time for the executive. However, it must be conceded that given recent scandals surrounding question hour, there is some public cynicism about the utility of this time. Parliamentarians have the opportunity to turn the attention to the actions of the government during other debates in the House. Today, parliamentary proceedings, especially crucial debates and the question hour, are televised and accessible to the public at large. Therefore, the public is kept informed of the reasons behind government’s policy decisions.

References:

Article 78 of the Constitution.

100: The chief executive and/or cabinet ministers give formal explanations of all policy matters. The chief executive regularly takes critical questions from journalists or an opposition party, usually at least once a month. There is no censoring of such sessions.

75:

50: The chief executive and/or cabinet ministers give explanations of policy, but not always in a timely or complete way. The chief executive occasionally takes critical questions from journalists or an opposition party, but not in a regular or formalized process. Particular issues of political sensitivity may be censored by government broadcasters.

25:

0: The chief executive and/or cabinet ministers do not give substantial justifications for policy. Public appearances by the chief executive offer no exposure to critical questions. The government and government-run media routinely censor such sessions.

22b. In law, the judiciary can review the actions of the executive.

YES | NO

References:

Articles 286, 299, 301 and 304 of the Constitution.

YES: A YES score is earned if there is a formal process by which the judiciary can pass judgments on the legality or constitutionality of actions taken by the executive.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exemptions exist with respect to executive actions that are reviewable (a national security exemption, for example).

22c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | 50 | 25 | 0

Comments:

India has been witness to judicial activism with the courts, striking down governmental decisions quite frequently. The public often views the judiciary as a check on the actions of the government

References:

The judgment of the Supreme Court.

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing executive actions and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

75:

50: The judiciary will review executive actions, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review executive policy. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power. It must rely on instructions from the executive in order to initiate a legal or constitutional review.

22d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

100 | 75 | 50 | 25 | 0

Comments:

Under the provisions of the Constitution and the laws, the Council of Ministers can recommend to the president the creation of new regulations and policies. If Parliament is in session, the practice is generally that the Council of Ministers makes the announcement on the floor of the House. There have been some criticisms by the opposition that the government has been by-passing Parliament and announcing new regulations outside the House.

References:

Parliamentary debates and Rules of Procedure.

100: The chief executive utilizes executive orders only when there is no constitutional or legal requirement for official legislative action or approval. Executive orders are limited in number and narrow in scope.

75:

50: The chief executive sometimes relies on executive orders to implement policies and regulations opposed by the legislature. Some executive orders are overly broad in scope and are designed to circumvent constitutional or legal

requirements for legislative action or approval.

25:

0: The chief executive routinely abuses executive orders to render the legislature practically useless. Executive orders are the norm, not the exception, and directly contravene constitutional or legal requirements for legislative action or approval.

23. Is the executive leadership subject to criminal proceedings?

50

23a. In law, the heads of state and government can be prosecuted for crimes they commit.

YES | **NO**

References:

Article 14 and 361 of the Constitution.

YES: A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations.

NO: A NO score is earned if either the head of state or government cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on the heads of state or government.

23b. In law, ministerial-level officials can be prosecuted for crimes they commit.

YES | NO

References:

Constitutional provisions and regulations.

YES: A YES score is earned if ministerial-level officials, or their equivalents, can all be investigated, charged or prosecuted for criminal allegations.

NO: A NO score is earned if any ministerial-level official, or equivalent official, cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on ministerial-level officials.

24. Are there regulations governing conflicts of interest by the executive branch?

24a. In law, the heads of state and government are required to file a regular asset disclosure form.

YES | NO

Comments:

The Head of Government is required to submit a statement of his/her assets as a Member of Parliament but not as the Head of Government. We could also have the odd situation of someone being Head of Government without being a member of Parliament. The constitution permits an individual to be a minister without being a member of Parliament for a period of six months. So we could theoretically have a Prime Minister who is sworn in as Prime Minister and is not a member of Parliament. He/she is required to become a member within a period of six months. During this period he/she could resign. You would thus have had a Head of Government (albeit for a short period of time) who would not have been a member of parliament and would not have been required to submit a declaration of his/her assets.

References:

Representation of People's Act.

YES: A YES score is earned if the heads of state and government are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form need not be publicly available to score a YES.

NO: A NO score is earned if either the head of state or government is not required to disclose assets.

24b. In law, ministerial-level officials are required to file a regular asset disclosure form.

YES | NO

Comments:

Any minister must be a member of Parliament. All members of Parliament are required to make a declaration of their assets to the presiding officer of the house of which they are a member. Any will refusal to do so could invite action linked to breach of privilege. Since 2004, any person who wants to contest an election to the state and national legislature is required to furnish an affidavit, which provides details of assets and liabilities.

References:

Representation of Peoples Act 1951.

YES: A YES score is earned if ministerial-level officials, or their equivalents, are all required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets.

NO: A NO score is earned if ministers are not required to disclose assets. A NO score is earned if some ministers must disclose assets, but other ministers are not required.

24c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

YES | NO

References:

Civil Service Rules. Ministerial Code of Conduct Rules.

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality offered to members of the executive branch of government.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch. A NO score is earned if the guidelines are overly general and do not specify what is and is not appropriate.

24d. In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).

YES | NO

References:

Central Vigilance Commission. Lokayukta Acts.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of executive branch asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of executive branch asset disclosures or if such requirements exist but allow for self-auditing.

24e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

YES | NO

Comments:

There is no restriction on heads of state or ministers entering the private sector after leaving government.

References:

Newspaper reports and laws.

YES: A YES score is earned if there are regulations restricting the ability of heads of state/government and ministers to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

24f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

100 | 75 | 50 | 25 | 0

Comments:

Not applicable.

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no or few cases of those officials taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, heads of state/government or ministers are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Heads of state/government or ministers routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

24g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | 25 | 0

Comments:

There are frequent controversies relating to the violation of this norm.

References:

Newspaper reports.

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given. Members of the executive branch never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the executive branch are generally applied though exceptions exist. Some ministers in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the executive branch are routinely ignored and unenforced. Ministers and other members of the executive branch routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

24h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | 50 | 25 | 0

Comments:

As they are increasingly in the public domain, the financial reports are subjected to discussion and public scrutiny. However, there is a valid public perception that many of the asset disclosures do not reflect the true assets of elected representatives.

References:

Newspaper reports.

100: Executive branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Executive branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Executive branch asset disclosures are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

25. Can citizens access the asset disclosure records of the heads of state and government?

75

25a. In law, citizens can access the asset disclosure records of the heads of state and government.

YES | NO

Comments:

The head of state is not required to make voluntary asset declarations. The head of government (prime minister) makes an asset declaration as a member of Parliament. This is accessible to citizens.

References:

Right to Information Act.

YES: A YES score is earned if the heads of state and government file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for either the head of state or government. A NO score is earned if the form is filed, but not available to the public.

25b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

The head of state is not required to make voluntary asset declarations. The head of government (prime minister) makes an asset declaration as a member of Parliament. This is accessible to citizens.

References:

Right to Information Act.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some additional delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

25c. In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.

100 | **75** | 50 | 25 | 0

Comments:

The head of state is not required to make voluntary asset declarations. The head of government (prime minister) makes an asset declaration as a member of Parliament. This is accessible to citizens.

References:

Right to Information Act.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

26. In practice, is the ruling party distinct from the state?

75

26. In practice, is the ruling party distinct from the state?

100 | 75 | 50 | 25 | 0

Comments:

It is beyond doubt that a clear distinction has emerged between the ruling party and the government/state. This is linked to two interdependent factors. First, the emergence of a competitive multi-party system in 1989, which replaced the one-party dominant system. Secondly, coalition governments have increasingly become the norm since the 1990s. This has resulted in a power-sharing arrangement and the inability of one party to dominate the system.

References:

Newspaper reports and developments.

100: Clear rules are followed distinguishing state functions from party activities. Government funds are never used for party activities. The civil service is completely distinct from party bureaucracy.

75:

50: The ruling party is, in principal, separate from the state, but exceptions to this standard sometimes occur. Examples may be use of civil servants to organize political rallies, use of government vehicles on campaign trips, or use of government funds for party purposes.

25:

0: The government is an extension of the ruling party. There are few boundaries between government and party activities. Government funds, equipment and personnel are regularly used to support party activities.

27. Can members of the legislature be held accountable for their actions?

92

27a. In law, the judiciary can review laws passed by the legislature.

YES | NO

Comments:

In India, the judiciary has the power to review the actions of the legislature to ascertain whether they are in agreement with the provisions of the Constitution.

References:

Articles 286, 299-301 and 304.

YES: A YES score is earned if there is a formal process by which the judiciary or constitutional courts can pass judgments on the legality or constitutionality of laws passed by the legislature.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exceptions exist exempting certain legislative actions from being reviewed (a national security exemption, for example).

27b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | 50 | 25 | 0

References:

Supreme Court judgments.

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing laws passed and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

75:

50: The judiciary will review laws passed, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review laws passed. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power.

27c. In law, are members of the national legislature subject to criminal proceedings?

YES | NO

Comments:

The only requirement is that the presiding officer be informed of the proceedings.

References:

Rules of procedure of the conduct of business in the house.

YES: A YES score is earned if all members of the legislature can, in law, be investigated and prosecuted for criminal allegations.

NO: A NO score is earned if any member of the legislature cannot, in law, be investigated and prosecuted for criminal proceedings.

28. Are there regulations governing conflicts of interest by members of the national legislature?

43

28a. In law, members of the national legislature are required to file an asset disclosure form.

YES | NO

Comments:

It is required at two levels. First, when any person wishes to seek election in the Lower House of Parliament, he/she must file an affidavit at the time of submitting the nomination papers, which contains details relating to their assets and liabilities. Once elected, they are required to file with the presiding officer a statement of their assets and liabilities.

References:

Representation of People's Act.

YES: A YES score is earned if all members of the legislature are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the legislature is not required to disclose assets.

