

Overall Score:

70 - Weak

Legal Framework Score:

86 - Strong

Actual Implementation Score:

55 - Very Weak

Category I. Civil Society, Public Information and Media

I-1. Civil Society Organizations

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

67

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

YES | NO

Comments:

Unless otherwise mentioned, law and policy for all kinds of civil society organizations (CSOs) are the same. No special laws exist for anti-corruption/good governance CSOs.

Under the Unlawful Activities (Prevention) Act, 1967 (http://www.mha.nic.in/pdfs/Unlawful_Activities_Prevention_Act1967.pdf), the Ministry of Home Affairs publishes a banned organizations list, declaring unlawful organizations and associations whose objective is unlawful activities as defined in the act. See a current list of unlawful organizations at http://www.mha.nic.in/uniquepage.asp?Id_Pk=292.

References:

Constitution of India;
Article 19 (1) All citizens shall have the right

(c) to form associations or unions;

(4) Nothing in sub-clause (c) shall affect the operation of any existing law in so far as it imposes, or prevents the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

<http://indiacode.nic.in/coiweb/welcome.html>

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:

This has to be an yes" because there is no ban on civil society organizations (CSOs) receiving foreign funding, but such funding is regulated. A CSO registered with the Ministry of Home Affairs needs only to submit information on the details of foreign funding received and the source every year, post facto. An unregistered CSO must get prior permission each time it wants to receive foreign funds. Political parties are barred from receiving foreign funds. There are no regulatory restrictions for receiving domestic funding.

References:

The Foreign Contribution Regulation Act, 1976, regulates acceptance and utilization of foreign contributions and hospitality by certain persons and associations.
http://www.mha.nic.in/pdfs/fcra_act.pdf

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:

Laws enabling the formation of civil society organizations (CSOs), such as the Societies Registration Act, 1860, the Indian Trusts Act and Section 25 of the Companies Act, are just legal instruments of their formation and rules of association. While these laws require maintaining annual financial audits, making them public is not mandatory.

References:

There are no laws requiring public disclosure of sources of funding. Disclosure to the government is required under the Foreign Contribution Regulation Act, 1976, for foreign funding received and is required for the purpose of auditing the accounts of the organization.

http://www.mha.nic.in/pdfs/fcra_act.pdf

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.

100 | 75 | 50 | 25 | 0

Comments:

While it can be said that forming a new nongovernmental organization (NGOs) is not difficult, government policies may make it difficult for smaller civil society organizations to sustain themselves. One particular area of pressure is the Foreign Contribution Regulations Act, which regulates foreign funds to NGOs. The other barrier is the tax policy, which can impose an additional burden or be used as a weapon to harass.

References:

Freedom House, Global Freedom of Association Score by Region from Freedom in the World for the Year 2007, in Descending Order. Optimal Score is 12. India is 10.

http://www.freedomhouse.org/uploads/2008_11_14_FOA_Report.pdf

NGO Partnership System, Planning Commission of India, <http://planningcommission.nic.in/news/ColourAdvtVAC.pdf>

Stifling dissent and debate," Praful Bidwai, Frontline, Volume 16, Issue 22, Oct. 23 Nov. 5, 1999, <http://www.thehindu.com/fline/fl1622/16221000.htm>

"Manmohan urged to reconsider FCR Bill," The Hindu, April 10, 2008, <http://www.thehindu.com/2008/04/10/stories/2008041055741200.htm>

"Taxing time for non-profit sector," by Rajesh Tandon, Business Standard, August 23, 2009

India Restricts NGO Meetings, Human Rights Features, Sept. 20, 1999, <http://www.hrdc.net/sahrdc/hrfeatures/HRF07.htm>

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.

100 | 75 | 50 | 25 | 0

Comments:

In recent years, civil society engagement to pass the Right to Information Act, 2005, and the National Rural Employment Guarantee Scheme, has been a welcome sign of the government's willingness to involve civil society in policy making. In the second phase of these legislative/policy initiatives, civil society is engaging with the government to ensure the policies' effective implementation.

The willingness of the government to take civil society seriously is also evident in the Planning Commission of India's National Policy on the Voluntary Sector 2007 and the NGO Partnership System, which seeks to bring about greater partnership between government and the voluntary sector and foster better transparency, efficiency and accountability. So far, civil society has largely been a facilitator for antipoverty government projects at the grassroot level.

Transition to a direct political involvement by any successful" civil society organization/movement has not quite happened except in the most recent elections, which saw the Lok Satta party win a seat in the Andhra Pradesh state legislature; many of Lok Satta's contestants returned with a fair amount of vote share.

References:

A Social Duet in the Sun," Smita Gupta, Outlook Magazine, Dec. 11, 2006, <http://www.outlookindia.com/article.aspx?233367>

NGO Partnership System, Planning Commission of India, <http://planningcommission.nic.in/news/ColourAdvtVAC.pdf>

"Stifling dissent and debate," Praful Bidwai, Frontline, Volume 16, Issue 22, Oct. 23 Nov. 5, 1999, <http://www.thehindu.com/fline/fl1622/16221000.htm>

Lok Satta party, <http://www.loksatta.org/cms/>

"Are NGOs Going Bust?" Civil Society, May 2009, <http://www.civilsocietyonline.com/may09/may091.asp>

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

75:

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

25:

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

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

YES | NO

Comments:

No data were found of any anti-corruption civil society organization (CSO) being forced to shut down. It is not possible to shut down a CSO in India because CSOs are formed as societies or trusts or nonprofit companies, and can be wound up by the association of persons themselves. But it is possible that CSOs completely dependent on foreign funds may find themselves squeezed out of business if the government denies them permission to receive foreign funding. So far, the government has placed restrictions, such as revoking registration (a facility meaning that once registered with the government, the CSO need not seek prior permission for every case of foreign funding) of organizations of political and religious nature. Also the current recession may dry up funding sources and cause smaller nongovernmental organizations to cease functioning or give up on specific projects.

References:

Ministry of Home Affairs, <http://www.mha.nic.in/fcra.htm>

Are NGOs Going Bust?" Civil Society, May 2009, <http://www.civilsocietyonline.com/may09/may091.asp>

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. YES is a positive score.

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?

0

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

YES | NO

Comments:

There have been some reported incidents of threats and arrests of right to information (RTI) activists.

There was also one incident in which 11 RTI activists were arrested for disorderly conduct inside the court room of the Information Commission and kept in jail for day days. They were protesting the commission's apathy in ensuring proper implementation of the Right to Information Act, 2005.

References:

Gandhi's Monkeys," by Saikat Datta, Anuradha Raman, Outlook Magazine, <http://www.outlookindia.com/article.aspx?239874>

"Information Commission seeks report from Gov't over farmer s," Express News Service, June 12, 2009, <http://www.expressbuzz.com/edition/story.aspx?Title=Information+Commission+seeks+report+from+Govt+over+farmer%E2%80%99s&artid=5UeB126jplM=&SectionID=mvKkT3vj5ZA=&MainSectionID=>

"Eleven RTI activists held for rioting," Viju B, Times of India, May 20, 2009, <http://timesofindia.indiatimes.com/Cities/Eleven-RTI-activists-held-for-rioting/articleshow/4553598.cms>

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

References:

Rights activists assaulted in Panaji restaurant," The Times of India, Oct. 14 2008, <http://timesofindia.indiatimes.com/Cities/Goa/Rights-activists-assaulted-in-Panaji-restaurant/articleshow/3593672.cms>

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:

This was one reported case of the murder of an activist working on right to information. It's alleged that he had been asking the government difficult questions under the RTI Act relating to land mafias and was allegedly murdered by the mafia. The investigation is ongoing.

References:

Rowdy-sheeter nabbed for RTI activist's murder," Deccan Herald, Sept. 8, 2009 <http://www.deccanherald.com/content/23963/rowdy-sheeter-nabbed-rti-activists.html>

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?

88

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

YES | NO

References:

Article 19(1)(c) of the Constitution of India guarantees freedom to form associations and unions subject to reasonable restrictions under Article 19(4), <http://indiacode.nic.in/coiweb/welcome.html>

The Trade Unions Act, 1926, grants legal status to registered trade unions. Both labor and entrepreneurs may form trade unions. Trade unions are registered by the Registrar of Trade Unions located in different states.

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:

Political parties' control over trade unions has diminished over the years. The changing nature of business, the presence of multinational companies with different work cultures and interventions by courts banning strikes called by unions are factors contributing to trade unions' loss of voice. There have been two incidents in recent months of agitating workers killing senior management.

90% of India's workforce is in the informal or unorganized sector, which has no recourse to trade unions. This indicator is therefore marked for the 10% workforce that is employed by the formal sector.

References:

Freedom House, Global Freedom of Association Score by Region from Freedom in the World for the Year 2007, in Descending Order. Optimal Score is 12. India is 10, http://www.freedomhouse.org/uploads/2008_11_14_FOA_Report.pdf

Who is afraid of trade unions?" by Latha Jishnu, Business Standard, Sept. 12, 2009, <http://www.business-standard.com/india/news/latha-jishnu-who-is-afraidtrade-unions/369852/>

Annual Survey of Violations of Trade Union Rights 2009, ITUC-CSI-IGB, <http://survey09.ituc-csi.org/survey.php?IDContinent=3&IDCountry=IND&Lang=EN>

"Pricol VP s murder stuns industry," by V Balasubramanian, Economic Times, Sept. 24, 2009, <http://economictimes.indiatimes.com/news/politics/nation/Pricol-VPs-murder-stuns-industry/articleshow/5048625.cms>

100: Trade unions are common and are an important part of 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?

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

YES | NO

Comments:

Freedom of the media flows out of the right to free speech and is guaranteed under the Constitution of India. This right is subject to certain reasonable restrictions contained in Article 19(2): Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the state from making any law, insofar as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the state, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offense."

Parliamentary/Legislative Assembly Privileges and the Contempt of Courts Act, 1971, have been used to punish criticism of members of parliament/state legislatures and the judiciary, respectively.

References:

Constitution of India, Article 19(1): All citizens shall have the right

(a) to freedom of speech and expression,

<http://indiacode.nic.in/coiweb/welcome.html>

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:

Freedom of speech is subject to reasonable restrictions under Article 19(2):

(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the state from making any law, insofar as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the state, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offense."

Parliamentary/Legislative Assembly Privileges and the Contempt of Courts Act, 1971, have been used to punish criticism of members of parliament/state legislatures and the judiciary, respectively.

References:

Article 19(1): All citizens shall have the right –

(a) to freedom of speech and expression.

<http://indiacode.nic.in/coiweb/welcome.html>

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?

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

100 | 75 | 50 | 25 | 0

Comments:

There is a distinction between freedom and ease of formation. Technically the media are free to start up publications and TV channels. In practice it can be cumbersome. And some of the lower bureaucracy could demand bribes, particularly at the state-government level."

References:

Email interview with Sevanti Ninan, The Hoot (a media watchdog), Sept. 21, 2009; email available on request.

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 appeals mechanism if a license is denied or revoked.

YES | NO

Comments:

The Press and Registration of Books Act, 1867, regulates printing presses and newspapers and preserves and registers copies of books and newspapers printed in India.

The Press Council of India Act, 1978, established a Press Council for preserving the freedom of the press and of maintaining and improving the standards of newspapers and news agencies in India.

References:

Section 5 of the Press and Registration of Books Act, 1867, requires the printer and the publisher of a newspaper to declare before a district or sub-divisional magistrate within whose local jurisdiction the newspaper is to be printed or published information regarding title, ownership, periodicity, etc., of such newspaper.

Section 6 provides for authentication of the declaration by the magistrate. Authentication may be refused if the declaration of the proposed newspaper bears a title that is the same as or similar to any other newspaper published either in the same language or in the same state (except in the case of newspapers owned by the same person).

Under Section 8B, the magistrate is empowered to cancel the declaration on an application made to him by the press registrar or any other person or otherwise on the ground that the declaration violated provisions of the act. The section provides for giving an opportunity of being heard.

Under Section 8C, any person aggrieved by an order of a magistrate refusing to authenticate a declaration under section 6 or canceling a declaration under section 8B may appeal to the Press and Registration Appellate Board which is regulated by the Press and Registration Appellate Board (Practice and Procedure) Order, 1961.

Since 1979, the Press Council of India has been assigned the responsibility of functioning as the appellate board under this Section.

The Press and Registration of Books Act, 1867, <https://rni.nic.in/prbact.asp>

The Press Council of India, <http://presscouncil.nic.in/home.htm>

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:

Getting the title through RNI is the quickest part [approval for title given by the Registrar of Newspapers]. If your company has foreign equity, starting a new title is really complicated with lots of requirements and paperwork. And if you have a multi-edition publication at each location that you intend to print, you have to file an affidavit before a magistrate stating the printer and publisher. That can be quite time consuming, because local magistrates can be difficult."

References:

Email interview with Sevanti Ninan, The Hoot (a media watchdog), Sept. 21, 2009. Email available on request.

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:

The financial burden in print media could be more in the nature of bribes.

References:

Email interview with Sevanti Ninan, The Hoot (a media watchdog), Sept. 21, 2009. Email available on request.

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

75:

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

25:

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

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

38

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

100 | 75 | 50 | 25 | 0

Comments:

FM radio frequencies are auctioned as and when the government decides to open up frequencies. License fees are fairly steep and favor big players for that reason. TV licences are given in fits and starts. You can apply for uplinking permission but actually getting it can be fairly unpredictable. Recently the government cleared a whole bunch of channels together. Basically all licensing is government controlled.

Community radio applications go through a maze of clearances by different ministries. It is very difficult for a small community group to apply for a local limited frequency licence and get it in less than a couple of years. All applications from all over the country come to Delhi to clear requirements of ministries, which include home, communications, and information and broadcasting."

Broadcasting rights are restricted to the central government and some private players as permitted by the central government. Ironically, even state governments and local bodies are barred from entering into broadcasting activities.

References:

Email interview with Sevanti Ninan, The Hoot (a media watchdog), Sept. 21, 2009. Email available on request.

Consultation Paper on Issues Relating to Entry of Certain Entities into Broadcasting and Distribution activities, Consultation Paper No. 04 /2008, Telecom Regulatory Authority of India, Feb. 25, 2008.

Guide to getting a community radio license," India Together, Aug. 12, 2008, <http://www.indiatogether.org/2008/aug/med-crsguide.htm>

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 tool.

7b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeals mechanism if a license is denied or revoked.

YES | NO

Comments:

Nothing precludes the prospective licensee from filing a writ petition in the High Court or Supreme Court against the decision of the arbitrator.

For post-license disputes (between the licensor and licensee), the Telecom Disputes Settlement and Appellate Tribunal, established under Section 14 of the Telecom Regulatory Authority of India Act, 1997, is the appropriate forum.

References:

A prospective broadcaster must have two licenses: 1) a general license for telegraph services under the Indian Telegraph Act, 1885, and 2) a wireless operating license under the Wireless Telegraphy Act, 1933. The Telecom Commission under the Department of Telecommunication has been designated as the telegraphy authority provided under the Indian Telegraph Act, 1885, to grant both licenses.

Section 4 of the Indian Telegraph Act, 1885, establishes the central government's exclusive privilege of establishing, maintaining and working telegraphs in India and enables the central government to grant a license on such conditions and in consideration of such payments as it thinks fit, to any person to establish, maintain or work a telegraph within any part of India." Section 3(1) defines "telegraph" in an all inclusive manner, as "telegraph" means any appliance, instrument, material or apparatus used or capable of use for transmission or reception of signs, signals, writing, images and sounds, or intelligence of any nature by wire, visual or other electromagnetic emissions, Radio waves or Hertzian waves, galvanic, electric or magnetic means," and consequently includes all forms of broadcasting, telephony and information technology.

Section 5 empowers the government to take temporary possession of licensed telegraphs and to order interception of messages in the event of any public emergency or in the interest of public safety. Press messages of correspondents accredited by the central government or a state government intended to be published in India will not be intercepted or detained, unless their transmission has been prohibited under this section.

Section 7B provides for arbitration of disputes between “the telegraph authority and the person for whose benefit the line, appliance or apparatus is, or has been provided.” The arbitrator is appointed by the central government either specially for the determination of that dispute or generally for the determination of disputes under this section. The award of the arbitrator is conclusive between the parties to the dispute and cannot be questioned in any court.

Section 8 provides for revocation of licenses granted under Section 4 for breach of any of the conditions of license or in default of payment of any necessary consideration.

Similar licensing is required under Section 5 of the Indian Wireless Telegraphy Act, 1933, which regulates the possession of wireless telegraphy apparatus in India. The telegraphy authority constituted under the Indian Telegraph Act, 1885, is also the authority competent to issue licenses to possess wireless telegraphy apparatus under this act on prescribed conditions and subject to such payments.

Indian Telegraph Act, 1885, <http://www.dot.gov.in/Acts/telegraphact.htm>

Indian Wireless Telegraphy Act, 1933, <http://www.dot.gov.in/Acts/wirelessact.htm>

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:

FM radio frequencies are auctioned as and when the government decides to open up frequencies. License fees are fairly steep and favor big players for that reason.

TV licences are given in fits and starts. You can apply for uplinking permission but actually getting it can be fairly unpredictable. Recently the government cleared a whole bunch of channels together. Basically all licensing is government controlled.

Community radio applications go through a maze of clearances by different ministries. It is very difficult for a small community group to apply for a local limited frequency license and get it in less than a couple of years. All applications from all over the country come to Delhi to clear requirements of ministries, which include home, communications, and information and broadcasting.”

References:

Email interview with Sevanti Ninan, The Hoot (a media watchdog), Sept. 21, 2009. Email available on request.

Auction of spectrum/frequencies are opened up as and when the government decides.

Guide to getting a community radio license,” India Together, Aug, 12, 2008. <http://www.indiatogether.org/2008/aug/med-crsguide.htm>

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.

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

100 | 75 | 50 | 25 | 0

Comments:

FM radio frequencies are auctioned as and when the government decides to open up frequencies. License fees are fairly steep and favor big players for that reason. TV licences are given in fits and starts. You can apply for uplinking permission but actually getting it can be fairly unpredictable. Recently the government cleared a whole bunch of channels together. Basically all licensing is government controlled.

Community radio applications go through a maze of clearances by different ministries. It is very difficult for a small community group to apply for a local limited frequency licence and get it in less than a couple of years. All applications from all over the country come to Delhi to clear requirements of ministries, which include home, communications, and information and broadcasting."

Setting up a community radio station could range from less than US \$5000 for a radio in a box to as high as US\$40,000 for a state-of-the-art community radio station.

References:

Email interview with Sevanti Ninan, The Hoot (a media watchdog), Sept. 21, 2009. Email available on request.

Radio and TV licenses are prohibitively expensive and only large companies can afford to bid for the frequencies/bandwidth.

ICT for Development Community, Solution Exchange ICT for Development Community, 2007, www.solutionexchange-un.net.in/.../418-Setting-Up-and-Running-a-Community-Radio-Station.html

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 on-line.

100 | 75 | 50 | 25 | 0

Comments:

While there have been some instances of the government asking Internet service providers to block specific sites on the ground of maintaining public order and for security reasons, users have been free of government manipulations in accessing Internet content. More pervasive government intervention has not happened for the lack of a statute or a procedure empowering the government to do so, though the Information Technology Act, 2000, specifies activities that constitute offenses. Section 70B, introduced in a 2008 amendment to the IT Act, empowers the government to set up an agency called the Indian Computer Emergency Response Team to serve as the national agency to ensure cyber security. The agency would monitor and coordinate responses to cyber incidents, which includes calling for information and giving directions to service providers, intermediaries, data centers and corporate bodies. Noncompliance will invite penalties. This provision is still at a draft stage.

Department of Information Technology, <http://www.mit.gov.in/default.aspx?id=321>

References:

India Country Profile: OpenNet Initiative, <http://opennet.net/research/profiles/india>>

What Was the Password?" by Arindam Mukherjee, Outlook Magazine, Aug. 3, 2009. <http://www.outlookindia.com/article.aspx?260060>

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 on-line.

100 | 75 | 50 | 25 | 0

References:

India Country Profile: OpenNet

Initiative, <http://opennet.net/research/profiles/india> http://en.wikipedia.org/wiki/Internet_censorship_in_India

Freedom House Global Assessment of Internet and Digital Media 2009

<http://www.internet-freedom.info/reports/freedom-net-2009/india>

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.

25:

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?

92

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

YES | NO

References:

Constitution of India, Article 19(1), All citizens shall have the right

(a) to freedom of speech and expression;

This right to free speech is subject to certain reasonable restrictions contained in Article 19(2) "Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law or prevent the state from making any law, insofar as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and

integrity of India, the security of the state, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence."

Reasonableness with regard to defamation is codified in two laws: (1) In the exceptions to criminal culpability incorporated in sections 499 and 500 of the Indian Penal Code, 1870, and (2) The limits to civil liability incorporated as tort law. Defamation can be brought under Parliamentary/Legislative Assembly Privileges with respect to parliamentarians/legislators and the Contempt of Court Act, 1971, with respect to the judiciary.

Constitution of India, <http://indiacode.nic.in/coiweb/welcome.html>

Indian Penal Code 1870, <http://www.vakilno1.com/bareacts/IndianPenalCode/indianpenalcode.htm>

Contempt of Court Act 1971, <http://www.vakilno1.com/bareacts/contemptact/contemptact.htm>

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.

100 | 75 | 50 | 25 | 0

Comments:

Covert censorship does exist but that is not necessarily at the insistence of the government or the owner of the media organization. Editors or bureau chiefs can and some of them do resort to covert censorship or impart a politically motivated spin to stories because of their ideological or personal affiliations with leaders. Such unprofessionalism is displayed even among the biggest media organizations. People in authority are known to disfavour inconvenient media outlets or professionals. There are also instances when the government has initiated criminal proceedings against journalists under the Official Secrets Act."

Advertising revenues are another way of putting pressure on the media to tow the line.

References:

Email interview with Manoj Mitta, senior journalist, Times of India, New Delhi, Sept. 20, 2009. Email available if required.

Witness to a success story," Sevanti Ninan, The Hindu, Sept. 12, 2009, http://beta.thehindu.com/opinion/columns/Sevanti_Ninan/article19306.ece

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:

Barring the emergency of 1975-77, there has never been any explicit government censorship of media in India. Thankfully, in

these days of greater transparency, the government has little scope to persecute media professionals for exposing corruption.”

References:

Email interview with Manoj Mitta, senior journalist, Times of India, New Delhi, Sept. 20, 2009. Email available if required.

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?

55

10a. In law, print media companies are required to publicly disclose their ownership.

YES | NO

Comments:

Names, etc. of owners, publishers and printers are required to be mentioned in every copy of a newspaper or other publication.

References:

Section 3 of the Press and Registration of Books Act, 1867, says Every book or paper printed within India shall have printed legibly on it the name of the printer and the place of printing, and (if the book or paper is to be published) the name of the publisher, and the place of publication.

Section 5 says that “No newspaper shall be published in India, except in conformity with the rules hereinafter laid down: (1) Without prejudice to the provisions of section 3, every copy of every such newspaper shall contain the names of the owner and editor thereof printed clearly on such copy and also the date of its publication.

Press and Registration of Books Act, 1867, <https://rni.nic.in/prbact.asp>

YES: A YES score is earned if print media companies are required by law to publicly 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 publicly disclosed.

10b. In law, broadcast (radio and TV) media companies are required to publicly disclose their ownership.

YES | NO

Comments:

Apart from the government-run radio (All India Radio) and television channels (Doordarshan), since the early 1990s radio and television broadcasting has been liberalized to involve private channels. The private channels are large companies that make public their corporate information through their websites.

Currently, transmission and content issues of cable television are governed by the Cable Television Networks (Regulation) Act, 1995. Given the rapid growth in broadcasting technologies, this law has been found inadequate and the government has introduced a Broadcasting Bill, 2007, which is yet to be passed. It has raised a great deal of controversy in the media on the government's efforts to control the media.

Cable Television Networks (Regulation) Act, 1995, <http://www.trai.gov.in/cablenetworkact.asp>>

Draft Broadcasting Bill, <http://www.mib.nic.in/ShowPDFContent.aspx>

Some media reports on the Broadcast Bill: <http://www.indianexpress.com/news/what-is-the-broadcasting-bill/219641/0>;
<http://www.rediff.com/news/mar/05vir.htm>

References:

There is no law requiring broadcast media companies to publicly disclose ownership information. Media companies can operate in India after licenses are granted by the government. The licensing procedure is public, and information about licensees are also in the public domain. Private companies can suo moto give information on their corporate positions on their websites. See for example <http://www.ndtv.com/convergence/ndtv/corporatepage/index.aspx>

YES: A YES score is earned if broadcast media companies are required by law to publicly 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 publicly disclosed.

10c. In practice, journalists and editors adhere to strict, professional practices in their reporting.

100 | 75 | 50 | 25 | 0

Comments:

India does not yet have a culture in which major media outlets feel obliged to adopt, much less abide by, a strict journalistic code. If they ever refer to such a code, it is more likely to be out of expediency rather than as a matter of principle. The moral vacuum makes it easier for journalists to fall prey to inducements, especially the subtler ones."

References:

Email interview with Manoj Mitta, senior journalist, Times of India, New Delhi, Sept. 20, 2009. Email available if required.

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.

100 | 75 | 50 | 25 | 0

Comments:

Media bias exists in the vernacular media (language media from the states), where media houses may be slanted along party lines, and where many political parties have their own media outlets, which are used at the expense of opponents. Parties in power are also likely to subvert fair coverage by selectively handing out government advertisements to the press/other media. Media outlets are also themselves guilty of exploiting the desperation for publicity during the elections for their commercial gain.

