Overall Score:

75 - Moderate

Legal Framework Score:

88 - Strong

Actual Implementation Score:

64 - Weak

Category I. Civil Society, Public Information and Media

I-1. Civil 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 deals with the broad right to freedom. As part of the right to freedom, citizens have 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 contrary to the constitution and the laws of the state. CSO's can also use another constitutional provision of Article 19, which allows citizens to carry out any trade, occupation of business.

References:
Article 19 of the 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. Funding from foreign sources can be accepted only after certain requirements are met as per the Foreign Contribution Regulation Act. The CSO should have been registered and working for at least three years before it applies for permission to seek funds from outside India. Any such funds received (after securing the permission) need to be declared to the government in a prescribed format. The government has the power to cancel permission granted to a CSO to receive foreign funds on a wide range of grounds, including non-compliance with the norms prescribed.

References:
Foreign Contribution Regulation Act, 1976;
Web site of the Home Ministry:
www.mha.gov.in;
Also guideline in Foreign Contributions –
www.mha.gov.in/fcraweb/fc_online.htm

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. CSOs are required to be registered organizations (which by virtue of registration have to conform to state laws), either trusts or societies or even companies. Such registered organizations are mandatorily required to file their income returns, which will have to include sources of funding. All organizations have to necessarily disclose their funding from foreign sources. However, it is also true that a lot of this funding is not officially disclosed and remains as unaccounted donations.

References:
Foreign Contribution Regulation Act, 1976;
Web site of the Home Ministry:
www.mha.gov.in;
Also guideline in Foreign Contributions –
www.mha.gov.in/fcraweb/fc_online.htm
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. As many of the CSOs are located in specific regions/cities, some have formed federative organizations across the country to coordinate their activities. Alliance for Democratic Rights (ADR) is one such group which moved the Supreme Court through a PIL (Public Interest Litigation) seeking a directive to be issued to the government that all candidates contesting elections to state legislatures and Parliament be mandatorily required to file an affidavit providing details of assets and convictions/cases pending in the court. This PIL and the subsequent Court action resulted in a historic victory for CSO’s and made it mandatory for all candidates to file such affidavits at the time of filing nomination. Further, the initiatives of Lok Satta in Andhra Pradesh and Janaagraha in Karnataka are being duplicated in other states.

In reality, the government is often a little apprehensive of such CSOs. Both the political leadership and the bureaucracy often see some of the CSOs as being breaks from the “independent function.” 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. This is especially true in the case of CSOs which seek to use the Right to Information Act to secure information and thus expose acts of administrative indiscretion. From another perspective, it could be argued that some measure of accountability with regard to the CSOs is important and critical. Part of the governments unease with CSOs is also linked to the lack of transparency in CSOs with regard to their functioning and also sources of funding.

References:
Right to Information Act;
www.loksatta.org;
www.janaagraha.org

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 registering a greater presence in the political and policy-making process. There is some 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 often see the participation of the CSOs as an ‘extra constitutional’ player who is seeking to challenge 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. However, the fault lines are not yet clear, and more often than not the capacity of CSOs to be recognized as legitimate stakeholders has much to do with their networking skills with those in positions of power and influence. It is not surprising that many CSOs have retired government officials as consultants to facilitate this task.

References:
World Bank position papers:
www.worldbank.org;
www.janaagraha.org;
www.pacindia.org

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.

Comments:
No CSO has been forcibly/fromally 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. This could include bureaucratic bottlenecks being created in the form of the plethora of procedures and regulations that CSOs are asked to adhere to/ comply with. This includes the regulations governing foreign contributions.
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?

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

| YES | NO |

Comments:
This question needs to be handled with an element of care and caution. It cannot be denied that some of those (individuals and groups) involved in the fight against corruption have had to bear the burden of direct and indirect persecution. There have been reports of activists of civil society groups fighting different forms of corruption being imprisoned for their peaceful protests. One example is that of the activists of the Narmada Bachao Andolan. Mention can also be made of the arrest of social activists in the past. To cite a recent incidence-on May 14, 2007, Dr. Binayak Sen, general secretary of the People’s Union for Civil Liberties (PUCL) (Chattisgarh unit) was arrested and detained under Chattisgarh Special Public Security Act, 2006 (CSPSA) and the Unlawful Activities (Prevention) Act, 1976.

References:
http://www.geocities.com/bororissa/cor.html

YES: A YES score is earned if there were no CSO activists imprisoned because of their work covering corruption. YES is a positive score.

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 person 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. Imprisoned” is defined here as detention by the government lasting more than 24 hours.

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 both by those they were investigating and by the state machinery.

References:
www.oecd.org/dataoecd/52/2/35137772.pdf;
www.skdubeyfoundation.org/tribute/archives/000086.php

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. YES is a positive score.

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:
www1.oecd.org/daf/asiacom/pdf

YES: A YES score is earned if there were no documented cases of CSO activists being killed because of their work covering corruption in the specific study period. YES is a positive score.

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?

75

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. It is also important to note that a bulk of the Indian work force is in the un-organized sector, which does not have access to being represented by organized trade unions.

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 Act;
Ministry of Labour and Employment:
www.labour.nic.in/

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:
Article 19 (1) (a) of the constitution extends the freedom of speech to print and electronic media with certain limitations as laid down in subclause (2). Besides, the Press Council Act, 1978, empowers press to exercise its freedom. Government retains the right to censor informations which could threaten the sovereignty and integrity of the nation, security of the country, damage friendly relations with foreign countries, cause public disorder, or if the information is indecent or immoral, contempts the court, or if it is a statement of defamation.

References:
Article 19 of the constitution

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

NO: A NO score is earned if any specific publication relating to government affairs 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:
Article 19 (1) (a) of the constitution grants freedom of speech and expression as a fundamental right. As a caveat it must be added that there are serious challenges in people exercising a capacity to enjoy this right in the light of the hierarchical social structure, which limits access to opportunities and the benefits of education.

References:
Article 19 of the constitution

YES: A YES score is earned if freedom of individual speech is guaranteed in law, including to 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 print media entities?

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

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. It must be added that much of the media in India is business-driven and business-controlled. As a result, it becomes sensitive to the 'cues' of the more privileged sections of society.

References:
www.presscouncilofindia.nic.in;
www.mca.gov.in;
www.mib.gov.in

100: Print media entities can freely organize with little to no interaction with the government. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of print 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.

25:

0: Print media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

6b. In law, where a print 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:
Freedom of the Media regulations

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

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

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

| 100 | 75 | 50 | 25 | 0 |

Comments:
In practice, where necessary, citizens can obtain a print media license within a reasonable time period. Given the comments to previous questions, one's capacity to secure the required licenses is directly linked to their contacts and influence within the system.

References:
Ministry of Information:
www.mib.gov.in/;

www.indiantelevision.com/dth/dth11.htm;

www.pib.nic.in/focus/foyr2001/fomar2001/dth_glines.pdf;


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 print 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.
7. Are citizens able to form broadcast (radio and TV) media entities?

69

7a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

Comments:
In theory it can be argued that 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 is the mandatory requirement. The media in India is largely (financially) controlled by a few business conglomerates. As a result, in reality the capacity of ordinary citizens successfully venturing into this domain remains a big question mark.

References:
Media reports;
Press Council of India Web site:
www.presscouncil.nic.in

100: Broadcast 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. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of broadcast 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: Broadcast media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. This score is appropriate if the division of broadcast bandwidth is widely viewed to be used as a political
7b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | NO

Comments:
There is a legal mechanism. There is an appeal mechanism in place to challenge the revoking or non-granting of broadcast rights. The Press Council of India is an autonomous body with the mandate to maintain a high degree of responsibility in the media. The government is planning to introduce the Broadcasting Service Regulation Bill, which would provide for an authority for regulating broadcasting issues, including programs and advertisements.

As of late, the question has assumed serious proportion on an important count. The media (electronic, print and radio) have not been serious about imposing self-regulation and norms. Two cases can be cited in this regard. Firstly, the winner of the Indian Idol, who hails from a particular part of India was commented on in a derogatory manner on a FM Radio channel by a radio jockey. This sparked off riots and protests. The radio channel has now been asked to apologize and there is also the threat of further action (www.ibnlive.com/news/darjeeling-tense). Secondly, the television channel Live has been in the dock for airing a fake sting operation and has been banned for a month. The ban was imposed by the Information and Broadcasting Ministry by invoking the Cable Television Networks Regulation Act, of 1995 (www.hindu.com/2007/09/21/stories/2007092162961700.htm).

References:
www.ibnlive.com/news/darjeeling-tense;

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

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

7c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) 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:
www.mib.gov.in;
www.presscouncilofindia.nic.in

100: Licenses are not required or licenses can be obtained within two months.
Licensing is required and takes more than two months. Some groups may be delayed up to six months. Licensing takes close to or more than one year for most groups.

7d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

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:
www.mib.gov.in;
www.presscouncilofindia.nic.in

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.

8. Can citizens freely use the Internet?

75

8a. In practice, the government does not prevent citizens from accessing content published online.

Comments:
A federal government notification from July 2003 says it can ban Web sites in the interest of: sovereignty or integrity of India; security of the state; friendly relations with foreign states and public order; preventing incitement to commissioning of any cognisable offences. The power has been used by the government on some occasions and it has
sparked some protest. A few blogging sites were banned by the government because of their content. There have been protests on the ban.

References:
http://news.bbc.co.uk/2/hi/south_asia/5194172.stm;
http://www.ifla.org;

100: The government does not prevent Internet users from accessing online content. While some forms of content may be illegal to download or own (such as child pornography), the government does not manipulate networks to prevent access to this information. This indicator addresses direct government intervention in the transfer of information, not indirect deterrents such as intimidation, surveillance or technical difficulties in countries with poor infrastructure.

75:

50: Internet users are prevented by the government from reaching online content in some cases. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

25:

0: Internet users are routinely prevented from accessing online content. Government restrictions are in place at all times for certain topics. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

8b. In practice, the government does not censor citizens creating content online.

Comments:
There have been restrictions imposed by the state as per the law mentioned in the earlier section. This has evoked serious protests and many groups are seeking recourse to the Right to Information Act do deal with the challenge.

References:
www.presscouncilofindia.nic.in;
www.mib.gov.in;
www.rti.nic.in

100: The government never removes online information or disables servers due to their political content. All political speech is protected with limited exceptions, such as legitimate intellectual property restrictions; direct calls to violence; or pornography.

75:

50: In some cases, the government restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting restricted content, or indirectly through threats or intimidation against the persons posting political content.
0: The government regularly restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting the restricted content, or indirectly through threats or intimidation against the persons posting political content.

9. Are the media able to report on corruption?

YES | NO

9a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

Comments:
The provisions of equality before the law have ensured that the media enjoy unfettered rights to report, even if it damages the reputation of a public figure. This is subject to the laws of defamation. The media have 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. There is also the trend that the electronic media in their desire to be the first to report 'scoops' relating to corruption and misuse of office, have used unethical means to do the same. The most recent controversy involves the effort of a media channel to frame a government school teacher on charges of illicit trafficking by using fictitious evidence.

References:
www.southasianmedia.net/check_news.cfm;
Article 19 of the Indian Constitution

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.

9b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

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 fetter the freedom of the circulation. However, a reasonable restriction can be determined by the circumstances.
**References:**
Press Council of India Reports:
www.presscouncil.nic.in;

Norms of Journalistic Conduct by Press Council of India.

| 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. |

9c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

| 100 | 75 | 50 | 25 | 0 |

**Comments:**
In the recent past, there have been several examples of what has now been become known as 'sting journalism'. The past year has been a never-ending sting season on television news. Parliamentarians have been caught on camera seeking cash for questions and their share of constituency funds; officials have been caught taking bribes; doctors have been filmed selling infants from hospitals; clerics shown issuing fatwas for money. A policeman was caught demanding bribes to hand over the body of a man to his family, etc., etc.. All this and more in the public interest, or the greater common good", as the channels never tire of reminding viewers. Not surprisingly, politicians and authorities who have been at the receiving end of the stings are demanding some sort of legislation to rein in the news channels. Some journalists say stings are blurring the line between journalism and entrapment, between public interest and voyeurism. Now the Supreme Court has raised concerns over freelance sting operators hawking their 'exposés' to the highest bidder. “Whether it [sting operation] is in public interest or to make money it will have to be examined one day,” the judges said.

**References:**
www.hinduonnet.com/thehindu/mp/2006/06/29/stories/2006062900960400.ht;

news.bbc.co.uk/2/hi/south_asia/6076040.stm – 50k

| 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. This score is appropriate if in countries where illiteracy is high, 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. This score is appropriate even if the government restricts only politically damaging news while allowing favorable coverage.

10. Are the media credible sources of information?

90

10a. In law, print 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. A declaration of ownership needs to be made every year. This is a requirement by the Registrar of Newspapers for India who issues the registration certificate, and all the newspapers and periodicals print the information once a year. It must be stressed that the disclosure of ownership norms does not require mandatory disclosure of financial assets and transactions relating to the company.

References:
Indian Companies Act

YES: A YES score is earned if print 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 types of entities or agents from being disclosed.