28b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

YES | **NO**

Comments:

There are no such restrictions.

References:

Representation of People's Act.

YES: A YES score is earned if there are regulations restricting national legislators' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

28c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

YES | NO

Comments:

There are provisions laid out in the Rules of Procedure for Conduct of Business in the two houses of parliament (separately for each house).

References:

Regulations enacted by the presiding officers of the concerned house.

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the legislature.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the legislature. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

28d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

YES | **NO**

Comments:

There is a submission of records of assets by legislators. This is often merely filed and not subjected to any scrutiny.

References:

Representation of Peoples Act .

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of legislative branch asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of legislative branch asset disclosures or if such requirements exist but allow for self-auditing.

28e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

There are no such regulations.

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no or few cases of legislators taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off” period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, legislators are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

28f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

It is difficult to monitor these provisions and hold elected representatives accountable.

References:

Newspaper reports.

100: The regulations governing gifts and hospitality to national legislators are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to legislators. Legislators never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to national legislators are generally applied though exceptions exist. Some legislators in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to national legislators are routinely ignored and unenforced. Legislators routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

28g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | **50** | 25 | 0

Comments:

There is no mandatory provision requiring that they be audited.

References:

Representation of Peoples Act.

100: Legislative branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Legislative branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Legislative branch asset disclosures are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

29. Can citizens access the asset disclosure records of members of the national legislature?

83

29a. In law, citizens can access the asset disclosure records of members of the national legislature.

YES | NO

Comments:

Today the asset disclosure affidavit of candidates is placed on the Web site by the Election Commission and is accessible to people. The percentage of those who have access to the Internet, however, is limited.

References:

Representation of People Act. Right to Information Act.

YES: A YES score is earned if members of the national legislature file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national legislature. A NO score is earned if the form is filed, but not available to the public.

29b. In practice, citizens can access these records within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

As mentioned, as the Election Commission places these records on the Web site. They are accessible to those who have access to the Internet.

References:

Newspaper reports.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

29c. In practice, citizens can access these records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The only cost is often Internet access costs.

References:

Right to Information Act.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

30. Can citizens access legislative processes and documents?

83

30a. In law, citizens can access records of legislative processes and documents.

YES | NO

References:

Web site of Parliament and Documentation, produced by Parliament: www.parliamentofindia.com.

YES: A YES score is earned if there is a general legal right to access records of legislative proceedings including voting records. A YES score can still be given if there are formal rules for specific exemptions to the right to disclosure (special secret sessions related to national security).

NO: A NO score is earned if there is no general right to access documents recording legislative proceedings. A NO score is earned if there exemptions to the general right that are not clearly defined by formal rules.

30b. In practice, citizens can access these records within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Many of these documents are on the Web site of Parliament and the remaining can be purchased at a reasonable price or accessed in public libraries.

References:

www.parliamentofindia.com

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

30c. In practice, citizens can access these records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

They can be accessed through the Internet or purchased from outlets managed by the government/legislature.

References:

www.parliamentofindia.com

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

75
III-3. Judicial Accountability

31. Are judges appointed fairly?

67

31a. In practice, there is a transparent procedure for selecting national-level judges.

YES | NO

Comments:

The Constitution mandates an elaborate procedure that ensures fairness.

References:

Article 124 of the Constitution.

YES: A YES score is earned if there is a formal process for selecting national level justices. This process should be public in the debating and confirmation stages.

NO: A NO score is given if there is no formal process of selection or the process is conducted without public oversight.

31b. In practice, there are certain professional criteria required for the selection of national-level judges.

100 | 75 | 50 | 25 | 0

References:

Articles 124(3) and 217(2) of the Constitution.

100: National-level judges selected have relevant professional qualifications such as formal legal training, experience as a lower court judge or a career as a litigator.

75:

50: Most national-level judges selected meet these qualifications, with some exceptions.

25:

0: National-level judges are often unqualified due to lack of training or experience.

31c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

YES | NO

Comments:

There is no confirmation process in the Indian system.

YES: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency independent from the body appointing the judges.

NO: A NO score is earned if there is no formal review. A NO score is earned if the review is conducted by a body directed by the body appointing the judges (such as review by the head of police if judges are appointed by the executive).

32. Can members of the judiciary be held accountable for their actions?

13

32a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

YES | **NO**

Comments:

They are not obliged to give reasons. However, often the judgment reflects the grounds on which the judge has made a particular decision.

References:

Judicial decisions.

YES: A YES score is earned if there is a formal and mandatory process for judges to explain their decisions.

NO: A NO score is earned if justices are not required to explain decisions. A NO score is earned if there is a general exemption from explaining some decisions (such as national security).

32b. In practice, members of the national-level judiciary give reasons for their decisions.

100 | **75** | 50 | 25 | 0

Comments:

The reasons are often reflected in the judgment.

References:

Judicial decisions.

100: Judges are formally required to explain their judgments in detail, establishing a body of precedent. All judges comply with these requirements.

75:

50: Judges are compelled to give substantial reasons for their decisions, but some exceptions exist. These may include special courts, such as military courts or tribunals.

25:

0: Judges commonly issue decisions without formal explanations.

32c. In law, there is an ombudsman (or equivalent agency or mechanism) for the national-level judicial system.

YES | **NO**

Comments:

There is a move to create a National Judicial Commission. The recommendation of the National Commission to Review the Working of the Constitution on this issue is pending.

References:

Laws, rules and regulations relating to the judiciary.

YES: A YES score is earned if there is a ombudsman or equivalent mechanism for the judicial system. A judicial ombudsman is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary.

NO: A NO score is earned if no agency or mechanism is specifically mandated to act as a judicial ombudsman.

32d. In law, the judicial ombudsman (or equivalent agency or mechanism) is protected from political interference.

YES | **NO**

Comments:

Not applicable.

YES: A YES score is earned if there are formal rules establishing that the judicial ombudsman is operationally independent from political interference by the executive, legislative or judicial branches.

NO: A NO score is earned if there are no formal rules establishing the independence of the judicial ombudsman. A NO score is given if the judicial ombudsman function is carried out by an inherently subordinate organization, such as an executive ministry or legislative committee.

32e. In practice, when necessary, the judicial ombudsman (or equivalent agency or mechanism) initiates investigations.

100 | 75 | 50 | 25 | **0**

Comments:
Not applicable.

100: The ombudsman aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The ombudsman is fair in its application of this power.

75:

50: The ombudsman will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The ombudsman, though limited in effectiveness, is still fair in its application of power.

25:

0: The ombudsman rarely investigates on its own or cooperates in other agencies' investigations, or the ombudsman is partisan in its application of this power.

32f. In practice, when necessary, the judicial ombudsman (or equivalent agency or mechanism) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:
Not applicable.

100: When rules violations are discovered, the ombudsman is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The ombudsman enforces rules, but is limited in its effectiveness. The ombudsman may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The ombudsman does not effectively penalize offenders. The ombudsman may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The ombudsman may be partisan in its application of power.

III-4. Budget Processes

33. Can the legislature provide input to the national budget?

33a. In law, the legislature can amend the budget.

YES | NO

Comments:

The question is geared to meet the requirements of a presidential system. In a parliamentary system of government, the budget needs the approval of the Parliament. The Lower House of Parliament has greater powers on matters linked to the budget and has the power to amend the budgetary recommendations. It must, however, be noted that because the budget is presented to the legislature by the government, which enjoys a majority in the lower house, they normally are able to ensure that the budgetary provisions are approved by the legislature.

References:

Rules of Procedure and Conduct of Business in the House.

YES: A YES score is earned if the legislature has the power to add or remove items to the national government budget.

NO: A NO score is earned if the legislature can approve, but not change details of the budget. A NO score is earned if the legislature has no input into the budget process.

33b. In practice, significant public expenditures require legislative approval.

100 | 75 | 50 | 25 | 0

Comments:

No expenditure can be made without the approval of the legislature. On occasions, post facto approval has been taken. No regularization of expenditure is possible without the sanction of the legislature.

References:

Rules of Procedure and Conduct of Business in the House.

100: All significant government expenditures (defined as any project costing more than 1% of the total national budget), must be approved by the legislature. This includes defense and secret programs, which may be debated in closed hearings.

75:

50: Most significant government expenditures (as defined) are approved by the legislature, but some exceptions to this rule exist. This may include defense programs, an executive's personal budget, or other expenses.

25:

0: The legislature does not have the power to approve or disapprove large portions of the government budget, or the legislature does not exercise this power in a meaningful way.

33c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

100 | 75 | 50 | 25 | 0

Comments:

Prior to the 1990s, it was found that a large chunk of the budgetary provisions were passed by the House without any debate simply because of a lack of time. In the 1990s, Parliament adopted the procedure of Department Related Standing Committees (DRSCs), which make a detailed assessment of the budgetary provisions relating to different departments. Their report becomes the basis of parliamentary approval. Reports have appeared in the media on the need to strengthen these mechanisms.

References:

Rules of Procedure and Conduct of Business in the House.

100: Legislators benefit from a sufficient and qualified staff as well as adequate financial and physical resources. Lack of capacity is never a reason why legislators cannot carry out their duties effectively.

75:

50: Legislators have some staff and financial resources but are limited by a shortfall of resources to adequately perform all of their budgetary oversight functions. Legislators are occasionally overwhelmed by the volume of work to be performed.

25:

0: Legislators have little to no staff and virtually no financial resources with which to perform their budgetary oversight role. Lack of resources is a regular and systemic problem that cripples the performance of the legislature.

34. Can citizens access the national budgetary process?

58

34a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

100 | 75 | 50 | 25 | 0

Comments:

There is an elaborate and transparent procedure. The challenge is the limited of time available to the legislature to do a more comprehensive scrutiny.

References:

Rules of Procedure and Conduct of Business in Lok Sabha, Rajya Sabha.

100: Budget debates are public and records of these proceedings are easily accessible. Authors of individual budget items can easily be identified. Nearly all budget negotiations are conducted in these official proceedings.