In the last election, money was a genuine barrier to fair coverage. Several states, including Madhya Pradesh and Andhra Pradesh, reported that newspapers had rates for coverage, or coverage linked to your buying their advertising packages.

I don't think you can make generalizations such as mass media having clear preferences in election outcomes. Election time media coverage is driven by sensation more than political bias, as in the case of the Varun Gandhi Pilibhit episode."

References:

More on how the media earned from the elections," Anil Chamdia, June 9, 2009, <http://www.thehoot.org/web/home/story.php?storyid=3901&pg=1&mod=1§ionId=1§ionname=MEDIA%20WATCH&valid=true>

"News for sale in General Elections 2009," Madabhushi Sridhar, May 27, 2009, <http://www.thehoot.org/web/home/story.php?storyid=3865&pg=1&mod=1§ionId=2§ionname=REGIONAL%20MEDIA&valid=true>

Orissa's editor MPs, Eliza Parija, The Hoot, May 22, 2009, <http://www.thehoot.org/web/home/story.php?storyid=3857&pg=1&mod=1§ionId=2§ionname=REGIONAL%20MEDIA&valid=true>

"Fighting paid election coverage," The Hoot, May 14, 2009, <http://www.thehoot.org/web/home/story.php?storyid=3832&pg=1&mod=1§ionId=2§ionname=REGIONAL%20MEDIA&valid=true>

Email interview with Sevanti Ninan, The Hoot (a media watchdog), Sept. 21, 2009. Email available on request.

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.

100 | 75 | 50 | 25 | 0

Comments:

110 hours of airtime on state-run television and radio channels is allowed for recognized national and state political parties. In the General Elections of 2009, seven national parties and 39 state parties were permitted campaign time on state-owned radio and TV. Unrecognized parties and independent candidates are excluded from this opportunity, but the sheer number of participants would make inclusion of all parties and independents very difficult.

References:

<http://eci.nic.in/press/current/pn190309.pdf>

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?

67

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

YES | NO

Comments:

Journalists have been imprisoned or harassed with criminal charges for their coverage of politics, of the people in power or of government policies, not necessarily concerning corruption. This is particularly true in states dealing with terrorism/extremist violence. Repressive measures frequently adopted by the governments come under a lot of criticism in the media.

References:

Reporters without Borders 2009 Barometer, http://www.rsf.org/en-barometre58-Journalists_imprisoned.html

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 imprisoned or harassed with criminal charges for their coverage of politics, of the people in power or of government policies, not necessarily concerning corruption. This is particularly true in states dealing with terrorism/extremist violence. Repressive measures frequently adopted by the governments come under a lot of criticism in the media. Often, elements not part of the establishment resort to intimidation with the tacit support of the establishment.

References:

Attacks on the Press in India: 2008," Committee to Protect Journalists, <http://www.cpj.org/2009/02/attacks-on-the-press-in-2008-india.php>

"Cash-for-query: 2 scribes charged," India Today, Aug. 13, 2009, http://indiatoday.intoday.in/index.php?issueid=&id=56582&option=com_content&task=view§ionid=4

"SOS: Subversion of Press Freedom in Mangalore and Udupi," Editor's Guild of India, press statement, Dec. 23, 2008.

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:

The killing of Vikas Ranjan was alleged to have been carried out by the drug mafia, but it is unlikely that the mafia can operate anywhere with such impunity without covert support from some sections of the police.

References:

Journalist investigating drug trafficking gunned down in Bihar state," International Freedom of Expression eXchange (IFEX), Nov. 27, 2008, http://www.ifex.org/india/2008/11/27/journalist_investigating_drug_trafficking/

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.

72 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:

What is information is defined in Section 2(f) of the RTI Act, 2005. The citizen's right to information is defined in Section 2(j).

As with all FOI/RTI laws, disclosure is subject to exceptions which are ENUMERATED in the law (Section 8)

Under Section 8(3) of the RTI Act, subject to the provisions of clauses 8(1) (a) – sovereignty, security, etc of the nation, (c) – breach of parliamentary privilege and (i) – cabinet papers, any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made...shall be provided to any person making a request under that section: Provided that where any question arises as to the date from which the said period of twenty years has to be computed, the decision of the Central Government shall be final, subject to the usual appeals provided for in this Act."

References:

Right to Information Act, 2005, <http://rti.gov.in/rti-act.pdf>

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:

Section 19(1) of the Right to Information Act, 2005, provides for a first appeal against the order of the Public Information Officer (PIO) to an Appellate Authority (AA) appointed by the public authority of a rank higher than the PIO. A second appeal against the order of the first AA comes before the Information Commission under Section 19(3). A citizen can also complain directly to the Information Commission under Section 18 against the denial of information by the PIO under certain circumstances.

In addition, if not satisfied with the decision of the Information Commission, appeal to the High Court is possible through a Writ Petition and further appeal in the Supreme Court against any judgment of the High Court.

References:

Section 19(1), 19(3), 18 of the Right to Information Act, 2005, <http://rti.gov.in/rti-act.pdf>

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

References:

Right to Information Act, 2005, <http://rti.gov.in/rti-act.pdf>

Section 6 of the Right to Information Act, 2005, prescribes the procedure for application for information. Section 7 lays down the procedure for the Public Information Officer/public authority to deal with such requests. Section 4 requires public authorities to make available information suo moto on their activities.

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?

71

13a. In practice, citizens receive responses to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The NGO report indicates that there was a success rate of 60 -70% in getting responses to applications for information. Primarily this is a result of the legal provision that specifies that not furnishing information within 30 days (ordinarily) will penalize the Public Information Officer (Section 7(1) of the Right to Information Act).

The NGO survey data has been obtained from interviewing government departments, applicants and it's own experience in filing applications for information. According to the government, the claims of timely furnishing of information was 90%, whereas in the case of applicants, information was provided in time in 50% of cases. The NGO's own experience was about 40%.

The Government survey ranked delay in furnishing information (not meeting the 30 day deadline) as the second important reason for the first appeals filed by applicants. 50% of applicants reported that they had not received information in time.

Both reports indicate that the quality of information furnished leaves much to be desired.

References:

Study conducted by PricewaterhouseCooper for the Department of Personnel and Training in 2008 2009 on the implementation of the Right to Information Act, <http://rti.gov.in/rticorner/studybypwc/index-study.htm>

Study conducted by a nongovernmental organization, RTI Assessment & Analysis Group (RaaG), and the National Campaign for People's Right to Information (NCPRI): the People's RTI Assessment, 2008 (summary report out in July 2009), <http://www.rti-assessment.org/>

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.

100 | 75 | 50 | 25 | 0

Comments:

The judiciary in some states has chosen to have excessively high application fees and copying rates. See for example the Allahabad High Court (Right to Information) Rules, 2006, where the application fee has been fixed at Rs 500/- (US\$11) and the copying fee at Rs. 15/- (US\$0.32). <http://www.allahabadhighcourt.in/event/UttarPradeshShasan3530Dt20-09-2006.html>.

The Rajasthan High Court has fixed an application fee of Rs. 100/- (US\$2) at the minimum and Rs. 500/- (US\$11) at the maximum. <http://hcraj.nic.in/rti-rules-2006.pdf>

References:

The Right to Information (Regulation of Fee and Cost) Rules, 2005, notified under the Right to Information Act, 2005, fixes a nominal application fee of Rs 10/- (US\$0.21) and photocopying charge of Rs 2/- (US\$0.04) at the minimum, <http://rti.gov.in/rti-act.pdf>; <http://persmin.gov.in/WriteData/CircularNotification/ScanDocument/RTI/FeeCostRTI.pdf>. This rate is largely the same for all state governments. For a comparative table on fee rules applicable across the country, see http://www.humanrightsinitiative.org/programs/ai/rti/india/comparative_table_on_the_fee_rules_issued_by_central_&_state_govt.pdf

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, responses to information requests are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

The study found a more than 75% dissatisfaction rate with the information furnished by public authorities. About 50% of the responses acknowledged that the intended objective of filing the RTI application had been met. About 20-30% of responses also indicated that filing the information request itself had the impact being sought in the application.

References:

Study conducted by PricewaterhouseCooper for the Department of Personnel and Training in 2008 2009 on the implementation of the RTI Act, <http://rti.gov.in/rticorner/studybypwc/index-study.htm>

Study conducted by an nongovernmental organization, RTI Assessment & Analysis Group (RaaG) and the National Campaign for People's Right to Information (NCPRI): the People's RTI Assessment 2008 (summary report out in July 2009), <http://www.rti-assessment.org/>.

100: Responses to information requests typically address the requestor's questions in full and are not redacted or edited to remove sensitive information.

75:

50: Information requests are sometimes met with sufficient responses, but responses to information requests may be vague or overly general when sensitive information is sought.

25:

0: The government rarely or never replies to information requests with meaningful responses. If and when responses are issued, they are so overly general or heavily redacted as to render them useless.

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

100 | 75 | 50 | 25 | 0

Comments:

As per the latest Annual Report of the Central Information Commission 2006-07, 75% of first appeals had been disposed of by central government departments in 2006-2007. Delay figures are not available. The Act provides for a maximum period of 45 days to dispose of first appeals received by the public authority (Section 19(6)).

As per other surveys, at the second appeal stage at the level of the Information Commissions, there is delay of less than 2 months to 20 months depending on the size of State. No time frame is prescribed in the Act for disposal of second appeals.

References:

Central Information Commission Annual Report 2006-07 <<http://cic.gov.in/AnnualReports/AR2006-07.pdf>>

Study conducted by PricewaterhouseCooper for the Department of Personnel and Training in 2008 2009 on the implementation of the Right to Information Act, <<http://rti.gov.in/rticorner/studyby/pwc/index-study.htm>>

Study conducted by a nongovernmental organization, RTI Assessment & Analysis Group (RaaG), and the National Campaign for People's Right to Information (NCPRI): the People's RTI Assessment, 2008 (summary report out in July 2009), <<http://www.rti-assessment.org/>>

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.

13e. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

No fee for appeals is prescribed in the Right to Information Act, 2005, so the appeals process is free.

Section 18 and 19 of the Right to Information Act, 2005, <http://rti.gov.in/rti-act.pdf>>

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.

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

100 | 75 | 50 | 25 | 0

Comments:

In Annexure IV, the figures cited under the Other column are reasons that are not legitimate for rejecting information requests.

References:

Sections 7(1), 9, 11 and 24 of the Right to Information Act, 2005, provide reasons/circumstances for refusing information, which have to be expressly cited in the decision of the Public Information Officer/Appellate Authority.

See also the Annual Report for 2006- 2007 pertaining to central government departments, where compliance figures for giving reasons as per the law have been a little less than 75% (Annexure IV).

Right to Information Act, 2005, <http://rti.gov.in/rti-act.pdf>>

<http://cic.gov.in/AnnualReports/AR2006-07.pdf>

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

75:

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

25:

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

Category II. Elections

II-1. ⁷⁰Voting & Citizen Participation

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

100

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

YES | NO

Comments:

The right to vote is derived from the constitutional guarantee for freedom of expression.

References:

Constitution of India:

Article 19(1) All citizens shall have the right

(a) to freedom of speech and expression;

Article 325 provides for a single electoral role for all eligible voters for elections to the Parliament and state legislatures.

Article 326 guarantees universal adult suffrage to every citizen who is above 18 years.

<http://indiacode.nic.in/coiweb/welcome.html>

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:

In view of Article 83(2), elections have to be called for every 5 years unless the House has been dissolved earlier. Extending the tenure of the House requires a constitutional amendment and consultation with the Election Commission of India. The Lower House was extended only once in the history of the Indian Constitution. By a constitutional amendment in 1975, the government of the day declared an emergency and postponed the election due to be held in 1976. This amendment was later rescinded and regular elections were held in 1977.

References:

Constitution of India:

Article 83(2) provides that the duration of the House of the People (Lower House) is 5 years and that the House shall stand dissolved on the expiry of this period.

<http://indiacode.nic.in/coiweb/welcome.html>

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?

92

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

100 | 75 | 50 | 25 | 0

Comments:

The voter registration process is not flawless. There are administrative glitches that manifest at every election that find a certain number of voters left out of the voters list. This is not for reasons of discrimination against any section of the population.

References:

India's marathon poll concludes," BBC News, May 13, 2009, http://news.bbc.co.uk/2/hi/south_asia/8045567.stm

"The recurring miracle of Indian democracy," by Shashi Tharoor, Strait Times, April 16, 2009, <http://www.straittimes.com/vgn-ext-templating/v/index.jsp?vgnextoid=eece35b378aa0210VgnVCM100000430a0aRCRD&vgnextchannel=0162758920e39010VgnVCM1000000a35010aRCRD>

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

75:

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

25:

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

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

100 | 75 | 50 | 25 | 0

Comments:

There are sporadic instances of violence, intimidation and booth capturing which occurs at election time. Election Commission orders repoll in affected booths. Voter and ballot security are major areas of focus of the Election Commission during voting and counting of votes stages.

After the results of the General Election of 2009 were announced, some political parties and individuals alleged possible manipulation of Electronic Voting Machines (EVMs). Some went to court as well. The Supreme Court of India dismissed the petition of one lot of EVM detractors and asked them to take it up with the Election Commission of India (ECI). The ECI in turn went public, declaring the infallibility of EVMs and challenged anyone to prove otherwise.

References:

LS polls: a gigantic numbers game," Times of India, TNN, March 3, 2009, <http://timesofindia.indiatimes.com/India/LS-polls-a-gigantic-numbers-game-/articleshow/4214689.cms>

"EC s sigh of relief after the last beep," The Economic Times, May 14, 2009, <http://economictimes.indiatimes.com/articleshow/4527174.cms?flstry=1>

"EC bid to rule out local influence in counting," Sanjeev Kumar Verma, TNN, May 13, 2009, <http://timesofindia.indiatimes.com/Cities/EC-bid-to-rule-out-local-influence-in-counting/articleshow/4522094.cms>

Overview of GE2009 Highlights, Election Commission of India, <http://eci.nic.in/press/GE-HIGHLIGHTS.pdf>

"Amid violence, voters turn up defying boycott calls", The Indian Express, 17 April 2009
<<http://www.indianexpress.com/news/amid-violence-voters-turn-up-defying-boycott-calls/447945/0>>

Some links to the ongoing debate on EVMs:

"EVMs: The question of manipulation," by Coomi Kapoor, The Indian Express, Sept. 4, 2009, <http://www.indianexpress.com/news/evms-the-question-of-manipulation/512964/0>>

ECI rebuttal, press release dated Aug. 1, 2009, <http://eci.nic.in/press/current/pn010809.pdf>>

See also technical presentations on ECI website, <http://eci.nic.in>.

"Are electronic voting machines tamper-proof?" by K Vidur, Pragati, The National Interest Review, July 2009, <http://pragati.nationalinterest.in/2009/07/are-electronic-voting-machines-tamper-proof/>

"PMK team tries its hand on EVMs in New Delhi," Express News Service, Aug. 28, 2009, <http://www.expressbuzz.com/edition/story.aspx?Title=PMK+team+tries+its+hand+on+EVMs+in+New+Delhi&artid=/6GSNgFEkPM=&SectionID=vBlkz7JCFvA=&MainSectionID=fyV9T2jla4A=&SectionNa>
(PMK is a regional party from the state of Tamilnadu, which lost badly in the last general elections.)

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.

100 | 75 | 50 | 25 | 0

Comments:

Under Article 83(2) of the Indian Constitution, elections have to be called for every 5 years unless the House has been dissolved earlier. Extending the tenure of the House requires a constitutional amendment and consultation with the Election Commission of India. The Lower House was extended only once in the history of the Indian Constitution. By a constitutional amendment in 1975, the government of the day declared an emergency and postponed the election due to be held in 1976. This amendment was later rescinded and regular elections were held in 1977. Elections to the Parliament and State Assemblies were deferred in some states, including Jammu and Kashmir (1991), Assam (1984) and Punjab (1984), when security/law and order conditions were not conducive to holding elections in those states. These rare occasions apart, election to both the Parliament and State Assemblies have always been held on schedule.

References:

Announcement of General Elections 2009, <http://eci.nic.in/press/current/pn020309.pdf>

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?

90

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

YES | NO

References:

Article 19(1)(c) of the Constitution of India guarantees freedom to form associations and unions, subject to reasonable restrictions under Article 19(4).

<http://indiacode.nic.in/coiweb/welcome.html>

(f) Political party" has been defined in Section 2(f) of the Representation of People Act, 1951, as "an association or a body of individual citizens of India registered with the Election Commission as a political party under section 29A." Political parties have to get themselves registered with the Election Commission of India under Section 29A of the Act. Applications for registration have certain requirements to be fulfilled, and the ECI may or may not agree to register the association as a political party. This doesn't bar individual members of the association from contesting elections as independents.

<http://lawmin.nic.in/legislative/election/volume%201/representation%20of%20the%20people%20act.%201951.pdf>

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:

The requirements to run for political office relate to being a citizen of the country, of a specified age (25 for Lower House/State Legislature and 30 for the Upper House of Parliament).

References:

Articles 85 and 173 of the Constitution of India prescribe qualifications for being a member of Parliament and a State Legislature, respectively. Sections 3, 4 and 5 of the Representation of Peoples Act, 1951, prescribes further requirements for citizens to qualify for membership of the Upper and Lower Houses of Parliament and State Legislatures, respectively.

Constitution of India, <http://indiacode.nic.in/coiweb/welcome.html>

The Representation of People Act, 1951, <http://lawmin.nic.in/legislative/election/volume%201/representation%20of%20the%20people%20act.%201951.pdf>

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 process of registering a political party requires bearing true faith and allegiance to the Constitution of India as by law established, and to the principles of socialism, secularism and democracy, and would uphold the sovereignty, unity and integrity of India" [Section 29A(5) of the Representation of People Act, 1951]. This condition of registration that requires a political party to swear by the principles of socialism was challenged by the Swatantra Bharat Party in the High Court of Bombay. Based on the challenge by this party, which is still undecided by the High Court, a public interest case has been admitted in the Supreme Court of India challenging this part of Section 29A of the RP Act.

See "Glare on socialist vow SC notice on hypocritical allegiance," The Telegraph, Jan. 9, 2008, http://www.telegraphindia.com/1080109/jsp/nation/story_8760406.jsp

References:

List of registered National and State parties and registered unrecognised parties just before the 2009 General Elections: <http://eci.nic.in/ElectoralLaws/OrdersNotifications/symbols170309.pdf>.

See also a similar list for the 2004 general elections: http://eci.nic.in/SR_KeyHighlights/LS_2004/Vol I LS_2004.pdf

There are many parties that have never sought registration but still participate in the electoral processes where the candidates contest as independents.

Why Shiv Sena Hindustan can't be registered as party: HC to EC," The Times of India, March 17, 2009

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 official cost of running for elections (called security deposits) is almost nominal (between US\$50 and US\$200). A defeated candidate who fails to secure more than one-sixth of the valid votes polled in the constituency loses his security deposit (Section 158(4) of Representation of People Act, 1951). The Election Commission of India has put a cap of US\$50,000 per candidate, accounts for which, under the law, have to be filed before the ECI. But a lot of unaccounted money flows during election time.

A nongovernmental organization's analysis of recently held state elections showed that the chance of a rich candidate (one possessing assets worth Rs 50 million (US\$1.1 million) and above) had about a 50% probability of winning.

Vidhan Sabha: A Place for the Rich," Indian Express, Dec, 14, 2008, <http://www.indianexpress.com/news/vidhan-sabha-a-place-for-the-rich/398328/0>

References:

See information on Security Deposits in the Election Commission of India's Handbook for Candidates, http://eci.nic.in/ElectoralLaws/HandBooks/Handbook_for_Candidates.pdf>

Offer Valid Till Votes Last," by Shantanu Guha Ray, Tehelka Magazine, Vol 6, Issue 17, May 2, 2009, [http://74.125.153.132/search?](http://74.125.153.132/search?q=cache:Cst1HRzKgFr4J:www.tehelka.com/story_main41.asp%3Ffilename%3DNe020509coverstory.asp+indian+elections+cost+of+running&cd=3&hl=en)

[q=cache:Cst1HRzKgFr4J:www.tehelka.com/story_main41.asp%3Ffilename%3DNe020509coverstory.asp+indian+elections+cost+of+running&cd=3&hl=en](http://74.125.153.132/search?q=cache:Cst1HRzKgFr4J:www.tehelka.com/story_main41.asp%3Ffilename%3DNe020509coverstory.asp+indian+elections+cost+of+running&cd=3&hl=en)

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

75:

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

25:

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

16e. In practice, an opposition party is represented in the legislature.

100 | 75 | 50 | 25 | 0

References:

Second day of trust vote," India Today, July 22, 2008, http://indiatoday.intoday.in/index.php?option=com_content&task=view&issueid=63&id=11755&Itemid=1§ionid=4>

"India coalition struggles to survive," New York Times, July 9, 2009 <http://www.nytimes.com/2008/07/09/world/asia/09iht-india.1.14363576.html>>

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

75:

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

25:

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

II-2. Election Integrity

18. Is the election monitoring agency effective?

85

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

YES | NO

References:

Constitution of India, Article 324, provides for the appointment of election commissioners by the president of India. Commissioners enjoy the same status and salary as judges of the Supreme Court of India. The chief election commissioner can be removed from office only through impeachment by Parliament.

http://india.gov.in/govt/documents/english/coi_part_full.pdf

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.

18b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

100 | 75 | 50 | 25 | 0

References:

Chief Election Commissioner cannot act on his own: Ashok Desai opinion," The Hindu, Feb. 3, 2009, <http://www.thehindu.com/2009/02/03/stories/2009020354970900.htm>

"Shocking constitutional overreach," Editorial, The Hindu, Feb. 1, 2009, <http://www.hindu.com/2009/02/01/stories/2009020155090800.htm>

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 (ECI) of India has its own secretariat. In addition, any election-related functions in the states are discharged by the ECI through state government officials designated as chief electoral officers, who function under the direct supervision of the ECI. During election periods (normally between one and two months), a very large number of officials from both the central and state governments become part of the election machinery and are deemed to be deputies of the election commission and subject to its control, superintendence, and discipline.

References:

Constitution of India, Article 324(6), directs the president and the governor of a state to make available manpower as may be required by the Election Commission for discharge of its duties, http://india.gov.in/govt/documents/english/coi_part_full.pdf

See also the Election Commission of India website: http://eci.nic.in/about-eci/the_setup.asp

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 of India's (ECI) website has information on the most recent as well as past elections. Thanks to electronic voting machines, the results of the recently concluded general election (April-May 2009) were declared on the website from across the country in one day. Statistical analysis on various aspects of the elections are also available. The ECI and several state election offices could also make available candidate information, such as asset declarations and affidavits declaring their criminal pasts, on their websites

References:

Election Commission of India website: <http://eci.nic.in/index.asp>

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

References:

The Representation of People Act, 1951, Part VII, identifies corrupt practices and electoral offenses that are penal offenses and have to be tried in criminal courts. The act allows for disqualification on certain grounds. But the Election Commission of India (ECI) is not empowered to penalize offenders. It can only conduct enquiries and recommend magisterial trials. The ECI has the power to disqualify candidates, but in the case of already-elected representatives, the president is the appropriate authority to disqualify the ECI can only recommend. The EC maintains a list of disqualified candidates and their period of disqualification on its website, <http://eci.nic.in/ElectoralLaws/FinalListofDisqualification.pdf>

<http://lawmin.nic.in/legislative/election/volume%201/representation%20of%20the%20people%20act,%201951.pdf>

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?

83

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

100 | 75 | 50 | 25 | 0

Comments:

Voters registration drives start well before any elections are scheduled. In many states, the voter list is available online. Electronic photo ID cards (EPIC) must be produced as proof of identity at the time of voting. However, according to a Supreme Court ruling, no one can be refused his/her right to vote in the absence of an EPIC. Any form of identification will suffice.

References:

With names missing, many left in lurch again," The Times of India, May 1, 2009, <http://timesofindia.indiatimes.com/Mumbai/With-names-missing-many-left-in-lurch-again/articleshow/4469737.cms>

"Many names go missing from voter lists," The Hindu, April 17, 2009, <http://www.thehindu.com/2009/04/17/stories/2009041759560300.htm>

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.

YES | NO

Comments:

By convention and several judicial pronouncements, once the process of elections has started, the judiciary does not intervene in the conduction of the polls. Once the polls are completed and results declared, the review of any result can be done only through the process of an election petition. For elections to the Parliament and state legislatures, petitions must be filed before the High Court. For elections of the president and vice president, petitions can be filed only before the Supreme Court.

References:

The Representation of People Act, 1951, Part VI, deals with disputes relating to elections. Under Section 80 of the act, No election shall be called in question except by an election petition presented in accordance with the provisions of this Part." Election petitions can be filed in the High Court only by a candidate or a voter.

<http://lawmin.nic.in/legislative/election/volume%201/representation%20of%20the%20people%20act.%201951.pdf>

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:

Election petitions have to be filed before the High Courts and are further appealable to the Supreme Court. Such petitions end up being treated as normal cases and can get lost in the huge backlog of cases from which courts in India suffer. Given that the longevity of a House is five years, most election challenges are fruitless because of the time it takes for the courts decide a case and proscribe the procedure for overturning the election.

References:

SC pulls up Madras HC for delay in pronouncing order," J. Venkatesan, The Hindu, Sept. 21, 2001, <http://www.hinduonnet.com/2001/09/21/stories/0221000h.htm>

Election Commission of India, Proposed Electoral Reforms, Item 3, 2004, http://eci.nic.in/PROPOSED_ELECTORAL_REFORMS.pdf

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.