10b. In law, broadcast (radio and TV) 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. This is required to be periodically (once a year) disclosed on their Web site and in broadcasts. This does not, of course, include the financial transactions, profits accrued and the like.

References:
The Companies Act

YES: A YES score is earned if broadcast 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.
10c. In practice, journalists and editors adhere to strict, professional practices in their reporting.

Comments:
Any comment needs to be preceded by a statement. There has been a virtual explosion in terms of numbers, especially of the electronic media channels and the FM radio networks. The number of print media publications is also witnessing a sharp increase. The net result of all this is the desire of journalists to be able to get 'breaking news' for their respective channels/papers. This has sometimes allowed norms and principles to be sidelined. Recent episodes involving a FM radio channel and a news channel can be cited in this regard. The news channel correspondent 'created' a scoop by getting someone to create a make-belief situation and submit it as a piece of investigative journalism. The reporter was arrested and the channel taken off air for a brief while. In the case of an FM radio channel, the RJ made an insensitive comment about the ethnic background of the winner of the Indian Idol competition. This created an uproar and the channel was off the air for a brief while. 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. Subtle biases – ideological, professional and personal invariably creep in while reporting and publishing news items.

References:
www.timesofindia.indiatimes.com/RJs_remarks_against_Inidan_Idol_triggers_violence_curfew_/articleshow/2412829.cms;  
www.zeenews.com/znnew/articles.asp?aid=398103&sid=NAT&name;  
www.newswatch.in/news-analyses/ethics-and-freedom/9053.html;  
www.merinews.com/catFull.jsp?articleID=126283 – 113k

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.

10d. In practice, during the most recent election, political parties or independent candidates received fair media coverage.
Comments:
The preliminary question we would have to deal with is how whether we define fairness in terms of time that political parties get/are covered or in terms of fairness in coverage. Given the intense competition within both the electronic and print media, political parties do generally receive sufficient 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. Ideological biases also clearly creep in. A classic example of this would be the stand that parties are taking on an issue like secularism or privatization. Different media publications/channels have a perspective on these issues and often view the development/party stand from that lense. A discerning reader/viewer is able to make out the difference. The most recent example is that of the nuclear standoff, which threatens to force a national election. The media reports clearly articulate accepted ideological positions on the issue.

References:
www.tni.org/detail_page.phtml?act_id=17212;
www.mg.co.za/.../breaking_news/breaking_news__international_news/&articleid=321320&referrer

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.

10e. In practice, political parties and candidates have equitable access to state-owned media outlets.

Comments:
A distinction must be made between access to state-owned media outlets at the time of elections and during non-election periods. Also here media refers largely to government-controlled electronic media and radio and not newspapers, as newspaper ownership is private. 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. It must also be stressed that today there is a mushroom growth of private electronic media channels and many parties purchase advertisement time on these channels. Some parties could allege that those parties which have access to fiscal resources are able to purchase advertisement time on private media channels.

References:
Website of Doordarshan and Akashvani and Election Commission;
www.ddindia.com;
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. All parties and candidates are offered consistent and equivalent rates for campaign advertising on state-owned media outlets.

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.

11. Are journalists safe when investigating corruption?

0

11a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

YES | NO

Comments:
The most recent case of action against journalists related to their writings on corruption charges against a former chief justice of India. On Sept. 21, 2007, the Delhi High Court found editors Vitusha Oberoi and M.K. Tayal, cartoonist Irfan Khan and publisher S.K. Akhtar guilty of contempt of court and sentenced them to four months in prison after the articles and a satirical cartoon claimed that the sons of then-Indian Supreme Court Justice Y.K. Sabharwal benefited from one of their fathers rulings. According to the articles, the decision opened the way for the demolition of several buildings, which increased the value of a neighbouring shopping mall that belongs to Sabharwals sons. Many believed that the decision of the Delhi High Court applied this unjust contempt law in a most arbitrary manner.

In the state of Jammu and Kashmir photo-journalist Muhammad Maqbool Khokar has been held since Sept. 18, 2004, under an emergency public security law. Despite calls for his release from the Jammu and Kashmir High Court and the National Human Rights Commission, he has not been set free.

References:
www.nhrc.nic.in;
www.nwc.nic.in

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

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. Imprisoned* is defined here as detention by the government lasting more than 24 hours.

11b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

YES   |   NO

Comments:
Journalists have been harmed for reporting on and investigating matters of corruption. Ratan Luwangcha, a journalist, was taken to hospital and struggled for his life after being shot three times by two unidentified gunmen. Luwangcha is the bureau chief of the mass-local language daily Poknapham in the state of Manipur and general secretary of the All Manipur Working Journalists. Soon after this attack, the Manipur-based rebel group Kangleipak Communist Party (KCP) claimed responsibility for the attack, saying it was in response to an article Luwangcha had written criticising some of the groups tactics.

As a protest, newspapers in the state of Manipur decided to suspend publication for two days and stage demonstrations against the attack on Luwangcha. The kidnapping of various editors from different newspapers in April 2006 showed KPCs lack of respect towards media freedom. Representatives of KPC seized the editors after inviting them to a weekend news conference in the state of Manipur and demanded that the editors newspapers print a message from the group marking its 1980 formation. They were released once their demand was met.

In January 2006, journalist Kamlesh Paikra was forced to flee his house in the state of Chhattisgarh following death threats against him. He lost his job as a consequence. Paikra had been subjected to constant harassment by police for his news reports on alleged police excesses.

There was also an attack on staff members of CNN-IBN TV channel on March 7, 2006, in the state of Uttar Pradesh, after the TV channel aired a story about the assets of a former Uttar Pradesh chief minister (she is now the chief minister of the state), which were under a Central Bureau of Investigation (CBI) probe. Four persons surrounded the CNN-IBN vehicle dragged the driver and the attendant out, and beat them up. The vehicle was also set on fire.

Before the attack, the politician had served CNN-IBN a legal note stating that the TV reports on him were distorted and asking CNN-IBN to pay approximately US$2.3 million in damages.

References:
www.nhrc.nic.in;
www.nwc.nic.in;
www.presscouncil.nic.in

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. A YES score is positive.

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.

11c. In practice, in the past year, no journalists investigating corruption have been killed.

YES   |   NO

Comments:
Journalists working on corruption-related cases have been killed in the last year. Arun Narayan Dekate, a correspondent for the Marathi-language daily Tarun Bharat died on June 10, 2006, from injuries sustained in an attack. Dekate was riding a motorbike when he was attacked and stoned by four people. Dekate has exposed a gambling racket in his newspaper and gave information to the police, which apparently helped in the arrest of criminals.
Prahlad Goala, a correspondent for the Assamese-language daily Asomiya Khabar was murdered on Jan. 6, 2006. The journalist was riding a motorbike when he was apparently rammed by a vehicle and subsequently stabbed to death. Goala's body was found with multiple stab wounds, many to the head. Prior to his murder, Goala had written a series of investigative articles for Asomiya Khabar that linked local forestry service officials to timber smuggling. Investigating authorities have reportedly identified a number of suspects. Zamman Jinnah, a forest warden, was arrested on suspicion of Goala's murder and released on bail. Jinnah allegedly made death threats against Goala soon after his articles on corruption in the forestry service appeared.

References:
www.nhrc.nic.in;
www.lawcommission.nic.in

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. A YES score is positive.

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.

I-3. Public Access to Information

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

100

12a. 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. A caveat needs to be added here. As the question relates to whether the provision exists in the law, the answer had been stated as yes. On a subsequent question of its working, the debate would engage with practical issues.

References:
Article 19 of the Indian Constitution;
Right to Information Act

YES: A YES score is earned if there is a formal right to access government documents, including constitutional guarantees. 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.
NO: A NO score is earned if there is no such right.

12b. 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 quite cumbersome and riddled with bureaucratic procedures. Again, there could be a debate on what constitutes a 'basic document'.

References:
Right to Information Act and related regulations.

YES: A YES score is earned if there is a formal process of appeal for rejected information requests. A YES score can still be earned if the appeals process involves redress through the courts rather than administrative appeal.

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

12c. 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 a citizen can seek access to these records. The Act provides for the creation of a Central Information Commission and a chief information commissioner. This has been replicated in each state. Its actual working is an issue discussed subsequently.

References:
Right to Information Act;
Central Information Commission:
www.persmin.nic.in/RTI/quest5RTI.htm

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.

13. Is the right of access to information effective?
13a. In practice, citizens receive responses to access to information requests within a reasonable time period.

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. There have been cases of citizens using the RTI act to gain information and expose wrongdoings in government. Several NGOs are working in the field. However, bureaucratic resistance has showed its ugly face quite often and prevented information from being made available by using a plethora of procedures. Reports of agencies are mentioned in the Web site sources.

References:
www.pucl.org/Topics/Media/2003/information.htm;
www.thesouthasian.org/archives/2006/maharashtra_right_to_informati.html;
www.cuts-international.org/Consumer-Rights.htm;
ww.rtiindia.org/forum/389-rti-brought-marked-decline-corruption-india-study.html

**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.

13b. In practice, citizens can use the access to information mechanism at a reasonable cost.

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:
www.rti.nic.in
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.

13c. In practice, citizens can resolve appeals to access to information requests within a reasonable time period.

Comments:
There have been delays in getting appeals addressed. This is the typical approach of the `system` to slow down and `beat the patience` of the information seeker. However, a lot of individuals and groups have been dogged in their patience and enthusiasm to cut through the plethora of procedures and bottlenecks so created and succeed in this multiple obstacle race.

References:
www.infochangeindia.org/analysis227.jsp;

www.pvchr.org/foodsecurity.htm;

www.humanrightsinitiative.org/.../events/research_papers/independent_citizen_initiative_chhattisgarh.pdf

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.

13d. In practice, citizens can resolve appeals to information requests at a reasonable cost.
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. Yet as of late, in a few celebrated cases the media have been highlighting the problems and helping the people get access to information and justice.

References:
www.rti.nic.in

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.

13e. In practice, the government gives reasons for denying an information request.

References:
www.rti.ac.in

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.
II-1. Voting & Citizen Participation

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

14a. In law, universal and equal adult suffrage is guaranteed to all citizens.

YES | NO

Comments:
With the inauguration of the Indian Constitution in 1950, every adult citizen in India was guaranteed a right to vote. Initially, an adult implied a person who was above 21 years of age. In 1989, the constitution was amended and the minimum eligibility age was reduced from 21 to 18.

References:
Article 326 of the Indian Constitution

YES: A YES score is earned if the right to vote is guaranteed to all citizens of the country (basic age limitations are allowed). 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.

14b. In law, there is a legal framework requiring that elections be held at regular intervals.

YES | NO

Comments:
The Indian Constitution mandates the maximum term of the elected legislative bodies. In the case of the lower House of the federal Parliament and the lower house of the State Legislative Assemblies it is five years. An independent agency, the Election Commission, is entrusted with the responsibility of conducting the elections. It must be mentioned that the constitution also provides for extending the term of the elected bodies by a year during the proclamation of an emergency. This period may be extended by Parliament for a period not exceeding one year at a time and not exceeding in any case beyond a period of six months after the proclamation has ceased to operate. As India has adopted the parliamentary form of government, the president (at the federal level) and the governor (in the state) has the power to prematurely dissolve the House. This in most cases is done on the advice of the Council of Ministers (at each level) when the government wishes to seek a new mandate or when no party is able to provide a stable government in view of the fluidity of the majority in the House.

References:
Article 352 of the constitution with regard to extension of the term during an emergency
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.

## 15. Can all citizens exercise their right to vote?

### 15a. In practice, all adult citizens can vote.

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<th>Score</th>
<th>Percentage</th>
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**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 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 exercised care the opportunities would be 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;
- Voting Pattern as delineated in the Web site of the Election Commission of India: www.eci.gov.in;
- Survey based studies of elections: www.lokniti.org

### 15b. In practice, ballots are secret or equivalently protected.

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<tr>
<th>Score</th>
<th>Percentage</th>
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Comments:
The process has generally been secret and confidential. With the introduction of electronic voting machines in all elections since 2004, the secrecy of the ballot has more or less been fully ensured. Instances of fraud and manipulation are on the decline and the Election Commission is known to order a re-poll in polling booths where malpractices have been detected. Further, to ensure that the area wise-voting pattern is kept secret, during the counting process it is not possible for observers (party sponsored and others) to ascertain which voting machine relates to which area.

References:
The Election Commission Web site has details on the impact of election voting machines: www.eci.gov.in;

A Panel discussion at the International Political Science Association held at Fukuoka (Japan) in 2006 focussed attention on the using of electronic voting machines in India: www.ipsa.org

Surveys done in India have also pointed out to the success of Electronic Voting Machines www.lokniti.org

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.

15c. In practice, elections are held according to a regular schedule.