75:

50: There is a formal, transparent process for budget debate, but major budget modifications may be negotiated in separate, closed sessions. Some items, such as non-secret defense projects, may be negotiated in closed sessions. Authors of individual line items may be difficult to identify.

25:

0: Budget negotiations are effectively closed to the public. There may be a formal, transparent process, but most real discussion and debate happens in other, closed settings.

34b. In practice, citizens provide input at budget hearings.

100 | 75 | 50 | 25 | 0

Comments:

Citizens have few opportunities to participate in budget hearings. There are few opportunities for the general public to interact with the Finance Ministry on budgetary proposals. The Department Related Standing Committees also provides little opportunity for common citizens to air their views on budgetary proposals.

References:

Rules of Procedure and Conduct of Business.

100: Citizens, usually acting through CSOs, can provide information or commentary to the budget debate through a formal process. This information is essential to the process of evaluating budget priorities.

75:

50: Citizens or CSOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or CSOs have no formal access to provide input to the budget debate.

34c. In practice, citizens can access itemized budget allocations.

100 | 75 | 50 | 25 | 0

Comments:

Citizens can access the entire budgetary proposals then they are printed. There is a general feeling that given the technicalities involved in budget documents, the bureaucracy is often able to hide more than it reveals through budget statistics

References:

www.parliamentofindia.com

100: Citizens, journalists and CSOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and CSOs can access itemized lists of budget allocations but this information may be difficult to access, incomplete or out of date.

25:

0: Citizens cannot access an itemized list of budget allocations, due to secrecy, prohibitive barriers or government inefficiency.

35. In law, is there a separate legislative committee which provides oversight of public funds?

100

35. In law, is there a separate legislative committee which provides oversight of public funds?

YES | NO

Comments:

The Public Accounts Committee performs this duty.

References:

Rules of Procedure and Conduct of Business, Lok Sabha.

YES: A YES score is earned if there is a dedicated legislative committee (or equivalent group located in the legislature) that oversees the expenditure of public funds.

NO: A NO score is earned if no such body exists. A NO score is earned if there is a body executing this function but it is not under the direction of the legislature.

36. Is the legislative committee overseeing the expenditure of public funds effective?

81

36a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

Comments:

The Public Accounts Committee requires officers to submit information and, at times, to provide oral testimony.

References:

Rules of Procedure and Conduct of Business, Lok Sabha.

100: Heads of ministry- or cabinet-level agencies submit regular, formal reports of expenses to a budget oversight committee.

75:

50: Agency heads submit reports to a budget oversight committee, but these reports are flawed in some way. The reports may be inconsistently delivered, or lacking important details.

25:

0: There is no budget oversight committee or equivalent, or heads of agencies do not submit meaningful reports to the agency.

36b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.

100 | 75 | 50 | 25 | 0

Comments:

The committee has been known to operate in a non-partisan manner.

References:

Rules of Procedure and Conduct of Business, Lok Sabha. Press reports.

100: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties in a roughly equitable distribution. All members of the committee — including opposition party members — are able to fully participate in the activities of the committee and influence the committee's work to roughly the same extent as any other member of the committee.

75:

50: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties although the ruling party has a disproportionate share of committee seats. The chairperson of the committee may be overly influential and curb other members' ability to shape the committee's activities.

25:

0: The committee is dominated by legislators of the ruling party and/or the committee chairperson. Opposition legislators serving on the committee have in practice no way to influence the work of the committee.

36c. In practice, this committee is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

As the committee deliberations are held in camera, members do not take a party line. However, there have been a few occasions when there have been complaints of partisan behavior.

References:

Rules of Procedure and Conduct of Business, Lok Sabha.

100: This committee operates independently of the political process, without incentive or pressure to render favorable judgments on politically sensitive issues. Investigations are rarely praised or criticized by political figures.

75:

50: This committee is usually independent but is sometimes influenced by negative or positive political incentives. This may include public praise or criticism by the government.

25:

0: This committee is commonly influenced by personal or political forces or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties that ultimately influence the committee's behavior and decision-making. Negative incentives may include threats, harassment or other abuses of power by the government.

36d. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | 50 | 25 | 0

Comments:

The PAC conducts an independent investigation of audit objections and submits its report. The government is also required to submit an action taken report. The only challenge lies in the fact that the PAC is only recommendatory and final action needs to be taken by the government. Here studies have shown that the government often drags its feet in implementing PAC recommendations.

References:

www.parliamentofindia.com

100: When irregularities are discovered, the committee is aggressive in investigating the government.

75:

50: The committee starts investigations, but is limited in its effectiveness. The committee may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The committee does not effectively investigate financial irregularities. The committee may start investigations but not complete them, or may fail to detect offenders. The committee may be partisan in its application of power.

IV-1. ⁷⁵Civil Service Regulations

37. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

100

37a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

YES | NO

Comments:

The Constitution attempts to provide for an independent, impartial and nonpolitical civil service. Special protection has been guaranteed to the higher civil service under the Constitution to ensure that they act in a fair and impartial manner.

References:

Article 312 of the Constitution.

YES: A YES score is earned if there are specific formal rules establishing that the civil service carry out its duties independent of political interference.

NO: A NO score is earned if there are no formal rules establishing an independent civil service.

37b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

YES | NO

Comments:

The Civil Service Rules (CSR) clearly outline the norms that civil servants are required to follow. The Prevention of Corruption Act categorically delineates what constitutes an act of nepotism and corruption.

References:

Civil Service Rules. Prevention of Corruption Act.

YES: A YES score is earned if there are specific formal rules prohibiting nepotism, cronyism, and patronage in the civil service. These should include competitive recruitment and promotion procedures as well as safeguards against arbitrary

disciplinary actions and dismissal.

NO: A NO score is earned if no such regulations exist.

37c. In law, there is an independent redress mechanism for the civil service.

YES | NO

Comments:

There is a Central Administrative Tribunal (CAT) and state administrative tribunals to redress the grievances of civil servants.

References:

www.nic.in

YES: A YES score is earned if there is a mechanism to which civil servants and applicants for the civil service can take grievances regarding civil service management actions. Civil servants are able to appeal the mechanism's decisions to the judiciary.

NO: A NO score is earned if no such mechanism exists.

37d. In law, civil servants convicted of corruption are prohibited from future government employment.

YES | NO

Comments:

A civil service officer against whom formal court proceedings are launched is often placed under suspension. On the basis of the final judgment, a decision is made whether to dismiss the officer from service. If dismissed, they are not eligible for reappointment in government.

References:

Civil Service Rules and reports.

YES: A YES score is earned if there are specific rules prohibiting continued government employment following a corruption conviction.

NO: A NO score is earned if no such rules exist.

38. Is the law governing the administration and civil service effective?

38a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

In recent years, there has been increasing evidence to show that the civil service is getting increasingly politicized and straying away from the path of political neutrality. A nexus between the political leadership and the bureaucracy is developing, which is resulting in the bureaucracy becoming sensitive to political cues. While the higher civil service has been guaranteed protection from political interference by the Constitution, they have often been swayed by political considerations.

References:

Civil Service Rules.

100: Civil servants operate independently of the political process, without incentive or pressure to render favorable treatment or policy decisions on politically sensitive issues. Civil servants rarely comment on political debates. Individual judgments are rarely praised or criticized by political figures. Civil servants can bring a case to the courts challenging politically-motivated firings.

75:

50: Civil servants are typically independent, yet are sometimes influenced in their judgments by negative or positive political or personal incentives. This may include favorable or unfavorable treatment by superiors, public criticism or praise by the government, or other forms of influence. Civil servants may bring a case to the judicial system challenging politically-motivated firings but the case may encounter delays or bureaucratic hurdles.

25:

0: Civil servants are commonly influenced by political or personal matters. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. Civil servants are unable to find a remedy in the courts for unjustified or politically-motivated firings.

38b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

A distinction must be made with regard to those appointed on the basis of examinations conducted by the Union Public Service Commission (UPSC) and those appointed on the basis of examinations conducted by State Public Service Commissions. The UPSC conducts the examination for the elite All India Services and the Central Services, while the State Public Service Commissions conduct the examinations for the State Services. The UPSC examinations and later recruitment by the Union is generally considered to be fair and on the basis of professional criteria. With regard to the State Public Service Commissions, there have been several complaints of nepotism, favoritism and other non-professional factors. With regard to evaluation of civil servants during their service, the procedures laid down are fair but have often been mired in controversies because of subjective and partisan assessments.

References:

Article 312 of the Constitution. News reports.

100: Appointments to the civil service and their professional evaluations are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments and professional assessments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments and professional assessments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

38c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

100 | 75 | 50 | 25 | 0

Comments:

A distinction must be made with regard to those appointed on the basis of examinations conducted by the Union Public Service Commission (UPSC) and those appointed on the basis of examinations conducted by State Public Service Commissions. The UPSC conducts the examination for the elite All India Services and the Central Services, while the State Public Service Commissions conduct the examinations for the State Services. The UPSC examinations and later recruitment by the Union is generally considered to be fair and on the basis of professional criteria. With regard to the State Public Service Commissions, there have been several complaints of nepotism, favoritism and other non-professional factors. With regard to evaluation of civil servants during their service, the procedures laid down are fair but have often been mired in controversies because of subjective and partisan assessments.

References:

Civil Service Rules. UPSC reports. Press reports

100: Nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) are actively discouraged at all levels of the civil service. Hirings, firings, and promotions are based on merit and performance.

75:

50: Nepotism, cronyism, and patronage are discouraged, but exceptions exist. Political leaders or senior officials sometimes appoint family member or friends to favorable positions in the civil service, or lend other favorable treatment.

25:

0: Nepotism, cronyism, and patronage are commonly accepted principles in hiring, firing and promotions of civil servants.

38d. In practice, civil servants have clear job descriptions.