Comments:

Indian military/security forces have generally been neutral during elections. It would be impossible to conduct the free and fair elections that India largely manages without the logistical and security support of the military and paramilitary forces. There have been exceptions in the past when the government of the day held elections in disturbed" states, such Jammu and Kashmir, Punjab and Assam, and used the army to compel people to vote. The media links cited above refer to a couple of such instances in the early 1990s.

References:

<http://eci.nic.in/press/GE-HIGHLIGHTS.pdf>

Indian Army Deployed in Punjab," By Sanjoy Hazarika, New York Times, Nov. 27, 1991, <http://www.nytimes.com/1991/11/27/world/indian-army-deployed-in-punjab.html>

"Kashmiris vote at the point of India's guns," Tim McGirk, The Independent, May 24, 1996, <http://www.independent.co.uk/news/world/kashmiris-vote-at-the-point-of-indias-guns-1348886.html>>

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:

There is no law permitting international election observers, but no law barring such observers exists either. Traditionally, the Indian government has been wary about international observers. Perhaps the unrestricted media coverage of elections by national and international media has made the need for international election observers an insignificant issue. However, lack of international observers has frequently been an issue whenever elections to Jammu and Kashmir has been held.

References:

Representation of People Act, 1951, Section 20B, empowers the Election Commission of India (ECI) to nominate observers, government officials who act as observers for the assigned constituency.

<http://lawmin.nic.in/legislative/election/volume%201/representation%20of%20the%20people%20act.%201951.pdf>

Foreign observers free to monitor polls in J&K," The Hindu, April 4, 2004, <http://www.hindu.com/2004/04/04/stories/2004040405680800.htm>>

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.

Comments:

Election observers are senior-level civil servants who have complete freedom under the law to oversee election arrangements, voting, expenses and candidates' code of conduct. Observers can even stop elections in the event of any voting irregularity. One area in which observers have failed is checking candidates' election expenses, which they are mandated to do. There have also been instances of individual lapses or misconduct by the observers themselves by not performing their duties with due care. As they are government officials deemed to be deputies of the Election Commission of India during the election period, the ECI has often recommended initiating disciplinary proceedings against such officials or withdrawing them from election duty.

References:

Election observers to meet tomorrow," J. Balaji, The Hindu, March 14, 2009, <http://www.hindu.com/2009/03/14/stories/2009031460161100.htm>>

"Offer Valid Till Votes Last," Shantanu Guha Ray, Tehelka Magazine, May 2, 2009, http://www.tehelka.com/story_main41.asp?filename=Ne020509coverstory.asp

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.

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

100

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

YES | NO

References:

Constitution of India, Article 324, empowers the Election Commission of India with the superintendence, direction, and control of elections in the country. It lays down the terms and procedure of employment of election commissioners.

http://india.gov.in/govt/documents/english/coi_part_full.pdf

See also the Election Commission of India, http://eci.nic.in/about-eci/the_setup.asp

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.

NO: A NO score is earned if no domestic agency or set of domestic agencies/entities exists that monitors elections. A NO score is earned if elections are only monitored by an agency informally, such as poll booth monitoring by the police, only by international observers, or only by NGOs. A NO score is earned if the domestic election agency or set of domestic agencies simply facilitates the process of voting but is not empowered to report violations or abuses.

20. Are there regulations governing the financing of political parties?

50

20a. In law, there are limits on individual donations to political parties.

YES | NO

Comments:

There are no limits on individual donations. Under Section 80GGC of the Income Tax Act, 1961, individual donations are 100 percent tax exempt. Individual donors must have written permission from the candidate that he/she is willing to receive donations from the donor. http://eci.nic.in/ElectoralSystem/the_function.asp#supervisingelections

References:

The Representation of People Act, 1951, Section 29B, provides that subject to the provisions of the Companies Act, 1956, (1 of 1956), every political party may accept any amount of contribution voluntarily offered to it by any person or company other than a government company: Provided that no political party shall be eligible to accept any contribution from any foreign source defined under clause (e) of Section 2 of the Foreign Contribution (Regulation) Act, 1976, (49 of 1976)."

<http://lawmin.nic.in/legislative/election/volume%201/representation%20of%20the%20people%20act.%201951.pdf>

YES: A YES score is earned if there are any limits in size on individual contributions to political parties. A YES score is also 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 in a discriminatory manner.

20b. In law, there are limits on corporate donations to political parties.

YES | NO

References:

The Representation of People Act, 1951, Section 29B, provides that subject to the provisions of the Companies Act, 1956, (1 of 1956), every political party may accept any amount of contribution voluntarily offered to it by any person or company other than a government company: Provided that no political party shall be eligible to accept any contribution from any foreign source defined under clause (e) of Section 2 of the Foreign Contribution (Regulation) Act, 1976, (49 of 1976)."

<http://lawmin.nic.in/legislative/election/volume%201/representation%20of%20the%20people%20act.%201951.pdf>

The Companies Act, 1956, Section 29B, prohibits political contributions to (a) Government company; and (b) any company that has been in existence for less than three financial years. Any other company may contribute any amount directly or indirectly (a) to any political party; or (b) for any political purpose to any person, provided that "the amount or, as the case may be, the aggregate of the amounts which may be so contributed by a company in any financial year shall not exceed 5 percent of its average net profits determined in accordance with the provisions of Sections 349 and 350 during the three immediately preceding financial years."

http://www.mca21.gov.in/Ministry/actsbills/pdf/Companies_Act_1956_Part_1.pdf

YES: A YES score is earned if there are any limits in size on corporate contributions to political parties. A YES score is earned if corporate contributions are prohibited.

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

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

YES | NO

References:

Section 77 of the Representation of People Act, 1951, read with Rule 90 of the Conduct of Election Rules, 1961, prescribes the maximum expenditure that can be incurred by a candidate that has to be accounted for as per procedure. By an amendment of the rule in October 2003, the limits have been increased to: for Lok Sabha seats in bigger states, it is now US\$50,000; in other states and Union Territories, it varies between US\$20,000 and US\$50,000. For Assembly seats, in bigger states, it is now US\$20,000, while in other states and Union Territories, it varies between US\$10,000 and US\$20,000.

<http://lawmin.nic.in/legislative/election/volume%201/representation%20of%20the%20people%20act.%201951.pdf>

<http://lawmin.nic.in/ld/subord/cer1.htm>

http://eci.nic.in/ElectoralSystem/the_function.asp#supervisingelections

YES: A YES score is earned if there are any limits in size on political party expenditures during the course of an election.

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

20d. In law, there are requirements for the disclosure of donations to political parties.

YES | NO

References:

The Representation of People Act, 1951, Section 29C, requires political parties to prepare a report of (a) the contribution in excess of twenty thousand rupees (US\$424) received by such political party from any person in that financial year; (b) the contribution in excess of twenty thousand rupees (US\$424) received by such political party from companies other than government companies in that financial year" and submit the report to the Election Commission of India before it furnishes its income tax return of that financial year, failing which the political party would not be entitled to any tax relief under the Income Tax Act, 1961. No public disclosure of such reports are required by the political parties.

<http://lawmin.nic.in/legislative/election/volume%201/representation%20of%20the%20people%20act.%201951.pdf>

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

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

20e. In law, there are requirements for the independent auditing of the finances and expenditures of political parties when financial irregularities are uncovered.

YES | NO

References:

There is no requirement in law for any independent auditing of political parties.

YES: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of party finances and expenditures when irregularities are uncovered. 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' finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for parties to self-audit.

20f. In law, there is an agency or entity that monitors the financing of political parties.

YES | NO

Comments:

In a Supreme Court judgment of April 4, 1996 (Common Cause v. Union of India & Others), the court interpreted the expression "conduct of election" in Article 324 by the election commission to include scrutiny of all expenses incurred by a political party, a candidate or any other association or body of persons or any individual in the course of the elections.

References:

Constitution of India, Article 324, creates an independent body for elections. Under the Representation of People Act, 1951, and Conduct of Elections Rules, 1961, the elections body has limited powers to ask for accounts/information regarding political parties' and candidates' contributions and campaign expenditures. The law provides for civil and criminal consequences for violations of financing/accounting norms. (Sections 7(b), 8A, 10A, 123 of Representation of People Act, 1951; Section 89 of Conduct of Election Rules, 1961; Section 171 of Indian Penal Code, 1860). The relevant provisions under the Companies Act, 1956, and the Income Tax Act, 1961, enforces political contributions and taxation matters, respectively.

<http://lawmin.nic.in/legislative/election/volume%201/representation%20of%20the%20people%20act.%201951.pdf>

<http://lawmin.nic.in/ld/subord/cer1.htm>

<http://www.vakilno1.com/bareacts/indianpenalcode/indianpenalcode.htm>

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 the financing of political parties. 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. A NO score is also earned if this monitoring is solely carried out by the media and civil society organizations.

21. Are there regulations governing the financing of individual political candidates?

40

21a. In law, there are limits on individual donations to political candidates.

YES | NO

References:

There are no limits on individual donations to political candidates. However, individual donations have to be made with the approval of the candidate. See Section 171H of the Indian Penal Code, 1860:

Section 171H. Illegal payments in connection with an election

Whoever without the general or special authority in writing of a candidate incurs or authorizes expenses on account of the holding of any public meeting, or upon any advertisement, circular or publication, or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate, shall be punished with fine which may extend to five hundred rupees:

Provided that if any person having incurred any such expenses not exceeding the amount of ten rupees without authority obtains within ten days from the date on which such expenses were incurred the approval in writing of the candidate, he shall be deemed to have incurred such expenses with the authority of the candidate."

<http://www.vakilno1.com/bareacts/indianpenalcode/S171H.htm>

YES: A YES score is earned if there are any limits in size on individual contributions to political candidates. A YES score is also 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 candidates in a discriminatory manner.

21b. In law, there are limits on corporate donations to individual political candidates.

YES | NO

References:

Companies Act, 1956, Section 293A, limits political contributions, directly or indirectly, to (a) to any political party; or (b) for any political purpose to any person, provided that the amount or, as the case may be, the aggregate of the amounts which may be so contributed by a company in any financial year shall not exceed 5 percent of its average net profits determined in accordance with the provisions of Sections 349 and 350 during the three immediately preceding financial years".

http://www.mca21.gov.in/Ministry/actsbills/pdf/Companies_Act_1956_Part_1.pdf

YES: A YES score is earned if there are any limits in size on corporate contributions to individual political candidates. A YES score is earned if corporate contributions are prohibited.

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

21c. In law, there are requirements for the disclosure of donations to individual political candidates.

YES | NO

References:

There is no requirement to disclose contributions made to individual candidates. They have to be shown as part of the accounting process to the election commission.

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

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

21d. In law, there are requirements for the independent auditing of the campaign finances of individual political candidates when irregularities are uncovered.

YES | NO

References:

No such audit requirement exists in the law.

YES: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of an individual candidate's campaign finances and expenditures when financial irregularities are uncovered. 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 an individual candidate's campaign finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for candidates to self-audit.

21e. In law, there is an agency or entity that monitors the financing of individual political candidates' campaigns.

YES | NO

References:

The Election Commission of India (ECI) is charged with ensuring that campaign finance limits are adhered to by individual candidates. Candidates have to maintain accounts of their election expenses, and the elected candidate has to file the accounts with the District Election Officer (DEO). Then, based on the report made by the DEO, ECI notifies the candidate whether the election expenses were filed within the time and manner specified under the act. The DEO also displays the winning candidate's expense information on his noticeboard and announces the time and place at which the account can be inspected by anyone upon payment of a 1 rupee (US\$0.02) fee. Every candidate also has to file an assets and liabilities declaration affidavit as part of the nomination procedure; the affidavit is made available in the public domain before the elections.

See Rules 86 to 89 of Conduct of Elections Rules 1961, and Section 29C of Representation of People Act, 1951. There are civil and criminal consequences for violation of the provisions.

<http://lawmin.nic.in/legislative/election/volume%201/representation%20of%20the%20people%20act.%201951.pdf>

<http://lawmin.nic.in/ld/subord/cer1.htm>

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 the financing of individual political candidates' campaigns. 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. A NO score is also earned if this monitoring is solely carried out by the media and civil society organizations.

22. Are the regulations governing the political financing of parties effective?

0

22a. In practice, the limits on individual donations to political parties are effective in regulating an individual's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

Comments:

Since there are no limits on individual donations, the entries made against this indicator may not be accounted for.

References:

http://eci.nic.in/ElectoralSystem/the_function.asp#supervisingelections

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a 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 political party. However, exceptions and loopholes exist through which individuals can indirectly support 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 party; unregulated loans to 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 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.

22b. In practice, the limits on corporate donations to political parties are effective in regulating a company's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

References:

Elections and the funding conundrum," Jayanthi Iyengar, The Hindu Business Line, April 10, 2004, <http://www.thehindubusinessline.com/2004/04/10/stories/2004041000100800.htm>

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a 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 political party. However, exceptions and loopholes exist through which companies can indirectly support 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 party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to political parties 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.

22c. In practice, the limits on total party expenditures are effective in regulating a political party's ability to fund campaigns or politically-related activities.

100 | 75 | 50 | 25 | 0

References:

Offer Valid Till Votes Last," Shantanu Guha Ray, Tehelka Magazine, May 2, 2009, http://www.tehelka.com/story_main41.asp?filename=Ne020509coverstory.asp

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.

22d. In practice, when necessary, an agency or entity monitoring the financing of political parties independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

Given the lack of adequate regulations on political financing, the Election Commission of India recommended the government pass laws requiring political parties to publicly publish their accounts annually. Maintaining and auditing accounts to ensure their

accuracy would be a prerequisite, and auditing could be done by any firm of auditors approved by the comptroller and auditor general.

References:

Offer Valid Till Votes Last," Shantanu Guha Ray, Tehelka Magazine, May 2, 2009, http://www.tehelka.com/story_main41.asp?filename=Ne020509coverstory.asp

Election Commission of India, Proposed Electoral Reforms, 2004

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of political parties, or cooperates well with other agencies that do. 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, has limited effectiveness when investigating, or is reluctant to cooperate with other agencies in politically sensitive cases. 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, is uncooperative with other agencies, or the agency or entity is partisan in its application of this power.

22e. In practice, when necessary, an agency or entity monitoring the financing of political parties imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

Given the lack of adequate regulations on political financing, the ECI recommended the government pass laws requiring political parties to publicly publish their accounts annually. Maintenance and auditing of accounts to ensure their accuracy would be a prerequisite, and auditing could be done by any firm of auditors approved by the comptroller and auditor general.

References:

Electoral Reforms in India: Proactive Role of Election Commission," Sumandeep Kaur, Mainstream Weekly, Nov. 25, 2008, <http://www.mainstreamweekly.net/article1049.html>

"Debating election finance," Pratap Bhanu Mehta, The Hindu, July 17, 2002, <http://www.thehindu.com/2002/07/17/stories/2002071700081000.htm>

Central Information Commission, Ms. Anumeha, C/o Association for Democratic Reforms, v. Chief Commissioner of Income Tax-XI, New Delhi and 8 others, in Appeal Nos. CIC/AT/A/2007/01029 and 8 others, dated 29 April 2008.

Election Commission of India, Proposed Electoral Reforms, 2004

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or cooperates well with other agencies that impose penalties.

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, reluctant to cooperate with other agencies, 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 and may refuse cooperation with other agencies.

22f. In practice, contributions to political parties are audited.

100 | 75 | 50 | 25 | 0

Comments:

While political parties and candidates must submit accounts for contributions received and expenditures made, there is no requirement for these accounts to be audited and placed in the public domain. This has been a demand of the civil society organizations, political analysts and various government commissions/committees, including the Election Commission of India.

References:

Debating election finance," Pratap Bhanu Mehta, The Hindu, July 17, 2002, <http://www.thehindu.com/2002/07/17/stories/2002071700081000.htm>

Central Information Commission, Ms. Anumeha, Association for Democratic Reforms v. Chief Commissioner of Income Tax-XI, New Delhi and eight others, in Appeal Nos. CIC/AT/A/2007/01029 and 8 others, April 29, 2008

Election Commission of India, Proposed Electoral Reforms, http://eci.nic.in/PROPOSED_ELECTORAL_REFORMS.pdf

100: Political party finances are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities. Auditing includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

75:

50: Political party 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 may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party 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.

23. Are the regulations governing the political financing of individual candidates effective?

20

23a. In practice, the limits on individual donations to political candidates are effective in regulating an individual's ability to financially support a particular candidate.

100 | 75 | 50 | 25 | 0

Comments:

There are no limits to individual donations to candidates or parties, and donations made are 100 percent tax exempt under the Income Tax Act, 1961, which makes it possible to channel an individual's undeclared wealth into electioneering and even enable individuals to buy their tickets to contest in the elections.

References:

A politically correct tax break," S. Murlidharan, The Hindu Business Line, March 14, 2009, www.thehindubusinessline.com/.../2009031450060900.htm

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political candidate. 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 particular candidate. However, exceptions and loopholes exist through which individuals can indirectly support particular political candidates 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; unregulated loans to candidates (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 particular political candidate 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.

23b. In practice, the limits on corporate donations to individual candidates are effective in regulating a company's ability to financially support a candidate.

100 | 75 | 50 | 25 | 0

References:

How do parties collect money?" March 24, 2004, in rediff.com/election/2004/mar/25espec.htm

Association of Chambers of Commerce, www.assochem.org/.../ASSOCHAM_Election_Funding_Suggestion.pdf

100: Existing limits represent the full extent to which a company can directly or indirectly financially support an individual candidate. 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 an individual candidate. However, exceptions and loopholes exist through which companies can indirectly support individual candidates 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; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to individual candidates 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.

23c. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The expenditure-limit checks and the required filing of account statements within the time specified by law during elections are perhaps the only areas where the Election Commission of India (ECI) has had limited success. The ECI website lists a large number of candidates (and a few returned candidates) who have been disqualified, but this is largely on procedural grounds.

References:

Debating election finance," Pratap Bhanu Mehta, The Hindu, July 17, 2002, <http://www.thehindu.com/2002/07/17/stories/2002071700081000.htm>

Central Information Commission, Ms. Anumeha, Association for Democratic Reforms v. Chief Commissioner of Income Tax-XI, New Delhi and eight others, in Appeal Nos. CIC/AT/A/2007/01029 and eight others, April 29, 2008

Election Commission of India, Proposed Electoral Reforms, http://eci.nic.in/PROPOSED_ELECTORAL_REFORMS.pdf

Election Commission of India: List of Disqualified Candidates, <http://eci.nic.in/Electorallaws/FinalListofDisqualification.pdf>

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of individual candidates' campaigns, or cooperates well with other agencies that do. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power. It may be reluctant to cooperate with other investigatory agencies.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power. It does not cooperate well with other investigatory agencies.

23d. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The expenditure-limit checks and the required filing of account statements within the time specified by law during elections are perhaps the only areas where the Election Commission of India (ECI) has had limited success. The ECI website lists a large number of candidates (and a few returned candidates) who have been disqualified, but this is largely on procedural grounds.

References:

Debating election finance," Pratap Bhanu Mehta, The Hindu, July 17, 2002, <http://www.thehindu.com/2002/07/17/stories/2002071700081000.htm>

Central Information Commission, Ms. Anumeha, Association for Democratic Reforms v. Chief Commissioner of Income Tax-XI, New Delhi and eight others, in Appeal Nos. CIC/AT/A/2007/01029 and eight others, April 29, 2008

Election Commission of India, Proposed Electoral Reforms, http://eci.nic.in/PROPOSED_ELECTORAL_REFORMS.pdf

Election Commission of India: List of Disqualified Candidates, <http://eci.nic.in/ElectoralLaws/FinalListofDisqualification.pdf>

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or in cooperating with other agencies that do.

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, reluctant to cooperate with other agencies, 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 or may refuse to cooperate with other agencies.

23e. In practice, the finances of individual candidates' campaigns are audited.

100 | 75 | 50 | 25 | 0

References:

No auditing is required. Only accounts are submitted, and accounts of returned candidates are scrutinised by expenditure observers after the elections and before the candidate is notified.

100: The finances of individual candidates' campaigns are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities.

75:

50: The finances of individual candidates' campaigns are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions.

25:

0: The finances of individual candidates' campaigns 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.

24. Can citizens access records related to the financing of political parties?

0

24a. In practice, political parties disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

During election time, candidates are expected to furnish accounts of their expenditures. Political parties are required to furnish reports detailing contributions received to the Election Commission of India annually and to file income tax returns under the income tax laws. As the discussion on right-to-information requests before the Information Commission indicates, not only do political parties not disclose their sources of funding and expenditures to the election commission, but they are unwilling to accept themselves as public authority" under the Right to Information Act, 2005, which would make them liable to disclose information about their income and expenditures to the public.

References:

Debating election finance," Pratap Bhanu Mehta, The Hindu, July 17, 2002, <http://www.thehindu.com/2002/07/17/stories/2002071700081000.htm>

Central Information Commission, Ms. Anumeha, Association for Democratic Reforms v. Chief Commissioner of Income Tax-XI, New Delhi and eight others, in Appeal Nos. CIC/AT/A/2007/01029 and eight others, April 29, 2008

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

75:

50: Political parties 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 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.

24b. In practice, citizens can access the financial records of political parties within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Political parties do not make financial information public on their own. Under the Right to Information Act, 2005, it is yet to be determined whether political parties are public authorities," which would make it mandatory for them to disclose information to the public. However, in the decision cited above, the Information Commission ruled that if information relating to a political party was held by a public authority (in this case, the Income Tax Department because the information request was for copies of income tax returns of political parties), that public authority was obliged to disclose the information in the public interest. At the time of elections, the expenditure statement of the winning candidate is placed on the notice board of the District Election Officer to invite objections within a specified period for a nominal cost.

References:

Central Information Commission, Ms. Anumeha, Association for Democratic Reforms v. Chief Commissioner of Income Tax-XI, New Delhi and eight others, in Appeal Nos. CIC/AT/A/2007/01029 and eight others, April 29, 2008, <http://cic.gov.in/CIC-Orders/AT-29042008-01.pdf>

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.

24c. In practice, citizens can access the financial records of political parties at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

It's not required by law. It's not done. At the time of elections, the expenditure statement of the winning candidate is placed on the notice board of the District Election Officer to invite objections within a specified period for a nominal cost.

References:

Central Information Commission, Ms. Anumeha, Association for Democratic Reforms v. Chief Commissioner of Income Tax-XI, New Delhi and eight others, in Appeal Nos. CIC/AT/A/2007/01029 and eight others, April 29, 2008, <http://cic.gov.in/CIC-Orders/AT-29042008-01.pdf>

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.

24d. In practice, the publicly available records of political parties' finances are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

They are not available to the public suo motu. Information relating to income tax returns and sources of funding have been disclosed by a few political parties to the Election Commission, and these have been made available under the RTI Act.

References:

Central Information Commission, Ms. Anumeha, Association for Democratic Reforms v. Chief Commissioner of Income Tax-XI, New Delhi and eight others, in Appeal Nos. CIC/AT/A/2007/01029 and eight others, April 29, 2008, <http://cic.gov.in/CIC-Orders/AT-29042008-01.pdf>

RTI unlocks party, judiciary doors, CMS Transparency Review, May 2008, <http://www.cmsindia.org/cms/rtimay2008.pdf>

Secrecy over India party funding," Panini Anand, BBC Hindi Service, Delhi, http://news.bbc.co.uk/2/hi/south_asia/7576377.stm

100: Publicly available records of political parties' finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political parties' finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political parties' finances, when available, are so incomplete or overly general as to render them useless in understanding a party's sources of income and its expenditures.

25a. In practice, individual political candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

These disclosures are made only during the time of the elections, along with affidavits on assets and liabilities.

References:

RTI unlocks party, judiciary doors, CMS Transparency Review, May 2008, <http://www.cmsindia.org/cms/rtimay2008.pdf>

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

75:

50: Individual 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: Individual 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.

25b. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Candidates are required to disclose this information at the time of elections. The information is available for public scrutiny for a specified period and at a nominal cost.

References:

RTI unlocks party, judiciary doors, CMS Transparency Review, May 2008., <http://www.cmsindia.org/cms/rtimay2008.pdf>

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.

25c. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The information as submitted by the candidate during election time is available at a nominal cost.

References:

RTI unlocks party, judiciary doors, CMS Transparency Review, May 2008, <http://www.cmsindia.org/cms/rtimay2008.pdf>

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.

25d. In practice, the publicly available records of political candidates' campaign finances are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

The information furnished is as per a format prescribed by the election commission. It requires keeping accounts of itemized expenditures and is intended to check whether the candidate has stayed within the limits of his campaign expenditures.

References:

RTI unlocks party, judiciary doors, CMS Transparency Review, May 2008., <http://www.cmsindia.org/cms/rtimay2008.pdf>

100: Publicly available records of political candidates' campaign finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political candidates' campaign finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political candidates' campaign finances, when available, are so incomplete or overly general as to render them useless in understanding a candidate's sources of income and expenditures.

Category III. Government Accountability

III-1. Executive Accountability

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

88

27a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | 50 | 25 | 0

Comments:

While press briefings to convey decisions made by the Cabinet is a norm in the central government and some states, it may not be so for all state cabinets. The government regularly issues press statements on policy matters. In recent times, government departments have also been using their websites to publicise policy choices and inviting comments from the public in some cases. An example of the changes in the direct tax law is cited above. Such exchanges with the press or publicising of government policy may not always be through formal press conferences. However, it is not expected that the government discuss every administrative or delegated action with the public. The system provides for checks and balances that a vigilant legislature/public/media/judiciary is expected to kick in if there is abuse of power.