Comments:
The Election Commission which is entrusted with the conduct of free and fair elections has played an extremely proactive role in this regard and in recent years (especially since the mid-1990s) elections have been held as per a predetermined schedule. This schedule is not prepared at the discretion of the government of the day but by the Election Commission. There have been several instances (dates for the 1999 poll and the 2004 poll) when the government of the day differed from the Election Commission on the polling dates identified, but the decision of the Election Commission prevailed. Most recently in 2007, when the election the Lower House of the State Legislature of the most thickly- populated state in India (Uttar Pradesh) were held, the Election Commission decide to stagger it across several weeks. Many political parties strongly objected to the move, including the government in power in the state. The Commission held firm on the schedule and the elections went strictly as per the 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 Web site: www.eci.gov.in;
Articles in newspapers around the time of the Uttar Pradesh poll:
www.deccanherald.com;
www.expressindia.com;
www.timesofindia.com

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.

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

95

16a. In law, all citizens have a right to form political parties.

YES | NO

Comments:
Article 19 of the Indian Constitution guarantees citizens the right to form associations. As part of this right the citizen can form a political party.

References:
Article 19 of the Indian 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.

16b. In law, all citizens have a right to run for political office.

YES | NO

Comments:
A review of the last 14 elections to the lower house of the Indian Parliament and a more or less equal number of elections to the lower house of State Legislatures would show that a large number of party-sponsored and independent candidates have
contested the election. The constitution mandates the qualification for contesting to the lower house of Parliament and State Legislature. Citizenship is a criterion. There is additionally a minimum age requirement and the person should not hold an office of profit. In 2006, a legislation on what constitutes an office of profit was passed.

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.

References:
Provisions of the Indian Constitution
Provision of the Representation of Peoples Act;
Provisions of the Office of Profit Act

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.

16c. 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. Section 29 of the Representation of People’s Act of 1951 outlines the procedure to be followed by political parties to register with the Election Commission.

References:
Article 19 of the constitution;
Election Commission of India: www.eci.gov.in;
Section 29 of the Representation of People’s Act 1951

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.
16d. 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.

**References:**
Newsreports around the time of the 2004 elections:
www.timesofindia.com;
www.deccanherald.com;

Election studies:
www.lokniti.org

| 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: | 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. |
| 50: | |
| 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. |

16e. 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. Since 1989, in most legislatures there is a formally recognized opposition party. This was sometimes not the case prior to 1989 when India witnessed a one-party dominant system.

**References:**
www.lokniti.org;
www.epw.org
### II-2. Election Integrity

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

<table>
<thead>
<tr>
<th>Score</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>100</td>
<td>The Election Commission of India has been given the responsibility for the superintendence and conduct of the elections. It 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. As a result, in recent times there have been some controversies relating to an election commissioner on the Election Commission with a major opposition party demanding his resignation/removal on the ground that he is not impartial and lacks integrity. The issue is today in the courts with a battle on jurisdiction being waged.</td>
</tr>
</tbody>
</table>

**Comments:**

#### References:

- www.eci.gov.in;
- Article 324 of the constitution;
- Report of the Commission on the review of the working of the commission: www.nic.in

**YES:** A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to ensure the integrity of the election process.
18. Is the election monitoring agency effective?

YES: A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies contesting 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 domestic election monitoring agency.

18a. In law, the agency or set of agencies/entities is protected from political interference.

YES | NO

Comments:
The Commission is largely 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 and beyond controversy. This is being mentioned especially in the light of recent controversies.

References:
Article 324 of the constitution;
Relevant laws – Representation of People’s Act 1951, 1952

18b. 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:
www.eci.gov.in;
www.timesofindia.com;
www.expressindia.com
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.

18c. 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. This system has worked reasonably well and experience has shown that officers on election duty demonstrate primary accountability to the Election Commission.

References:
www.eci.gov.in

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.

18d. 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.

18e. 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 are to be taken.

References:
Representation of Peoples Act 1950, 1951;

www.eci.gov.in

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.

19. Are elections systems transparent and effective?

92
19a. In practice, there is a clear and transparent system of voter registration.

Comments:
The government in India takes the responsibility to register eligible voters at periodic intervals. Despite the best 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. It could be argued that ensuring authenticity of the voters list involves multiple players. Firstly, it involves interest on the part of the citizens. To be fair to the government, efforts are made to publicize any effort/move to register voters and correct errors. Citizens are provided an opportunity to verify the lists. These lists are today on the Web site in the regional language. Secondly, it involves the state machinery. There are those rare cases of the voters list having been manipulated to serve partisan ends. Given the fact that these lists are today in the public domain, it immediately invites reactions. Finally, NGO’s are today playing a major role, especially in some urban areas, to ensure that the voters list are free of errors.

References:
www.janaagraha.org;
www.eci.gov.in

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 voting by non-existent voters is common.

19b. In law, election results can be contested through the judicial system.

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 1951, 1952
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.

19c. 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 1951; www.eci.gov.in

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.

19d. 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. It must be noted that the Election Commission can request the services of the paramilitary forces in order to ensure a free and fair election.

References: Representation of Peoples Act 1951;
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 overly 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.

19e. 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 have also played a major role in this regard. International observers have also been observing the electoral process.

References: www.eci.gov.in

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.

19f. 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 have also played a major role in this regard. International observers have also been observing the electoral process.
References:
www.hinduonline.com;
www.janaagraha.com;
www.eci.gov.in

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.

II-3. Political Financing

20. Are there regulations governing political financing?

57

20a. In law, there are regulations governing private contributions to political parties.

YES | NO

Comments:
There are regulations in place. The flip side is that they are hopelessly inadequate.

References:
www.eci.gov.in

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.
20b. 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. This has been a major area of concern and also controversy.

**References:**
Companies Act  
www.eci.gov.in

**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.

---

20c. In law, there are limits on corporate donations to candidates and political parties.

**YES | NO**

**Comments:**
Section 293 of the Companies Act of 1956 states that donations can be made by corporations to political parties, but they cannot exceed 50,000 rupees (US$1,272) or 5 percent of the average net profit determined under specific provisions of the Companies Act for the 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

**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.

---

20d. In law, there are limits on total political party expenditures.

**YES | NO**

**References:**
Companies Act
### 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:
Election Commission Web site:
www.eci.gov.in

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
</table>

**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.

20e. In law, there are requirements for disclosure of donations to political candidates and parties.

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
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</thead>
</table>

**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.

20f. In law, there are requirements for the independent auditing of the finances of political parties and candidates.

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
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</table>

**Comments:**
This occurs only in the case of candidates. The Election Commission monitors the expenditure of candidates and limits are fixed as to how much a candidate can spend. Candidates are required to submit an account of expenditure once the elections are completed. There is very little verification of the authenticity of what is submitted. 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:
www.eci.gov.in

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.

20g. In law, there is an agency or entity that monitors the political financing process.

YES | NO

Comments:
The Election Commission of India oversees whether candidates remain within the limits of expenditure prescribed. They appoint expenditure observers for each electoral district who monitor the election related expenditure of individual candidates. However, there is very little public information or debate on the matching of the expenditure statements submitted by candidates and those recorded by the observers. This is partly linked to the fact that there is no cap on the expenses that a party can incur on its candidates. There has been some effort at the level of local elections by the authorities to compute the party expenses on individual candidates, but it has had limited success.

References:
The Election Commission of India

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around political financing. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity.

21. Are the regulations governing political financing effective?

21

21a. 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. Further, a large number of investigative reports by the electronic media have highlighted the fact that serious cases of financial irregularities indulged in by elected representatives are linked to their need for funds to carry forward their campaigns. The scam involving members of Parliament selling the questions that they are allowed to ask is a case in point.

References:
Scames unearthed by televisions channels:
www.ibnlive.com;
www.ndtv.com

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.

21b. 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:
www.hinduonline.com;
www.timesofindia.com

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 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.
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.

21c. In practice, the limits on total party expenditures are effective in regulating a political party’s ability to fund campaigns or politically-related activities.

Comments:
There are no limits on party expenditures.

References:
In the absence of a law to regulate party expenses, there is no writing on effectiveness or otherwise.

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.

21d. In practice, when necessary, an agency or entity monitoring political financing independently initiates investigations.

Comments:
The only level of monitoring that is required is the monitoring of individual candidates expenses. Candidates are required to submit details of expenses. These are routinely submitted. There is limited opportunity to verify their authenticity. It is an open secret that most candidates spend well above the prescribed limits. A study done by Lokniti around the time of the 1999 Elections, which was sponsored by the Election Commission, shows that limits of expenses are very rarely adhered to. News reports too vouchsafe the fact that limits to expenditure by individual candidates are never adhered to.

References:
www.lokniti.org
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, thought 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.

21e. In practice, when necessary, an agency or entity monitoring political financing imposes penalties on offenders.

Comments:
It is only individual candidates who can be penalised if it can be proved that their expenses have crossed the prescribed limits. Most candidates are able to circumvent the provision by claiming that any visible, documented excess expenditure has been incurred by the political party, and there are no limits on what the party can spend.

References:
ECI reports:
www.eci.nic.in

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.

21f. In practice, contributions to political parties and candidates are audited.

Comments:
There is little scope for auditing.
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.

22. Can citizens access records related to political financing?

50

22a. 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. More often than not 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:
www.eci.gov.in

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.

22b. In practice, citizens can access the financial records of political parties and candidates within a reasonable time period.
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:
www.lokniti.org;
www.eci.gov.in

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.

22c. In practice, citizens can access the financial records of political parties and candidates at a reasonable cost.

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:
www.janaagraha.com;
www.lokniti.org;
www.eci.gov.in

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:
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

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

100

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. While these rights are guaranteed in law, the technicalities involved in court procedures and limitations of access for socially disadvantaged groups limit the capacity to use this right.

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.

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

88

24a. In practice, the chief executive gives reasons for his/her policy decisions.
Comments:
We need to begin with a rider. In a parliamentary system the chief executive is the president who plays a largely ceremonial role. The Council of Ministers headed by the prime minister is the real executive, and the prime minister is the head of government.

The parliamentary system of governance makes it binding upon the (real) 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 the 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 the government’s policy decisions. There is a flip side to this analysis. Increasingly, the executive is attempting to marginalize the legislature. The most recent example would be the nuclear deal with the United States. The opposition and some allies of the government are up in arms in Parliament against an important policy decision made by the government. A linked development is that legislative proceedings are increasingly being stalled and deliberations disrupted. An important question on whether legislators see their role outside the House as being more important than inside the House becomes relevant.

References:
www.parliamentofindia.nic.in;
www.timesofindia.com

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 sensor such sessions.

24b. In law, the judiciary can review the actions of the executive.

YES | NO

Comments:
The power of the judiciary to review the actions of the executive is an “assumed/implied power”, although the judiciary has held that the power of judicial review is part of the basic structure of the constitution. With regard to the review of the actions of the executive, the judiciary does not act suo motto. The judiciary pronounces judgements on the legality of executive actions in response to cases filed in the court in this regard. A practice that is being increasingly followed is the recourse to public interest litigation. Over the years there have been a few instances of serious conflict between the executive and the judiciary, the most recent being on the matter of reservations from backward castes in federal government elite educational institutions.
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).

24c. 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. This development does not find uniform acclaim across the country. Firstly, many view the intervention of the judiciary as an ad hoc arrangement in view of the executive not being proactive on its responsibilities. It could be argued that the actions of the judiciary are a stop gap remedy – a legal ‘fist aid’, which cannot be a long term/long lasting solution to the problem. Secondly, there are alarm bells being raised on the accountability of judicial activism. How does one ‘guard the guardian’? This is a common refrain of many.

References:
Supreme Court pronouncements;
Legal opinions:
www.timesofindia.com;
www.expressindia.com

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. It does not need to relay upon the executive to initiate a constitutional or legal review.

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.

24d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

100 | 75 | 50 | 25 | 0
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 bypassing Parliament and announcing new regulations outside the House. In recent years, there is a feeling that the executive (irrespective of the party in power) has been sidestepping and undercutting the role of the legislature. It is also argued that the response of the legislature has been very feeble, in general, in this regard.

References:
Parliamentary debates/ rules of procedure;

www.mainstreamweekly.net/article355.html – 19k;


25. Is the executive leadership subject to criminal proceedings?

YES | NO

Comments:
In a parliamentary system we need to make a distinction between the head of state and head of government. The president is the head of state and the constitution protects this position from being taken to court for official actions while in office. This appears to have been done for two reasons. Firstly, to maintain the dignity of the highest office in the land. Secondly, the president acts on the advice of the Council of Ministers and therefore cannot be held personally liable for the actions made in the name of the office.

The head of government, the prime minister is liable to be prosecuted. The prior permission of the president would be necessary for initiating this action.

References:
Constitutional Provisions – Articles 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. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

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.

25b. In law, ministerial-level officials can be prosecuted for crimes they commit.

YES | NO

Comments:
Action can be initiated for crimes committed. There is a legal requirement that when doing the same, the prior consent of the competent authority would be necessary.

References:
Prevention of Corruption Act

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.

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

66

26a. 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 ordinarily required to be a member of Parliament. As a member of Parliament, he/she is required to submit a statement of his/her assets. 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.

With regard to the head of state, there is no mandatory requirement to submit a statement of the assets. During the recently held presidential elections (2007) one of the campaign issues was the declaration of assets. The independent candidate backed by the opposition alliance unilaterally made a declaration of assets and challenged the rival to do the same. This assumed significance in the light of charge of fiscal irregularity being a campaign issue.
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. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

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

26b. 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 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. We could also have the odd situation of someone being a minister 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 minister who is sworn in 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 minister (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 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.