Comments:

The majority have clear job descriptions. The demarcation of responsibilities between the political and permanent executive positions have become controversial in recent times. There have been a few cases of corruption, nepotism, inefficiency, delay and the like. Investigations revealed that it is difficult to fix the responsibility on any individual/position and the error/deviant behavior is described to be a result of "system failure."

References:

Civil Service Rules.

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable means to map positions to both human capital requirements (including the position's authority and responsibilities) and base pay.

75:

50: Civil servants often have formal job descriptions, but exceptions exist. Some civil servants may not be part of the formal assignment of duties and compensations. Some job descriptions may not map clearly to pay or responsibilities in some cases.

25:

0: Civil servants do not have formal roles or job descriptions. If they do, such job descriptions have little or nothing to do with the position's responsibilities, authority, or pay.

38e. In practice, civil servant bonuses constitute only a small fraction of total pay.

Comments:

There needs to be some clarity on bonuses. Does this mean extra legal remuneration for completion of special work or for doing a task with a higher level of efficiency? If this were the definition of bonus, then the civil servants in India are not given any significant bonuses. If bonuses, are taken to mean extra sources of wealth, then it has become a major bone of contention today. Many believe that the reason why the civil service attracts a lot of people is because of the opportunity to earn such bonuses.

References:

Civil Service Rules.

100: Civil servant bonuses constitute no more than 10% of total pay and do not represent a major element of take-home pay.

75:

50: Civil servant bonuses are generally a small percentage of total take-home pay for most civil servants though exceptions exist where some civil servants' bonuses represent a significant part of total pay.

25:

0: Most civil servants receive bonuses that represent a significant amount of total take-home pay. In some cases bonuses represent the majority of total pay to civil servants.

38f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

100 | 75 | 50 | 25 | 0

Comments:

With regard to the federal government, the Web site of the Ministry of Personnel lists the details. With regard to the state governments, these details are often not available.

References:

www.nic.in

100: The government publishes such a list on a regular basis.

75:

50: The government publishes such a list but it is often delayed or incomplete. There may be multiple years in between each successive publication.

25:

0: The government rarely or never publishes such a list, or when it does it is wholly incomplete.

38g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | 50 | 25 | 0

Comments:

There is both a Central Administrative Tribunal (CAT) and each state has an Administrative Tribunal. The civil service has the opportunity to approach the tribunal for redress of grievances. There have been occasions when these tribunals have directed the government to take remedial measures to offset the hardship or injustice caused to an officer.

References:

www.nic.in

100: The independent redress mechanism for the civil service can control the timing and pace of its investigations without any input from the bodies that manage civil servants on a day-to-day basis.

75:

50: The independent civil service redress mechanism can generally decide what to investigate and when but is sometimes subject to pressure from the executive or the bodies that manage civil servants on a day-to-day basis on politically sensitive

issues.

25:

0: The civil service redress mechanism must rely on approval from the executive or the bodies that manage civil servants on a day-to-day basis before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

38h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

Comments:

Civil servants are normally paid on time. In those rare cases when states face a fiscal crunch, it may just be that the payment of salaries is delayed by a few days. It may be a one time occurrence

References:

www.nic.in

100: In the past year, no civil servants have been paid late.

75:

50: In the past year, some civil servants have been paid late.

25:

0: In the past year, civil servants have frequently been denied due pay.

38i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | 50 | 25 | 0

Comments:

In practice it has been found that it is quite a challenge to bring a charge against a civil servant to the level of conviction. If convicted, the civil servants (who would have already been terminated) would be relieved from service and not eligible for future appointment.

References:

www.nic.in

100: A system of formal blacklists and cooling off periods is in place for civil servants convicted of corruption. All civil servants are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some civil servants may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

39. Are there regulations addressing conflicts of interest for civil servants?

63

39a. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

YES | NO

Comments:

Civil servants are required to clearly bring to the notice of the authorities any issue which is coming under their purview that involves a conflict of interests.

References:

Civil Service Rules.

YES: A YES score is earned if there are requirements for civil servants to recuse themselves from policy decisions where their personal interests, including personal financial interests as well as those of their family and friends, are affected.

NO: A NO score exists if no such requirements exist in regulation or law.

39b. In law, there are restrictions for civil servants entering the private sector after leaving the government.

YES | NO

Comments:

There are no legal restrictions that prohibit a civil servant from taking a position in the private sector after retirement. The general norm is that they should not take an assignment with any private agency that is involved with work they were linked to while in service. This problem that is coming to the forefront now is that officers are seeking voluntary retirement to work in the private sector. Many of them are taking responsibilities that are in direct conflict with what they were doing earlier.

References:

Civil Service Rules.

YES: A YES score is earned if there are regulations restricting civil servants' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

39c. In law, there are regulations governing gifts and hospitality offered to civil servants.

YES | NO

Comments:

The Civil Service Rules clearly state that an officer should not accept gifts or hospitality that are not in consonance with their duties and responsibilities.

References:

Civil Service Rules.

YES: A YES score is earned if there are formal guidelines regarding gifts and hospitality given to civil servants.

NO: A NO score is earned if there are no such guidelines or regulations.

39d. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | **50** | 25 | 0

Comments:

The Central Vigilance Commission (CVC) has asked for more stringent measures to ensure that when officers leave government service they do not take up employment that is directly or indirectly linked to responsibilities they have when they were involved with government. However, not much has been done in this regard and several controversies linked to retired government officers have thus emerged.

References:

News reports.

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no or few cases of civil servants taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, civil servants are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Civil servants routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

39e. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | **50** | 25 | 0

Comments:

There have been cases reported of officers accepting gifts and hospitality disproportionate to their status and position.

References:

News reports.

100: The regulations governing gifts and hospitality to civil servants are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to civil servants. Civil servants never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to civil servants are generally applied though exceptions exist. Some civil servants in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to the civil service are routinely ignored and unenforced. Civil servants routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

39f. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | **75** | 50 | 25 | 0

Comments:

Mainly this is followed, however there are some controversies in this regard. The most recent involves an election commissioner (EC) who was in the civil service and also had an interest in several charitable trusts in which his family members were trustees. He is believed to have influenced contributions to these trusts using his position and influence in the civil service. Many political groups have demanded that he vacate the EC's position as many politicians and elected representatives has made contributions to the trusts.

References:

News reports.

100: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are routinely followed by most or all civil servants.

75:

50: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are followed by most civil servants though exceptions exist. In certain sectors, civil servants are known to routinely participate in policy decisions where their personal interests are affected.

25:

0: Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected.

40. Can citizens access the asset disclosure records of senior civil servants?

0

40a. In law, citizens can access the asset disclosure records of senior civil servants.

YES | **NO**

Comments:

Disclosure of assets is not mandatory.

References:

News reports.

YES: A YES score is earned if laws or regulations guarantee that citizens can access the asset records of senior civil servants.

NO: A NO score is earned if senior civil servants do not file an asset disclosure. A NO score is earned if senior civil servants file an asset disclosure, but it is not available to the public.

40b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | **0**

Comments:

Not applicable.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

40c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Not applicable.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

IV-2. Whistle-blowing Measures

41. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

75

41a. In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

Comments:

The Prevention of Corruption Act offer special protection to those who wish to report on corruption.

References:

Prevention of Corruption Act.

YES: A YES score is earned if there are specific laws against recrimination against public sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for public-sector whistleblowers.

41b. In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | **50** | 25 | 0

Comments:

There are several reports of civil servants being singled out for harassment for having attempted to expose corruption. There have been two cases of death on this account. An engineer Mr. Satyendra Dubey, who worked for the government highway project, and Mr. Manjunath, who was a manager in a public sector oil company, were killed for exposing corruption. Mr. Dubey tried to expose the builder mafia and its corrupt practices. Mr. Manjunath tried to expose petrol bunk (gas station) owners who were selling adulterated petrol (gas).

References:

News reports.

100: Public sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Public sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Public sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

41c. In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

Comments:

The government has made their official stand clear: Any information on corrupt practices will not put the informant in jeopardy.

References:

Prevention of Corruption Act.

YES: A YES score is earned if there are specific laws against recrimination against private sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for private-sector whistleblowers.

41d. In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | **50** | 25 | 0

Comments:

In reality, the attempt to report corruption often boomerangs because of the network of contacts of those taking part in corrupt practices.

References:

News reports.

100: Private sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Private sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Private sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

42. Is there an effective internal mechanism (i.e. phone hotline, e-mail address, local office) where civil servants can report corruption?

44

42a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | **50** | 25 | 0

Comments:

The CVC has been monitoring corruption complaint and corrupt practices. At the state-level the Lok Ayukta has been charged in

some states to investigate citizens' complaints of maladministration and corruption. The action taking authority is in most cases the competent authority, invariably the government

References:

CVC reports. Lok Ayukta reports.

100: The agency/entity has staff sufficient to fulfill its basic mandate.

75:

50: The agency/entity has limited staff, a fact that hinders its ability to fulfill its basic mandate.

25:

0: The agency/entity has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

42b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | **50** | 25 | 0

Comments:

There is a generally a complaint of a lack of funds.

References:

News reports.

100: The agency/entity has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency/entity has a regular source of funding but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

42c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | 50 | **25** | 0

Comments:

The elaborate procedures often delay investigations and often defeat the very purpose of the investigations

References:

News reports.

100: The agency/entity acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

42d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | 75 | **50** | 25 | 0

Comments:

Upon receiving complaints, they usually initiate an investigation but it is frightfully slow and ineffective.

References:

News reports.

100: When irregularities are discovered, the agency/entity is aggressive in investigating the government or in cooperating with other agencies' investigations.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other investigative agencies, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate. The agency/entity may start investigations but not complete them, may refuse to cooperate with other investigative agencies, or may fail to detect offenders. The agency/entity may be partisan in its application of power.

IV-3. Procurement

43. Is the public procurement process effective?

95

43a. In law, there are regulations addressing conflicts of interest for public procurement officials.

YES | NO

Comments:

The rules are very elaborate and well laid out.