References:

Transparency is the key for cabinet secretary, July 3, 2009, <<http://news.rediff.com/report/2009/jul/03/cabinet-sec-wants-press-briefings-more-transparent.htm>>

Direct Tax Code discussions, Ministry of Finance <<http://finmin.nic.in/dtcode/index.html>>

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

75:

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

25:

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

27b. In law, the judiciary can review the actions of the executive.

YES | NO

References:

Constitution of India, Article 32, grants writ jurisdiction to enforce fundamental rights to the Supreme Court, and Article 226 grants the High Court writ jurisdiction as well as powers to redress any other injury or illegality caused by contravention of any ordinary law, http://india.gov.in/govt/documents/english/coi_part_full.pdf

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).

27c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | 50 | 25 | 0

Comments:

Some recent cases:

1. The High Court struck down as unconstitutional Section 377 of the Indian Penal Code, which criminalized consensual gay sex. Delhi High Court strikes down Section 377 of IPC," Nirmimesh Kumar, The Hindu, Jul 3, 2009, www.thehindu.com/2009/07/03/.../2009070358010100.htm

2. The Gujarat High Court struck down a book-ban by the Gujarat government considered derogatory to a national leader. The Supreme Court also gave notice to the state government. "Supreme Court asks Gujarat why Jaswant's book was banned," The Hindustan Times, Sept. 14, 2009, <http://www.hindustantimes.com/homepage/india/Why-was-Jaswant-s-book-banned-SC-asks-Gujarat-Govt/449192/H1-Article1-449179.aspx>

3. The Supreme Court ordered a state government to stop its statue- and park-building spree at the cost of huge public money, "Comment: Maya's Folly", Times of India, Sept. 14, 2009. <http://timesofindia.indiatimes.com/opinion/edit-page/Comment-Mayas-Folly/articleshow/5006312.cms>

4) This is a "fake encounter" case. The Supreme Court has earlier taken up cases involving riots and police excesses causing death and other human rights violations.

"Sohrabuddin case: SC asks Gujarat why case not be entrusted to SIT," The Times of India, Aug. 3 2009

References:

IX Schedule laws open to review," J. Venkatesan, The Hindu, Jan. 12, 2007 <http://www.thehindu.com/2007/01/12/stories/2007011207840100.htm>>

"Judicial Review of Supreme Court Judgment on IX schedule of the Constitution," M. Sundara Rami Reddy, V.N. Maya, Legal Research Associates, http://www.legalserviceindia.com/articles/jud_sc.htm

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 rely 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.

27d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

100 | 75 | 50 | 25 | 0

Comments:

Under the Indian Constitution, the chief executive must be aided and advised by his Cabinet in deciding policy- and law-making. Laws can be passed only through a parliamentary process. Ordinances passed in special circumstances by the executive must be enacted through due parliamentary procedure within a specified period (there have been many violations here).

The above citations give examples of administrative action taken that was not rooted in any statute, not only by the executive but also by the judiciary and other constitutional bodies. Such executive action is prevalent in economic laws, where the government wants to move fast on economic reforms. The 100 rating is to indicate that the chief executive cannot act on his own. Even administrative actions as cited above are rare, given both that there are more than 3000 central laws and perhaps more than 30,000 state laws dating from 1836 that are still on the books, and the vast amount of administrative action that happens. The courts too have been alert to strike down extra-legal policies/orders.

References:

A code for excess," A.G. Noorani, Frontline, Aug. 1-14, 2009, <http://www.thehindu.com/line/fi2616/stories/20090814261608400.htm>

"Against the law, A.G. Noorani, Frontline, October 25-Nov. 7, 2008, http://www.judicialreforms.org/files/against_the_law_ag_noorani.pdf

"Licensed to Delicense?" by Paromita Shastri, Outlook Magazine, Oct. 3, 2005,, <http://www.outlookindia.com/article.aspx?228798>

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

75:

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

25:

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

28. Is the executive leadership subject to criminal proceedings?

100

28a. In law, the heads of state and government can be prosecuted for crimes they commit.

YES | NO

References:

Constitution of India, Article 56, provides for impeachment of the president (nominal head) for violation of the Constitution, india.gov.in/govt/documents/english/coi_part_full.pdf

The Prime Minister, who is the head of the government, is a public servant within the meaning of Section 21 of the Indian Penal Code 1860 and Section 2(c) of the Prevention of Corruption Act, 1988, and can be prosecuted.

www.vakilno1.com/bareacts/indianpenalcode/indianpenalcode.htm

www.persmin.nic.in/EmployeesCorner/Acts_Rules/PCAct/pcact.pdf

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.

28b. In law, ministerial-level officials can be prosecuted for crimes they commit.

YES | NO

References:

Ministers are public servants under Section 21 of the Indian Penal Code, 1860, and Section 2(c) of the Prevention of Corruption Act, 1988.

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.

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

38

29a. In law, the heads of state and government are required to file a regular asset disclosure form.

YES | NO

References:

Not required by the President (head of state)

Required by the Prime Minister (head of government) as a Member of Parliament under Section 75A of the Representation of the People Act, 1951. The Members of Lok Sabha (Declaration of Assets and Liabilities) Rules, 2004, and Members of Rajya Sabha (Declaration of Assets and Liabilities) Rules, 2004, are procedural rules made under this act.

<http://lawmin.nic.in/legislative/election/volume%201/representation%20of%20the%20people%20act.%201951.pdf>

164.100.24.208/ls/templates/Rules_L_A_2004_E.pdf

www.rajyasabha.nic.in/rsnew/general.../GI_DeclarationAssets.pdf

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.

29b. In law, ministerial-level officials are required to file a regular asset disclosure form.

YES | NO

References:

Ministers, as Members of Parliament, are required to file asset disclosures under Section 75A of the Representation of the People Act, 1951. The Members of Lok Sabha (Declaration of Assets and Liabilities) Rules, 2004, and Members of Rajya Sabha (Declaration of Assets and Liabilities) Rules, 2004, are procedural rules made under this act.

<http://lawmin.nic.in/legislative/election/volume%201/representation%20of%20the%20people%20act.%201951.pdf>

164.100.24.208/ls/templates/Rules_L_A_2004_E.pdf

www.rajyasabha.nic.in/rsnew/general.../GI_DeclarationAssets.pdf

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.

29c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

YES | NO

Comments:

If members of the executive branch" implies ministers of the government, the Ministry of Home Affairs is entrusted with the function of framing a Code of Conduct for Ministers. This Code is kept confidential and its contents are not public. So it is unclear whether this Code covers gifts and hospitality. However, Ministers are required to file their asset declarations annually under this Code.

The Upper House (Rajya Sabha) has a Code of Conduct for its Member and some ministers may belong to this House. This Code is very broad. The Lower House (Lok Sabha), where most of the ministers belong, has no such Code in place.

Article 102(1) of the Constitution bars members of parliament/legislative assemblies from holding any office of profit while they are MPs/MLAs.

References:

Key men in PM's team go slow on assets declaration", Himanshi Dhawan, The Times of India, 17 November 2009.

Rajya Sabha Handbook for Members, <http://164.100.47.5/rsnew/handbook/chapter2-1.asp#Code>

"Committee recommends code of conduct for Lok Sabha," April 30, 2008, http://www.thaindian.com/newsportal/politics/committee-recommends-code-of-conduct-for-lok-sabha_10043784.html

Article 102(1) of the Constitution: Office of Profit

http://india.gov.in/govt/documents/english/coi_part_full.pdf

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.

29d. In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).

YES | **NO**

References:

There is no such auditing mechanism.

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.

29e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

YES | **NO**

References:

No such restrictions exist.

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.

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

29f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

100 | 75 | 50 | 25 | 0

References:

There are no such restrictions.

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

75:

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

25:

0: The regulations are rarely or never enforced. Heads of state/government or ministers routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced. A zero score is also earned if heads of state and government or minister are allowed to hold private sector jobs while in office.

29g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | 25 | 0

Comments:

The only code of conduct that exists is the one issued by the Rajya Sabha (Upper House), which does not contain many ministers.

New code of conduct for MPs recommended," Indian Express, April 30, 2008, <http://www.expressindia.com/latest-news/tbgtNew-code-of-conduct-for-MPs-recommendedlt-bgt/303651/>

References:

Advani cautions first-time MPs against 'temptations,'" Indian Express, June 9, 2009, <http://www.expressindia.com/latest-news/Advani-cautions-firsttime-MPs-against-temptations/473631/>

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced. Members of the executive branch never or rarely accept gifts or hospitality above what is allowed.

75:

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

25:

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

29h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | 50 | 25 | 0

References:

No such auditing is done.

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

75:

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

25:

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

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

63

30a. In law, citizens can access the asset disclosure records of the heads of state and government.

YES

NO

Comments:

Though no law has been made, on the force of executive instructions issued by the Election Commission of India (ECI), political candidates for parliamentary and state elections are required to declare their assets and liabilities at the time of filing their nomination for the elections. This was as a consequence of a ruling by the Indian Supreme Court on a public interest case. These affidavits are available on the website of the ECI (cited above). Members of Parliament are required to declare assets and liabilities within 90 days of taking the oath under Section 75A of the Representation of the People Act, 1951. Members of Lok Sabha (Declaration of Assets and Liabilities) Rules, 2004, and Members of Rajya Sabha (Declaration of Assets and Liabilities) Rules, 2004, are procedural rules made under this act. In the Lok Sabha, these disclosures are treated as confidential and are made available to the public only if permitted by the speaker of the Lower House (Lok Sabha). However, asset and liability affidavits filed before the ECI prior to the elections are in the public domain. In the Rajya Sabha (Upper House), the disclosures can be made public only with the approval of the chairman of the Rajya Sabha. Unlike the asset disclosure (AD) affidavits of members of the Lok Sabha, the AD affidavits of members of the Rajya Sabha are not freely available to the public. The current head of the government is from the Rajya Sabha, and so his AD disclosure will be available only if permitted by the chairman of the Rajya Sabha. The indicator has been marked Yes because ADs are not completely barred from the public.

References:

The head of state, the president of India, is not required by law to file asset disclosures.

The head of government may be from either House of Parliament, and as an MP is required to file such a declaration. Asset and Liabilities Declaration by members of Parliament have to be filed under Section 75A of the Representative of People Act, 1951. <http://lawmin.nic.in/legislative/election/volume%201/representation%20of%20the%20people%20act.%201951.pdf>

The two houses of Parliament have issued procedural rules for the purpose:

1. Members of Lok Sabha (Declaration of Assets and Liabilities) Rules, 2004, http://164.100.24.208/ls/templates/Rules_L_A_2004_E.pdf

2. Members of Rajya Sabha (Declaration of Assets and Liabilities) Rules, 2004, http://164.100.47.5/rsnew/members/declaration_assets_rules_2006.pdf

The declarations of all candidates for elections to the Lok Sabha (Lower House) are available at the Election Commission of India website: http://eci.nic.in/CurrentElections/ge2009/Affidavits_fs.htm

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.

30b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Rated 0 because it's some time away. On a right to information request, the Information Commission held that asset disclosures of ministers were accessible only with the permission of the speaker of the Lok Sabha or the chairman of the Rajya Sabha. So far, only the Rajya Sabha has agreed to make available assets information. From reports, it appears that the compliance of the asset disclosure law by MPs is not total. Noncompliance by members of the Lok Sabha is likely to be higher.

References:

Central Information Commission, Appeal No. CIC/WB/A/2009/00038 & WB/C/08/868, March 16, 2009, SC Agrawal v. Prime Minister's Office (PMO), <http://cic.gov.in/CIC-Orders/WB-16032009-01.pdf>

RS to provide asset details of ministers," The Tribune, April 21, 2009, <http://www.tribuneindia.com/2009/20090422/nation.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.

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.

30c. In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

This indicator has been rated 100 because when applied for, asset disclosures would be available at a nominal cost.

References:

RS to provide asset details of ministers," The Tribune, April 21, 2009, <http://www.tribuneindia.com/2009/20090422/nation.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.

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.

30d. In practice, the asset disclosure records of the heads of state and government are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

This input is valid for the head of government and ministers of the government. Analysis of the content of asset disclosures by the head of government and ministers is only possible through the disclosures made at the time of elections. The prescribed format requires giving information on assets and liabilities and government dues by candidates and their wives and children on affidavit. Though the form itself is comprehensive, the information furnished is often not complete, that is, the columns in the form are left blank. The information is not scrutinized for accuracy of the content. The cited information sources are examples of the kind of

quality analysis that was done on the asset affidavits filed by candidates during the recently concluded elections. Asset disclosure of the present head of government (prime minister) is not available in the public domain.

References:

Association for Democratic Reforms, National Election Watch, press release, May 22, 2009, <http://national-ew-news.googlegroups.com/attach/e4c7e13bce44d5c8/Press+Release+PAN+details+of+MPs.pdf?view=1_4&hl=en

Asset comparison: 2004 MPs recontesting in 2009 Lok Sabha Elections,” Association for Democratic Reforms, National Election Watch, press release, May 19, 2009, http://national-ew-news.googlegroups.com/attach/0269b0e1a9ecf6b2/Press+Release+Asset+comparison+for+recontesting+MPs_complete+report.pdf?view=1_4&hl=en

100: The asset disclosure records of the heads of state and government are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the heads of state and government contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the heads of state and government are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

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

100

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

YES | NO

Comments:

The Supreme Court read Articles 32 and 226 together with Article 300 and found that where public functionaries are involved and there has been a violation of fundamental rights or the enforcement of public duties, the remedy would be available under the public law and a suit could also be filed for damages under private law. In *Rudal Shah v. State of Bihar* AIR 1983 SC 1083, the Supreme Court held that in a case of illegal detention, violation of the right to personal liberty can give rise to a civil liability.

References:

Constitution of India, Articles 32 and 226, grant the Supreme Court of India and the High Courts of the States writ jurisdiction, that is, the power to issue writs of habeas corpus, mandamus, prohibition, certiorari and quo warranto for the enforcement of fundamental rights provided for in the Constitution against any violation by the state.

Article 300 of the Constitution of India provides for tortious liability of the state for acts of torts committed by the state.

Constitution of India: http://india.gov.in/govt/documents/english/coi_part_full.pdf

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.

31. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

50

31. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

100 | 75 | 50 | 25 | 0

Comments:

There are restrictions during the election by way of the Model Code of Conduct. The code doesn't have the force of law and hasn't completely done away with misuse of public money for partisan purposes, but has perhaps limited it, as the code hangs as a Damocles sword over the candidates. Rivals are quick to complain of any misuse, and the election commission sends out notices of violation. At other times, it is generally a politics of spoils even though the executive is insulated from the pressures of politicians. It is not unusual to find the line between the party and the government getting blurred for public functions/projects.

References:

Election Commission of India, Model Code of Conduct for Candidates, eci.nic.in/Model_Code_Conduct.pdf

Poll code violation: six vehicles seized," The Hindu, Aug. 14, 2009, www.thehindu.com/2009/08/14/stories/2009081452880300.htm

"Can't give NREGS space to any other political party," Indian Express, Sept. 16, 2009, www.indianexpress.com/news/cant-give-nregs-space-to-any-other-political-party/517685/

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

75:

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

25:

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

III-2. Legislative Accountability

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

92

32a. In law, the judiciary can review laws passed by the legislature.

YES | NO

Comments:

The history of the Indian Constitution has been one of frequent one-upmanship between the legislature and judiciary. The current position is that the judiciary has upheld its powers of judicial review over some basic features: sovereignty, the democratic and secular character of the nation, rule of law, independence of the judiciary and the fundamental rights of citizens.

References:

By way of its writ jurisdiction under Articles 32 and 226 of the Constitution, the Supreme Court can decide on the constitutionality of laws passed by the legislature.

http://india.gov.in/govt/documents/english/coi_part_full.pdf

Basic structure of the Constitution, Commonwealth Human Rights

Initiative: http://www.humanrightsinitiative.org/publications/const/the_basic_structure_of_the_indian_constitution.pdf

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).

32b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | 50 | 25 | 0

Comments:

The Supreme Court has been known to aggressively review the constitutionality of laws, such as those of preventive detention and property rights, but the court has also buckled to executive pressures and overreached itself by way of judicial activism.

References:

The Supreme Court Rules," OutlookIndia.com, Jan. 11, 2007, <http://www.outlookindia.com/article.aspx?233582>

"Judicial Activism in Public Interest Litigation," Tehmtan R. Andhyarujina, Halsbury's Law Monthly, August 2008, <http://www.halsburys.in/judicial-activism.html>

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

75:

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

25:

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

32c. In law, are members of the national legislature subject to criminal proceedings?

YES | NO

Comments:

Based on an interpretation of Article 105(2) of the Constitution of India in P.V. Narasimha Rao v. CBI (1998) on parliamentary privilege, the Supreme Court ruled that bribe-giving MPs did not enjoy any immunity and were liable to be prosecuted under the anti-corruption law. The court split bribe-taking MPs into two categories: those who voted and those who did not. The bribe-taking MPs who honored the deal, that is, those who voted in a particular manner for a consideration, were granted immunity from prosecution by the apex court, but those who took the bribe and did not vote became liable for prosecution.

References:

Legislators have no immunity from criminal prosecution. The speaker/chairman of the House has to be informed of any arrest/criminal proceedings initiated against a member of Parliament. Article 105 of the Constitution lays out the privileges that protect legislators from arrest in civil cases under certain circumstances. In corruption cases, MPs are public servants within the meaning of Section 21 of the Indian Penal Code 1860 and the Prevention of Corruption Act, 1988, and therefore require sanction for prosecution.

www.vakilno1.com/bareacts/indianpenalcode/indianpenalcode.htm

www.persmin.nic.in/EmployeesCorner/Acts_Rules/PCAct/pcact.pdf

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. A NO score is also earned if the legislative branch itself controls whether investigative or prosecutorial immunity can be lifted on members of the legislature.

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

14

33a. In law, members of the national legislature are required to file an asset disclosure form.

YES | NO

References:

Under Section 75A of the Representation of the People Act, 1951, MPs are required to file asset disclosures. The Members of Lok Sabha (Declaration of Assets and Liabilities) Rules, 2004, and Members of Rajya Sabha (Declaration of Assets and Liabilities) Rules, 2004, are procedural rules made under this act.

lawmin.nic.in/legislative/election/volume%201/representation%20of%20the%20people%20act,%201951.pdf

164.100.24.208/ls/templates/Rules_L_A_2004_E.pdf
www.rajyasabha.nic.in/rsnew/general.../GI_DeclarationAssets.pdf

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.

33b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

YES | NO

References:

No source given.

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.

33c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

YES | NO

Comments:

There are restrictions under the Foreign Contributions Regulation Act, which regulates the acceptance and utilization of foreign contributions and foreign hospitality by persons and associations working in public life. Politicians, public servants, judges, journalists, printers and publishers of newspapers, and other people working in important areas of national life are covered under this act.

References:

Rajya Sabha Handbook for Members: 164.100.47.5/rsnew/handbook/chapter2-1.asp#Code

Committee recommends code of conduct for Lok Sabha,” April 30, 2008, www.thaindian.com/newsportal/politics/committee-recommends-code-of-conduct-for-lok-sabha_10043784.html

Article 102(1) bars members of Parliament/legislative assemblies from holding any office of profit while they are MPs/MLAs, india.gov.in/govt/documents/english/coi_part_full.pdf

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.

33d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

YES | NO

References:
No source given.

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.

33e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | 0

References:
There are no restrictions.

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no cases 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. A zero score is also earned if legislators are allowed to hold private sector positions while in office.

33f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

References:
No source given.

100: The regulations governing gifts and hospitality to national legislators are regularly enforced. 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 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.

33g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | 0

References:
No source given.

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: 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.

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

63

34a. In law, citizens can access the asset disclosure records of members of the national legislature.

YES | NO

References:
An MP is required to file an asset and liabilities declaration under Section 75A of the Representative of People Act, 1951, lawmin.nic.in/legislative/election/volume%201/representation%20of%20the%20people%20act,%201951.pdf

The two Houses of Parliament have issued procedural rules for the purpose: Members of Lok Sabha (Declaration of Assets and Liabilities) Rules, 2004, 164.100.24.208/ls/templates/Rules_L_A_2004_E.pdf, and Members of Rajya Sabha (Declaration of Assets and Liabilities) Rules, 2004, 164.100.47.5/rsnew/members/declaration_assets_rules_2006.pdf

The declarations of all candidates for elections to the Lok Sabha (Lower House) are available on the Election Commission of India website, eci.nic.in/CurrentElections/ge2009/Affidavits_fs.htm

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.

34b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Though no law has been made, executive instructions issued by the Election Commission of India require political candidates for parliamentary and state elections to declare their assets and liabilities at the time of filing their nominations for the elections. This was as a consequence of a ruling of the Indian Supreme Court on a public interest litigation case. These affidavits are available on the website of the Election Commission of India (cited above).

Members of Parliament are also required to declare assets and liabilities within 90 days of taking the oath under Section 75A of the Representation of the People Act, 1951. Members of Lok Sabha (Declaration of Assets and Liabilities) Rules, 2004, and Members of Rajya Sabha (Declaration of Assets and Liabilities) Rules, 2004, are procedural rules made under the act.

In the Lok Sabha, these disclosures are treated as confidential and are made available to the public only if permitted by the speaker of the Lok Sabha (Lower House). However, members' asset and liability affidavits filed before the ECI prior to the elections are in the public domain. In the Rajya Sabha (Upper House), the disclosures can be made public only with the approval of the chairman of the Rajya Sabha.

Unlike asset disclosures affidavits of members of the Lok Sabha, asset disclosure affidavits of members of the Rajya Sabha have not been available to the public. On a right to information request, the Information Commission held that asset disclosures of ministers were accessible only with the permission of the speaker of the Lok Sabha or chairman of the Rajya Sabha. So far, only the Rajya Sabha has agreed to make asset information available. From reports, it appears that the compliance with the asset disclosure law by MPs is not complete. Noncompliance by members of the Lok Sabha is likely to be higher.

References:

lawmin.nic.in/legislative/election/volume%201/representation%20of%20the%20people%20act,%201951.pdf

The two Houses of Parliament have issued procedural rules for the purpose: Members of Lok Sabha (Declaration of Assets and Liabilities) Rules, 2004, 164.100.24.208/ls/templates/Rules_L_A_2004_E.pdf, and Members of Rajya Sabha (Declaration of Assets and Liabilities) Rules, 2004, 164.100.47.5/rsnew/members/declaration_assets_rules_2006.pdf

The declarations of all candidates for elections to the Lok Sabha (Lower House) are available on the Election Commission of India website, eci.nic.in/CurrentElections/ge2009/Affidavits_fs.htm

Central Information Commission, Appeal No. CIC/WB/A/2009/00038 & WB/C/08/868, March 16, 2009, in S.C. Agrawal v. Prime Minister's Office (PMO), cic.gov.in/CIC-Orders/WB-16032009-01.pdf

RS to provide asset details of ministers," The Tribune, April 21, 2009, <http://www.tribuneindia.com/2009/20090422/nation.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.

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.

34c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

This indicator is marked 100 because if it was possible to access asset disclosures, then they could be obtained at a nominal

cost. The rules of procedure for the Lok Sabha and the Rajya Sabha do not specify any cost for obtaining information. Under the Right to Information Act, 2005, the cost of information is the cost of making copies, etc.

References:

RS to provide asset details of ministers," The Tribune, April 21, 2009, www.tribuneindia.com/2009/20090422/nation.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.

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.

34d. In practice, the asset disclosure records of members of the national legislature are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

Analysis asset disclosures of the head of government and ministers is possible only through disclosures made at the time of elections. The prescribed format requires giving information on affidavit on assets and liabilities and government dues of candidates and their wives and children. Though the form itself is comprehensive, the information furnished is often not complete that is, the columns are left blank. The information is not scrutinized for accuracy. The cited information sources are examples of the kind of quality analysis that was done on the asset affidavits filed by candidates during the recently concluded elections.

References:

Association for Democratic Reforms, National Election Watch, press release, May 22, 2009 national-ew-news.googlegroups.com/attach/e4c7e13bce44d5c8/Press+Release+-+PAN+details+of+MPs.pdf?view=1&hl=en

Asset comparison: 2004 MPs recontesting in 2009 Lok Sabha Elections," Association for Democratic Reforms, National Election Watch, press release, May 19, 2009, national-ew-news.googlegroups.com/attach/0269b0e1a9ecf6b2/Press+Release+_Asset+comparison+for+recontesting+MPs_complete+report.pdf?view=1&hl=en

100: The asset disclosure records of members of the national legislature are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the members of the national legislature contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the members of the national legislature are overly general, lack any meaningful detail, and do not provide clear accounting of the individuals' sources of income, investments, and other financial assets.

35. Can citizens access legislative processes and documents?

92

35a. In law, citizens can access records of legislative processes and documents.

YES | NO

Comments:

The full report of the proceedings is published, printed and available for purchase as well as shown on the websites of the two Houses.

References:

The Official Reports of the Proceedings of the Lok Sabha and the Rajya Sabha are prepared and published under Rule 379 and Rule 382 of the Rules of Procedure and Conduct of Business in the Lok Sabha and under Rule 260 of the Rules of Procedure and Conduct of Business in the Rajya Sabha.

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.

35b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The records of the proceedings in the Parliament are available freely on the websites of the two Houses, though there may be a time lag.

References:

Lok Sabha (Lower House), loksabha.nic.in/
Rajya Sabha (Upper House), rajyasabha.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.

35c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The online information is available for free. The priced copies are available at reasonable costs at government publications outlets.