26c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

YES | NO

Comments:
There are rules in this regard. However, with the civil servants being the ‘masters of the rule’ they often invent innovative means to circumvent the spirit of the provision and benefit from ‘extra legal’ advantages and benefits that come their way.

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.

26d. 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 |

**Comments:**
There is an independent auditing of the assets disclosure forms submitted by the ministers. This is today also open to public scrutiny as the asset forms that ministers submit while contesting for elections to Parliament are a public document.

**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. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

**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.

26e. 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 government entering the private sector after completing their assignments.

**References:**
Relevant laws of the Representation of People’s Act

**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. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.
26f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

<table>
<thead>
<tr>
<th>Score</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>100</td>
<td>Regulations are uniformly enforced. No cases of officials taking jobs in private sector after leaving government where they lobby or influence former colleagues without adequate cooling off period.</td>
</tr>
<tr>
<td>75</td>
<td>Regulations are generally enforced, but some exceptions exist. In certain sectors, heads of state/government or ministers are known to accept jobs in the private sector that entail direct lobbying or influencing former colleagues. Cooling off periods are short and sometimes ignored.</td>
</tr>
<tr>
<td>50</td>
<td>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 former colleagues. Cooling off periods are non-existent or never enforced.</td>
</tr>
<tr>
<td>25</td>
<td>Regulations are not enforced. Heads of state/government or ministers accept gifts above the allowed amounts.</td>
</tr>
<tr>
<td>0</td>
<td>Regulations are not enforced. Heads of state/government or ministers accept gifts above the allowed amounts.</td>
</tr>
</tbody>
</table>

References:
This is not applicable.

26g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

<table>
<thead>
<tr>
<th>Score</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>100</td>
<td>Regulations governing gifts and hospitality are regularly enforced and sufficiently restrict the amounts that can be given. Members of the executive branch do not accept gifts or hospitality above what is allowed.</td>
</tr>
<tr>
<td>75</td>
<td>Regulations governing gifts and hospitality are generally enforced, but some exceptions exist. Members of the executive branch rarely accept gifts or hospitality above what is allowed.</td>
</tr>
</tbody>
</table>

Comments:
There are frequent controversies relating to the violation of this norm. As mentioned earlier, given their mastery over the rule book, the public servants are able to discover ingeneous ways of circumventing the provisions of the law and still seek ‘extra legal’ sources of gratification. This is clearly revealed by the fact that the Ombudsman, as the authority in many of the states of India, has found officers having assets not commensurate to their known sources of wealth.

References:
Newspaper reports:
www.timesofindia.com;
www.deccanherald.com
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.

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.

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

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

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.

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

27. Can citizens 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. Citizen watch groups and the media have also been publicizing the asset disclosure affidavits and this often gets wide publicity.

References:
Media reports:
www.timesofindia.com;
www.deccanherald.com

Comments:
As they are increasingly in the public domain, the assets disclosure 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.
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.

27b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

### Score Range

<table>
<thead>
<tr>
<th>Score</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>100</td>
<td>Accessible in a reasonable time period.</td>
</tr>
<tr>
<td>75</td>
<td>Accessible within a month.</td>
</tr>
<tr>
<td>50</td>
<td>Accessible within 2-4 weeks.</td>
</tr>
<tr>
<td>25</td>
<td>Accessible within 2-3 months.</td>
</tr>
<tr>
<td>0</td>
<td>Accessible after 3 months.</td>
</tr>
</tbody>
</table>

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:
- Review of the new norms for candidates contesting elections

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.

27c. In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.

### Score Range

<table>
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<td>Accessible within 2-3 months.</td>
</tr>
<tr>
<td>0</td>
<td>Accessible after 3 months.</td>
</tr>
</tbody>
</table>

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. It can be obtained at a reasonable cost.
28. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

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. Yet, it needs to be conceded that there are rare instances of the line of distinction between party and government having been obliterated.

References:
www.lokniti.org
III-2. Legislative Accountability

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

92

29a. 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).

29b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | 50 | 25 | 0

Comments:
The review of laws passed by the legislature is undertaken by the judiciary only when a case in this regard is filed in the court. The important point is that the legislature cannot take suo motu action in this regard. There are frequent cases of tussle between the legislature and the judiciary. The two most recent are the standoff between the two on the expulsion of members of Parliament and temporary disqualification of the legislators of a state assembly on the ground of violation of the anti-defection law.

References:
Anti Defection Law;
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.
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.

29c. 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 and Conduct of Business

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.

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

30a. 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.

30b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

YES | NO

Comments:
In law, 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.

30c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

YES | NO

Comments:
The Rules of Procedure and Conduct of Business and the norms established for members spell out the regulations relating to accepting of gifts and hospitality. The tragedy is that it is not followed in spirit.

References:
Rules of Procedure and Conduct of Business

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.

30d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.
Comments:
While members are asked to submit a statement on assets, there is no evidence of the same being subjected to the scrutiny of an independent agency created for that specific purpose.

References:
Representation of People’s Act 1951

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.

30e. 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 norms.

References:
Representation of People’s Act 1951

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.

30f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.
Comments:
It is difficult to monitor these provisions and hold elected representatives accountable. There is ambiguity in the provisions, which allows for a very liberal interpretations of the limitations placed on legislators.

References:
Ethics Committee of Parliament report:
www.parliamentofindia.nic.in

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.

30g. In practice, national legislative branch asset disclosures are audited.

Comments:
There is no mandatory provision requiring that they be audited.

References:
Rules of Procedure and Conduct of Business;

Ethics Committee Report

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. Audits may be performed by entities known to be partisan or biased in their practices.
31. Can citizens access the asset disclosure records of members of the national legislature?

83

31a. 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. Further, the capacity of ordinary citizens to withstand the ‘tyranny of procedures’ of the Right to Information Act is also limited.

References:
Right to Information Act:
www.parliamentofindia.nic.in

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.

31b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:
As mentioned, the authorities places these records on the Web site. They are accessible to those who have access to the internet.

References:
www.eci.gov.in

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:
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.

31c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100  75  50  25  0

Comments:
The only cost is often internet access cost.

References:
Right to Information Act:
www.eci.gov.in

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.

32. Can citizens access legislative processes and documents?

83

32a. In law, citizens can access records of legislative processes and documents.

YES  |  NO

Comments:
The Web site of the Parliament has a lot of material on deliberations and other documents. The rest of the documentation can also be accessed in the Parliament house library and libraries of other state legislatures. Parliament today has a dedicated television channel that broadcasts programs related to its activity. There is this feeling that as legislative staff controls the entire process they ensure that only those documents are placed in the public domain which will not cause too much embarassment to the legislature.

References:
www.parliamentofindia.nic.in
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 are exemptions to the general right that are not clearly defined by formal rules.

32b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

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

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

References:
www.parliamentofindia.nic.in

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.

32c. In practice, citizens can access records of legislative processes and documents 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. A caveat needs to be added at this stage. Given the fact that one-third of the nation's population is still illiterate they have limited use of these materials.

References:
www.parliamentofindia.nic.in

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.
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.

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

### III-3. Judicial Accountability

#### 33. Are judges appointed fairly?

<table>
<thead>
<tr>
<th></th>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
</table>

33a. In law, there is a transparent procedure for selecting national-level judges.

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. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

NO: A NO score is given if there is no formal process of selection or the process is conducted without public oversight. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

33b. In practice, there are certain professional criteria required for the selection of national-level judges.
Comments:
The criteria for the selection of national level judges is extremely rigorous.

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.

33c. 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 India.

References:
Article 124

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).

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

13

34a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

YES | NO
Comments:
The judge is not obligated to give reasons. However, often the judgment reflects the grounds on which the judge has made a particular decision.

References:
Supreme Court Judgments and Web site:
www.nic.in

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).

34b. 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:
All supreme Court judgments

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.

34c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

YES  |  NO

Comments:
There has been a proposal to create a National Judicial Commission. The recommendation of the National Commission to review the working of the constitution on this issue is pending. There are many who believe that this step is important to ensure the accountability of the judiciary.
Article 124 provides for the method of appointment of judges, tenure and procedure for their removal

**YES:** A YES score is earned if there is a disciplinary agency (or equivalent mechanism) for the judicial system. A disciplinary agency 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 disciplinary mechanism for the national-level judiciary.

34d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

| YES | NO |

**References:**
This is not applicable.

**YES:** A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is operationally independent from political interference by the executive, legislative and judicial branches.

**NO:** A NO score is earned if there are no formal rules establishing the independence of the judicial disciplinary agency (or equivalent mechanism). A NO score is given if the judicial disciplinary agency or equivalent mechanism function is carried out by an inherently subordinate organization, such as an executive ministry, legislative committee, or by an internal judiciary committee or council that can only act with the approval of judges themselves.

34e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

| 100 | 75 | 50 | 25 | 0 |

**References:**
This is not applicable.

100: The judicial disciplinary agency (or equivalent mechanism) aggressively starts investigations — or participates fully with cooperating agencies’ investigations — into judicial misconduct. The judicial disciplinary agency (or equivalent mechanism) is fair in its application of this power.

75:

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

25:
0: The judicial disciplinary agency (or equivalent mechanism) rarely investigates on its own or cooperates in other agencies’ investigations, or the judicial disciplinary agency (or equivalent mechanism) is partisan in its application of this power.

34f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

References:
This is not applicable.

100: When rules violations are discovered, the judicial disciplinary agency (or equivalent mechanism) is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The judicial disciplinary agency (or equivalent mechanism) enforces rules, but is limited in its effectiveness. The judicial disciplinary agency (or equivalent mechanism) 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 judicial disciplinary agency (or equivalent mechanism) does not effectively penalize offenders. The judicial disciplinary agency (or equivalent mechanism) 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 judicial disciplinary agency (or equivalent mechanism) may be partisan in its application of power.

35. Are there regulations governing conflicts of interest for the national-level judiciary?

25

35a. In law, members of the national-level judiciary are required to file an asset disclosure form.

YES | NO

Comments:
They are not required to file an asset disclosure form. Many have argued that the members of the national judiciary should voluntarily take this step, but the same this has been consistently opposed.

References:
Article 124

YES: A YES score is earned if all members of the national-level judiciary 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.
35b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

YES | NO

Comments:
There are conduct rules which the members of the national judiciary follow.

References:
Rules of Procedure in the Supreme Court

35c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

YES | NO

Comments:
There is no requirement for asset disclosure.

References:
www.nic.in

35d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.
The only mandate is that a retired Supreme Court judge cannot practice as a lawyer in the Supreme Court or any of the lower courts.

Comments:
The only mandate is that a retired Supreme Court judge cannot practice as a lawyer in the Supreme Court or any of the lower courts.

References:
www.supremecourtofindia.com

YES: A YES score is earned if there are regulations restricting national-level judges 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.

35e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

100 | 75 | 50 | 25 | 0

Comments:
This is not applicable.

References:
www.supremecourtofindia.com

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no or few cases of judges 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 cases, judges 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. Judges 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.

35f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.
Comments:
There are reports of cases of judges accepting gifts and hospitality that does not strictly conform to the norms laid down by the conduct rules. However, the objectivity with which this assessment can be done is severely limited.

References:
www.hrsolidarity.net/mainfile.php/2007vol17no05/2576/?print=yes;
www.educationworldonline.net/eduworld/article.phpchoice=prev_art&article_id=988&issueid=59

**100**: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to judges. Judges never or rarely accept gifts or hospitality above what is allowed.

**75:**

**50**: The regulations governing gifts and hospitality to members of the national-level judiciary are generally applied though exceptions exist. Some judges 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 national-level judiciary are routinely ignored and unenforced. Judges routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

35g. In practice, national-level judiciary asset disclosures are audited.

Comments:
There are no mandatory asset disclosure requirements.

References:
Rules and regulations relating to the Supreme Court judges

**100**: National-level judiciary asset disclosures are regularly audited using generally accepted auditing practices.

**75:**

**50**: National-level judiciary 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**: National-level judiciary asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.
36. Can citizens access the asset disclosure records of members of the national-level judiciary?

0

36a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

YES | NO

Comments:
There is no requirement for mandatory submission of records of assets.

References:
Rules of Conduct from Supreme Court judges

YES: A YES score is earned if members of the national-level judiciary 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-level judiciary. A NO score is earned if the form is filed, but not available to the public.

36b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:
There is no requirement for mandatory submission of records of assets.

References:
Supreme Court Judges Rules and Regulations

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.
36c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

| 100 | 75 | 50 | 25 | 0 |

Comments:
There is no mandatory requirement for submission of records of assets.

References:
Supreme Court Judges Rules of Code of Conduct

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.

III-4. Budget Processes

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

YES | NO

37a. In law, the legislature can amend the budget.

Comments:
It is important to record that the budgetary process has its own distinct momentum in a parliamentary system of government. The question seems to be more set to the dynamics of a presidential form of government. In a parliamentary system of government like India’s, the budget needs to be approved by Parliament before any expenditure is made or tax is collected. 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. However, this is often preceded by intense debates. Parliament has of late attempted to strengthen the mechanisms for budgetary control by the
creation of Department Related Standing Committees in the House. It also must be noted that if the government is defeated on a budgetary proposal it must resign.