References:

Conduct of Civil Servant Rules.

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private gain for public procurement officials.

NO: A NO score is earned if no such rules exist.

43b. In law, there is mandatory professional training for public procurement officials.

YES | NO

Comments:

Officers in charge of procurement undergo rigorous training in procedures and methods.

References:

Government internal rules.

YES: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process.

NO: A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, or voluntary.

43c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | 75 | 50 | 25 | 0

Comments:

There have often been complaints of officers manipulating norms to serve partisan/vested interests.

References:

News reports.

100: Regulations regarding conflicts of interest for procurement officials are aggressively enforced.

75:

50: Conflict of interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

43d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

YES | NO

References:

Central Vigilance Commission.

YES: A YES score is earned if there is a formal mandate to some agency to monitor the assets, incomes and spending habits of public procurement officials, such as an inspector general, or ombudsman.

NO: A NO score is earned if no such mandate exists.

43e. In law, major procurements require competitive bidding.

YES | NO

Comments:

There is an open tendering process, which has been made more transparent by being placed on the Internet.

References:

Internal Rules on the Working of Administration.

YES: A YES score is earned if all major procurements (defined as those greater than 0.5% of GDP) require competitive bidding.

NO: A NO score is earned if competitive bidding is not required by law or regulation for major procurement (greater than 0.5% OF GDP).

43f. In law, strict formal requirements limit the extent of sole sourcing.

YES | NO

References:

Internal Rules of Procedure.

YES: A YES score is earned if sole sourcing is limited to specific, tightly defined conditions, such as when a supplier is the only source of a skill or technology.

NO: A NO score is earned if there are no prohibitions on sole sourcing. A NO score is earned if the prohibitions on sole sourcing are general and unspecific.

43g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

YES | NO

Comments:

Procedures for redress are clearly laid out.

References:

Internal Rules of Procedure.

YES: A YES score is earned if there is a formal appeal process for unsuccessful bidders.

NO: A NO score is earned if no such process exists.

43h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

YES | NO

Comments:

They have recourse in law and the judicial process.

References:

Internal Rules of Procedure.

YES: A YES score is earned if unsuccessful bidders can use the courts to appeal a procurement decision.

NO: A NO score is earned if no such process exists.

43i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

YES | NO

Comments:

Companies guilty of procurement violations are blacklisted and forbidden from bidding.

References:

Internal Rules of Procedure.

YES: A YES score is earned if there are formal procurement blacklists, preventing convicted companies from doing business with the government.

NO: A NO score is earned if no such process exists.

43j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

100 | 75 | 50 | 25 | 0

Comments:

There have been a few cases of companies circumventing procedures and getting away with it.

References:

Reports.

100: A system of formal blacklists and cooling off periods is in place for companies convicted of corruption. All companies are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some procurements or companies may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future hiring of blacklisted companies.

44. Can citizens access the public procurement process?

88

44a. In law, citizens can access public procurement regulations.

YES | NO

References:

Right to Information Act.

YES: A YES score is earned if procurement rules are, by law, open to the public.

NO: A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

44b. In law, the government is required to publicly announce the results of procurement decisions.

YES | NO

Comments:

These are announced on the Web site.

YES: A YES score is earned if the government is required to publicly post or announce the results of the public procurement process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the public procurement process.

44c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The limited access to the Internet is an inhibiting factor.

References:

Web sites of concerned departments. Manuals.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

44d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Web sites of concerned departments.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

44e. In practice, major public procurements are widely advertised.

100 | 75 | 50 | 25 | 0

References:

Advertisements. Web site.

100: There is a formal process of advertising public procurements. This may include a government Web site, newspaper advertising, or other official announcements. All major procurements are advertised in this way.

75:

50: There is a formal process of advertisement but it is flawed. Some major procurements may not be advertised, or the advertising process may not be effective.

25:

0: There is no formal process of advertising major public procurements or the process is superficial and ineffective.

44f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | 50 | 25 | 0

Comments:

A full score has not been assigned because of the limited accessibility of the Internet.

References:

Web site.

100: Records of public procurement results are publicly available through a formal process.

75:

50: Records of public procurements are available, but there are exceptions to this practice. Some information may not be available, or some citizens may not be able to access information.

25:

0: This information is not available to the public through an official process.

45. Is the privatization process effective?

92

45a. In law, all businesses are eligible to compete for privatized state assets.

YES | NO

References:

www.nic.in

YES: A YES score is earned if all businesses are equally eligible to compete for privatized assets. A YES score is still earned if the government did not privatize any state-owned assets during the study period.

NO: A NO score is earned if any group of businesses (other than those blacklisted due to corruption charges) is excluded by law.

45b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

YES | NO

Comments:

Civil Service Rules do not allow a government official to have a personal stake in any transaction involving privatization of government assets.

References:

CSR rules.

YES: A YES score is earned if there are formal regulations defining and regulating conflicts of interest for government officials involved in privatization.

NO: A NO score is earned if there are no such formal regulations.

45c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

Comments:

There are cases in which officers are known to have indirectly influenced the sale of government assets in favor of those parties in which they have a vested interest.

References:

News reports.

100: Regulations regarding conflicts of interest for privatization officials are aggressively enforced.

75:

50: Conflict of interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from the regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

46. Can citizens access the terms and conditions of privatization bids?

88

46a. In law, citizens can access the terms and conditions of privatization bids.

YES | NO

Comments:

There procedures announcing bids are on the Web site and can be accessed by citizens who have access to the Internet.

References:

www.nic.in Earlier Ministry of Web site. Current Ministry of Finance Web site.

YES: A YES score is earned if there is a formal process of publishing the details of privatization bids that makes information available to all citizens.

NO: A NO score is earned if there is no formal publication process, or if any citizens are excluded by law from accessing this information.

46b. In law, the government is required to publicly announce the results of privatization decisions.

YES | NO

References:

www.nic.in Earlier Ministry of Web site. Current Ministry of Finance Web site.

YES: A YES score is earned if the government is required to publicly post or announce the results of the privatization process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the privatization process.

46c. In practice, citizens can access the terms and conditions of privatization bids within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Web site of Government of India – Disinvestment Ministry and Finance Ministry.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

46d. In practice, citizens can access the terms and conditions of privatization bids at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

It can be accessed from the Web site. The Right to Information Act permits greater scope for transparency.

References:

Right to Information Act.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category V. Oversight and Regulation

V-1. ⁷⁰National Ombudsman

47. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

0

47. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

YES | **NO**

Comments:

Several attempts have been made to pass legislation to create a national ombudsman-like authority, but they have not met with success (shc efforts began in 1969). Such an authority exists at the state-level in several, but not all, states.

References:

News reports

YES: A YES score is earned if there is a specific agency or set of agencies whose primary mandate is to investigate the actions of government on the behalf of common citizens. This agency or set of agencies should be specifically charged with seeking out and documenting abuses of power.

NO: A NO score is earned if no such agency or set of agencies exists, or that function is a secondary concern of a larger body, such as the legislature.

48. Is the national ombudsman effective?

0

48a. In law, the ombudsman is protected from political interference.

YES | **NO**

Comments:
Not applicable.

YES: A YES score is earned only if the agency (or set of agencies) has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

48b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | **0**

Comments:
Not applicable.

100: This agency (or set of agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

75:

50: This agency (or set of agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include public criticism or praise by the government. The ombudsman may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or set of agencies) is commonly influenced by political or personal incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The ombudsman cannot compel the government to reveal sensitive information.

48c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

Not applicable.

100: The director of the ombudsman (or directors of multiple agencies) serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the ombudsman (or directors of multiple agencies) serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the ombudsman (or directors of multiple agencies) can be removed at the will of political leadership.

48d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Not applicable.

100: The ombudsman agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The ombudsman agency (or agencies) has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The ombudsman agency (or agencies) has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

48e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

Not applicable.

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

48f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Not applicable.

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

48g. In practice, the agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

Comments:

Not applicable.

100: The agency (or agencies) makes regular, publicly available, substantial reports either to the legislature or directly to the public outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature and/or directly to the public that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

48h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

Not applicable.

100: The agency aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The agency is fair in its application of this power.

75:

50: The agency will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency rarely investigates on its own or cooperates in other agencies' investigations, or the agency is partisan in its application of this power.

48i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

Not applicable.

100: When rules violations are discovered, the agency is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The agency enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively penalize offenders. The agency may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

48j. In practice, the government acts on the findings of the agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:
Not applicable.

100: Ombudsman's reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, ombudsman's reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Ombudsman reports are often ignored, or given superficial attention. Ombudsman reports do not lead to policy changes.

48k. In practice, the agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:
Not applicable.

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

49. Can citizens access the reports of the ombudsman?

0

49a. In law, citizens can access reports of the ombudsman(s).

YES | **NO**

Comments:
Not applicable.

YES: A YES score is earned if all ombudsman reports are publicly available.

NO: A NO score is earned if any ombudsman reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute the reports.

49b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | **0**

Comments:
Not applicable.

100: Reports are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

49c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | **0**

Comments:
Not applicable.

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Reports costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

V-2. Supreme Audit Institution

50. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

50. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

YES | NO

References:

Article 148 to 151 of the Constitution.

YES: A YES score is earned if there is a specific agency whose primary mandate is to audit and track the movement of money through the government. This agency should be specifically charged to investigate and document the misuse of funds. A system of agencies located in each department is equivalent.

NO: A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as the executive.

51. Is the supreme audit institution effective?

97

51a. In law, the supreme audit institution is protected from political interference.

YES | NO

Comments:

The Constitution guarantees the independence of the Comptroller and Auditor General of India.

References:

Article 148 to 151 of the Constitution.

YES: A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

51b. In practice, the head of the agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

Under the Constitution, the Comptroller and Auditor General can be removed from office before the expiration of the term only through a process of impeachment.

References:

Article 148 to 151 of the Constitution.

100: The director of the agency serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the agency serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the agency can be removed at the will of political leadership.