References:

loksabha.nic.in

rajya.sabha.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.

65 III-3. Judicial Accountability

36. Are judges appointed fairly?

50

36a. In law, there is a transparent procedure for selecting national-level judges.

YES | NO

Comments:

The procedure set by the Constitutional underwent changes after three pronouncements of the Supreme Court. The concept of a collegium" was introduced, which requires a "consultation." The position as it stands today is as follows: "The Chief Justice of India must make a recommendation to appoint a judge of the Supreme Court and to transfer a Chief Justice or puisne judge of a High Court in consultation with the four seniormost puisne judges of the Supreme Court. In so far as an appointment to the High Court is concerned, the recommendation must be made in consultation with the two seniormost -puisne judges of the Supreme Court. ... the requirement of consultation by the Chief Justice of India with his colleagues, who are likely to be conversant with the affairs of the High Court concerned, does not refer only to those judges who have that High Court as a parent High Court. It does not exclude judges who have occupied the office of a judge or Chief Justice of that High Court on transfer... the views of the other judges consulted should be in writing and should be conveyed to the Government of India by the Chief Justice of India along with his views. ... (Supreme Court Advocates-on-Record Association v. Union of India, 1998)

References:

Article 124 (2) of the Constitution provides for the appointment of a judge of the Supreme Court by the president, after consultation with the judges of the Supreme Court and the High Courts in the states. In the appointment of a judge other than the chief justice, the chief justice of India must be consulted.

Article 217 of the Constitution provides for the appointment and conditions of service of a High Court judge (in the states). Such judges are appointed after consultation with the governor of the state. In the appointment of a judge other than the chief justice, the chief justice of India must be consulted.

Constitution of India, india.gov.in/govt/documents/english/coi_part_full.pdf

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.

36b. In practice, professional criteria are followed in selecting national-level judges.

Comments:

The distinction is made between professional qualifications and merit. Appointment of judges in the higher judiciary lacks transparency and the courts are known to have large number of judges who are either unsuitable or of doubtful integrity.

References:

Judicial Reform: Appointment and Transfer of Judges," Shyamliha Pappu, Halsbury's Law Monthly, November 2008, www.halsburys.in/judicial-reform.html

"Issues raised by I affaire Dinakaran," V.R. Krishna Iyer, The Hindu, Sept. 17, 2009, beta.thehindu.com/opinion/op-ed/article21767.ece

"Selection and impeachment of judges," K.G. Kannabiran, PUCL Bulletin, March 2005, www.pucl.org/Topics/Law/2005/judges-selection.htm

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.

36c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

YES | NO

Comments:

The current procedure is set out by judicial interpretation (Supreme Court Advocates-on-Record Association v. Union of India, 1998). The Chief Justice of India must make a recommendation to appoint a judge to the Supreme Court and to transfer a Chief Justice or puisne judge of a High Court in consultation with the four seniormost puisne judges of the Supreme Court. For an appointment to the High Court, the recommendation must be made in consultation with the two seniormost -puisne judges of the Supreme Court. The views of the other judges consulted must be in writing and should be conveyed to the government of India by the Chief Justice of India along with his views. The president makes the appointment on the recommendation of the chief justice of India.

References:

No sources given.

YES: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency or entity 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 the same body that appoints the judges (such as the Prime Minister approving judicial nominees put forward by the Minister of Justice, both of whom are part of the executive).

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

63

37a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

YES | NO

Comments:

There are no formal or mandatory processes, but courts follow the common law tradition and principles of natural justice to give reasons for their decisions.

References:

Common law tradition

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).

37b. In practice, members of the national-level judiciary give reasons for their decisions.

100 | 75 | 50 | 25 | 0

Comments:

Such instances cannot be ruled out.

References:

An order bereft of reasons," T.N. Pandey, Hindu Business Line, May 2, 2009, <http://www.thehindubusinessline.com/2009/05/02/stories/2009050250070700.htm>

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.

37c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

YES | NO

Comments:

The Judges (Inquiry) Act 1968 regulates the procedure for investigating and proving misbehavior and incapacity. The act requires that the investigation be done by a three-member Inquiry Committee consisting of two judges and a jurist. The outcome of the investigation is then referred to the speaker or chairman of the appropriate House. The motion to impeach then has to be supported by at least a two-thirds vote by House members present and voting. A yes" vote is then presented to the president during the same session, who then removes the offending member.

The Supreme Court also has an in-house procedure for dealing with deviant behavior of judges that did not warrant impeachment.

References:

The Judges (Inquiry) Act 1968 and rules framed under it, www.prsindia.org/docs/bills/1168509659/bill88_2007100588_The_Judges__Inquiry__Act_1968.pdf

In-House Procedure set up by the Supreme Court for dealing with deviant behavior of judges that did not warrant the impeachment procedure, C. Ravichandran Iyer v. Justice A.M. Bhattacharjee, (1995 (5) SCC 457)

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. A YES score can still be earned if the judicial disciplinary agency (or mechanism) is internal to 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.

37d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

YES | NO

Comments:

The Judges (Inquiry) Act 1968 regulates the procedure for investigating and proving misbehavior and incapacity. The act requires that the investigation be done by a three-member Inquiry Committee consisting of two judges and a jurist. The outcome of the investigation is then referred to the speaker or chairman of the appropriate House. The motion to impeach then has to be supported by at least a two-thirds vote by House members present and voting. A yes" vote is then presented to the president during the same session, who then removes the offending member.

The Supreme Court's in-house procedure for dealing with deviant behavior of judges also is insulated from executive and legislative interference.

References:

The Judges (Inquiry) Act, 1968, and the rules framed under it,
www.prsindia.org/docs/bills/1168509659/bill88_2007100588_The_Judges__Inquiry__Act_1968.pdf

In-house procedure set up by the Supreme Court for dealing with deviant behavior of judges that did not warrant the impeachment procedure, C. Ravichandran Iyer v. Justice A.M. Bhattacharjee, (1995 (5) SCC 457)

YES: A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is protected from political interference by the executive and legislative 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 executive ministry or legislative committee.

37e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The current debate on cleaning up the judiciary follows serious allegations of corruption leveled against the chief justice of the Karnataka High Court, who is on the verge of being elevated to the Supreme Court. These allegations, made by respected advocates, built up intense pressure on the chief justice of the Supreme Court to enquire into the allegations.

The Supreme Court has an in-house mechanism to enquire into allegations of misconduct, but it rarely does so. Even when it does enquire, the reports are not made public or the enquiries do not amount to anything.

A rare exception was the decision to hand over to the Central Bureau of Investigations investigations into the siphoning of provident funds of government employees: several judges of the High Court and one judge of the Supreme Court were allegedly involved. Another case that has reached the stage of impeachment is that of Justice Soumitra Sen, of the Calcutta High Court, for misappropriation of funds deposited with the court. This case was recommended for enquiry by the chief justice of the Supreme Court under the Judges (Enquiry) Act, 1968, and an impeachment motion was moved in Parliament against the judge.

A Transparency International India Corruption Study in 2005 found the judiciary to be the second most corrupt department. Though this study was confined to the lower judiciary, recent instances and reports bring home the point that the higher judiciary is not insulated from corrupt elements. The lack of transparency of the in-house enquiries into the judiciary and the contempt-of-court laws that punish public criticism of the judiciary prevent any constructive outcome of this mechanism.

References:

National Consultation on Judicial Accountability and the Gram Nyayalaya Act, 2008, Campaign for Judicial Accountability and Reform, National Consultation, Sept. 19, 2009, www.judicialreforms.org/files/National%20Consultation%20background%20note.pdf

Crisis, we need ombudsman over SC collegium: Nariman," Indian Express, Sept. 19, 2009, www.indianexpress.com/news/crisis-we-need-ombudsman-over-sc-collegium-nariman/519019/0

Charges pile up against Dinakaran, Nagendar Sharma, Hindustan Times, Oct. 9, 2009, www.hindustantimes.com/Charges-pile-up-against-Dinakaran/H1-Article1-464465.aspx

Half of the Last 16 Chief Justices Were Corrupt , Tehelka Magazine, Vol. 6, Issue 35, Sept. 5, 2009, www.tehelka.com/story_main42.asp?filename=Ne050909half_of.asp

"PF scam: Apex court judge withdraws after charges," Business Standard, Aug. 8, 2008, [/www.business-standard.com/india/news/pf-scam-apex-court-judge-withdraws-after-charges/330823/](http://www.business-standard.com/india/news/pf-scam-apex-court-judge-withdraws-after-charges/330823/)

"Twist in Justice Sen tale: Somnath writes to Ansari on certain things ," Maneesh Chhibber, The Indian Express, October 19, 2009, www.indianexpress.com/news/twist-in-justice-sen-tale-somnath-writes-to-ansari-on-certain-things/530470/0

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.

37f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

In all the years of the Indian Constitution, 1950, there has been only one impeachment case, and it failed.

References:

National Consultation on Judicial Accountability and the Gram Nyayalaya Act, 2008, Campaign for Judicial Accountability and Reform, National Consultation, Sept. 19, 2009, www.judicialreforms.org/files/National%20Consultation%20background%20note.pdf

Crisis, we need ombudsman over SC collegium: Nariman," Indian Express, Sept. 19, 2009, www.indianexpress.com/news/crisis-we-need-ombudsman-over-sc-collegium-nariman/519019/0

Judge in a Corruption Case, Amulya Gopalakrishnan, The Frontline, Vol. 20 Issue 10, <http://www.flonnet.com/fl2010/stories/20030523002904600.htm> (last visited 30 April 2006).

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.

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

0

38a. In law, members of the national-level judiciary are required to file an asset disclosure form.

YES | NO

Comments:

There is no law mandating asset disclosures by judges. After a huge controversy and debate over the Central Information Commission decision asking the Supreme Court to disclose whether judges declared their assets or not, the Supreme Court decided to voluntarily "declare their assets on their website. Yet it challenged the High Court decision which had ruled that the practice of Supreme Court judges confidentially furnishing asset declarations to the Chief Justice was bound to be made public under the Right to Information Act. See more on the current debate here at www.judicialreforms.org/home.htm.

References:

SC judges list their assets for the people, Indian Express, 03 November 2009.

<http://www.indianexpress.com/news/sc-judges-list-their-assets-for-the-people/536566/0>

SC challenges HC order on judges' assets declaration, The Indian Express, 05 October 2009.

<http://www.indianexpress.com/news/sc-challenges-hc-order-on-judges-assets-declaration/525262/0>

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.

NO: A NO score is earned if any member of the national-level judiciary is not required to publicly disclose assets.

38b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

YES | NO

Comments:

There are restrictions under the Foreign Contributions Regulation Act, which regulates the acceptance and utilization of foreign contributions and foreign hospitality by persons and associations working in public life. Politicians, public servants, judges, journalists, printers and publishers of newspapers, and other people working important areas of national life are covered under this act.

References:

No sources given.

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

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

38c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

YES | NO

References:

No sources given.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of national-level judiciary 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 national-level judiciary asset disclosures or if such requirements exist but allow for self-auditing.

38d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

YES | **NO**

Comments:

There are issues regarding taking up government positions in commissions, committees and quasi-judicial bodies that do not have a transparent selection process: Consultation Paper on Superior Judiciary, National Commission to Review the Working of the Constitution, Vol. II, Book I, Available at lawmin.nic.in/ncrcw/finalreport/v2b1-14.htm

References:

No sources given.

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.

38e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

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

Comments:

The pernicious practice of judges accepting government jobs after retirement is seen as a way to reward members of the judiciary for services rendered as a judge. There is no transparency in the selection of judges for such positions. See the Consultation Paper on Superior Judiciary, National Commission to Review the Workings of the Constitution, Vol. II, Book I, lawmin.nic.in/ncrcw/finalreport/v2b1-14.htm.

References:

No sources given.

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no cases 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. A zero score is also earned if judges are allowed to hold private sector jobs while serving on the bench.

38f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

100 | 75 | 50 | 25 | 0

References:

No sources given.

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced. 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 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.

38g. In practice, national-level judiciary asset disclosures are audited.

100 | 75 | 50 | 25 | 0

References:

No sources given.

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: 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.

39. Can citizens access the asset disclosure records of members of the national-level judiciary?

38

39a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

YES | NO

Comments:

Some kind of confidential asset disclosure is made to the chief justice of India, but it is not available to the public.

References:

No sources given.

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.

39b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

This is a hugely controversial issue currently playing out over the Central Information Commission decision asking the Supreme Court to disclose whether judges declared their assets or not. The Supreme Court decided to voluntarily "declare their assets on their website. Yet it challenged the single judge High Court decision which had ruled that the practice of Supreme Court judges confidentially furnishing asset declarations to the Chief Justice was bound to be made public under the Right to Information before a three-judge panel of the High Court. Under public pressure and revolt by a couple of High Court judges, some Supreme Court and High Court judges have begun to place their asset disclosures on the Court websites.

References:

CJI has to make judges' assets public, rules HC," Smriti Singh, The Times of India, Sept. 3, 2009, timesofindia.indiatimes.com/news/india/CJI-has-to-make-judges-assets-public-rules-HC/articleshow/4966151.cms

"Supreme Court judges to disclose assets," Dhananjay Mahapatra, The Times of India, Aug. 27, 2009., timesofindia.indiatimes.com/news/india/Supreme-Court-judges-to-disclose-assets/articleshow/4938536.cms

"3-judge HC bench to decide if RTI covers CJI," Economic Times, Oct 8, 2009, economictimes.indiatimes.com/news/politics/nation/3-judge-HC-bench-to-decide-if-RTI-covers-CJI/articleshow/5099986.cms

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.

39c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

If and when this information is made available, it is likely to be available at nominal cost.

References:

Supreme Court judges to disclose assets," Dhananjay Mahapatra, The Times of India, Aug. 27, 2009, timesofindia.indiatimes.com/news/india/Supreme-Court-judges-to-disclose-assets/articleshow/4938536.cms

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.

39d. In practice, the asset disclosure records of the national-level judiciary are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

After strongly resisting the decision of the Central Information Commission and the Delhi High Court to make asset declarations of judges public, some judges of the Supreme Court and High Courts have begun to place their asset statements on the court websites. However, it is too early to assess the quality of these disclosures particularly those concerning conflict of interest investment issues.

References:

Supreme Court asset declarations <<http://www.supremecourtindia.nic.in/assets.htm>>

India judges to disclose assets," BBC News, South Asia, India, Aug. 27, 2009, news.bbc.co.uk/2/hi/south_asia/8223745.stm

100: The asset disclosure records of the national-level judiciary are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the national-level judiciary contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the national-level judiciary are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

III-4. Budget Processes

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

83

40a. In law, the legislature can amend the budget.

YES | NO

References:

Article 112 of the Constitution provides that the President shall, in respect of every financial year, cause to be laid before Parliament, Annual Financial Statement ; Article 265 provides that no tax shall be levied or collected except by authority of law; and Article 266 provides that no expenditure can be incurred except with the authorization of the Legislature:
india.gov.in/govt/documents/english/coi_part_full.pdf

For the procedure, see Rules of Procedure and Conduct of Business in Lok Sabha, Chapter XIX, Financial Business, Budget, loksabha.nic.in/lis/rules/rulep19.html

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.

40b. In practice, significant public expenditures require legislative approval.

100 | 75 | 50 | 25 | 0

Comments:

In practice, there is an element of legislative oversight in the budget process, but the quality of this oversight is questionable, as evidenced by the near absence of any serious debate or discussions of the budget, demands for grants, and scrutiny of expenses and outcomes.

References:

Let's talk about budget," Subrat Das, 2007 Centre for Budget and Governance Accountability, www.cbgaindia.org/publications/primers_manuals/PRIMER-1-FIN%20reduced.pdf

"Outcomes Rule: Getting Development from Development Expenditure," Jay Chaudhuri, Yamini Aiyar, Jessica Wallack, Working Draft: August 2009, Accountability Initiative, www.accountabilityindia.org/admin/uploads/vitalfiles/39_1251713167.pdf

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.

40c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

100 | 75 | 50 | 25 | 0

Comments:

The legislature comes into the budget picture only after it has been presented in Parliament. It has less than three months to discuss and pass the budget. The volume of proposals and policies involved do not allow adequate time to discuss the budget in any depth. Also of concern are parliamentary competence to understand the complexity of the accounting issues and program overview to enable any meaningful oversight.

References:

Transparency and Accountability in Government Budgeting in India, Center for Budget and Governance Accountability, 2004, unpan1.un.org/intradoc/groups/public/documents/apcity/unpan036034.pdf

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.

41a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

100 | 75 | 50 | 25 | 0

Comments:

The budget process (i.e., the process of budget preparation, presentation before the legislature, legalization and periodic review) and budget policies (i.e., the socioeconomic policies adhered to by the government in deciding the priorities in the budget) do not come under substantial public scrutiny. The budget presentation and consequent legislation is recorded and reported and available to the public.

References:

Transparency and Accountability in Government Budgeting in India, Center for Budget and Governance Accountability, 2004, unpan1.un.org/intradoc/groups/public/documents/apcity/unpan036034.pdf

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.

41b. In practice, citizens provide input at budget hearings.

100 | 75 | 50 | 25 | 0

Comments:

During the budget-preparation phase, until the budget is presented before Parliament, only a handful of entities are involved in the budget proposals and the policy priorities driving those proposals: the chief economic advisor of the Reserve Bank of India (the central bank of the country); various parliamentary standing committees, which look into the expenditures of different ministries and their demands; certain government-funded research institutions and the Ministry of Finance.

References:

Transparency and Accountability in Government Budgeting in India, Center for Budget and Governance Accountability, 2004, unpan1.un.org/intradoc/groups/public/documents/apcity/unpan036034.pdf

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.

41c. In practice, citizens can access itemized budget allocations.

100 | 75 | 50 | 25 | 0

Comments:

Citizens have no access to the budget process.

References:

Transparency and Accountability in Government Budgeting in India, Center for Budget and Governance Accountability, 2004, unpan1.un.org/intradoc/groups/public/documents/apcity/unpan036034.pdf

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.

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

50

43a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

Comments:

The PAC's term is only a year, so at the beginning of each year, the committee makes a selection of audit paragraphs included in the various reports of the comptroller & auditor general for in-depth examination. After holding deliberations and noting the time available, the committee selects the most important paragraphs from the Audit Reports for detailed examination. The committee submits its reports to the House. The scoring is 50 because the actual oversight is only a sampler of audit objections raised by the comptroller & auditor general.

References:

164.100.24.208/ls/committee/p17.htm?comm_code=26#Constitution of the Committee

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.

43b. 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:

Though the chairman is from the leading opposition party, the committee is formed on proportional representation of parties and, depending on the composition of the Houses, can become partisan.

References:

164.100.24.208/ls/committee/p17.htm?comm_code=26#Constitution of the Committee

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

75:

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

25:

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

43c. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | 50 | 25 | 0

Comments:

The PAC does not initiate any investigations on its own but acts on audit reports of the comptroller & auditor general. The PAC does not question the quality of these audit reports. The recommendations are for government departments to follow up and report on action taken.

References:

Audit and Legislative Oversight: Developing Country Perspective Capacity Development Workshop, Auditing for Social Change, May 22, 2005, unpan1.un.org/intradoc/groups/public/documents/UN/UNPAN020690.pdf

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.

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

100

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

YES | NO

Comments:

The Public Accounts Committee consists of not more than 22 members: 15 elected by Lok Sabha every year from among its members according to the principle of proportional representation by means of single transferable vote, and not more than 7 members of Rajya Sabha, elected by that House in like manner. A member from the opposition in Lok Sabha is appointed as the chairman of the committee by convention.

References:

The Public Accounts Committee is constituted every year under Rule 308 of the Rules of Procedure and Conduct of Business in Lok Sabha

http://164.100.24.208/ls/committee/p17.htmcomm_code=26#Introduction

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).

Category IV. Administration and Civil Service

IV-1. ⁶⁶Civil Service Regulations

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

75

44a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

YES | NO

References:

Article 309 of the Constitution of India provides for making laws to regulate the recruitment and conditions of service of public servants, which are subject to provisions of the Constitution.

Article 312 of the Constitution provides for the creation of the All India Services – the Indian Administrative Service, Indian Police Service and the Indian Forest Service – the higher civil services that are shared among the central and state governments, india.gov.in/govt/documents/english/coi_part_full.pdf

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.

44b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

YES | NO

Comments:

India has a system of a permanent civil service as opposed to political appointees. The Constitution is the basis of all acts, rules and regulations governing recruitment and conditions of service. Nepotism, cronyism and patronage would violate the conduct rules governing public servants.

References:

Article 309 provides for making laws to regulate the recruitment and conditions of service of public servants, which are subject to provisions of the Constitution. Article 312 provides similarly for the three All-India Services.

Articles 315 to 320 provide for independent constitutional bodies known as the Union Public Service Commission and the State Public Service Commission to recruit higher civil servants, largely through a competitive process. Similar recruitment bodies, though not creatures of the Constitution, exist for the competitive recruitment of lower ranking employees, india.gov.in/govt/documents/english/coi_part_full.pdf

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.

44c. In law, there is an independent redress mechanism for the civil service.

YES | NO

Comments:

The only institutional mechanism for individual service-related grievances is the Administrative Tribunals, which are quasi-judicial statutory bodies. An employee may take his grievance to the rule-making authority for the rule/s he is aggrieved under (relating to his pay or disciplinary proceedings), which may not be his immediate supervisor but rather a different department. As a group or class aggrieved by any specific anomaly, the Joint Consultative Machinery takes up issues on behalf of employees with the government. It's akin to a trade union.

References:

No source given.

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. The mechanism should be independent of their supervisors but can still be located within the government agency or entity (such as a special commission or board). Civil servants are able to appeal the mechanism's decisions to the judiciary.

NO: A NO score is earned if no such mechanism exists, or if the only recourse civil servants have is directly through the courts.

44d. In law, civil servants convicted of corruption are prohibited from future government employment.

YES | NO

Comments:

I have scored this Yes because there is not only a lifetime ban but also a possibility of removal from service, which allows re-entry and, in exceptional circumstances, other lesser punishment.

References:

Rule 6 of the All India Service (Discipline and Appeals) Rules, 1969, and Rule 11 of Central Civil Services (Classification, Control and Appeal) Rules, 1965, say that in every case in which the charge of possession of assets disproportionate to known-source of income or the charge of acceptance from any person of any gratification, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act is established," the penalty of (i) removal from service which shall not be a disqualification for future employment under the government; or (ii) dismissal from service which shall ordinarily be a

disqualification for future employment under the government, shall be imposed. These rules also provide that “in any exceptional case and for special reasons recorded in writing, any other penalty may be imposed.”

Central Civil Services (Classification, Control and Appeal) Rules, 1965,
[www.persmin.nic.in/EmployeesCorner/Acts_Rules/ccs\(cca\)/ccstotal1.htm#11](http://www.persmin.nic.in/EmployeesCorner/Acts_Rules/ccs(cca)/ccstotal1.htm#11)>

All India Service (Discipline and Appeals) Rules, 1969,
[persmin.nic.in/EmployeesCorner/Acts_Rules/AISRRule/AISManual_Updated_27112007/12.The%20All%20Inida%20Services%20\(Discipline%20and%20](http://persmin.nic.in/EmployeesCorner/Acts_Rules/AISRRule/AISManual_Updated_27112007/12.The%20All%20Inida%20Services%20(Discipline%20and%20)

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 or if the ban is not a lifetime ban.

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

69

45a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

Pressure exerted on civil servants by administrative superiors, political executives, businesses and other vested interests are common, particularly in the states. The most common method of exerting wrongful pressure is by the frequent transfer of bureaucrats who don't tow the line of their ministers/chief minister. Bureaucrats may also be placed under suspension for a long period of time without any follow up. Security of tenure and protection from arbitrary suspension and departmental action have been subjects of discussion and debate, including government reports on civil service reforms. One such report is cited above.

References:

Chapter 5 of Final Report on Civil Services Reforms (Hota Committee, darpn.nic.in/arpg-website/ReportsAndPublication/HotaCommittee.asp)

Frequent transfers of UP cops anger Chidu," Deepak Gidwani, DNA, Sept. 12, 2009, www.dnaindia.com/india/report_frequent-transfers-of-up-cops-anger-chidu_1289490>

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.

45b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

Under Article 320 of the Constitution, the Public Service Commissions (PSCs) are entrusted with conducting competitive examinations for appointment to services of the central government and the states. Despite recruitment rules fixing academic and professional criteria, irregularities do occur. Members of the PSCs are not always chosen for the right reasons. They are not persons of eminence, and some have doubtful integrity. These factors have no doubt affected on the quality of civil servants selected.

References:

Final Report on Civil Services Reforms (Hota Committee), darpn.nic.in/arpg-website/ReportsAndPublication/HotaCommittee.asp

Razi nails JPSC bosses," by Sudhir Kimar Mishra and Suman K. Shrivastava, The Telegraph, Feb. 26, 2009, www.telegraphindia.com/1090226/jsp/frontpage/story_10592566.jsp

"Self Service Commission," The Financial Express, editorial, April 13, 2002, www.financialexpress.com/printer/news/43186/

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.

45c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

100 | 75 | 50 | 25 | 0

Comments:

A distinction needs to be made between initial recruitment and in-service promotions and placements. While recruitment and promotions are bound by rules and procedures, the fairness of in-service promotion procedures may get undermined due to the bias in the performance-appraisal process, which forms the basis of judgment for the suitability for promotions and placements. Nepotism, cronyism and patronage, often for community or caste considerations, and corrupt practices may affect the fairness of promotions and placements.