References:
Rules of Procedure and Conduct of Business in the Lok Sabha/ Rajy Sabha

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

37b. 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 given. No regularization of expenditure is possible without the sanction of the legislature. Yet a caveat needs to be added. The devil they say lies in the detail! Given the complexity of budgeting procedures and technicalities involved, it becomes possible for the government to limit the quantum of information made available to the House which approves expenditure. As a result it becomes possible for the government to make minor modifications in the broad contours of expenditure and yet present it as being within the larger framework of what has been approved by Parliament. The report of the Comptroller and Auditor General often makes reference to this.

References:
Rules of Procedure and Conduct of Business in the Lok Sabha;
Report of the CAG;
www.nic.in

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.

37c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.
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. It is important to add that often members of the legislature neither have the time nor the inclination to seriously monitor the budgetary process. As a result, the government (and often the bureaucracy) is able to define and determine the nature, direction and focus of expenditure.

References:
Reports of DRSC's:
www.parliamentofindia.nic.in;

Reports of CAG:
www.nic.in

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.

38. Can citizens access the national budgetary process?

67

38a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

Comments:
The procedure is quite elaborate and transparent. The challenge is the limited time available to the legislature to do a more comprehensive scrutiny. Further, scrutiny becomes meaningful when it is a top priority of the legislature as a body and legislators as individuals. The focus appears to be on other areas, which they, as a group and individuals, seem to define as important.

References:
www.parliamentofindia.nic.in
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.

38b. In practice, citizens provide input at budget hearings.

Comments:
Citizens have few formal opportunities to participate in budget hearings. There are some opportunities for the general public to interact with the Finance Ministry on budgetary proposals. The Department Related Standing Committees also provides some limited opportunity for common citizens to air their views on budgetary proposals. Given the greater visibility of the media today, citizens often use the media to articulate their views on budget proposals/priorities. Increasingly, NGO's are stepping into the frame and seeking to articulate the views of the groups that they represent.

References:
www.patriamentofindia.com;
Times of India
www.timesofindia.com;
Indian Express
www.expressindia.com;
Deccan Herald
www.deccanherald.com;
The Hindu
www.hinduonline.com;
The Financial Express
www.expressindia.com

newspapers around the last working day of February (the day the budget is presented) and the reporting in the first week of March.

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.

38c. In practice, citizens can access itemized budget allocations.

100  75  50  25  0

Comments:
Citizens can access the entire budgetary proposals as they are printed at the time of their presentation. 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. The media too highlights the proposals, and this is accessible to citizens. The entire budget proposals are placed on the Web site of the Lok Sabha soon after its presentation.

References:
www.palriamentofindia.nic.in;
also news media reports as mentioned in response to previous question

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.

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

100

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

YES  NO

Comments:
The Public Accounts Committee

References:
www.parliamentofindia.nic.in
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 within the legislature. A NO score is earned if there is a body executing this function but it is not part of the legislature (such as a separate supreme audit institution).

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

81

40a. 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 at the hearings of the Committee.

References:
www.parliamentofindia.nic.in;
Reports of the Public Accounts Committee;
www.parliamentofindia.nic.in

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.

40b. 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:
By and large the Committee has been known to operate in a non-partisan manner. This is largely because the Committee meetings are held ‘in camera’.
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.

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.

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.

In practice, this committee is protected from political interference.

As the Committee deliberations are held in camera, members generally do not take a party line. However, there have been a few occasions when there have been complaints of partisan behavior. This is often not reflected in the reports submitted but in the debate subsequent to the release of the report.

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.

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.
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.

40d. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

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.nic.in (for public accounts committee reports);

Shastri, Sandeep (1994)
Legislative Control over Administration,
New Delhi Uppal Publishers;

Seshadri (1981)
Parliamentary Control over Public Expenditure
New Delhi Sterling

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

100

41a. 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 non-political 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.

41b. 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 Conduct Rules;

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.
41c. In law, there is an independent redress mechanism for the civil service.

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
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</thead>
</table>

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

References:
Department of Personnel and Administrative Reforms:
www.persmin.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.

41d. In law, civil servants convicted of corruption are prohibited from future government employment.

<table>
<thead>
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<th>YES</th>
<th>NO</th>
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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, he/she is not eligible for reappointment in government.

References:
Civil Service Conduct Rules;
Dept of Personnel and Administrative Reforms:
www.persmin.nic.in/

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.

42. Is the law governing the administration and civil service effective?
In practice, civil servants are protected from political interference.

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. An unholy 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. This is not to say that all civil servants should be painted with the same brush. There are those rare cases of officers who stand up to the political leadership. The media today often highlight such instances.

References:
Civil Service Rules of Conduct
Memoirs of Retired Civil Servants in India
WHY I AM NOT A CIVIL SERVANT: Ajay Singh Yadav; Bluejay Books, New Delhi; Srishti Publishers and Distributors;

A Cabinet Secretary Looks Back By BG Deshmukh,
HarperCollins India, 392pp, Rs 500

Tale Told by an Idiot
R K Noronha

Memoirs of a Civil Servant,
Dharam Vira

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.

42b. In practice, civil servants are appointed and evaluated according to professional criteria.
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;
Civil Service Rules of Conduct Memoirs of Retired Civil Servants in India;
WHY I AM NOT A CIVIL SERVANT: Ajay Singh Yadav;
Bluejay Books, New Delhi; Srishti Publishers and Distributors;
A Cabinet Secretary Looks Back
By BG Deshmukh, HarperCollins India, 392pp, Rs 500;
Tale Told by an Idiot
R K Noronha;
Memoirs of a Civil Servant,
Dharam Vira

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.

42c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

Comments:
Hiring and firing would receive high scores in terms of objectivity. Promotions and transfers would score lower. Let’s take each separately. 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. Increasingly, nepotism, favouritism based on caste and political loyalties determine postings and promotions.
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.

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.

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

42d. 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 has 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.”
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.

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.

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.

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 of Conduct
Memoirs of Retired Civil Servants in India
WHY I AM NOT A CIVIL SERVANT: Ajay Singh Yadav; Bluejay Books, New Delhi; Srishti Publishers and Distributors;
A Cabinet Secretary Looks Back By BG Deshmukh, HarperCollins India, 392pp, Rs 500
Tale Told by an Idiot
R K Noronha
Memoirs of a Civil Servant, Dharam Vira

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

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.
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.

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

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:
Ministry of Personnel,
Public Grievances and Pensions
www.persmin.nic.in/

The government publishes such a list on a regular basis.

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

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

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

There is both a Central Administrative Tribunal (CAT) and each state has an Administrative Tribunal (SAT). The civil servant 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. There are also instances when officers have moved the Tribunal on decisions of the government relating to appointments made to selection posts. These are posts where both seniority and merit are taken into account when making appointments and the government makes a decision on the matter. Officers who feel injustice has been done to them often feel that the Tribunals are able to do precious little to secure what is rightfully theirs. However, it must be stressed that ‘selection posts’ leave a lot of room for the discretion of the government of the day and thus can often become an issue of subjective controversy.

References:
www.nic.in;
Ministry of Personnel Web site
http://persmin.nic.in
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.

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.

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.

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

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. The flip side of the story is that civil servants ensure that they are paid on time, irrespective of whether others who depend on government grants are paid or not, because they control the levers of power!

References:
www.nic.in

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

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

In the past year, civil servants have frequently been denied due pay.
42i. 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 fired) would be relieved from service and not eligible for future appointment.

References:
http://persmin.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.

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

54

43a. 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 Conduct 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.

43b. 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. This is done in subtle ways by taking advisory/consultancy positions.

References:
Civil Service Conduct 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.

43c. In law, there are regulations governing gifts and hospitality offered to civil servants.

YES | NO

Comments:
There are regulations on the acceptance of gifts and hospitality. Further the rules state that an officer must declare any gifts/hospitality accepted to the concerned authority, if such a gift or hospitality is not directly connected with his/her work.

References:
All India Service Conduct Rules;
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.

43d. In practice, the regulations restricting post-government private sector employment for civil servants are effective.
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 had 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. The media attempt to expose this now and then.

References:
www.cvc.gov.in/

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.

43e. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

References:
http://cvc.gov.in/

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:
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.

43f. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

Comments:
There are several 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 have made contributions to the trusts. This matter has snowballed into a major controversy.

Several raids by the state ombudsman on the properties of officials have shown that the assets possessed are disproportionate to wealth and involve the stake of officers in private trusts and funds which are indirectly linked to official responsibilities that they may have discharged in the past.

References:
Website of the Karnataka Lokayukta:
www.kar.nic.in

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.

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

33

44a. In law, citizens can access the asset disclosure records of senior civil servants.

YES | NO

Comments:
At one level an officer will have to file his/her income tax returns as a citizen. At another level All India Service Rules, require an officer to file their asset returns. This is often not closely monitored. It may not be easily accessible to common citizens, unless
they take recourse to the RTI act. Further, in some states, the state level ombudsman is directing officers to file their asset returns. This has been a matter steeped in controversy.

References:
Website of state governments:
www.nic.in

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.

44b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

| 100 | 75 | 50 | 25 | 0 |

Comments:
As the declaration of assets is not automatically accessible to citizens unless it is placed on the Web site (as is done in the case of some states by state ombudsman authorities) the procedures outlines in the Right to Information Act have to be employed to gain access to this information.

References:
website of state ombudsman authorities:
www.nic.in

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.

44c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

| 100 | 75 | 50 | 25 | 0 |

Comments:
Those disclosures made on the Web site of state level ombudsman authorities can be accessed. Citizens would need to use the RTI (Right to Information) route to gain access to information which is not on the net. This often involves procedures and delays.
45. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

75

45a. 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 offers 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.
45b. 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:
In recent times, there have been reports of officers who have attempted to expose corruption charges being victimized in subtle and not so subtle ways. Frequent transfers to apparently insignificant positions are some of the ways in which officers who have tried to expose corruption have been penalized. The increasing nexus between the political leadership and the bureaucracy appears to have further suffocated those who seek to work with integrity.

An officer belonging to the elite Indian Administrative Service (IAS) has alleged that he has been victimized because he attempted to expose corruption and has been transferred six times in six months. He has taken his case to the Tribunal and also used the Right to Information Act to seek further information on his frequent transfers (Web site appended).

References:
www.fightcorruption.wikidot.com

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.

45c. 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 position has been that names of those who reports acts of corruption or misuse of office will be kept secret and not publicly disclosed.

References:
Prevention of Corruption Act
www.cvc.nic.in

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.

45d. 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. Informal leaks and the wide network of those involved in corrupt practices often exposes the whistleblowers.

References:
www.cvc.nic.in;
www.nhrc.nic.in

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.

46. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

100

46. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

YES  |  NO

Comments:
Yes the Central Vigilance Commission, Central Bureau of Investigation, Human Rights Commission and Women’s Commission have a dedicated number for filing of complaints as well as an email address and fax number.
YES: A YES score is earned if there is a mechanism, or multiple mechanisms for multiple national government agencies, through which civil servants can report cases of graft, misuse of public funds, or corruption.

NO: A NO score is earned if no such mechanism (or equivalent series of mechanisms) exists.

47. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

38

47a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:
The Central Vigilance Commission (CVC) has been monitoring corruption complaints 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. This severely hampers the good work that is done by these agencies. A caveat needs to be added. The effectiveness of the system varies across states significantly.

References:
www.cvc.nic.in;
www.lawmin.nic.in

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.

47b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.
Comments:
Their funding is part of what is included in the budgetary provisions. There is a general comment that the quantum of funds at their disposal in not commensurate to the responsibilities of these agencies.

References:
www.cvc.nic.in

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.

47c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

Comments:
The elaborate procedures frequently delay investigations and more often than not defeat the very purpose of these investigations. Often there is a vested interest to protect groups and delay processes in order to ensure that a complainant is frustrated into giving up the pursuit of the case.

References:
www.nhrc.nic.in;
www.lawcommission.nic.in;
www.cvc.nic.in;
www.lokayukta.karnataka.nic.in

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.
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.

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

Comments:
There was a rule that a political leader pronounced years ago which captures the attitude of the authorities quite succinctly – If you can, don’t move; If you must, move slowly; if pushed, move in circles; and if cornered, appoint a committee. This mirrors the response of the government to investigations which are often uncomfortable and inconvenient.

References:
www.lawmin.nic.in;
www.lokayukta.kar.nic.in

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

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.

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

Is the public procurement process effective?

In law, there are regulations addressing conflicts of interest for public procurement officials.
Comments:
The rules are very elaborate and well laid out.

References:
www.persmin.nic.in

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for public procurement officials. A YES score is earned if such regulations cover all civil servants, including procurement officials.

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

48b. 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:
www.persmin.nic.in

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, unrelated to procurement processes, or voluntary.

48c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | 75 | 50 | 25 | 0

Comments:
Frequent complaints have been voiced of corrupt practices involving conflict of interests by public procurement officials. In recent times Defence deals have been under the scanner.