51c. In practice, the agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Indian Audit and Accounts Service.

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

51d. In practice, agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

The Indian Audit and Accounts Service is an independent central service.

100: Appointments to the agency are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

51e. In practice, the agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Article 148 states that the salaries and other benefits linked to the CAG's office are charged on the Consolidated Fund of India and thus non-votable.

References:

Article 148 to 151 of the Constitution.

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

51f. In practice, the agency makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

The CAG submits an annual report to the president who passes the same on to the legislature. They are also available to the public to scrutinize.

References:

CAG Web site.

100: The agency makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency makes publicly available reports to the legislature and/or to the public directly that are sometimes delayed or incomplete.

25:

0: The agency makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

51g. In practice, the government acts on the findings of the agency.

100 | 75 | 50 | 25 | 0

Comments:

The audit reports are further examined by the Public Accounts Committee and it submits a report on the action that needs to be taken. It must be emphasized that the final decision to take action rests with the competent authority – the government. Studies have found that the government is not as responsive to the PAC/CAG recommendations when it involves disciplinary and other corrective action.

References:

Audit Reports.

100: Audit agency reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, audit agency reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Audit reports are often ignored, or given superficial attention. Audit reports do not lead to policy changes.

51h. In practice, the supreme audit institution is able to initiate its own investigations.

100 | 75 | 50 | 25 | 0

Comments:

The agency is able to initiate its investigations and make recommendations, but the action must be taken by the competent authority – the government.

References:

Audit Reports.

100: The supreme audit institution can control the timing and pace of its investigations without any input from the executive or legislature.

75:

50: The supreme audit institution can generally decide what to investigate, and when, but is subject to pressure from the executive or legislature on politically sensitive issues.

25:

0: The supreme audit institution must rely on approval from the executive or legislature before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

52. Can citizens access reports of the supreme audit institution?

100

52a. In law, citizens can access reports of the agency.

YES | NO

Comments:

Citizens can easily access the reports in print and electronic form.

References:

Audit Reports.

YES: A YES score is earned if all supreme auditor reports are available to the general public.

NO: A NO score is earned if any auditor reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

52b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Soon after the reports are released (handed over to the president and passed on to the Parliament) they are made available for public scrutiny.

References:

Audit Reports.

100: Reports are available on-line, or records can be obtained within two days. Reports are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most reports may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

52c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The reports are available at reasonable rates and can be purchased or read in public libraries and also accessed on the Internet.

References:

Audit Reports.

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

99
V-3. Taxes and Customs

53. In law, is there a national tax collection agency?

100

53. In law, is there a national tax collection agency?

YES | NO

Comments:

The are different agencies within the Department of Revenue linked to revenue collection. The main agencies include, the Central Board of Excise and Customs (CBEC) and the Central Board of Income Tax.

References:

Web site of the Finance Ministry.

YES: A YES score is earned if there is a national agency formally mandated to collect taxes.

NO: A NO score is earned if that function is spread over several agencies, or does not exist. A NO score is earned if national government ministries can collect taxes independently.

54. Is the tax collection agency effective?

100

54a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Finance Ministry Web site. Central Board of Excise and Revenue Web site.

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

54b. In practice, the agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

It is laid out in the budget of the Finance Ministry

References:

Finance Ministry Web site. Central Board of Excise and Revenue Web site.

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

55. In practice, are tax laws enforced uniformly and without discrimination?

75

55. In practice, are tax laws enforced uniformly and without discrimination?

Comments:

There have been several cases of discrimination caused by favoritism, nepotism, political pressures and subjective interpretation of the law, which have been reported in the media and audit reports.

References:

Finance Ministry Web site. Central Board of Excise and Revenue Web site. News reports.

100: Tax laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade tax law than another.

75:

50: Tax laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade tax law. Some arbitrary and discriminatory tax rules exist.

25:

0: Tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax regulations are, as a rule, written to be discriminatory and/or arbitrary.

56. In law, is there a national customs and excise agency?

100

56. In law, is there a national customs and excise agency?

YES | NO

References:

Finance Ministry Web site. Central Board of Excise and Revenue Web site.

YES: A YES score is earned if there is an agency formally mandated to collect excises and inspect customs.

NO: A NO score is earned if that function is spread over several agencies, or does not exist.

57. Is the customs and excise agency effective?

100

57a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Finance Ministry Web site. Central Board of Excise and Revenue Web site.

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

57b. In practice, the agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Part of the budgetary provisions laid out by the Finance Ministry.

References:

Budgetary provisions.

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

58. In practice, are customs and excise laws enforced uniformly and without discrimination?

58. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

There have been some reports of favoritism, misapplication of law and procedures, nepotism and corruption with regard to the collection of customs and excise revenues involving large business, which have been reported both in the media and by the audit department.

References:

Finance Ministry Web site. Central Board of Excise and Revenue Web site. News reports.

100: Customs and excise laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade customs than another.

75:

50: Customs and excise laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade customs requirements.

25:

0: Customs and excise laws are unequally applied. Some groups of citizens are consistently more or less likely to evade customs and excise laws than others.

V-4. Financial Sector Regulation

59. In law, is there a financial regulatory agency overseeing publicly listed companies?

100

59. In law, is there a financial regulatory agency overseeing publicly listed companies?

YES | NO

Comments:

The Security and Exchange Board of India (SEBI) Act 1992, provides for an independent board to protect the interests of the investors.

References:

Security and Exchange Board of India (SEBI) Web site.

YES: A YES score is earned if there is an agency tasked with overseeing publicly listed companies in the public interest and ensuring that disclosure rules are met.

NO: A NO score is earned if this function is spread over several agencies or does not exist.

60. Is the financial regulatory agency effective?

85

60a. In law, the financial regulatory agency is protected from political interference.

YES | NO

Comments:

SEBI is broadly protected from interference from the political process. However, it does receive directions from the government under whose overall control it is required to function.

References:

SEBI Web site.

YES: A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

60b. In practice, the agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

SEBI Web site. SEBI Act.

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

60c. In practice, the agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Under the Act, SEBI is allowed to levy fees or charges for carrying out its functions.

References:

SEBI Web site. SEBI Act.

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

60d. In practice, when necessary, the financial regulatory agency independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

Under the ACT, SEBI has the power to conduct inquiries and audit of exchanges, mutual funds and other activity associated with the securities market.

References:

SEBI Web site.

100: When irregularities are discovered, the agency is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its

judgments.

25:

0: The agency does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

60e. In practice, when necessary, the financial regulatory agency imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

SEBI is allowed to levy a wide range of penalties.

References:

SEBI Web site.

100: When rules violations are discovered, the agency is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

50: The agency enforces rules, but is limited in its effectiveness or reluctant to cooperate with other agencies. The agency may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partis

61. Can citizens access the financial records of publicly listed companies?

75

61a. In law, citizens can access the financial records of publicly listed companies.

YES | NO

Comments:

Publicly listed companies must publish their financial records.

References:
SEBI Web site.

YES: A YES score is earned if the financial information of all publicly traded companies is required by law to be public.

NO: A NO score is earned if any category of publicly- owned or publicly-traded company is exempt from this rule, or no such rules exist.

61b. In practice, the financial records of publicly listed companies are regularly updated.

100 | 75 | 50 | 25 | 0

Comments:

Publicly listed companies are required to produce half yearly reports on their performance. The shareholders are required to be given a copy of the audited accounts.

References:
SEBI Web site. News reports.

100: Publicly traded companies always disclose financial data, which is generally accurate and up to date.

75:

50: Publicly traded companies disclose financial data, but it is flawed. Some companies may misstate financial data, or file the information behind schedule.

25:

0: Financial data is not available, or is consistently superficial or otherwise of no value to investors.

61c. In practice, the financial records of publicly listed companies are audited according to international accounting standards.

100 | 75 | 50 | 25 | 0

Comments:

Publicly listed companies are required to follow internationally accepted accounting standards. Many of them are listed on the share markets abroad.

References:
SEBI Web site.

100: Financial records of all public companies are regularly audited by a trained third party auditor using accepted international standards.

75:

50: Financial records of public companies are regularly audited, but exceptions may exist. Some companies may use flawed or deceptive accounting procedures, or some companies may be exempted from this requirement.

25:

0: Publicly traded companies are not audited, or the audits have no functional value. The auditors may collude with the companies in providing misleading or false information to the public.

61d. In practice, citizens can access the records of disciplinary decisions imposed by the government on publicly-listed companies.

100 | 75 | **50** | 25 | 0

Comments:

Companies are not required to disclose such information. Only shareholders find out about such developments when the company is required to ask their permission for certain changes as per executive direction or court order.

References:

SEBI Web site.

100: These records are freely available to all citizens through a formal official process.

75:

50: These records are available to all citizens, with some exceptions.

25:

0: These records are generally not available through official processes.

61e. In practice, citizens can access the financial records of publicly listed companies within a reasonable time period.

100 | **75** | 50 | 25 | 0

Comments:

Companies post their financial accounts on the Internet. Accessibility depends on access to the Internet.

References:

SEBI Web site.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

61f. In practice, citizens can access the financial records of publicly listed companies at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Most of it is available on the Internet. The records can also be purchased from companies or secured on the basis of a written request.

References:

SEBI Web site.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

87
V-5. Business Licensing and Regulation

62. Are business licenses available to all citizens?

69

62a. In law, anyone may apply for a business license.

YES | NO

Comments:

Yes

YES: A YES score is earned if no particular group or category of citizens is excluded from applying for a business license, when required. A YES score is also earned if basic business licenses are not required.

NO: A NO score is earned if any group of citizens are categorically excluded from applying for a business license, when required.

62b. In law, a complaint mechanism exists if a business license request is denied.

YES | NO

YES: A YES score is earned if there is a formal process for appealing a rejected license.

NO: A NO score is earned if no such mechanism exists.

62c. In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Rules of Procedure.