References:

Report of the Group Constituted to Review the System of Performance Appraisal, Promotion, Empanelment and Placement for the All India Services and Other Group A Services (Surendra Nath Committee) 8. Weaknesses of the current system

persmin.nic.in/Publications/CommitteeReport/ACRReport/Weaknesses.htm

Gender bias? What poppycock!" Niranjana Desai, gfilesindia.com/magazine-pdf-2007/5-May-2007.pdf

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

75:

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

25:

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

45d. In practice, civil servants have clear job descriptions.

100 | 75 | 50 | 25 | 0

Comments:

Department websites carry information on departments' structure and responsibilities. Officials' titles are indicative of their specific

functions within the unit. Under the proactive disclosure norm of the Right to Information Act, every department is required to make this information publicly available, along with the salaries drawn by each official.

References:

Rules and regulations are extensive and cover all aspects of a civil servant's service conditions, including a clear organization structure and job descriptions.

A good primer for an overview of the central government is the Sixth Pay Commission Report, india.gov.in/govt/report_index.php

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable representation of positions in terms of a person's authority, responsibility and base pay.

75:

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

25:

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

45e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | 50 | 25 | 0

Comments:

This indicator is difficult to score. A certain proportion of lower-level government employees if they are in a government commercial enterprise, like the railways, for example receive productivity-linked bonuses; certain other categories of workers receive ad hoc bonus. The categories of personnel and the quantity of bonuses keep fluctuating. The Sixth Pay Commission has recommended that productivity-linked bonus and ad hoc bonus should be replaced by a performance-related incentive scheme.

References:

Chapter 4 of the Sixth Pay Commission Report, india.gov.in/govt/report_index.php

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

75:

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

25:

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

45f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

100 | 75 | 50 | 25 | 0

Comments:

Publication of comprehensive lists of cadred services, along with the authorized power of persons in the position, is more prevalent. Recruitment is done periodically on the basis of need. In some services, competitive examinations are held annually. A large number of government offices have isolated posts (they are not part of any of the cadred services). Making available comprehensive lists of posts and personnel holding these posts, along with the remuneration they receive, is now mandatory under the proactive disclosure of all public offices under the Right to Information Act, 2005. Most vacancies are advertised (which again is mandatory) when the need arises.

References:

Example of listed cadre posts for the IAS: persmin.nic.in/EmployeesCorner/Acts_Rules/AISRule/AisRulesVol2/Rule-02.pdf

Recruitment advertisement by the Union Public Service Commission: www.upsc.gov.in/

Authorised strength and officials in position in respect of the IAS: persmin.nic.in/CivilList/PDF/AppendixA.pdf

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

75:

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

25:

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

45g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | 50 | 25 | 0

Comments:

The above-cited report extensively discusses how the absence of an impartial grievance redressal system has resulted in government officials approaching administrative tribunals and the courts, making the government one of the biggest litigants in India. The report recommends setting up a Dispute Resolution Council independent from the current internal channels of presenting grievances.

References:

Chapter 7 of Final Report on Civil Services Reforms (Hota Committee), darpn.nic.in/arpn-website/ReportsAndPublication/HotaCommittee.asp

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

75:

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

25:

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

45h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

Comments:

Instances of civil servants not getting paid on time is rare. In fact, even when the economy is down, government servants always manage to get their salaries, pay hikes and bonuses on time.

References:

Students, transport workers protest in JK," One India, Sept. 1, 2009, news.oneindia.in/2009/09/01/students-transport-workers-protest-in-jk.html

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

75:

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

25:

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

45i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | 50 | 25 | 0

Comments:

No figures are available to substantiate the rating. Dismissal from service is ordinarily a disqualification for future employment in government under any circumstances, while removal from service is not a disqualification for future employment in the government. Conviction of possessing assets disproportionate to known sources of income or bribery should result in dismissal, removal or compulsory retirement from service, but there may be special cases when such a penalty was not imposed.

In fact, one of the chief vigilance officer (CVO) of offices/departments' (see Vigilance Manual Part I (Para 2.13.vi)) main duties is to maintain a list of officials of doubtful integrity who

- (a) have been convicted in a court of law on the charge of lack of integrity or for an offense involving moral turpitude but who did not receive a penalty of dismissal, removal or compulsory retirement in view of exceptional circumstances;
- (b) have been hit with a major penalty for charges of lack of integrity or gross dereliction of duty in protecting the interests of government although proof of corrupt motive may not be possible;
- (c) are in the middle of proceedings for a major penalty or a court trial for alleged acts involving lack of integrity or moral turpitude;
- (d) were prosecuted but acquitted on technical grounds, as there remained a reasonable suspicion about his integrity.

References:

Central Civil Services (Classification, Control and Appeal) Rules, 1965,
[www.persmin.nic.in/EmployeesCorner/Acts_Rules/ccs\(cca\)/ccstotal1.htm#11](http://www.persmin.nic.in/EmployeesCorner/Acts_Rules/ccs(cca)/ccstotal1.htm#11)

All India Service (Discipline and Appeals) Rules, 1969,
[persmin.nic.in/EmployeesCorner/Acts_Rules/AISRule/AISManual_Updated_27112007/12.The%20All%20Inida%20Services%20\(Disciplinne%20and%20](http://persmin.nic.in/EmployeesCorner/Acts_Rules/AISRule/AISManual_Updated_27112007/12.The%20All%20Inida%20Services%20(Disciplinne%20and%20)

Central Vigilance Commission, Vigilance Manual Part I, cvc.nic.in/man04.pdf

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. Some bans are only temporary.

25:

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

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

56

46a. In law, senior members of the civil service are required to file an asset disclosure form.

YES | NO

Comments:

Asset declaration by public servants in India is part of the comprehensive code of conduct. The All India Services (Conduct) Rules, 1968, apply to the three premier All India Services: the Indian Administrative Service, the Indian Police Service and the Indian Forest Service. The Central Civil Services (Conduct) Rules cover all other central government employees, as well as those

offices that do not come under the Central Civil Services, such as the railways, defense, public sector undertakings and other autonomous bodies, that have extended these rules to cover their employees. State governments too have drawn their own codes of ethics based on these rules. The conduct rules are supplemented by executive instructions.

References:

Rule 16 of the All India Services (Conduct) Rules, 1968, and Rule 18 of the Central Civil Services (Conduct) Rules

[http://www.persmin.nic.in/EmployeesCorner/Acts_Rules/AISRule/AISManual_Updated_27112007/10.The%20All%20India%20Services%20\(Conduct\)%20Rules.pdf](http://www.persmin.nic.in/EmployeesCorner/Acts_Rules/AISRule/AISManual_Updated_27112007/10.The%20All%20India%20Services%20(Conduct)%20Rules.pdf)

www.persmin.nic.in/EmployeesCorner/Acts_Rules/CCSRules_1964/ccs_conduct_rules_1964_index.htm

YES: A YES score is earned if senior members of the civil service 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 senior member of the civil service is not required to disclose assets.

46b. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

YES | NO

Comments:

Though there are no specific rules/regulations on this, the conduct rules provide that every government servant shall at all times (i) maintain absolute integrity; (ii) maintain devotion to duty; and (iii) do nothing that is unbecoming of a government servant. Every government servant is also expected to act in his best judgment in the performance of his official duties. Government instructions have interpreted rule iii to include a stress on impartiality and avoidance of show undue favour or illwill in the official dealings of a government employee.

DOPT OM No. 11013/10/93-Estt.(A), dated

06.10.1993]http://www.persmin.nic.in/EmployeesCorner/Acts_Rules/CCSRules_1964/ccs_conduct_rules_1964_details.htm#03

The Supreme Court has held that the Constitution ensures equality before the law and equal protection of the law (Article 14). Equal protection bars arbitrary discrimination. The principles of natural justice flow out of this article, including that no man can be judge in his own case.

A.K. Kraipak v. Union of India, 1969 (2) SCC 262

References:

No source given.

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.

46c. In law, there are restrictions for civil servants entering the private sector after leaving the government.

YES | NO

References:

Rule 26 of the All India Service (Death-cum-Retirement Benefits) Rules, 1958, and Rule 10 of the CCS (Pension) Rules, 1972, bar civil servants in the All India Services and Central Services Group from taking up post-retirement commercial employment for a year after they have retired,

[www.persmin.nic.in/EmployeesCorner/Acts_Rules/AISRule/AISManual_Updated_27112007/13.The%20All%20India%20Services%20\(Death-Cum-Retirement%20Benefits\)%20Rules,%201958%20\(Updated%20up%20to%2015th%20March,%202007\).pdf](http://www.persmin.nic.in/EmployeesCorner/Acts_Rules/AISRule/AISManual_Updated_27112007/13.The%20All%20India%20Services%20(Death-Cum-Retirement%20Benefits)%20Rules,%201958%20(Updated%20up%20to%2015th%20March,%202007).pdf)

[www.persmin.nic.in/EmployeesCorner/Acts_Rules/BrochureOnPostRetirementCommercialEmployment/27012_5_2000_Estt\(A\).pdf](http://www.persmin.nic.in/EmployeesCorner/Acts_Rules/BrochureOnPostRetirementCommercialEmployment/27012_5_2000_Estt(A).pdf)

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.

46d. In law, there are regulations governing gifts and hospitality offered to civil servants.

YES | NO

References:

Rule 11 of the AIS (Conduct) Rules and Rule 13 of CCS (Conduct) Rules govern gifts and hospitality.

www.persmin.nic.in/EmployeesCorner/Acts_Rules/CCSRules_1964/ccs_conduct_rules_1964_index.htm

[www.persmin.nic.in/EmployeesCorner/Acts_Rules/AISRule/AISManual_Updated_27112007/13.The%20All%20India%20Services%20\(Death-Cum Retirement%20Benefits\)%20Rules,%201958%20\(Updated%20up%20to%2015th%20March,%202007\).pdf](http://www.persmin.nic.in/EmployeesCorner/Acts_Rules/AISRule/AISManual_Updated_27112007/13.The%20All%20India%20Services%20(Death-Cum%20Retirement%20Benefits)%20Rules,%201958%20(Updated%20up%20to%2015th%20March,%202007).pdf)

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.

46e. In law, there are requirements for the independent auditing of the asset disclosure forms of senior members of the civil service.

YES | NO

Comments:

No independent body exists to carry out auditing of asset declarations, but there are certain executive instructions dating back to 1955 and 1959 (which still remain on the books) requiring that property returns be scrutinized in the department. See executive instructions under Rule 16.

These instructions make scrutiny a mandatory obligation for the government for the All India Services. Similar instructions for other central government employees do not require regular or continuous scrutiny of all property returns, except when there is reason for suspicion. See MHA OM No. 12/9/58-CS (A), dated 21 June, 1958 under Rule 18.

www.persmin.nic.in/EmployeesCorner/Acts_Rules/CCSRules_1964/ccs_conduct_rules_1964_index.htm

References:

No source given.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of civil service 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 civil service asset disclosures or if such requirements exist but allow for self-auditing.

46f. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | 0

Comments:

The government has been ambivalent on this issue. On the one hand, it has placed restrictions on post-retirement commercial employment (meaning, employment in the private sector) for one year from the date of retirement (whittled down from 2 years in

2005). On the other hand, it acknowledges the merit of experience in the private sector as relevant to broadening the horizons of its senior-level officers. The government rules also allow senior officers to go on deputation to the private sector. Attractive pay packets in the private sector and dissatisfaction within government service have resulted in officers leaving the government (restriction don't apply to those who have resigned, only to those who have taken voluntary retirement after 20 years' service and those who have superannuated reached 60 years of age) to join the private sector. The government maintains that it has no record of how many officials have joined the private sector, but press reports make it seem unlikely that many of these officers seek government permission post-retirement.

References:

Careful: Bureaucrats are taking up private jobs," Aug. 4, 2009, business.rediff.com/special/2009/aug/04/spec-careful-bureaucrats-are-taking-up-private-jobs.htm>

"Private attraction: Sky-high salaries and a rewarding work environment are beginning to attract civil servants to the private sector," P.T. Sebastian, Outlook Business Magazine, Nov. 3, 2007, business.outlookindia.com/article.aspx?100306

Lok Sabha unstarred question No. 3144, Answered on Dec. 14, 2005, 164.100.47.132/LssNew/psearch/QResult14.aspx?qref=21022

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no cases 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.

46g. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

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

Comments:

The Bribeline report indicated that 6 percent of reported bribery demanded hospitality, entertainment or gifts. The World Bank Enterprise Survey of 2006 showed that for some purposes, such as getting operating licenses, construction permits and meeting with tax officials, more than 50 percent of firms were expected to give gifts to public officials.

References:

Business Registry for International Bribery and Extortion (BRIBELine), India ReportI, 2009, <https://secure.traceinternational.org/news/pdf/indiareportnarrative011009.pdf>

World Bank Enterprise Survey, India, 2006, www.enterprisesurveys.org/CustomQuery/country.aspx?economyid=89&year=2006&characteristic=size

100: The regulations governing gifts and hospitality to civil servants are regularly enforced. Civil servants never or rarely accept gifts or hospitality above what is allowed.

75:

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

25:

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

46h. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | 50 | 25 | 0

Comments:

Although there is no law, the principles which demand recusal is built into other conduct rules and common law principles followed by civil servants in their administrative and quasi-judicial functions.

One area is the appointment of senior bureaucrats to post-retirement jobs that have a direct link to their last-held position, for example, appointments of former heads of departments as regulatory authorities overseeing the department.

References:

No sources given.

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.

46i. In practice, civil service asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

My study of asset-declarations compliance among Indian Administrative Service officers from 2001 to 2005 showed that only 50 percent of the officers actually filed their returns, despite the fact that non-filing could lead to departmental action for violation of the Conduct Rules. Though instructions exist requiring the repository departments in the central government and the states (where IAS officers also serve) to scrutinize the declarations, this is not normally done. The only time scrutiny is brought to bear is when the Central Bureau of Investigation, which is charged with investigating corruption cases, calls for the asset declarations of that small number of officers it is investigating to correlate declared assets with the findings their investigations.

References:

Personal research of information on the scrutiny of asset disclosures requested under the Right to Information Act, 2005. Findings can be made available on request.

100: Civil service asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Civil service 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: Civil service 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.

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

0

47a. In law, citizens can access the asset disclosure records of senior civil servants.

YES | NO

References:

No source given.

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.

47b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Since the Right to Information Act passed in 2005, there have been several instances of citizens requesting information about public servants' assets, including those of ministers and judges. The Central Information Commission (CIC) has held that in their present form, civil servants' asset disclosures are confidential. The commission has also been directing the government to move toward placing civil servants' asset information in the public domain. In the case of ministers, the CIC has held that there is no fiduciary relationship involved in the submission of ministers' asset disclosures because the law requires that such statements be made available at the time of elections. In Hota Committee too had recommended that civil servants' asset disclosures be placed on the department website.

Despite these moves/directions to open up asset disclosures to public scrutiny, the government is not currently considering any proposal to improve the disclosure format, scrutiny or enforcement processes, any of which could positively affect the asset disclosure system. In fact, a 2008 amendment to the Prevention of Corruption Act, 1988, diluted the need to report all income sources regularly.

References:

Central Information Commission, S.C. Agrawal v. Prime Minister s Office, Appeal No. CIC/WB/A/2009/00038 & WB/C/08/868, March 16, 2009

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.

47c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

No source given.

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.

47d. In practice, the asset disclosure records of senior civil servants are of high quality.

100 | 75 | 50 | 25 | 0

References:

No source given.

100: The asset disclosure records of senior civil servants are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of senior civil servants contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of senior civil servants are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

IV-2. Whistle-blowing Measures

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

63

48a. 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:

Currently, the policy is in the form of a resolution that was passed at the direction of the Supreme Court of India. As yet there is no special statute protecting whistle-blowers. However, news reports suggest that the government is working on a statute. Gov't ready with whistle-blower draft law, but exempts ministers from its ambit," Maneesh Chhibber, Indian Express, Aug. 27, 2009, www.indianexpress.com/news/govt-ready-with-whistleblower-draft-law-but-exempts-ministers-from-its-ambit/507820/

References:

Section 125 of the Indian Evidence Act, 1872, covers the interest and integrity of information given about offenses, www.vakilno1.com/bareacts/indianevidenceact/indianevidenceact.htm

The Public Interest Disclosure and Protection of Informer Resolution, 2004, cvc.nic.in/whistleblow.pdf

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.

48b. 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

References:

Their identities disclosed, facing probes and cases, whistle-blowers do rounds of courts," Ritu Sarin, Indian Express, Aug. 31, 2009

"Blowing the Whistle," Prashant Bhushan, V.K. Shunglu, Arvind Kerjiwal, Madhu Bhaduri, Outlook Magazine, outlookindia.com/printarticle.aspx?261960

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.

48c. 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:

Section 125 of the Indian Evidence Act, 1872, covers the integrity and interest of any information given about offences. This is a general law that covers all citizens.

The Reserve Bank of India (RBI) made the whistle-blower scheme applicable to private sector and foreign banks. The body that receives and deals with complaints is the RBI. Public sector banks are covered by the whistle-blower resolution passed by the government.

There is a non-mandatory provision for listed companies to have a whistle-blower policy outlining how employees are to report to management concerns about unethical behavior, actual or suspected fraud or violation of the company's code of conduct or ethics policy. This mechanism could also provide for adequate safeguards against victimization of employees who avail of the mechanism and can also provide for direct access to the Chairman of the Audit committee in exceptional cases. Once established, the existence of the mechanism may be appropriately communicated within the organization.

References:

Protected Disclosures Scheme for Private Sector and Foreign Banks, Reserve Bank of India, rbidocs.rbi.org.in/rdocs/Content/PDFs/76875.pdf

Non-Mandatory Whistle-Blower Policy in Clause 49 of Listing Agreement Issued by the Securities and Exchange Board of India on Corporate Governance, www.sebi.gov.in/circulars/2004/cfdcir0104.pdf

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.

48d. 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:

No documentation could be found about whistle-blowing in the private sector, although all banks are required to have such a scheme in place. Private sector whistle-blowing is often stymied by nondisclosure agreements that the employees must sign, making it difficult for employees to report fraud and irregularities.

References:

No sources given.

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.

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

44

50a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

A whistle-blower law was first recommended to the government by the Law Commission of India in 2002. In 2004, on a public interest litigation in the wake of the murder of a whistle-blower, the Supreme Court of India directed the government to pass a law. The government responded by issuing a policy resolution and making the Central Vigilance Commission (CVC) (the integrity ombudsman for the government) the organization to implement the policy. The CVC relies on the chief vigilance officers of individual departments to conduct enquiries into complaints it receives. Individual departments/public sector undertakings are also required to set up their own in-house mechanisms to receive and enquire into complaints. The CVC/departments have to make do with their existing staff strength. The staff is clearly unprepared for undertaking the sensitive nature of this work, as is evident from the cases of harassment reported and limited numbers of complaints filed before the commission.

References:

Their identities disclosed, facing probes and cases, whistle-blowers do rounds of courts" Ritu Sarin, Indian Express, Aug. 31, 2009

"CAT comes to aid of whistle-blower," Hiral Dave, Indian Express, March 4, 2009, www.indianexpress.com/news/cat-comes-to-aid-of-whistleblower/430467/0

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.

50b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

There is no separate whistle-blower provision than what is provided for the Central Vigilance Commission's regular budget.

References:

Budget of the Ministry of Personnel, Public Grievances and Pension, www.persmin.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.

50c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

According to the Resolution on Public Interest Disclosure and Protection of Informer Scheme, the ministries/department are expected to enquire into allegations and to send it to the Central Vigilance Commission (CVC) within a month. This obviously is rarely done, which prompted the May 12, 2009 circular from the CVC.

References:

Central Vigilance Commission circular to all Ministries/Departments on the delay in submitting enquiry reports on complaints forwarded by the CVC, May 12, 2009, cvc.nic.in/090509.pdf

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

75:

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

25:

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

50d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

Comments:

The CVC reported that it had received 328 complaints from whistle-blowers during 2007. Of this, only 80 were sent to the CVOs concerned or the to the CBI for investigation/discreet verification of facts/comments. The CVC observed that the complaints received under the Whistle-blower Resolution provide more specific and verifiable allegations than complaints received otherwise. However, no separate records are available on the outcomes of investigation/discreet verification resulting from whistle-blower complaints.

References:

Central Vigilance Commission (CVC), Annual Report 2007, www.cvc.nic.in

Blowing the Whistle," Prashant Bhushan, V.K. Shunglu, Arvind Kerjiwal, Madhu Bhaduri, Outlook Magazine, outlookindia.com/printarticle.aspx?261960

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

75:

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

25:

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

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

100

49. 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:

The Central Vigilance Commission is the body that receives complaints and enquires into them. It has laid down a procedure for the public to file complaints as well as devised its own internal mechanism for proceeding with the complaint in consultation with the concerned departments.

References:

Central Vigilance Commission, cvc.nic.in/004vgt26_1.PDF

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.

51. Is the public procurement process effective?

53

51a. In law, there are regulations addressing conflicts of interest for public procurement officials.

YES | NO

Comments:

There is no separate statutory provision for public procurement officials who are covered by the same rules as other public officials.

References:

Rule 4 of the Central Civil Services (Conduct) Rules, 1964, and Rule 4 of the All India Services (Conduct) Rules, 1968, specifically bar a public servant from using his/her position to obtain employment for any member of his/her family in any company or nongovernmental organization (NGO); requires him/her to seek government permission before any member of his/her family or dependents accept employment in any company/NGO that he/she has official dealings with; bars him/her from granting a contract to any company that employs any member of his/her family or in which he/she or any member of his/her family has any interest.

www.persmin.nic.in/EmployeesCorner/Acts_Rules/CCSRules_1964/ccs_conduct_rules_1964_details.htm#04. Employment of near relatives of Govt. servants in companies or firms

[www.persmin.nic.in/EmployeesCorner/Acts_Rules/AISRule/AISManual_Updated_27112007/10.The%20All%20India%20Services%20\(Conduct\)%20Rules](http://www.persmin.nic.in/EmployeesCorner/Acts_Rules/AISRule/AISManual_Updated_27112007/10.The%20All%20India%20Services%20(Conduct)%20Rules)

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.

51b. In law, there is mandatory professional training for public procurement officials.

YES | NO

Comments:

Training is not mandatory but advised for procurement personnel. Government training institutes offer courses on procurement/purchase rules and management. Chief vigilance officers attached to departments/offices are to see that officials are adequately trained from the vigilance angle.

References:

Manual of Procedures for Purchase of Goods, finmin.nic.in/the_ministry/dept_expenditure/GFRS/Mpproc4ProGod.pdf

Guidelines for Central Vigilance Commissions, www.cvc.nic.in/5%20Guidence%20to%20CVOs.pdf

YES: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process. A YES score is earned if such training is mandated for portions of the broader civil service, to include procurement officials.

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.

51c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

Comments:

There are no separate conflict-of-interest regulations for procurement officials. Regulations are the same as for other public servants. The vigilance administrative guidelines that require the chief vigilance officer in departments/offices of the government to keep under surveillance officials in sensitive posts are rarely followed. Integrity pacts initiated with the help of Transparency International lack independent monitoring. It is estimated that bribes account for almost 30 percent of the total procurement cost in many cases."

References:

Blowing the Whistle," Prashant Bhushan, V.K. Shunglu, Arvind Kerjiwal, Madhu Bhaduri, Outlook Magazine, outlookindia.com/printarticle.aspx?261960

"Transparency body lacks means to track pacts with public sector," Utpal Bhaskar, Mint, Dec. 11, 2008, www.livemint.com/2008/12/11215519/Transparency-body-lacks-means.html

"India Bribing! In Search of Anti-Corruption' s Holy Grail," Gopakumar Thampi, www.pacindia.org/blogs/india-bribing-in-search-of-anti-corruption2019s-holy-grail

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

75:

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

25:

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

51d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

YES | NO

Comments:

General guidelines for vigilance administration for all public servants apply to officials dealing with procurement as well, except for keeping a special eye on sensitive posts and public officials with doubtful integrity. Scrutiny of asset declarations is a routine aspect of preventive vigilance which is never done unless called for by the investigating agency in any specific case of corruption that has come to light. Integrity/lifestyle checks are not listed in the Vigilance Manual as a monitoring tool for doubtful public servants.

www.cvc.nic.in/man04.pdf

References:

No sources given.

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.

51e. In law, major procurements require competitive bidding.

YES | NO

Comments:

The basic principle of the tendering process is that all government purchases should be made in a transparent, competitive and fair manner to secure the best value for the

money. Limited tendering is allowed within specific guidelines. It has been upheld by the Supreme Court that in exceptional circumstances, tenders can give way to nomination. Guidelines have been laid down for nomination also.

References:

General Financial Rules, 2005, finmin.nic.in/the_ministry/dept_expenditure/GFRS/GFR2005.pdf

Central Vigilance Commission, Office Order No.23/7/07, July 5, 2007, on Transparency in Works/Purchase/Consultancy Contracts Awarded on Nomination Basis, cvc.nic.in/OfficeOrderNo23-7-07.pdf

Central Vigilance Commission, No.005/CRD/19, may 9, 2006, Guidelines for nominations/limited tendering, www.cvc.nic.in/005crd19.pdf

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).

51f. In law, strict formal requirements limit the extent of sole sourcing.

YES | NO

Comments:

The Supreme Court has held that the absence of an open tenders procedure violates Article 14 of the Constitution: equal protection of the law/equality before law. But in certain exceptional circumstances, it may be inevitable, as when natural calamities and emergencies are declared by the government; where the procurement is possible from a single source only; where the supplier or contractor has exclusive rights in respect of the goods or services and no reasonable alternative or substitute exists; where the auction was held on several dates but there were no bidders or the bids offered were too low, etc.. This normal rule may be departed from and such contracts may be awarded through private negotiations. Central Vigilance Commission guidelines respond to this opinion.