References:
www.india-defence.com/reports-3213;
<table>
<thead>
<tr>
<th>Score</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>100</td>
<td>Regulations regarding conflicts of interest for procurement officials are aggressively enforced.</td>
</tr>
<tr>
<td>75</td>
<td></td>
</tr>
<tr>
<td>50</td>
<td>Conflict of interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from regulations.</td>
</tr>
<tr>
<td>25</td>
<td></td>
</tr>
<tr>
<td>0</td>
<td>Conflict of interest regulations do not exist, or are consistently ineffective.</td>
</tr>
</tbody>
</table>

48d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
</table>

**Comments:**
Yes, this is done by the Central Vigilance Commission, Enforcement Directorate and the Lok Ayuktas (State level ombudsman), where they exist.

**References:**
www.cvc.nic.in;
www.lokayukta.kar.nic.in

**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.

48e. In law, major procurements require competitive bidding.

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
</table>

**Comments:**
There is an open tendering process, which has been made more transparent by being placed on the internet. Each department which is involved in procurement is required to float tenders and delineate a transparent process by which the procurement contract is finally awarded.

**References:**
www.cvc.nic.in
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).

48f. In law, strict formal requirements limit the extent of sole sourcing.

YES | NO

Comments:
The rules of procedures clearly mention that sole sourcing would be discouraged.

References:
Rules of Procedure for Tendering and Contracting

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.

48g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

YES | NO

Comments:
They have recourse to appeals to tribunals within the framework of law. They can also approach the judicial process.

References:
Rules of Internal 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.

48h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.
**Comments:**
Yes, they can approach the court of law after exhausting internal mechanisms provided.

**References:**
Rules of Internal Procedure

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**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.

---

48i. 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:**
Web sites of concerned ministries:
www.nic.in

---

**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.

---

48j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

---

**Comments:**
There have been a few cases of officials circumventing procedures. A few cases are listed above.

**References:**
www.hindu.com/2007/05/28/stories/2007052807300500.htm;
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.

49. Can citizens access the public procurement process?

83

49a. In law, citizens can access public procurement regulations.

YES | NO

Comments:
Most procurement procedures are on the Web sites of the concerned departments. The rest can be accessed through the use of the Right to Information.

References:
www.nic.in

YES: A YES score is earned if procurement rules are, by law, open to the public. These regulations are defined here as the rules governing the competitive procurement process.

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

49b. In law, the government is required to publicly announce the results of procurement decisions.

YES | NO

Comments:
These are announced on the Web site or through press releases.
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.

49c. In practice, citizens can access public procurement regulations within a reasonable time period.

| 100 | 75 | 50 | 25 | 0 |

Comments:
The procurement norms and manuals vary from ministry to ministry. The Web site of the concerned ministries contain the details which can be accessed.

References:
Web sites of ministries:
www.nic.in;
http://www.divest.nic.in/tenderopt.htm

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. These records are defined here as the rules governing the competitive procurement process.

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.

49d. In practice, citizens can access public procurement regulations at a reasonable cost.

| 100 | 75 | 50 | 25 | 0 |

Comments:
The procedure would vary from department to department. I have listed the Web site of the Department of Disinvestment as an example.
References:
Web sites of concerned ministries:
www.nic.in;
http://www.divest.nic.in/tenderopt.htm

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. These records are defined here as the rules governing the competitive procurement process.

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.

49e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

References:
Government department Web sites:
www.nic.in

100: There is a formal process of advertising public procurements. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

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. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising major public procurements or the process is superficial and ineffective.

49f. 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.
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.

---

IV-4. Privatization

50. Is the privatization process effective?

92

50a. In law, all businesses are eligible to compete for privatized state assets.

YES | NO

References:
http://www.divest.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.

50b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.
Civil Service Rules do not allow a government official to have a personal stake in any transaction involving privatization of government assets.

**References:**
Civil Service Conduct Rules
www.persmin.nic.in/

**YES:** A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for privatization officials. A YES score is earned if such regulations cover all civil servants, including privatization officials.

**NO:** A NO score is earned if there are no such formal regulations.

In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

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

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

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

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. These include the privatization of government-owned hotels (Web site mentioned) or the privatization of NALCO (second largest primary aluminium producer in India) and the like.

**References:**
www.keralamonitor.com/kovalamjiji.htm;
www.hinduonnet.com/fline/fl1825/18251160.htm;
www.outlookindia.com/pti_coverage.asp?gid=26;
www.hinduonnet.com/fline/fl1806/18060280.htm

51. Can citizens access the terms and conditions of privatization bids?
51a. In law, citizens can access privatization regulations.

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:
http://www.divest.nic.in/

YES: A YES score is earned if privatization rules (defined here as the rules governing the competitive privatization process) are, by law, open to the public. Even if privatization is infrequent or rare, the most recent privatization should be used as the basis for scoring this indicator.

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

51b. In practice, privatizations are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:
Yes, it is advertised both in the press and on the department Web site.

References:
http://www.divest.nic.in/

100: There is a formal process of advertising privatizations. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some privatizations may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising privatizations or the process is superficial and ineffective.

51c. In law, the government is required to publicly announce the results of privatization decisions.
The procedures of disinvestment/privatization require such disclosures.

References:
http://www.divest.nic.in/

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.

51d. In practice, citizens can access privatization regulations within a reasonable time period.

Comments:
Yes, they are accessible on the Department Web site.

References:
www.divest.nic.in/;
http://www.divest.nic.in/tenderopt.htm;
www.divest.nic.in/guidelines/muladv.htm;
www.divest.nic.in/maruti.htm

100: Records (defined here as the rules governing the competitive privatization process) 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.

51e. In practice, citizens can access privatization regulations at a reasonable cost.
Comments:
It is available on the internet and can also be purchased at a reasonable price.

References:
http://www.divest.nic.in/

100: Records (defined here as the rules governing the competitive privatization process) 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. National Ombudsman

52. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

0

52. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

Comments:
Several attempts have been made to pass legislation to create a national ombudsman-like authority, but they have not met with success (the efforts began in 1969). Such an authority exists at the state-level in several, but not all, states.
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.

53. Is the national ombudsman effective?

0

53a. In law, the ombudsman is protected from political interference.

YES | NO

Comments:
This is not applicable, as the discussion is on a national level ombudsman.

References:
www.lawmin.nic.in

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.

53b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:
This is not applicable, as there is no national level ombudsman.

References:
www.lawmin.nic.in
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.

53c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

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

Comments:
This is not applicable, as there is no national level ombudsman.

References:
www.lawmin.nic.in

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.

53d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

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

Comments:
This is not applicable, as there is no national level ombudsman.
References:
www.lawmin.nic.in

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.

53e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:
This is not applicable, as there is no national level ombudsman.

References:
www.lawmin.nic.in

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.

53f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:
This is not applicable, as there is no national level ombudsman.
References:
www.lawmin.nic.in

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.

53g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

Comments:
This is not applicable, as there is no national level ombudsman.

References:
www.lawmin.nic.in

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.

53h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:
This is not applicable, as there is no national level ombudsman. In some states, the Lok Ayuktas can initiate investigations. The Lok Ayukta functions as state-level ombudsman.
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.

53i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:
This is not applicable, as there is no national level ombudsman. The state level ombudsman bodies can initiate investigations but not impose penalties.

References:
www.lawmin.nic.in

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.

53j. In practice, the government acts on the findings of the ombudsman agency (or agencies).
Comments:
This is not applicable, as there is no national level ombudsman.

References:
www.lawmin.nic.in

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.

53. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

Comments:
This is not applicable, as there is no national level ombudsman.

References:
www.lawmin.nic.in

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.

54. Can citizens access the reports of the ombudsman?
54a. In law, citizens can access reports of the ombudsman(s).

YES | NO

Comments:
This is not applicable, as there is no national level ombudsman. The state level ombudsman authorities have Web sites where the reports can be accessed.

References:
www.lawmin.nic.in

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.

54b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:
This is not applicable, as there is no national level ombudsman. The state level ombudsman have Web sites and the reports can be accessed there.

References:
www.lawmin.nic.in

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.

54c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.
Comments:
This is not applicable, as there is no national level ombudsman. The reports of the state level ombudsman can be accessed on the internet.

References:
www.lawmin.nic.in

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

55. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

55. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

YES | NO

Comments:
These are the Comptroller and Auditor General of India.

References:
Articles 148 to 151 of the constitution
56. Is the supreme audit institution effective?

94

56a. In law, the supreme audit institution is protected from political interference.

Comments:
The constitution guarantees the independence of the Comptroller and Auditor General of India.

References:
Articles 148 to 151 of the constitution

56b. In practice, the head of the audit 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:
Articles 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.

56c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:
Yes, they have a full time staff. The senior officers working under the CAG are drawn from the Indian Audit and Accounts Service.

References:
www.cag.nic.in

56d. In practice, audit 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. They have demonstrated this independence on several occasions and this is reflected in the nature of the audit reports they have prepared.

References:
www.cag.nic.in

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:
Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

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.

In practice, the audit agency receives regular funding.

Article 148 states that the salaries and other benefits linked to the CAG’s office are charged on the Consolidated Fund of India and are thus non-votable.

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.

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.

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

In practice, the audit agency makes regular public reports.

The CAG submits an annual report to the president who then passes it onto the legislature. The reports are also available to the public to scrutinize.

The agency makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.
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.

56g. In practice, the government acts on the findings of the audit agency.

Comments:
The audit reports are further examined by the Public Accounts Committee, which then 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:
www.southasianmedia.net/index_opinion.cfm?category=Civil%20Society&country

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.

56h. In practice, the audit agency is able to initiate its own investigations.

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:
www.cag.nic.in
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.

57. Can citizens access reports of the supreme audit institution?

100

57a. In law, citizens can access reports of the audit agency.

YES | NO

Comments:
Citizens can easily access the reports in print and electronic form.

References:
www.cag.nic.in;
www.parliamentofindia.nic.in

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.

57b. 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 onto the Parliament) they are made available for public scrutiny.
<table>
<thead>
<tr>
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### Comments:
The reports are available at reasonable rates and can be purchased or read in public libraries and also accessed on the internet.

### References:
www.parliamentofindia.nic.in;

www.cag.nic.in
58. In law, is there a national tax collection agency?

100

58. 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 are the Central Board of Excise and Customs (CBEC) and the Central Board of Income Tax.

References:
www.finmin.nic.in/

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.

59. Is the tax collection agency effective?

100

59a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:
Yes, they have a full-time, professional staff.

References:
http://finmin.nic.in/

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

59b. In practice, the tax agency receives regular funding.

| 100 | 75 | 50 | 25 | 0 |

Comments:
It is laid out in the budget of the Finance Ministry.

References:
www.finmin.nic.in/

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.

60. In practice, are tax laws enforced uniformly and without discrimination?

75

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. The government maintains that given the manner in which the Appelate Tribunals are created there is no room for nepotism, corruption and favoritism.

References:
itat.nic.in/Accolades.htm;
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.

61. In law, is there a national customs and excise agency?

100

61. In law, is there a national customs and excise agency?

YES | NO

Comments:
Central Board of Excise and Customs (CBEC) is a part of the Department of Revenue under the Ministry of Finance. It deals with the tasks of formulation of policy concerning levy and collection of Customs and Central Excise duties, prevention of smuggling and administration of matters relating to Customs, Central Excise and Narcotics to the extent under CBEC’s purview. The board is the administrative authority for its subordinate organizations, including Custom Houses, Central Excise Commissionerates and the Central Revenues Control Laboratory.

References:
www.finmin.nic.in/the_ministry/dept_revenue/cbec/index.html

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.

62. Is the customs and excise agency effective?

100

62a. In practice, the customs and excise agency has a professional, full-time staff.
Comments:
They have a full-time, professional staff drawn from the Indian Revenue Service.

References:
www.finmin.nic.in/the_ministry/dept_revenue/cbec/index.html

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.

62b. In practice, the customs and excise agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:
It is included as part of the budgetary provisions for the Ministry of Finance.

References:
www.finmin.nic.in/the_ministry/dept_revenue/cbec/index.html

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.

63. In practice, are customs and excise laws enforced uniformly and without discrimination?

75
63. In practice, are customs and excise laws enforced uniformly and without discrimination?

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 businesses, which have been reported both in the media and by the audit department.

References:
www.finmin.nic.in/the_ministry/dept_revenue/cbec/index.html;
www.irb-cisr.gc.ca/en/research/publications/index_e.htm?cid=0&docid=292 -;
www.indianexpress.com/res/web/ple/e/daily/19990702/ige02045.html;

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. State-Owned Enterprises

64. In law, is there an agency or equivalent mechanism overseeing state-owned companies?

100

64. In law, is there an agency or equivalent mechanism overseeing state-owned companies?

YES | NO
If we survey the state-owned companies, they would be those under the direct control of the federal government, those under the state government, those managed and controlled by both. The state-owned companies function under the overall direction of the ministry that they come under. There is also a federal ministry for Public Enterprises. Its is given the responsibility of a) coordination of matters of general policy of non-financial nature affecting all public sector industrial and commercial undertakings; b) matters relating to Memorandum Of Understanding mechanism of improving the performance of Public Sector Undertakings; c) matters relating to Permanent Machinery of Arbitration for the Public Sector Enterprises; d) counselling, training and rehabilitation of employees in Central Public Sector Undertakings under Voluntary Retirement Scheme.