100: Licenses are not required, or licenses can be obtained within roughly one week.

75:

50: Licensing is required and takes around one month. Some groups may be delayed up to a three months.

25:

0: Licensing takes more than three months for most groups. Some groups may wait six months to one year to get necessary licenses.

62d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

100 | 75 | **50** | 25 | 0

References:

Rules of Procedure.

100: Licenses are not required, or licenses are free. Licenses can be obtained at little cost to the organization, such as by mail, or on-line.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

63. Do businesses receive equitable regulatory treatment from the government?

75

63a. In law, basic business regulatory requirements for meeting health, safety, and environmental standards are transparent and publicly available.

YES | NO

References:

The Web site of the concerned ministry.

YES: A YES score is earned if basic regulatory requirements for meeting health, safety, and environmental standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

63b. In practice, business inspections by the government are carried out in a uniform and even-handed manner.

Comments:

In practice, there have been complaints about extra constitutional/legal means of influence that determine procuring licenses and permissions. It is hoped that greater transparency in administration will reduce the problem.

References:

News reports.

100: Business inspections by the government (i.e. health, safety, or environmental inspections) are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government (i.e. health, safety, or environmental inspections) are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections (i.e. health, safety, or environmental inspections) are routinely carried out by the government in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

Category VI. Anti-Corruption and Rule of Law

VI-1. ⁸³Anti-Corruption Law

64. Is there legislation criminalizing corruption?

100

64a. In law, attempted corruption is illegal.

YES | NO

Comments:

Section 15 of the Prevention of Corruption Act provides for punishment of an attempt to commit an offence under Section 13.

YES: A YES score is earned if corruption laws include attempted acts.

NO: A NO score is earned if this is not illegal.

64b. In law, extortion is illegal.

YES | NO

References:

Indian Penal Code

YES: A YES score is earned if corruption laws include extortion. Extortion is defined as demanding favorable treatment (such as a bribe) to withhold a punishment.

NO: A NO score is earned if this is not illegal.

64c. In law, offering a bribe (i.e. active corruption) is illegal.

YES | NO

References:

Prevention of Corruption Act. Indian Penal Code.

YES: A YES score is earned if offering a bribe is illegal.

NO: A NO score is earned if this is not illegal.

64d. In law, receiving a bribe (i.e. passive corruption) is illegal.

YES | NO

References:

Section 11 and 12 of the Prevention of Corruption Act.

YES: A YES score is earned if receiving a bribe is illegal.

NO: A NO score is earned if this is not illegal.

64e. In law, bribing a foreign official is illegal.

YES | NO

References:

Section 7 and 11 of the Prevention of Corruption Act.

YES: A YES score is earned if bribing a foreign official is illegal.

NO: A NO score is earned if this is not illegal.

64f. In law, using public resources for private gain is illegal.

YES | NO

References:

Section 13 of the Prevention of Corruption Act.

YES: A YES score is earned if using public resources for private gain is illegal.

NO: A NO score is earned if this is not illegal.

64g. In law, using confidential state information for private gain is illegal.

YES | NO

References:

Prevention of Corruption Act. Indian Penal Code.

YES: A YES score is earned if using confidential state information for private gain is illegal.

NO: A NO score is earned if this is not illegal.

64h. In law, money laundering is illegal.

YES | NO

References:

Prevention of Money Laundering Act, 2002.

YES: A YES score is earned if money laundering is illegal. Money laundering is defined as concealing the origin of funds to hide wrongdoing or avoid confiscation.

NO: A NO score is earned if this is not illegal.

64i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

YES | NO

References:

Indian Penal Code.

YES: A YES score is earned if organized crime is illegal.

NO: A NO score is earned if this is not illegal.

VI-2. Anti-Corruption Agency

65. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

65. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

YES | NO

Comments:

This is the Central Vigilance Commission.

References:

Central Vigilance Commission Web site.

YES: A YES score is earned if an agency is specifically mandated to address corruption. A YES score is earned if there are several agencies or entities with specific roles in fighting corruption, including special prosecutorial entities.

NO: A NO score is earned if no agency (or group of agencies/entities) is specifically mandated to prevent or prosecute corruption.

66. Is the anti-corruption agency effective?

83

66a. In law, the agency (or agencies) is protected from political interference.

YES | NO

Comments:

The CVC is a vigilance body as free of executive monitoring or control. It is also responsible for monitoring the working of the premier investigating agency, the Central Bureau of Investigation.

References:

Central Vigilance Commission Web site.

YES: A YES score is earned only if the agency (or agencies) has some formal organizational or operational independence from the government. A YES score is earned even if the agency/agencies is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency (or agencies) is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department, in such a way that limits its operational independence.

66b. In practice, the agency (or agencies) is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

There have been rare cases of complaint that the institution is subject to political pressures. The capacity of the institution to resist those pressures is associated with the individual who heads the institution.

References:

News reports.

100: This agency (or agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

75:

50: This agency (or agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government, political appointments, or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or agencies) is commonly influenced by political or personal incentives. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The agency (or agencies) cannot compel the government to reveal sensitive information.

66c. In practice, the head of the agency (or agencies) is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

Central Vigilance Commission Act 2003, Section 6:

Subject to the provisions of sub-section (3), the Central Vigilance Commissioner or any Vigilance Commissioner shall be removed from his office only by order of the President on the ground of proved misbehaviour or incapacity after the Supreme Court, on a reference made to it by the President, has, on inquiry, reported that the Central Vigilance Commissioner or any Vigilance Commissioner, as the case may be, ought on such ground be removed.

References:

Central Vigilance Commission Web site.

100: The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director(s) can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director(s) can be removed at the will of political leadership.

66d. In practice, appointments to the agency (or agencies) are based on professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

Central Vigilance Commission Act 2003, Section 3:

The Central Vigilance Commissioner and the Vigilance Commissioners shall be appointed from amongst persons:

(a) who have been or are in an All-India Service or in any civil service of the Union or in a civil post under the Union having knowledge and experience in the matters relating to vigilance, policy making and administration including police administration; or

(b) who have held office or are holding office in a corporation established by or under any Central Act or a Government company owned or controlled by the Central Government and persons who have expertise and experience in finance including insurance and banking, law, vigilance and investigations:

Provided that, from amongst the Central Vigilance Commissioner and the Vigilance Commissioners, not more than two persons shall belong to the category of persons referred to either in clause (a) or clause (b):

References:

News reports. CVC reports.

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

66e. In practice, the agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Central Vigilance Commission Web site.

100: The agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency (or agencies) has no staff, or a limited staff, that is clearly unqualified to fulfill its mandate.

66f. In practice, the agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

This is made as part of the budgetary provisions .

From the Central Vigilance Commission Act 2003, Section 13:

The expenses of the Commission, including any salaries, allowances and pensions payable to or in respect of the Central Vigilance Commissioner, the Vigilance Commissioners, Secretary and the staff of the Commission, shall be charged on the Consolidated Fund of India.

When the expenditure is charged on the Consolidated Fund of India it is not subject to debate in Parliament and cannot be reduced by the Executive.

References:

Budgetary papers. Finance Ministry Web site.

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: The agency's funding sources are unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

66g. In practice, the agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

The agencies submit reports to the government and often carry the same on their Web sites.

References:

Central Vigilance Commission Web site.

100: The agency (or agencies) makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

66h. In practice, the agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

It has wide-ranging powers

References:

Central Vigilance Commission Web site. Various provisions of the Central Vigilance Commission Act 2003.

100: The agency (or agencies) has powers to gather information, including politically sensitive information. The agency (or agencies) can question suspects, order arrests and bring suspects to trial (or rely on related agencies or law enforcement authorities to perform such functions).

75:

50: The agency (or agencies) has most of the powers needed to carry out its mandate with some exceptions.

25:

0: The agency (or agencies) lacks significant powers which limit its effectiveness.

66i. In practice, when necessary, the agency (or agencies) independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

Depending on the nature of the case ,the CVC can direct the CBI or the income tax department to investigate and send it a report on a particular case.

References:

Central Vigilance Commission Web site. Various provisions of the Central Vigilance Commission Act 2003.

100: When irregularities are discovered, the agency (or agencies) is aggressive in investigating the government or in cooperating with other investigative agencies.

75:

50: The agency (or agencies) starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency (or agencies) may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency (or agencies) does not effectively investigate or does not cooperate with other investigative agencies. The agency (or agencies) may start investigations but not complete them, or may fail to detect offenders. The agency (or agencies) may be partisan in its application of power.

67. Can citizens access the anti-corruption agency?

63

67a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

Citizens can lodge complaints with the CVC through the Web site or by sending the same through the mail.

References:

Central Vigilance Commission Web site.

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

67b. In practice, citizens can complain to the agency (or agencies) without fear of recrimination.

100 | 75 | 50 | 25 | 0

Comments:

The identity of the complainant can be protected by the CVC if the complainant fears danger to his/her life. Section 128 of the IPC states that anyone who knowingly makes a false complaint can be prosecuted.

References:

Central Vigilance Commission Web site.

100: Whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers, or may be due to a culture that encourages disclosure and accountability.

75:

50: Whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

82
VI-3. Rule of Law

68. Is there an appeals mechanism for challenging criminal judgments?

67

68a. In law, there is a general right of appeal.

YES | NO

References:

Section 374 of the Criminal Procedure Code. Article 134 of the Constitution.

YES: A YES score is earned if there is a formal process of appeal for challenging criminal judgments.

NO: A NO score is earned if there is no such process.

68b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

There are known to be excruciatingly long delays in the judicial process. Recently amendments were introduced to the Criminal Law Process to speed up the justice delivery mechanisms.

References:

News reports.

100: Appeals are acted upon quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: Appeals are generally acted upon quickly but with some exceptions. Some appeals may not be acknowledged, and simple cases may take years to resolve.

25:

0: Most appeals are not resolved in a timely fashion. Appeals may go unacknowledged for months or years and simple cases may never be resolved.