References:

Central Vigilance Commission, Office Order No.23/7/07, July 5, 2007, on Transparency in Works/Purchase/Consultancy Contracts Awarded on Nomination Basis, cvc.nic.in/OfficeOrderNo23-7-07.pdf

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.

51g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

YES | NO

Comments:

The bidding process is decentralized by department/office, and individual bidding documents may incorporate review mechanisms.

References:

Rule 11 of the Manual on Policy and Procedure for Purchase of Goods provides for a tenderer's right to question the purchaser on improper procedure or rejection of tender.

finmin.nic.in/the_ministry/dept_expenditure/GFRS/Mpproc4ProGod.pdf

General Financial Rules, 2005

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.

51h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

YES | NO

Comments:

Under the writ jurisdiction of the High Courts and the Supreme Courts, unsuccessful bidders can appeal any administrative action that violates fundamental rights.

References:

Articles 32 and 226 of the Constitution of India: writ jurisdiction

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.

51i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

YES | NO

Comments:

Grounds for disqualification/blacklisting/suspension of bidders are part of the General Financial Rules and procedures. This applies to firms registered with the government and even those that aren't. With a large number of public sector undertakings adopt the Integrity Pact (TI), disqualification and debarment from future contracts, temporarily or permanently, is part of the agreement.

References:

Chapter 5 of the Manual on Policy and Procedure for Purchase of Goods gives eligibility of parties to contract with the government and grounds for debarment and suspension, www.cvc.nic.in/41122007.pdf

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

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

51j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

100 | 75 | 50 | 25 | 0

Comments:

This indicator could not be assessed because of lack of information on debarment/suspension by government departments in accordance with the provisions contained in Manual on Policy and Procedure for Purchase of Goods.

References:

No source given.

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.

52. Can citizens access the public procurement process?

63

52a. In law, citizens can access public procurement regulations.

YES | NO

Comments:

The financial rules and procedures governing tenders/contracts are available in the public domain. Numerous guidelines and directions issued by the Central Vigilance Commission relating to transparency issues are on its website, though it is not easy to access this information because it is so scattered.

References:

General Financial Rules 2005, finmin.nic.in/the_ministry/dept_expenditure/GFRS/GFR2005.pdf

Manual of Procedure for Purchase of Goods, finmin.nic.in/the_ministry/dept_expenditure/GFRS/Mpproc4ProGod.pdf

cvc.nic.in/proc_works.htm contains directives regarding government department/public sector undertakings on procurement issues.

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.

52b. In law, the government is required to publicly announce the results of procurement decisions.

YES | NO

Comments:

Large projects are generally well publicized in the media during the bidding process, as is the outcome. Questionable ones do get a lot of media attention.

References:

Rule 11 of the Manual on Policy and Procedure for Purchase of Goods requires publishing tender results on the notice board/website of the department/office.

finmin.nic.in/the_ministry/dept_expenditure/GFRS/Mpproc4ProGod.pdf

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.

52c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Under Right to Information, 2005, any information relating to rules and procedures adopted by individual departments/offices to carry out their mandate is required to be made available proactively. If sought by a citizen by way of an information request, it has to be given free of cost.

References:

Information is now publicly available on the website.

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.

52d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Under Right to Information, 2005, any information relating to rules and procedures adopted by individual departments/offices to carry out their mandate is required to be made available proactively. If sought by a citizen by way of an information request, it has to be given free of cost.

References:

They are generally freely available.

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.

52e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

Tender information is widely published in newspapers (in fact, it is a major source of revenue for newspapers in India and is often used by the government in power to pressure the press!). There are a large number of private sources that also advertise public procurement information.

References:

Indian Government Tenders Information System is the central source for government and public sector procurement /tenders/notifications issued by the central and state governments and other public bodies across India for goods, services and works.

tenders.gov.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.

52f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | 50 | 25 | 0

Comments:

The efforts made by departments/offices to publicize contract award is not commensurate with the efforts made to publicize the call for tenders. This is evident from a study of departments' websites. One department shown here the Department of Telecommunication is an example of a department with controversial procurement issues. While calls for tenders have all been made available on the department's website, no awards have been mentioned. The annual report for the previous year does mention the results of the tenders called for, but the annual reports are published after a gap of more than a year. Similarly, the government's one-stop tender portal does not have updated information on awards because this information is required to be posted by the departments.

References:

tenders.gov.in/index.htm

www.dot.gov.in/tender/tender_archive.htm

www.dot.gov.in/annualreport/2009/AR_English_2008-09.pdf_Website

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

53. Is the privatization process effective?

53a. In law, all businesses are eligible to compete for privatized state assets.

YES | NO

Comments:

Subject to government policies/guidelines/regulations, all business are eligible to compete for privatized assets.

References:

Disinvestment Policy, Department of Disinvestment, www.divest.nic.in/policy.htm

Guidelines for qualification of bidders seeking to acquire stakes in public sector enterprises through the process of disinvestment, Department of Disinvestment, July 13, 2001, www.divest.nic.in/guidelines/adv-guidelines2.htm

Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations

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.

53b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

YES | NO

References:

Rule 4 of the Central Civil Services (Conduct) Rules, 1964 and Rule 4 of the All India Services (Conduct) Rules, 1968, specifically:
bar a public servant from using his/her position to obtain employment for any member of his/her family in any company or nongovernmental organization (NGO);
require him/her to seek permission of the government before any member of his/her family or dependents accept employment in any company/NGO that he/she has official dealings with;
bar him/her from granting a contract to any company that employs any member of his/her family or in which he/she or any member of his/her family has any interest.

The Expression of Interest law requires advisors to the disinvestment process who are not government officials to certify that there is no conflict of interest" (COI) that would adversely affect the interests of government of India or the company being disinvested. COI has been defined in the Guidelines for Advisors.

www.persmin.nic.in/EmployeesCorner/Acts_Rules/CCSRules_1964/ccs_conduct_rules_1964_details.htm#04. Employment of near relatives of government servants in companies or firms

[www.persmin.nic.in/EmployeesCorner/Acts_Rules/AISR/AISManual_Updated_27112007/10.The%20All%20India%20Services%20\(Conduct\)%20Rules](http://www.persmin.nic.in/EmployeesCorner/Acts_Rules/AISR/AISManual_Updated_27112007/10.The%20All%20India%20Services%20(Conduct)%20Rules)

www.divest.nic.in/guidelines/adv-guidelines1.htm

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.

53c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | 50 | 25 | 0

Comments:

The privatization process in India has always been controversial, with allegations of conflicts of interest and valuations and bending of norms to facilitate buyers. The government process is handled at the highest level, involving ministers and senior bureaucrats. Over the years, there have been efforts to eliminate conflict of interest issues in the privatization norms, but the regulations have rarely been enforced to enquire into these allegations or, when they have, it hasn't amounted to anything.

References:

Bidding Discontent" by Bhavdeep Kang, Outlook Magazine, Nov. 19, 2001, www.outlookindia.com/article.aspx?213775

"nder the Scanner," Soumitra Dasgupta, The Telegraph, May 15, 2005, www.telegraphindia.com/1050515/asp/opinion/story_4739890.asp

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

75:

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

25:

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

54. Can citizens access the terms and conditions of privatization bids?

100

54a. In law, citizens can access privatization regulations.

YES | NO

References:

Department of Disinvestment, Policy and Guidelines.

www.divest.nic.in/index.htm

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.

54b. In practice, privatizations are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

Information is made available on the website of the department and is also publicized through newspaper advertisements.

References:

www.divest.nic.in

See the advertisement for the disinvestment of Indian Petrochemicals Corporation Ltd in February 2004, www.divest.nic.in/eng_737.pdf

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.

54c. In law, the government is required to publicly announce the results of privatization decisions.

YES | NO

Comments:

The various stages of the privatization process are made public. However, the actual evaluation and auditing of the privatization is made public only after it is submitted to Parliament.

References:

Disinvestment Manual, Chapter 9: Overview of the Privatization Process

www.divest.nic.in/manual03/chap9.htm

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.

54d. In practice, citizens can access privatization regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The regulations are available on the website of the department. Under Right to Information, 2005, any information relating to rules and procedures adopted by the individual department/office to carry out its mandate is required to be made available proactively. If sought by a citizen by way of an information request, it has to be given free of cost.

References:

www.divest.nic.in

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.

54e. In practice, citizens can access privatization regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Under Right to Information, 2005, any information relating to rules and procedures adopted by the individual department/office to carry out its mandate is required to be made available proactively. If sought by a citizen by way of an information request, it has to be given free of cost.

References:

Regulations are available freely.

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

56. Is the national ombudsman effective?

73

56a. In law, the ombudsman is protected from political interference.

YES | NO

Comments:

The three vigilance commissioners are appointed by the president on the recommendation of a committee consisting of (a) the prime minister/chairperson; (b) the minister of home affairs; (c) the leader of the opposition in the House of the People. The CVC has functional autonomy and can technically operate independent of any pressure from the government in power.

References:

Central Vigilance Commission Act, 2003, cvc.nic.in/cvcact.pdf

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.

56b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The rating is limited to the Central Vigilance Commission and the institution of Lok Ayukta in the states. While the statutes allow adequate independence in appointment and functioning, there are questions about the commissions' effectiveness and consistency of supervision. Their role is largely recommendatory and they do not normally have investigative powers. Further, their hands are tied by constitutional protections granted to public servants.

References:

Under the table," Yamini Aiyar, Dec. 9, 2008, www.indianexpress.com/news/Under-the-table/395835

Reforming Public Services in India: Drawing Lessons from Success, The World Bank, Report No. 35041-IN

"Blowing the Whistle," Prashant Bhushan, V.K. Shunglu, Arvind Kerjiwal, Madhu Bhaduri, Outlook Magazine, outlookindia.com/printarticle.aspx?261960

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.

56c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

The CVC Act ensures security of tenure; a vigilance commissioner can be removed only by the president of India based on an enquiry by the Supreme Court. Removal is possible only if the vigilance commissioner (a) is adjudged as insolvent; or (b) has been convicted of an offense which, in the opinion of the central government, involves moral turpitude; or (c) engages during his term of office in any paid employment outside the duties of his office; or (d) is, in the opinion of the president, unfit to continue in office by reason of infirmity of mind or body; or (e) has acquired such financial or other interests as is likely to affect prejudicially his functions as a central vigilance commissioner or a vigilance commissioner."

References:

Section 5 and 6 of the Central Vigilance Commission Act, 2003, cvc.nic.in/cvcact.pdf

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.

56d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

As of Dec. 31, 2007, the CVC reported 227 personnel against 282 posts in the commission. However, the CVC is dependent of the Central Bureau of Investigation for investigating cases, and chief vigilance officers are posted in departments/offices to conduct vigilance administration within the organization. A good number of positions remain vacant in both these institutions, which hampers the functioning of the CVC.

References:

Central Vigilance Commission Annual Report 2007, cvc.nic.in/AR2007.pdf

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.

56e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

Other than the central vigilance commissioner and vigilance commissioners who are appointment as per the provisions of the CVC Act, 2003, all officials of the CVC are permanent civil servants who are appointment by the government in accordance with constitutional provisions and the rules and regulations framed under it. Experience in vigilance and anti-corruption issues and technical qualifications for officials in the chief technical examiner's wing may be required for postings in the CVC.

References:

Central Vigilance Commission Annual Report 2007, cvc.nic.in/AR2007.pdf

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.

56f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Administratively, the Central Vigilance Commission comes under the Ministry of Personnel, Public Grievances and Pension, and budgetary provisions are made for the CVC under this ministry's budget as per demand by the CVC (subject to budget approval by the Finance Ministry).

References:

See Budget and Accounts under Ministry of Personnel, Public Grievances and Pension, www.persmin.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.

56g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

Comments:

Reports on CVC activities are available on its website. Requests for information under the Right to Information Act are an option for getting other kinds of information. Ironically, this anti-corruption body has been trying for several years to be exempted from furnishing information under the RTI act. See the issue discussed at www.humanrightsinitiative.org/programs/ai/rti/india/national/letter_to_cvc_cbi_re_rti_jul_2005.pdf.

References:

cvc.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.

56h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The CVC doesn't have direct powers of investigation but is empowered to direct enquiries into complaints/investigations and to advise departmental action through other agencies. In the Annual Report for 2007, the CVC reported 56 cases of non-compliance with its directions/flouting of the norms by various departments/offices of the government of India. The chief vigilance officers placed within departments/offices, who are to act on complaints within three months, had not responded to the directions of the CVC in 851 cases; 30 cases were pending for over 3 years and 203 cases for between 1 and 3 years.

The Central Bureau of Investigation (CBI), which is under the supervision of the CVC, had 753 registered cases pending investigation at the end of 2007. Clearly, the CVC's powers over these anti-corruption institutions have not been appropriately exercised or have been ineffective. The general perception (also supported by corruption studies like those of Transparency International) is that there is far more corruption than what gets noticed by the CVC or is pursued aggressively. The investigated and the punished are usually lower and middle ranking officers; the big fish almost always get away. This was commented upon by the prime minister when addressing a recent anti-corruption conference.

References:

Blowing the Whistle," Prashant Bhushan, V.K. Shunglu, Arvind Kerjiwal, Madhu Bhaduri, Outlook Magazine, outlookindia.com/printarticle.aspx?261960

Prime Minister's address at the XVII biennial conference of CBI and state anti-corruption Bureaus, Aug. 26, 2009, pmindia.nic.in/speeches.htm

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.

56i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The CVC has no powers to impose penalties. Its role is advisory. The 2007 annual report mentions 56 cases of deviations from its advice to impose various kinds of penalties.

The CVC's powers over the anti-corruption institutions it supervises have not been appropriately exercised or have been ineffective. The general perception (also supported by corruption studies like those of Transparency International) is that there is far more corruption than what gets noticed by the CVC or is pursued aggressively. The investigated and the punished are usually lower and middle ranking officers; the big fish almost always get away. This was commented upon by the prime minister when addressing a recent anti-corruption conference.

References:

Central Vigilance Commission, Annual Report 2007, cvc.nic.in/AR2007.pdf

Prime Minister's address at the XVII biennial conference of CBI and state anti-corruption Bureaus, Aug. 26, 2009, pmindia.nic.in/speeches.htm

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.

56j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

The CVC reported 56 cases of non-compliance with its directions/flouting of the norms by various departments/offices of the government of India.

References:

Central Vigilance Commission, Annual Report 2007, cvc.nic.in/AR2007.pdf

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's reports are often ignored, or given superficial attention. Ombudsman's reports do not lead to policy changes.

56k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

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

Comments:

In its Annual Report for 2007, the CVC reports that it received 1,712 complaints that year (including whistle-blower complaints) and that 713 complaints had not been responded to, 158 of which were pending for more than 6 months.

References:

Annexure III-A(i) of Central Vigilance Commission Annual Report, 2007, cvc.nic.in/AR2007.pdf

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.

57. Can citizens access the reports of the ombudsman?

92

57a. In law, citizens can access reports of the ombudsman(s).

YES | NO

Comments:

The CVC's annual reports and monthly performance reports and achievements are available on its website. Requests for information under the Right to Information Act is an option for getting other kinds of information. Ironically, this anti-corruption body has been trying for several years to be exempted from furnishing information under the RTI Act. See the issue discussed at www.humanrightsinitiative.org/programs/ai/rti/india/national/letter_to_cvc_cbi_re_rti_jul_2005.pdf.

References:

cvc.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.

57b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

CVC reports are available online. Requests for information under the Right to Information Act is an option for getting other kinds of information, which is normally made available within a month under the act. Ironically, this anti-corruption body has been trying for several years to be exempted from furnishing information under the RTI Act.

References:

cvc.nic.in/

www.humanrightsinitiative.org/programs/ai/rti/india/national/letter_to_cvc_cbi_re_rti_jul_2005.pdf

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.

57c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

CVC reports are freely available online. Requests for information under the Right to Information Act is an option for getting other kinds of information at a nominal price, as per the provisions of the act. Ironically, this anti-corruption body has been trying for several years to be exempted from furnishing information under the RTI Act.

References:

cvc.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.

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

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

YES | NO

Comments:

There is no national ombudsman in India. The institution of Lok Pal was designed to serve as one but has been in the creation phase since the early 1960s. The Lok Pal Bill was introduced in Parliament eight times but allowed to lapse without becoming law.

What we have are the statutorily independent Central Vigilance Commission (CVC) for central government offices and Lok Ayukta in the state governments. The indicators in this section cover the Central Vigilance Commission. There are several Lok Ayukta in the states with varying powers and functions.

The CVC came into being by a government resolution in 1964 as an apex body for exercising general superintendence and control over vigilance administration. In 1998, the government promulgated an ordinance in compliance with Supreme Court of India directions granting autonomy to anti-corruption agencies, which included conferring statutory status to the CVC. The CVC Act was passed in 2003 and provides for the constitution of a Central Vigilance Commission to inquire or cause inquiries to be conducted into offenses alleged to have been committed under the Prevention of Corruption Act, 1988, by certain categories of public servants of the central government. CVC powers include superintendence over the functioning of the Central Bureau of Investigation (CBI) in matters relating to investigation under the Prevention of Corruption Act, 1988; tendering independent and impartial advice to the disciplinary authorities in cases that involve a vigilance angle (having a bearing on integrity); supervising vigilance and anti-corruption work in ministries or departments of the central government; leading the selection committee for the appointment of the directors of the CBI and Enforcement Directorate (the investigating agency for economic offenses) and officers of the level of superintendent of police and above in the CBI.

Many states have the institution of Lok Ayukta, which is generally headed by a retired High Court or Supreme Court judge.

References:

The Central Vigilance Commission Act, 2003, cvc.nic.in/cvcact.pdf

Reforming Public Services in India: Drawing Lessons from Success, The World Bank, Report No. 35041-IN

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.

V-2. Supreme Audit Institution

59. Is the supreme audit institution effective?

78

59a. In law, the supreme audit institution is protected from political interference.

YES | NO

Comments:

Though the appointment of the comptroller & auditor general is made by the executive, as is any other high level executive appointment, the C&AG as a body is answerable only to Parliament.

References:

Article 148 of the Constitution of India provides that the comptroller & auditor general of India shall be appointed by the president by warrant under his hand and seal and shall be removed from office only in like manner and on the like grounds as a sudge of the Supreme Court (which is impeachment by the Parliament).

india.gov.in/govt/documents/english/coi_part_full.pdf

YES: A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

59b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

There has been no occasion in the history of the Indian Constitution of the C&AG being removed.

References:

Article 148 of the Constitution of India provides that the comptroller & auditor general of India shall only be removed from office in like manner and on the like grounds as a judge of the Supreme Court (which is impeachment by Parliament). Under Article 124 of the Constitution, a judge of the Supreme Court can be removed on the grounds of proved misbehaviour or incapacity.

india.gov.in/govt/documents/english/coi_part_full.pdf

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.

59c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The comptroller & auditor general employs about 50,000 personnel across the country. Its latest performance report, 2007-2008, does not indicate any constraints due to inadequate staffing.

References:

Article 148(5) of the Constitution provides for persons appointed in the Indian Audit & Accounts Department.

india.gov.in/govt/documents/english/coi_part_full.pdf

cag.gov.in/Activity/2007-08/perf07-08.pdf

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

75:

50: The agency has limited staff that hinders it 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.

59d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

There have been questions about the manner in which the comptroller & auditor general's appointment is made. Senior officials with audit experience from the Audit and Accounts department have been overlooked in favor of senior officials from the Indian Administrative Service, a generalist service but considered higher in status and the most powerful of all the organized civil services in the country.

References:

Checks and balances," Era Sezhiyan, Frontline, Volume 24, Issue 25, Dec. 27, 2007-Jan. 04, 2008

www.thehindu.com/fline/fl2425/stories/20080104242508500.htm

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

75:

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

25:

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

59e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Article 148 of the Constitution provides for the budget of the organization to be met out of the Consolidated Fund of India, india.gov.in/govt/documents/english/coi_part_full.pdf>

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.

59f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | 25 | 0

References:

Compliance/Regulatory Audit and Performance Audit Reports are published regularly for the central and state government offices and are placed before Parliament and on the comptroller & auditor general website for the public.

cag.gov.in/

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

75:

50: The agency makes publicly available reports to the legislature and/or to the public directly that are sometimes delayed or incomplete.

25:

0: The agency makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

59g. In practice, the government acts on the findings of the audit agency.

100 | 75 | 50 | 25 | 0

Comments:

While the reports are attended to by government departments, the comptroller & auditor general has no enforcement powers. The quality of the reports is sometimes questioned for its nit-picking, and the volume makes it impossible for parliamentary oversight committees to do anything but a superficial scrutiny. There are also delays in placing of the reports before Parliament.

References:

National Commission to Review the Working of the Constitution, A Consultation Paper on the Efficacy of the Public Audit System in India: C & Ag Reforming the Institution, Jan. 8, 2001

lawmin.nic.in/ncrwc/finalreport/v2b1-11.htm

Transparency and Accountability in Government Budgeting in India, Center for Budget and Governance Accountability, 2004

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.

59h. In practice, the audit agency is able to initiate its own investigations.

100 | 75 | 50 | 25 | 0

Comments:

The comptroller & auditor general is not empowered to conduct its investigations, but it works with the Central Vigilance Commission to enquire into red flag instances.

References:

National Commission to Review the Working of the Constitution, A Consultation Paper on the Efficacy of the Public Audit System in India: C & Ag Reforming the Institution, Jan. 8, 2001

lawmin.nic.in/ncrwc/finalreport/v2b1-11.htm

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.

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

100

60a. In law, citizens can access reports of the audit agency.

YES

NO

References:

Audit reports of the central and state governments are available to the public at cag.gov.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.

60b. In practice, citizens can access audit reports within a reasonable time period.

100

75

50

25

0

Comments:

Audit reports are available freely online.

References:

cag.gov.in/

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

75:

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

25:

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

60c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Audit reports are available freely online.

References:

cag.gov.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. Report costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

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

100

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

YES | NO

References:

Articles 148 to 152 of the Constitution of India lays down the special status of the comptroller & auditor general (C&AG) of India.

The C&AG Act, 1971, regulates the duties, powers and conditions of service of the comptroller & auditor general of India.

india.gov.in/govt/documents/english/coi_part_full.pdf

finmin.nic.in/the_ministry/dept_eco_affairs/budget/CAGAct1971.pdf

YES: A YES score is earned if there is a specific agency whose primary mandate is to audit and track the movement of money through the government. This agency should be specifically charged to investigate and document the misuse of funds. A system of agencies located in each department is equivalent.

NO: A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as the executive.

62. Is the tax collection agency effective?

100

62a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The annual report for the ministry does not report any staff crunch affecting its performance.

References:

finmin.nic.in/reports/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 tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The tax agencies are regularly funded through the union and state budgets.

References:

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.

65. Is the customs and excise agency effective?

100

65a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

No documents/records were found to indicate that there is any staff crunch affecting its performance.

References:

finmin.nic.in/reports/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.

65b. In practice, the customs and excise agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The CBEC receives regular funding from the budget of the central government.

References:

finmin.nic.in/reports/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.

61. In law, is there a national tax collection agency?

100

61. In law, is there a national tax collection agency?

YES | NO

References:

Article 246 and 265 read with Schedule VII of the Constitution: Taxes are levied by both the central Government and state Government, india.gov.in/govt/documents/english/coi_part_full.pdf

Under the central government, direct and indirect taxes are regulated by the Ministry of Finance. The authorities involved in tax collection are the Central Board of Direct Taxes and the Central Board of Excise and Customs, 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.

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

25

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

100 | 75 | 50 | 25 | 0

Comments:

Uneven application of tax laws is made possible due to the complex and opaque nature of tax legislation and its administration. Simplifying the tax law for an ordinary taxpayer and improving compliance is the aim of the new Direct Tax Code, which was recently thrown open for public discussion.

References:

Tax Administration: India, Business Anti-corruption Portal

www.business-anti-corruption.com/country-profiles/south-asia/india/corruption-levels/tax-administration/

Importance of Tax Administration," The Financial Express, Jan. 15, 2003, www.financialexpress.com/news/importance-of-tax-administration/69046/0

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.

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

100

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

YES | NO

References:

The Ministry of Finance regulates customs and excise duties. The agency set up to do it is the Central Board of Excise and Customs.

finmin.nic.in

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.

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

25

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

100 | 75 | 50 | 25 | 0

Comments:

The indirect tax regime is complex, uncertain, lacking in transparency and places a heavy procedural burden on the taxpayer. This has the effect of breeding corruption and raising the transaction costs of doing business.

References:

Customs Administration: India, Business Anti-corruption Portal, www.business-anti-corruption.com/country-profiles/south-asia/india/corruption-levels/customs-administration/

Consultation Paper, Task Force on Indirect Taxes, Constituted by the Ministry of Finance & Company Affairs, October 2002, finmin.nic.in/kelkar/report.pdf

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

68. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

60

68a. In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.

YES | NO

Comments:

PSEs are administratively controlled by the ministries/departments concerned with it. This includes deciding policy issues, appointments, etc.

References:
Department of Public Enterprises, dpe.nic.in/

YES: A YES score is earned only if the agency, series of agencies, 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, series of agencies, or equivalent mechanism is a subordinate part of any government ministry or agency.

68b. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:
There is no one agency overseeing state-owned enterprises. The policy and administrative controls are with the ministry concerned with the enterprise, whereas the department of public enterprise is concerned with coordinating general policies of a non-financial nature, including a mechanism for improving performance, arbitration and employees issues.