References:
www.dpe.nic.in/

**YES:** A YES score is earned if there is an agency or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. State-owned companies are defined as companies owned in whole or in part by the government.

**NO:** A NO score is earned if this function does not exist.

65. Is the agency or equivalent mechanism overseeing state-owned companies effective?

60

65a. In law, the agency or equivalent mechanism overseeing state-owned companies is protected from political interference.

**YES** | **NO**

Comments:
In theory, the Bureau of Public Enterprises which oversees the functioning of the state-owned companies is free of political interference. The developments in actual practice will be discussed in another section.

References:
www did.nic.in

**YES:** A YES score is earned only if the agency or equivalent mechanism has some formal operational 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 or equivalent mechanism is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

65b. In practice, the agency or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

100 | 75 | 50 | 25 | 0
The agency which oversees the working of Public Enterprises is the Bureau of Public Enterprises. This is today made a part of the Ministry of Industrial Development and is frequent witness to appointments made on political considerations. It has often been argued that if state-owned companies are not working as efficiently as they should, it is due to the unprofessional approach adopted by their management.

References:
www.did.nic.in

| 100: The agency or equivalent mechanism has staff sufficient to fulfill its basic mandate. |
| 75: |
| 50: The agency or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate. |
| 25: |
| 0: The agency or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate. |

65c. In practice, the agency or equivalent mechanism overseeing state-owned companies receives regular funding.

| 100 | 75 | 50 | 25 | 0 |

Comments:
They receive funding as part of the budgetary provisions made for the ministry they are a part of.

References:
www.did.nic.in

| 100: The agency or equivalent mechanism 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 equivalent mechanism 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. |

65d. In practice, when necessary, the agency or equivalent mechanism overseeing state-owned companies independently initiates investigations.
**Comments:**
This happens very rarely because of the excessive control exercised by the government.

**References:**
www.blonnet.com/2005/06/03/stories/2005060300250800.htm – 29k –

<table>
<thead>
<tr>
<th>100: When irregularities are discovered, the agency or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.</th>
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<tr>
<td>75:</td>
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<tr>
<td>50: The agency or equivalent mechanism 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.</td>
</tr>
<tr>
<td>25:</td>
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<tr>
<td>0: The agency or equivalent mechanism 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.</td>
</tr>
</tbody>
</table>

65e. In practice, when necessary, the agency or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

| 100 | 75 | 50 | 25 | 0 |

**Comments:**
This happens very rarely, as imposing punishments/penalties is done by the government.

**References:**
www.cag.nic.in;
www.parliamentofindia.nic.in

<table>
<thead>
<tr>
<th>100: When rules violations are discovered, the agency or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.</th>
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<tbody>
<tr>
<td>75:</td>
</tr>
<tr>
<td>50: The agency or equivalent mechanism 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.</td>
</tr>
</tbody>
</table>
0: The agency or equivalent mechanism 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 partisan in its application of power.

66. Can citizens access the financial records of state-owned companies?

95

66a. In law, citizens can access the financial records of state-owned companies.

YES | NO

Comments:
Citizens can access the reports of state-run companies as they are incorporated in the budget documents. Further, the CAG audits the accounts of these companies and the report is part of the audit report. There is a parliamentary committee called the Committee on Public Undertakings (CPU), which reviews the audit report and the annual report of the companies.

References:
www.cag.nic.in;
www.parliamentofindia.nic.in

YES: A YES score is earned if the financial information of all state-owned companies is required by law to be public. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if any category of state-owned company is exempt from this rule, or no such rules exist.

66b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | 50 | 25 | 0

Comments:
It is mandatorily prepared for every fiscal year.

References:
www.cag.nic.in

100: State-owned companies always disclose financial data, which is generally accurate and up to date.
50: State-owned 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.

66c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

100 | 75 | 50 | 25 | 0

Comments:
The CAG lays down the procedure for the maintenance of accounts and also the conduct of the audit.

References:
www.cag.nic.in

100: Financial records of all state-owned companies are regularly audited by a trained third party auditor using accepted international standards.

75:

50: Financial records of state-owned 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: State-owned 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.

66d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:
The reports of the agencies contain records which can be accessed reasonably easily.

References:
www.cag.nic.in

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.

66e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

Comments:
A few of the state-owned companies have their own Web sites from which these records can be accessed. Or else they could be accessed from the audit reports. The costs would involve only internet access costs in case of those companies that have a Web site. Under the Right to Information Act, a person could write to a public sector company and seek its financial records. The same could be procured for less than US$5.

References:
www.cag.nic.in

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.

85

V-5. Business Licensing and Regulation

67. Are business licenses available to all citizens?

81

67a. In law, anyone may apply for a business license.
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.

67b. In law, a complaint mechanism exists if a business license request is denied.

YES | NO

References:
Companies Act

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.

67c. 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

Comments:
There are procedures involved. Some feel that they are too cumbersome.

References:
Company Act;

www.mca.gov.in;


www.thehindubusinessline.com/2007/02/22/stories/2007022203600100.htm
Licenses are not required, or licenses can be obtained within roughly one week.

Licensing is required and takes around one month. Some groups may be delayed up to a three months.

Licensing takes more than three months for most groups. Some groups may wait six months to one year to get necessary licenses.

In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

The formal cost may often be less threatening as the informal costs in the form of bribes and speed money. This may still be a legacy of the ‘control raj’, the vestiges which still continue in some ways, if not in laws and regulations but at least in attitudes.

References:
www.business-anti-corruption.com/normal;
www.rru.worldbank.org/Discussions/Discussion

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.

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.

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

Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.
YES  |  NO

Comments:
The law prescribes the public health standard clearly. It is not as categorical when it comes to its applicability in practice.

References:
Web site of the concerned ministries/ departments:
www.nic.in

YES: A YES score is earned if basic regulatory requirements for meeting public health standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

68b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

YES  |  NO

Comments:
The law prescribes the standards but they are often breached. Today new projects require the clearance of the Ministry of Environment.

References:
www.envfor.nic.in/

YES: A YES score is earned if basic regulatory requirements for meeting public 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.

68c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

YES  |  NO

Comments:
Yes, they are, but they are not often fully implemented. The Health and Labor Ministries Web sites outline those standards.
YES: A YES score is earned if basic regulatory requirements for meeting public safety standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

69. Does government effectively enforce basic health, environmental, and safety standards on businesses?

33

69a. In practice, business inspections by government officials to ensure public health standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:
In practice, there have been complaints about extra-constitutional/legal means of influencing decision-making in this regard. There is a tremendous element of subjectivity in determining the correctness or otherwise the fulfillment of the standards.

References:
www.timesofindia.com;
www.deccanherald.com

100: Business inspections by the government to ensure that public health standards are being met 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 to ensure public health standards are met 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 to ensure that public health standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

69b. In practice, business inspections by government officials to ensure public environmental standards are being met are carried out in a uniform and even-handed manner.
Comments:
In practice, many would argue that there is a creative subjectivity in interpreting these norms and this leaves a lot of space for corruption and misuse.

References:
www.cpcb.nic.in/oldwebsite//Inspection/ch60503.htm;

100: Business inspections by the government to ensure that public environmental standards are being met 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 to ensure public environmental standards are met 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 to ensure that public environmental standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

69c. In practice, business inspections by government officials to ensure public safety standards are being met are carried out in a uniform and even-handed manner.

Comments:
A former chief vigilance commissioner in India is on record saying that the plethora of rules alone when seen in isolation would make India seem like a 'haven of correctness'. A moment into the application brings out the reality. The public safety standards are quite strict but then are given the go by. A classical example in India would be the regularizing of irregular constructions, which violate all safety and health norms.

References:
cvc.nic.in/vscvc/cvcspeeches/sp10sep01.pdf;
www.india-today.com/itoday/20000731/states2.html -;
www.staging.unchs.org/programmes/ump/documents/wp6

100: Business inspections by the government to ensure that public safety standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:
Business inspections by the government to ensure public safety standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

Business inspections to ensure that public safety standards are met are routinely carried out by government officials 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. Anti-Corruption Law

70. Is there legislation criminalizing corruption?

100

70a. 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.

References:
Prevention of Corruption act;
www.cvc.nic.in

YES: A YES score is earned if corruption laws include attempted acts.

NO: A NO score is earned if this is not illegal.

70b. In law, extortion is illegal.

YES | NO
The Indian Penal Code defines extortion and all forms of extortion are illegal.

**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.

70c. In law, offering a bribe (i.e. active corruption) is illegal.

**YES | NO**

**Comments:**
The Prevention of Corruption Act and Indian Penal Code are clear in defining what is an act of corruption, and bribery is very much in that domain.

**References:**
Indian Penal Code;
Prevention of Corruption Act

**YES:** A YES score is earned if offering a bribe is illegal.

**NO:** A NO score is earned if this is not illegal.

70d. In law, receiving a bribe (i.e. passive corruption) is illegal.

**YES | NO**

**Comments:**
Yes, it is considered corruption.

**References:**
Prevention of Corruption Act;
Indian Penal Code;
www.cvc.nic.in
YES: A YES score is earned if receiving a bribe is illegal.

NO: A NO score is earned if this is not illegal.

YES | NO

70e. In law, bribing a foreign official is illegal.

Comments:
Section 7 and 11 of the Prevention of Corruption Act clearly state that it is illegal. The entire Bofors controversy in India involves alleged bribing of a foreign official. This has been the bone of contention in many recent Defence deals also.

References:
Section 7/11 of the Prevention of Corruption Act;
www.cvc.nic.in

YES: A YES score is earned if bribing a foreign official is illegal.

NO: A NO score is earned if this is not illegal.

YES | NO

70f. In law, using public resources for private gain is illegal.

Comments:
Section 13 of the Prevention of Corruption Act states that using public resource for private gain is illegal and amounts to corruption.

References:
Prevention of Corruption Act
www.cvc.nic.in

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.

YES | NO

70g. In law, using confidential state information for private gain is illegal.
<table>
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<tr>
<th></th>
<th>YES</th>
<th>NO</th>
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<tbody>
<tr>
<td><strong>Comments:</strong></td>
<td>The Official Secrets Act and Prevention of Corruption Act state that using confidential state information for private gain is illegal.</td>
<td></td>
</tr>
<tr>
<td><strong>References:</strong></td>
<td><a href="http://www.cvc.nic.in">www.cvc.nic.in</a></td>
<td></td>
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</tbody>
</table>

| 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. |

| 70h. In law, money laundering is illegal. |
| YES | NO |

| **Comments:** | The Prevention of Money Laundering Act, 2002 clearly defines using confidential information for private gain as illegal. |
| **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. |

| 70i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal. |
| YES | NO |

| **Comments:** | The Indian Penal Code clearly states that conspiracy to commit a crime is illegal and punishable under the law. |
| **References:** | Indian Penal Code |

| YES: A YES score is earned if organized crime is illegal. |
VI-2. Anti-Corruption Agency

71. 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:
www.cvc.nic.in

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.

72. Is the anti-corruption agency effective?

89

72a. In law, the anti-corruption agency (or agencies) is protected from political interference.

YES | NO

Comments:
It is increasingly so today. A visit to the Central Vigilance Commission (CVC) would be indicative of the autonomy the office enjoys in recent times. This has also got to do with judicial activism. The same cannot be said of other anti-corruption agencies within the system.
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.

72b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

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<tr>
<th>Score</th>
<th>Description</th>
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<tbody>
<tr>
<td>100</td>
<td>Yes</td>
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<td>75</td>
<td>Yes</td>
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<td>50</td>
<td>Yes</td>
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<td>25</td>
<td>Yes</td>
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Comments:
The CVC as a body has more or less evoked a high degree of public trust in its impartiality and apolitical nature. There have been rare cases of complaints that the institution is not able to do much to withstand political pressures under agencies it oversees. Also, the capacity of the institution to resist those pressures is associated with the individual who heads the institution.

References:
www.cvc.nic.in

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.

72c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

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<th>Score</th>
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<tr>
<td>100</td>
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<td>Yes</td>
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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 misbehavior 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:
www.cvc.nic.in;

Interview with CVC

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<tr>
<td>The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.</td>
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| 72d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria. |

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):
Would have given a score of `100` if there was not so much of an emphasis on a bureaucratic background.

References:
www.cvc.nic.in

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<th>75</th>
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<th>25</th>
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<tbody>
<tr>
<td>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.</td>
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</table>

| Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however. |

| 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. |
72e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:
The agencies have professional, full-time staff.

References:
www.cvc.nic.in

72f. In practice, the anti-corruption agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:
The Central Vigilance Commission Act 2003, Section 13 states that 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:
www.cvc.nic.in

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.
72g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

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

Comments:
The agencies submit reports to the government and often publish them on their Web sites.

References:
www.cvc.nic.in

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.