68c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | **50** | 25 | 0

Comments:

The costs can be quite high given the need for professional support and the long delays in the procedures/ processes

References:

News reports.

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments.

69. In practice, do judgments in the criminal system follow written law?

75

69. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

Comments:

It normally does follow written laws and procedures.

References:

Court proceedings.

100: Judgments in the criminal system are made according to established legal code and conduct. There are no exceptional cases in which individuals are treated by a separate process. Political interference, bribery, cronyism or other flaws are rarely factors in judicial outcomes.

75:

50: Judgments in the criminal system usually follow the protocols of written law. There are sometimes exceptions when political concerns, corruption or other flaws in the system decide outcomes.

25:

0: Judgments in the criminal system are often decided by factors other than written law. Bribery and corruption in the criminal judicial process are common elements affecting decisions.

70. In practice, are judicial decisions enforced by the state?

100

70. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | 25 | 0

Comments:

Court judgments are enforced by the state even when those judgments go against high state authorities.

References:

Court judgments.

100: Judicial decisions are enforced quickly regardless of what is being decided or who is appearing before the court. Failure to comply brings penalties enforced by the state.

75:

50: Judicial decisions are generally enforced by the state, with some exceptions. Certain areas of law may be ignored, or certain parties appearing before the courts may evade or delay enforcement.

25:

0: Judicial decisions are often ignored. The state lacks the will or capacity to consistently enforce these decisions.

71. Is the judiciary able to act independently?

94

71a. In law, the independence of the judiciary is guaranteed.

YES | NO

References:

Articles 121, 124, 125 and 146 of the Constitution.

YES: A YES score is earned if there are formal rules establishing that the judiciary is independent from political interference by the executive and legislative branches. Independence include financial issues (drafting, allocation and managing the budget of the courts).

NO: A NO score is earned if there are no formal rules establishing an independent judiciary.

71b. In practice, national-level judges are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

Recently, there have been a few complaints that judges are being subjected to undue and intense political pressures. There are also apprehensions that they are falling prey to such pressures. It is in this context that there is a demand for the establishment of a National Judicial Commission

References:

Articles 121, 124, 125 and 146 of the Constitution.

100: National level judges operate independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Judges never comment on political debates. Individual judgments are rarely praised or criticized by political figures.

75:

50: National level judges are typically independent, yet are sometimes influenced in their judgments by negative or positive political incentives. This may include favorable or unfavorable treatment by the government or public criticism. Some judges may be demoted or relocated in retaliation for unfavorable decisions.

25:

0: National level judges are commonly influenced by politics and personal biases or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include demotion, pay cuts, relocation, threats or harassment.

71c. In law, there is a transparent and objective system for distributing cases to national-level judges.

YES | NO

Comments:

This is determined by court procedures laid down by the chief justice.

YES: A YES score is earned if there is an objective system that is transparent to the public that equitably or randomly assigns cases to individual judges. The executive branch does not control this process.

NO: A NO score is earned if the case assignment system is non-transparent or subjective where judges themselves have influence over which cases they adjudicate. A NO score is also earned if the executive branch controls this process.

71d. In law, national-level judges are protected from removal without relevant justification.

YES | NO

Comments:

There are detailed provisions for impeaching a judge.

References:

Article 124 of the Constitution.

YES: A YES score is earned if there are specific, formal rules for removal of a justice. Removal must be related to abuse of power or other offenses related to job performance.

NO: A NO score is earned if justices can be removed without justification, or for purely political reasons. A NO score is earned if the removal process is not transparent, or not based on written rules.

72. Are judges safe when adjudicating corruption cases?

100

72a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

YES | NO

References:

News reports.

YES: A YES score is earned if there were no documented cases of judges being assaulted because of their involvement in a corruption case during the specific study period.

NO: A NO score is earned if there were any documented cases of assault to a judge related to his/her participation in a corruption trial. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

72b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

YES | NO

References:

News reports.

YES: A YES score is earned if there were no documented cases of judges being killed related to their involvement in a corruption case during the study period.

NO: A NO score is earned if there were any documented cases where a judge was killed because of his/her participation in a corruption trial. The relationship between a mysterious death and a judge's involvement in a case may not be clear, however the burden of proof here is low. If it is a reasonable assumption that a judge was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

73. Do citizens have equal access to the justice system?

67

73a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

References:

Court records.

100: Judicial decisions are not affected by racial or ethnic bias.

75:

50: Judicial decisions are generally not affected by racial or ethnic bias, with some exceptions. Some groups may be occasionally discriminated against, or some groups may occasionally receive favorable treatment.

25:

0: Judicial decisions are regularly distorted by racial or ethnic bias. Some groups consistently receive favorable or unfavorable treatment by the courts.

73b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

Generally, women have been less frequent than men in approaching the court. It may be linked to the social system and the continued male-dominated nature of power relationships within the family and society.

References:

News reports.

100: Women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system.

75:

50: Women generally have use of the judicial system, with some exceptions. In some cases, women may be limited in their access to courts, or gender biases may affect court outcomes.

25:

0: Women generally have less access to the courts than men. Court decisions are commonly distorted by gender bias. Women may have to go through intermediaries to interact with the court, or are unable to present evidence.

73c. In practice, the state provides legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | 25 | 0

References:

Court proceedings.

100: State-provided legal aid is basic, but well trained and effective in representing the rights of indigent defendants.

75:

50: State-provided legal aid is available, but flawed. Legal aid may be unavailable to some indigent defendants. Legal aid/public defenders may be sometimes unable or unwilling to competently represent all defendants.

25:

0: State-provided legal aid is unavailable to most indigent defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

73d. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

The judicial process is costly and painstakingly slow. It is often not the preferred means of seeking justice.

References:

News reports.

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance.

75:

50: In some cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. In other cases, the cost is prohibitive.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits.

73e. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

The costs of a legal suit are quite high and the delays in decision-making discourage people from filing a suit.

References:

News reports.

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance.

75:

50: In some cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. In other cases, the cost is prohibitive.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits.

73f. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | 50 | 25 | 0

Comments:

There seems to be more limited access to the judicial system to those living in rural areas as compared to those living in the cities.

References:

News reports.

100: Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

75:

50: Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location.

25:

0: Courts are unavailable to some regions without significant travel on the part of citizens.

VI-4. Law Enforcement

74. Is the law enforcement agency (i.e. the police) effective?

50

74a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

References:

Article 312 of the Constitution.

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

74b. In practice, the agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

A major complaint of officers and the reports of the National Police Commission indicate that limited funds are a major constraint.

References:

News reports.

100: The agency (or agencies) has a budget sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited budget, generally considered somewhat insufficient to fulfill its basic mandate.

25:

0: The agency (or agencies) has no budget or an obviously insufficient budget that hinders the agency's ability to fulfill its mandate.

74c. In practice, the agency is protected from political interference.

100 | 75 | 50 | **25** | 0

Comments:

The agency is increasingly subject to serious political interference as the political executive controls the transfer and posting of officers.

References:

News reports.

100: The agency (or agencies) operates independently of the political process and has operational independence from the government. All laws can be enforced regardless of the status of suspects or the sensitivity of the investigation.

75:

50: The agency (or agencies) is typically independent, yet is sometimes influenced in its investigations or enforcement actions by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: The investigative and enforcement work of the agency (or agencies) is commonly influenced by political actors or the government. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power by the government.

75. Can law enforcement officials be held accountable for their actions?

79

75a. In law, there is an independent mechanism for citizens to complain about police action.

YES | NO

Comments:

Citizens can lodge complaints with a Lok Ayukta (the provincial level ombudsman in some states) or the National Human Rights Commission. In practice it has been found that many Lok Ayuktas have limited powers of prosecution.

References:
News reports.

YES: A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions.

NO: A NO score is earned if there is no such mechanism.

75b. In practice, the independent reporting mechanism responds to citizen's complaints within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

It has been found that procedures delay investigations and minor cases take a excruciatingly long time for investigation.

References:
News reports.

100: The agency/entity responds to complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity responds to complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take three to six months to resolve. Serious abuses are not investigated with any urgency.

75c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

YES | NO

Comments:

These are the Lok Ayukta, the Central Vigilance Commission, Human Rights Commission. A case in point is the alleged excesses committed by the law enforcement agencies during sectarian violence in different parts of the country, which are facing investigations by the above mentioned agencies.

References:
News reports.

YES: A YES score is earned if there is an agency/entity specifically mandated to investigate corruption-related activity within law enforcement. This agency/entity is separate from the regular police department.

NO: A NO score is earned if no such agency/entity exists.

75d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | **50** | 25 | 0

Comments:

It is now becoming increasingly frequent. The National Human Rights Commission and National Women's Commission have been taking up investigations.

References:

News reports.

100: When irregularities are discovered, the agency/entity is aggressive in investigating government law enforcement officials or in cooperating with other investigative agencies.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate or does not cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

75e. In law, law enforcement officials are not immune from criminal proceedings.

YES | NO

References:

Article 311, read with provisions of the Human Rights Act.

YES: A YES score is earned if law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

NO: A NO score is earned if law enforcement enjoys any special protection from criminal investigation or prosecution.

75f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | 75 | 50 | 25 | 0

Comments:

Article 311 of the Constitution provides for safeguards of officers to permit them to independently do their duty. Agencies like the National Human Rights Commission, National Women's Commission, Central Vigilance Commission and the Lok Ayukta are holding law enforcement officers accountable for their actions.

References:

News reports.

100: Law enforcement officers are subject to criminal investigation for official misconduct. No crimes are exempt from prosecution.

75:

50: Law enforcement is generally subject to criminal investigation but exceptions may exist where criminal actions are overlooked by the police or prosecutors. Some crimes may be exempt from prosecution, such as actions taken in the line of duty.

25:

0: Law enforcement enjoys a general protection from most criminal investigation. This may be due to a formal immunity or an informal understanding that the law enforcement community protects itself.