72h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

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

Comments:
It has wide-ranging powers. However, many would argue that it needs to be made more visible and it needs to be more proactive.

References:
www.cvc.nic.in

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.
72i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

Comments:
Depending on the nature of the case, the Central Vigilance Commission (CVC) can direct the CBI or the income tax department to investigate and send it a report on a particular case. Many would feel that the CVC should be given a more independent role of initiating action.

References:
www.cvc.nic.in

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.

73. Can citizens access the anti-corruption agency?

63

73a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

Comments:
Citizens can lodge complaints to the Central Vigilance Commission (CVC). The procedures can be very complicated and the process of investigation can be very time-consuming and counter-productive.

References:
www.cvc.nic.in;

www.hindu.com/2005/06/16/stories/2005061612270400.htm;
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.

73b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

Comments:
The identity of the complainant can be protected by the Central Vigilance Commission (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:
www.cvc.nic.in

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.

VI-3. Rule of Law

84

74. Is there an appeals mechanism for challenging criminal judgments?
74a. In law, there is a general right of appeal.

**YES** | **NO**

**Comments:**
Article 134 of the constitution read in consonance with Section 374 of the Criminal Procedure Code

**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.

74b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**
The judicial process grinds ever so slowly that many believe that the injustice that they suffer while waiting for justice is more intense than the injustice for which they wish to approach the court. Recent amendments were introduced to the Criminal Law Process to speed up the justice delivery mechanisms. They are yet to operationalized.

**References:**
www.lawmin.nic.in;

www.supremecourtofindia.nic.in

**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.
In practice, citizens can use the appeals mechanism at a reasonable cost.

**Comments:**
The costs can be quite high given the need for professional support and the long delays in the judicial procedures/processes. Many celebrated cases in recent times have taken over a decade to reach the state of final conviction—The case involving the Mumbai blasts, the Uphaar Tragedy case, the Jessica Lal Murder case are a few that can be cited in this regard. A recent speech made by the chief justice of India draws attention to this point:

Various factors contribute to large pendency of criminal cases in the subordinate courts. Speedy trial of criminal cases should be recognized as an urgent need of the present judicial system in order to decide the fate of lakhs of litigants. It will help enhance the faith of general public in the present judicial system. In order to have a strong socio-economic system, it is important that each and every state of trial of an accused should move at a reasonably fast pace. In many cases, the accused is the head of a family and is the only breadwinner; his responsibility is also towards the large family left behind him. It is not only the accused but also other members of his family who suffer because of delays in trial. Speedy trial ensures that a society is free of such vices. In many cases, large number of persons are arrested and kept in custody. It is said that a large percentage of jail population is under-trial prisoners. Arrest of an accused originally was a mechanism for bringing the suspects before the magistrate so that their cases could be decided. This was the only coercive power possessed by the police. In reality, of course, warrants were issued on the basis of information provided by the police, but at least some information was required. But gradually it was replaced by summary arrest, that is, arrest without warrant on reasonable suspicion for arrest. Unless the pending cases are disposed of as quickly as possible in the present scenario, we would not be able to free our jails from large number of under-trial prisoners. The new system of plea bargaining incorporated in the Criminal Procedure Code shall be available to the under-trial prisoners and the court and the prosecuting agency and the lawyers should make them aware of the benefits of the benevolent provision incorporated in our statute. (*Entire text [www.supremecourtofindia.nic.in/new_links/ILI-17.3.07.doc](http://www.supremecourtofindia.nic.in/new_links/ILI-17.3.07.doc)*)

**References:**

[www.legalservicesindia.com/articles/bar](http://www.legalservicesindia.com/articles/bar);

[www.supremecourtofindia.nic.in/new_links/ILI-17.3.07.doc](http://www.supremecourtofindia.nic.in/new_links/ILI-17.3.07.doc)

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.

75. In practice, do judgments in the criminal system follow written law?
Comments:
It normally does follow written laws, procedures and precedents.

References:
www.supremecourtofindia.nic.in;
www.lawmin.nic.in

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.

76. In practice, are judicial decisions enforced by the state?

75

Comments:
By and large court judgments are enforced by the state even when those judgments go against high state authorities. In recent times, the Supreme Court has initiated contempt proceedings against senior officials for having wilfully disregarded the directives of the court. It can be argued that authorities often seek refuge under the provisions of some procedural loophole or limitation to delay action.

References:
www.lawmin.nic.in;
www.humanrights.in

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:
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.

Judicial decisions are often ignored. The state lacks the will or capacity to consistently enforce these decisions.

77. Is the judiciary able to act independently?

77a. In law, the independence of the judiciary is guaranteed.

YES | NO

Comments:
The independence of the judiciary is guaranteed in terms of the manner of the appointment of judges, the protection of the service conditions and a removal by a process of impeachment (High Court and Supreme Court judges). Many would still argue that the judiciary is not fully insulated from the political process and judges at times appear to be sensitive to political cues. But overall, the independence of the judiciary is generally accepted as a positive element of the system.

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.

77b. In practice, national-level judges are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:
On the face of it, there is not much evidence that goes to show that judges are susceptible to political pressures. 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. This is not spoken about in the open often because of fears of violation of `privilege` and contempt of the court. It is in this context that there is a demand for the establishment of a National Judicial Commission to oversee the functioning of the judiciary and to `guard the guardian`.

References:
Articles 121, 124, 125 and 146 of the constitution.
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.

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.

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.

In law, there is a transparent and objective system for distributing cases to national-level judges. This is determined by court procedures laid down by the chief justice.

References:
www.supremecourtofindia.nic.in

In law, national-level judges are protected from removal without relevant justification.

There are detailed provisions for impeaching a judge. The method also ensures that the provisions are not misused. A judge can be impeached on grounds of proved misbehavior or professional incompetence. The procedure ensures that the concerned judge is given a fair hearing. In the last six decades, there was an attempt to impeach only one judge (for his actions as the chief justice of a High Court) and this fell through at quite an advanced stage of the proceedings.

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.

78. Are judges safe when adjudicating corruption cases?

100

78a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

YES | NO

Comments:
No judge has been harmed for adjudicating a corruption case. There have been cases of judges having been allegedly transferred for adjudicating cases involving corruption of those in influential positions. The case of Justice Shethna of the Gujarat High Court who resigned in protest can be cited in this regard. Justice B J Shethna, in his letter to the president, reportedly stated that he was shocked by his transfer and said he was being victimised for exposing corruption in higher judiciary*

References:
www.timesofindia.indiatimes.com/articleshow/1889253

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. YES is a positive score.

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.

78b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

YES | NO

Comments:
No judge has been reportedly killed for having investigated a corruption case.

References:
www.supremecourtofindia.nic.in;
www.nhrc.nic.in

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. YES is a positive score.
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.

79. Do citizens have equal access to the justice system?

64

79a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

Comments:
By and large decisions have not been affected by caste/religious considerations. There is a feeling among the socially underprivileged that the legal system has not been fully fair to them. More recently in the aftermath of communal riots in the state of Gujarat, the minority community (Muslims) did express apprehensions of being given justice by the lower courts in view of the political pressures they would be subjected to and pleaded for a trial outside the state. The National Human Rights Commission has often intervened on these matters.

References:
www.supremecourtofindia.com;
www.nhrc.nic.in

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.

79b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

Comments:
Generally, women have less frequently than men approached the courts. It may be linked to the social system and the continued male-dominated nature of power relationships within the family and society. Women's organizations have often argued that women are at a disadvantage in judicial proceedings especially when it involves cases of dowry harassment/ dowry death/ rape. The National Women's Commission has been taking up such cases.
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. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

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. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

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. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

79c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

| YES | NO |

Comments:
It is mandatory on the part of the state to provide legal support.

References:
www.supremecourtofindia.nic.in

YES: A YES score is earned if the government is required by law to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

NO: A NO score is earned if there is no legal requirement for the government to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

79d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.
While the state does provide legal aid to those who cannot afford to defend themselves, two points need to be made. Firstly, the quality of the help provided may not be of the high standards. Secondly, if the prosecution team is able to afford it, they may require the services of the best lawyers which places the defendant at an unfair disadvantage.

References:
www.nhrc.nic.in;
www.supremecourtofindia.com

100: State-provided legal aid is basic, but well-trained and effective in representing the rights of impoverished defendants.

75:

50: State-provided legal aid is available, but flawed. Legal aid may be unavailable to some impoverished 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 impoverished defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

79e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

Comments:
The judicial process is costly and painstakingly slow. It is often not the preferred means of seeking justice. As a result, it is often those with substantial financial means who approach the court system.

References:
www.vmslaw.edu;
www.legalserviceindia.com

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.

79f. In practice, a typical small retail business can afford to bring a legal suit.
The judicial process is costly and painstakingly slow. It is often not the preferred means of seeking justice. As a result, it is often those with substantial financial means who approach the court system. The costs of a legal suit are quite high and the delays in decision-making discourage people from filing a suit.

References:
www.vmslaw.edu;
www.legalserviceindia.com

In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance.

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.

The cost of engaging the legal system prevents small businesses from filing suits.

In practice, all citizens have access to a court of law, regardless of geographic location.

Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location.

Courts are unavailable to some regions without significant travel on the part of citizens.
80. Is the law enforcement agency (i.e. the police) effective?

50

80a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

Comments:
The elite among the law enforcement agencies belong to the prestigious All India service called the Indian Police Service. They are recruited on the basis of an all India competitive examination and are allotted to different states. These officers oversee the law enforcement agencies in the state. In each state, there are another set of officers to assist those belonging to the All India Service, who belong to the State Police Service. In some states, there have been complaints of nepotism, favoritism and corruption in their recruitment. These aberrations are more apparent at the lower levels of recruitment of the law enforcement agencies. These are the 'faces' of law enforcement that common citizens see on the ground and therefore the public confidence in law enforcement agencies is low (National Election Study Surveys/ World Values Survey).

References:
Article 312 of the constitution;
www.lokniti.org ( for NES )

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.

80b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.
Comments:
A major complaint of the law enforcement agency is the insufficient budgetary allocation both for recruitment of personnel and for purchase of necessary equipment. The report of the National Police Commission has also highlighted this point.

References:
www.lawmin.nic.in;
www.mha.gov.in/

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.

80c. In practice, the law enforcement agency is protected from political interference.

Comments:
The agency is increasingly subject to serious political interference as the political executive controls the transfers and postings of officers. The recent report of the Padmanabhaiah Committee also draws attention to this point.

References:
www.humanrightsinitiative.org/programs/aj/police/india/initiatives/analysis_padmanabhaiah;
www.humanrightsinitiative.org/programs/aj/police/india/initiatives/writ_petition_1.htm

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.
81. Can law enforcement officials be held accountable for their actions?

83

81a. 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 state level ombudsman – not present in all states). In practice it has been found that many Lok Ayuktas have limited powers of prosecution. Further, their role varies significantly across states. More often than not, it is the holder of the office who defines and determines the manner in which the Ombudsman functions. Citizens can also appeal to the National Human Rights Commission and the State Human Rights Commission. Complaints by women are often addressed to the Women’s Commission and the minorities have also approached the Minorities Commission.

References:
www.nhrc.nic.in;
www.nwc.nic.in;
www.nmc.nic.in

YES: A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions. A YES score is earned if a broader mechanism such as the national ombudsman, human rights commission, or anti-corruption agency has jurisdiction over the police.

NO: A NO score is earned if there is no such mechanism

81b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen’s complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:
It has been found that the law enforcement agency is not as responsive as it should be to complaints. The delays are often the by-product of too many procedures and also the fact that the agencies are overworked and understaffed. As of late, the media and citizen groups have been able to draw attention to complaints and forced the authorities to act. This happens in a few celebrated cases and those which gained visibility thanks to the media. It can be argued that in many other cases the delays can be excruciatingly long.

References:
www.nhrc.nic.in;
www.lawcommission.nic.in
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.

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.

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.

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, Women’s Commission, Minority 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. In a most recent judgment, the courts have held senior police officials guilty of killing two businessmen in Delhi on the grounds of mistaken identity. Another case in the media is the one alleging involvement of senior police officials in the death of an artist in Kolkata. Some would argue such cases of prosecution are few and far between.

References:
www.indiaenews.com/india/20071006/73891.htm;
www.milligazette.com/Archives/01082001/29.htm;

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 may be internal to the police department (provided it has a degree of independence, such as an internal affairs unit) or part of a broader national mechanism such as the national ombudsman, human rights commission, or anti-corruption agency.

NO: A NO score is earned if no such agency/entity exists.

In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

Comments:
It is now becoming increasingly frequent. The National Human Rights Commission and National Women’s Commission have been taking up investigations. However, final actions on the recommendations of these commissions need to be initiated by the government.
When irregularities are discovered, the agency/entity is aggressive in investigating government law enforcement officials or in cooperating with other investigative agencies.

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.

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.

In law, law enforcement officials are not immune from criminal proceedings.

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.

A NO score is earned if law enforcement enjoys any special protection from criminal investigation or prosecution.

In practice, law enforcement officials are not immune from criminal proceedings.

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. The challenge always lays in taking the proceedings to their logical conclusion – conviction and punishment.
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.