References:
dpe.nic.in/

Ministries/departments of government of India and the states

100: The agency, series of agencies, or equivalent mechanism has staff sufficient to fulfill its basic mandate.

75:

50: The agency, series of agencies, or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

25:

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

68c. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:
Like any other government department, the ministries/departments concerned with state-owned enterprises are fully funded through the budget.

References:
Ministry of Finance, Budget

100: The agency, series of agencies, 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, series of agencies, 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.

68d. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The problems with agencies initiating investigations relating to state-owned enterprises is the same as those with other government departments/offices. The Central Vigilance Commission handles corruption in central public sector undertakings. The CVC's chief technical examiner can scrutinize technical/financial aspects of occupational fraud and financial irregularities, and can recommend investigations. The Serious Fraud Offices under the Department of Company Affairs, which looks into fraud involving violations of multiple laws such as income tax, FEMA and the RBI Act, etc. The Central Bureau of Investigation and state police have specialized wings to deal with economic offenses. However, the impact of vigilance administration is not evident, particularly in matters of grand corruption.

References:

Blowing the Whistle," Prashant Bhushan, V.K. Shunglu, Arvind Kerjwal, Madhu Bhaduri, Outlook Magazine, outlookindia.com/printarticle.aspx?261960

Central Vigilance Commission, Annual Report 2007, cvc.nic.in/AR2007.pdf

Prime Minister's address at the XVII biennial conference of CBI and state anti-corruption Bureaus, Aug. 26, 2009, pmindia.nic.in/speeches.htm

100: When irregularities are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency, series of agencies, or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

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

68e. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The Central Vigilance Commission (CVC) has no powers to impose penalties. Its role is advisory. CVC's powers over the anti-corruption institutions it supervises have not been appropriately exercised or have been ineffective. The general perception (also supported by corruption studies like those of Transparency International) is that there is far more corruption than what gets noticed by the CVC or is pursued aggressively. In cases that do get investigated, those investigated and the punished are usually lower and middle ranking officers; the big fish almost always get away.

This was commented upon by the Prime Minister of India while addressing a recent anti-corruption conference.

Unlike government departments where licenses and permits are a source of corruption, in state-owned enterprises, the source is more often in procurement policies. Transparency International has, with the support of the CVC, produce Integrity Pacts with such enterprises to achieve more transparency in procurements and contracts.

References:

Central Vigilance Commission, Annual Report 2007, cvc.nic.in/AR2007.pdf

Prime Minister's address at the XVII biennial conference of CBI and state anti-corruption Bureaus, Aug. 26, 2009, pmindia.nic.in/speeches.htm

100: When rules violations are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

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

25:

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

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

85

69a. In law, citizens can access the financial records of state-owned companies.

YES | NO

Comments:

The documents available for public scrutiny are the annual returns and financial statement, which include the director's report, the auditor's report, the balance sheet and profit and loss accounts. These can be obtained by applying to the Registrar of Companies and paying a fee. Information can be obtained online at www.mca.gov.in/MCA21/index.html.

Under Listing Agreements with the Securities and Exchange Board, listed companies are required to publish a snapshot of their financial statements.

Most state-owned companies display their financial statements on their websites.

References:

Sections 209, 210 and 610 and Part VI of the Companies Act, 1956, allow any person to inspect companies' financial records of companies, including those of state-owned companies.

www.mca.gov.in/Ministry/acts_bills.html

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.

69b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | 50 | 25 | 0

Comments:

State-owned companies are under higher scrutiny through comptroller & auditor general audits and parliamentary oversight, which makes most of them more compliant.

References:

Gov't orders inspection of books of six state-run companies, Educomp," Economic Times, Feb 2, 2009, www.caclubindia.com/forum/message_display.asp?quote=143241&group_id=23866

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

75:

50: State-owned companies disclose financial data, but it is flawed. Some companies may misstate financial data, file the information behind schedule, or not publicly disclose certain data.

25:

0: Financial data is not publicly available, or is consistently superficial or otherwise of no value.

69c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

100 | 75 | 50 | 25 | 0

Comments:

As per the Corporate Social Responsibility directives of the Department of Public Enterprises, all central public sector undertakings are required to prepare consolidated financial statements as per Accounting Standards, namely, AS21, AS23 and AS27, issued by the Institute of Chartered Accountants of India (ICAI).

References:

Guidelines on Corporate Governance for Central Public Sector Enterprises, 2007, dpe.nic.in/newsite/gcgcpse.pdf

Gov't orders inspection of books of six state-run companies, Educomp," Economic Times, Feb. 2, 2009, www.caclubindia.com/forum/message_display.asp?quote=143241&group_id=23866

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.

69d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The documents available for public scrutiny are the annual returns and financial statement, which include the director's report, the auditor's report, the balance sheet and profit and loss accounts. These can be obtained by applying to the Registrar of Companies and paying a fee.

References:

Information can be obtained online at www.mca.gov.in/MCA21/index.html.

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.

69e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Sections 209, 210 and 610 and Part VI of the Companies Act, 1956: information can be obtained online at www.mca.gov.in/MCA21/index.html on payment of Rs. 50.

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.

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

100

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

YES | NO

Comments:

The Department of Public Enterprises (DPE) acts as a nodal agency for all PSEs and assists in policy formulation pertaining to the role of PSEs in the economy as also in laying down policy guidelines on performance improvement and evaluation, financial accounting, personnel management and in related areas. It also collects, evaluates and maintains information on several areas in respect of PSEs. DPE also provides an interface between the administrative ministries and the PSEs. In fulfilling its role, it associates itself with other ministries and organizations as the premier management institutes in the country."

Ministries/departments concerned with the state-owned enterprises have administrative control of those enterprises.

In addition, there are a large number of state-owned enterprises that have been set up by state governments and are controlled by the respective government.

References:

Department of Public Enterprises, dpe.nic.in/

YES: A YES score is earned if there is an agency, series of agencies, or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. A YES score can be earned if several government agencies or ministries oversee different state-owned enterprises. 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, or if some state-owned companies are free from government oversight.

70. Are business licenses available to all citizens?

69

70a. In law, anyone may apply for a business license.

YES | NO

References:

Article 19(1)(g) of the Constitution of India allows all citizens the right to practise any profession, or to carry on any occupation, trade or business."

Article 19(6) puts in certain reasonable restrictions to this fundamental right, including the restriction that nothing will affect the operation of any existing law insofar as it relates to, or prevents the state from making any law relating to (i) the professional or technical qualifications necessary for practicing any profession or carrying on any occupation, trade or business, or the carrying on by the state, or by a corporation owned or controlled by the state, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.

india.gov.in/govt/documents/english/coi_part_full.pdf

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

70b. In law, a complaint mechanism exists if a business license request is denied.

YES | NO

Comments:

Since the principles of natural justice are built into India's legal system, it is common to find at least one or two layers of statutory appeal. Further appeal is possible in the High Court and the Supreme Court.

References:

Licenses are given under several laws relating to manufacturing, service and sales, and under specific licenses such as food, liquor, labor, environment, etc. The appeals procedure (in most cases, more than one) is prescribed into these licensing laws.

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.

70c. 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:

According to the Doing Business 2010 data on starting a business, it takes an average of 30 days to complete all legal/regulatory formalities, versus an OECD average of 13 days. To obtain a construction permit, the time is 195 days, versus an OECD average of 157 days.

References:

Doing Business in India 2010, /www.doingbusiness.org/ExploreEconomies/?economyid=89

100: Licenses are not required, or licenses can be obtained within roughly one week.

75:

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

25:

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

70d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

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

Comments:

The cost (percent of income per capita) to start a business is 66.1, versus the OECD average of 4.7. To get a construction permit the cost (percent of income per capita) is 2,394.9, versus the OECD average of 56.1.

References:

Doing Business in India 2010, www.doingbusiness.org/ExploreEconomies/?economyid=89#StartingBusiness

100: Licenses are not required, or licenses are free. Licenses can be obtained at little cost to the organization, such as by mail, or on-line.

75:

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

25:

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

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

100

71a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

YES | NO

Comments:

Various environment protection legislation covers preservation and protection of the environment air, water, forests, land, biodiversity, wildlife, noise pollution, management of hazardous substances, public liability insurance, which generally takes care of health issues too. Depending on the kind of business activity, such as food or pharmaceuticals, relevant laws would apply.

References:

Environment and health standards are contained in legislation of the Ministry of Environment and Forests, www.envfor.nic.in/legis/legis.html

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.

71b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

YES | NO

Comments:

Various environment protection legislation covers preservation and protection of the environment – air, water, forests, land, biodiversity, wildlife, noise pollution, management of hazardous substances, public liability insurance.

References:

Environment and health standards are contained in legislation of Ministry of Environment and Forests, www.envfor.nic.in/legis/legis.html

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.

71c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

YES | NO

Comments:

Occupational health and safety standards cover statutes for safety at workplaces, safety of substances and safety of activities.

References:

Occupational Health and Safety standards are contained in the Factories Act, 1948, the Mines Act, 1952, and the Dock Workers (Safety, Health & Welfare) Act, 1986, business.gov.in/legal_aspects/keyregulation.php

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.

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

25

72a. 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:

Inspections under various laws is a huge burden on businesses, particularly those involved in manufacturing. Industry

associations have long demanded replacing inspections with self certifications.

References:

Inspector Raj and administration required for Indian Manufacturing, survey by the Federation of Indian Chambers of Commerce and Industry, docs.google.com/gview?a=v&q=cache:ulln0tOwqK8J:www.ficci.com/surveys/inspector-raj.pdf+ficci+self+certification&hl=en&gl=in&sig=AFQjCNFbT7jxWG3UfQand7Jcll-90XO26g

Ministry of Commerce, commerce.nic.in/PressRelease/pressrelease_detail.asp?id=25

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.

72b. 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.

100 | 75 | 50 | 25 | 0

Comments:

Inspections under various laws is a huge burden on businesses, particularly those involved in manufacturing. Industry associations have long demanded replacing inspections with self certifications.

References:

docs.google.com/gview?a=v&q=cache:ulln0tOwqK8J:www.ficci.com/surveys/inspector-raj.pdf+ficci+self+certification&hl=en&gl=in&sig=AFQjCNFbT7jxWG3UfQand7Jcll-90XO26g

Ministry of Commerce, commerce.nic.in/PressRelease/pressrelease_detail.asp?id=25

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.

72c. 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.

100 | 75 | 50 | 25 | 0

Comments:

Inspections under various laws is a huge burden on businesses, particularly those involved in manufacturing. Industry associations have long demanded replacing inspections with self certifications.

References:

docs.google.com/gview?a=v&q=cache:uIn0tOwqK8J:www.ficci.com/surveys/inspector-raj.pdf+ficci+self+certification&hl=en&gl=in&sig=AFQjCNFbT7jxWG3UfQand7Jcll-90XO26g

Ministry of Commerce, commerce.nic.in/PressRelease/pressrelease_detail.asp?id=25

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:

50: 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.

25:

0: 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. ⁷¹Anti-Corruption Law

73. Is there legislation criminalizing corruption?

89

73a. In law, attempted corruption is illegal.

YES | NO

Comments:

India is a signatory to the UN Convention against Corruption but has not yet ratified it. Attempted acts of corruption have always been illegal.

References:

Under the Prevention of Corruption Act, 1988, attempted corruption is illegal and is detailed in this act as follows:

Section 7. Public servant taking a gratuity other than legal remuneration to perform an official act;
Section 8. Public servant taking a gratuity by corrupt or illegal means, to influence the public servant;
Section 9. Public servant taking a gratuity to influence the public servant;
Section 11. Public servant obtaining something valuable from a person concerned with a proceeding or business transacted by the public servant;
Section 13. Criminal misconduct by a public servant.

www.persmin.nic.in/EmployeesCorner/Acts_Rules/PCAct/pcact.pdf

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

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

73b. In law, extortion is illegal.

YES | NO

References:

Under the Prevention of Corruption Act, 1988, attempted corruption is illegal and is detailed in this act as follows:

Section 7. Public servant taking a gratuity other than legal remuneration to perform an official act;
Section 8. Public servant taking a gratuity by corrupt or illegal means, to influence the public servant;
Section 9. Public servant taking a gratuity to influence the public servant;
Section 11. Public servant obtaining something valuable from a person concerned with a proceeding or business transacted by the public servant;
Section 13. Criminal misconduct by a public servant.

www.persmin.nic.in/EmployeesCorner/Acts_Rules/PCAct/pcact.pdf

Section 10 provides for punishment for public servants convicted of offenses defined in section 8 or 9. Similarly, Section 12 provides for punishment for public servants convicted of offenses defined in section 7 or 11. Thus, sections 10 and 12 cover demand for bribes.

www.persmin.nic.in/EmployeesCorner/Acts_Rules/PCAct/pcact.pdf

Extortion" is a crime defined under the Indian Penal Code (Section 383) that is accompanied with a threat of violence, www.vakilno1.com/.../IndianPenalCode/indianpenalcode1.htm

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.

73c. In law, offering a bribe (i.e. active corruption) is illegal.

YES | NO

Comments:

Section 24 of the Prevention of Corruption Act, however, provides immunity from prosecution to a bribe-giver if he/she gives a statement in a court of law that he/she offered bribe. The Second Administrative Reforms Committee, Ethics in Government has recommended deleting this section to put an end to collusive bribery, which makes it difficult to obtain a conviction for the accused public servant.

References:

Under the Prevention of Corruption Act, 1988, offering a bribe is an offense and is covered by Section 12, which provides for punishment for public servants convicted of offenses defined in section 7 or 11.

The Report of the Second Administrative Reforms Committee, Ethics in Government, www.persmin.nic.in/EmployeesCorner/Acts_Rules/PCAct/pcact.pdf

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

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

73d. In law, receiving a bribe (i.e. passive corruption) is illegal.

YES | NO

References:

Under the Prevention of Corruption Act, 1988, the words used are accepts" or "obtains" any illegal remuneration or a "valuable thing" or "pecuniary advantage" to cover bribery and are detailed in this act as follows:

Section 7. Public servant taking a gratuity other than legal remuneration to perform an official act;
Section 8. Public servant taking a gratuity by corrupt or illegal means, to influence the public servant;
Section 9. Public servant taking a gratuity to influence the public servant;
Section 11. Public servant obtaining something valuable from a person concerned with a proceeding or business transacted by the public servant;
Section 13. Criminal misconduct by a public servant.

www.persmin.nic.in/EmployeesCorner/Acts_Rules/PCAct/pcact.pdf

YES: A YES score is earned if receiving a bribe is illegal.

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

73e. In law, bribing a foreign official is illegal.

YES | **NO**

Comments:

In 2006 certain Indian individuals and companies were charged with violating foreign exchange regulations and other Reserve Bank of India guidelines when they received commissions from foreign companies in exchange for oil coupons given by the Saddam Hussein regime in 2001. These were part of the findings in the report of the Volcker Committee to the UN on the food-for-oil scam. The individuals and firms had committed corrupt practices by receiving undue benefits from an international organization and are being prosecuted under foreign exchange laws.

References:

There is no law making bribing foreign officials illegal.

Pathak: Father, son abused position, Cong in the clear," R. Venkataraman, Indian Express, Aug. 4, 2006.

"Finally, the link: ED says Jagat, Natwar made money in Iraq deal," Ritu Sarin, Indian Express, Sept. 4, 2006.

The law of the letter, Vinay Sitapati, The Indian Express, 28 October 2009.

[<http://www.indianexpress.com/news/the-law-of-the-letter/534048/0>](http://www.indianexpress.com/news/the-law-of-the-letter/534048/0)

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

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

73f. In law, using public resources for private gain is illegal.

YES | NO

References:

Section 13(1)(c) of the Prevention of Corruption Act, 1988, says that a public servant is said to commit the offense of criminal misconduct if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do."

www.persmin.nic.in/EmployeesCorner/Acts_Rules/PCAct/pcact.pdf

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.

73g. In law, using confidential state information for private gain is illegal.

YES | NO

References:

Section 13(1)(d) of the Prevention of Corruption Act, 1988, a public servant is said to commit the offense of criminal misconduct if he, (ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or (iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest.

These clauses would cover the use of confidential state information.

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.

73h. In law, money laundering is illegal.

YES | NO

References:

Prevention of Money-Laundering Act, 2002, and other legislations that deal with money transactions, including the Securities and Exchange Board of India Act, 1992, Foreign Exchange Management Act, 1999, Foreign Trade (Development and Regulation) Act, 1992, Foreign Contribution (Regulation) Act, 1976.

Ministry of Finance, finmin.nic.in/

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.

73i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

YES | NO

Comments:

India is a signatory to United Nations Convention against Transnational Crime.

References:

Under Section 120B of the Indian Penal Code, 1860, criminal conspiracy is an offense.

YES: A YES score is earned if organized crime is illegal.

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

75. Is the anti-corruption agency effective?

69

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

YES | NO

Comments:

The Central Vigilance Commission, which oversees the vigilance administration and supervises corruption investigations, has been vested with autonomy from government control by the act. The vigilance commissioners (3 in all) are appointed by the president on the recommendation of a committee consisting of (a) the prime minister-chairperson; (b) the minister of home affairs; (c) the leader of the opposition in the House of the People. The commission has functional autonomy and can technically operate independent of any pressures from the government in power.

References:

The Central Vigilance Commission Act, 2003, cvc.nic.in/cvcact.pdf

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.

75b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The statutory autonomy granted to the Central Vigilance Commission by the CVC act, 2003 giving it superintendence over CBI investigations and insulating it from government control has nearly failed in its mandate. Governments in power have manipulated the anti-corruption agencies for partisan or personal ends. A classic case is that of the investigations into the Bofors case, which were allowed to be perverted by successive governments for more than 20 years and which were finally closed (see the fourth source cited above).

References:

On Mulayam, CBI takes cue from Cong-SP ties," Ritu Sarin, Indian Express, May 1, 2009, www.indianexpress.com/news/on-mulayam-cbi-takes-cue-from-congsp-ties/453279/0

"On Babri, it was BJP which made CBI crawl," Ritu Sarin, Indian Express, May 5, 2009, www.indianexpress.com/news/on-babri-it-was-bjp-which-made-cbi-crawl/454643/>

"Blowing the Whistle," Prashant Bhushan, V.K. Shunglu, Arvind Kerjiwal, Madhu Bhaduri, Outlook Magazine, outlookindia.com/printarticle.aspx?261960

"How Quattrocchi walked free," Coomi Kapoor, Indian Express, Oct. 1, 2009, www.indianexpress.com/news/how-quattrocchi-walked-free/523780/0

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.

75c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

The CVC act ensures security of tenure; a vigilance commissioner can be removed only by the president based on an enquiry by the Supreme Court. Removal is possible only if he/she (a) is adjudged an insolvent; or (b) has been convicted of an offense which, in the opinion of the central government, involves moral turpitude; or (c) engages during his term of office in any paid employment outside the duties of his office; or (d) is, in the opinion of the president, unfit to continue in office by reason of infirmity of mind or body; or (e) has acquired such financial or other interest as is likely to affect prejudicially his functions as a central vigilance commissioner or a vigilance commissioner."

The director of the Central Bureau of Investigation, the chief investigating agency for corruption cases, is a senior police officer whose terms and condition of appointment are guided by the All India Service Act, 1961, of which he is invariably a member (the Indian Police Service). To allow the director independence of functioning, his appointment to the post is made by a committee headed by the CVC and he has security of tenure under the act.

References:

Sections 5 and 6 and Section 26 of the Central Vigilance Commission Act, 2003, cvc.nic.in/cvcact.pdf

100: The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director(s) can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director(s) can be removed at the will of political leadership.

75d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

Section 26(b)4A of the Central Vigilance Commission Act, 2003, specifies that the director of the CBI should be selected (a) on the basis of seniority, integrity and experience in the investigation of anti-corruption cases; and (b) chosen from among officers belonging to the Indian Police Service constituted under the All-India Services Act, 1951. Yet there are controversies relating to the appointments and there are continuous efforts by the government to violate the spirit of the law. The consequence is that the director of the premier corruption investigating agency is not always the best anti-corruption cop in the country.

Appointments to the CVC have also not been without questions.

References:

A vacancy in the CBI," Purnima S. Tripathi, Frontline, Volume 18, Issue 10, May 12- 25, 2001, www.thehindu.com/fline/fl1810/18100240.htm

"Ashwani Kumar to takeover as CBI chief," Mail Today, Aug. 1, 2008, epaper.mailtoday.in/epaperpdf/182008/182008-md-hr-4.pdf

"An Old Boys Club?" Charu Lara Joshi, Outlook Magazine, Sept. 14, 1998, www.outlookindia.com/article.aspx?206155

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

75:

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

25:

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

75e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The CBI, which is the investigating agency for corruption cases, reported 1086 vacancies versus 5960 authorized posts. The anti-corruption agencies in the central government and the states are staffed by police officers, and the police force is grossly short-staffed all over the country.

References:

Fill up police vacancies, Chidambaram tells states, Business Standard, Aug. 18, 2009, www.business-standard.com/india/news/fillpolice-vacancies-chidambaram-tells-states/367328/

Central Bureau of Investigations Annual Report ,2008, cbi.nic.in/annualreport/cbi_annual_report_2008.pdf

100: The agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

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

75f. In practice, the anti-corruption agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The funding is available by government budget outlays.

References:

Ministry of Personnel, Public Grievances & Pension, persmin.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.

75g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

References:

CBI Performance and Annual Reports, www.cbi.gov.in/performance/performancemain.php

CVC Performance and Annual Reports, 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.

75h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

Apart from political interference, investigating agency/departmental enquiries often have legal protections given to public servants:

- Section 19 of the Prevention of Corruption Act provides that previous sanction of the competent authority (generally the department/office that appointed the accused) is necessary before a court takes cognizance of the offenses defined under the act. Such sanctions for prosecution are often refused or delayed by the concerned authorities.
- Section 6A of the Delhi Special Police Establishment Act, 1946, prohibits initiation of any enquiry or investigation against a senior officer (joint secretary and above rank) without the prior permission of the government unless it concerns a case where he has been caught red-handed accepting a bribe.
- Natural justice provisions contained in Article 311 of the Constitution stretch for years departmental action in cases of official misconduct that are not criminal in nature, making such action meaningless.

The Report of the Administrative Reforms Committee, Ethics in Government recommended that enforcement of anti-corruption and misconduct laws be made more effective by scrapping sanctions for the prosecution in cases of bribery and illicit enrichment, by repealing of Article 311 and giving the powers of granting permission to initiate investigations against senior officials to the Central Vigilance Commission.

References:

On Mulayam, CBI takes cue from Cong-SP ties," Ritu Sarin, Indian Express, May 1, 2009, www.indianexpress.com/news/on-mulayam-cbi-takes-cue-from-congsp-ties/453279/0

"On Babri, it was BJP which made CBI crawl," Ritu Sarin, Indian Express, May 5, 2009, www.indianexpress.com/news/on-babri-it-was-bjp-which-made-cbi-crawl/454643/>

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.

75i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The Central Bureau of Investigation registers an average of 1100 cases annually and the comparable conviction rate is very low.

References:

Blowing the Whistle," Prashant Bhushan, V.K. Shunglu, Arvind Kerjwal, Madhu Bhaduri, Outlook Magazine, outlookindia.com/printarticle.aspx?261960

Report of the Administrative Reforms Committee, Ethics in Government

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.

76. Can citizens access the anti-corruption agency?

38

76a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

In the Annual Report for 2007, the CVC reports that it received 1712 complaints that year (including whistle-blower complaints) and that 713 complaints had not been responded to, of which 158 were pending for more than 6 months. While the CBI invites the public to file complaints, there is no information on the number of complaints received or acted upon.

References:

Annexure III-A(i) of Central Vigilance Commission Annual Report, 2007, cvc.nic.in/AR2007.pdf

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.

76b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

Comments:

Anonymous and pseudonymous complaints are not entertained. There have been cases of whistle-blowers being outed. Under the criminal procedure code, a First Information Report is made to initiate a criminal case (corruption is a crime) based on a complaint by any member of the public, which may be the state itself.

References:

Their identities disclosed, facing probes and cases, whistle-blowers do rounds of courts," Ritu Sarin, Indian Express, Aug. 31, 2009

"Blowing the Whistle," Prashant Bhushan, V.K. Shunglu, Arvind Kerjiwal, Madhu Bhaduri, Outlook Magazine, outlookindia.com/printarticle.aspx?261960

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.

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

YES | NO

Comments:

a) The Administrative Vigilance Division is responsible for the formulation and implementation of vigilance and anti-corruption policy of the central government and provides guidance and coordination for all government departments and offices. The division is part of the Ministry of Personnel, which also administratively controls other anti-corruption organizations, including the Central Bureau of Investigation (CBI) and the Central Vigilance Commission (CVC).

b) The Central Bureau of Investigation was created by the Delhi Special Police Establishment (DSPE) Act, 1946, to investigate corruption cases involving all central government departments. The jurisdiction of the DSPE extends to all union territories (these are directly administered by the central government) and could also be extended to the states with the consent of the concerned state government or on the directions of the High Courts and the Supreme Court.

c) The Central Vigilance Commission, first created in 1964, is the apex body for exercising general superintendence and control over vigilance administration in the central government. It became a statutory body in 2003 on the direction of the Supreme Court of India. The act mandates the CVC to inquire or cause inquiries to be conducted into offenses alleged to have been committed under the Prevention of Corruption Act, 1988, by certain categories of public servants of the central government. The CVC's power includes superintendence over the functioning of the CBI in matters relating to investigation under the Prevention of Corruption Act, 1988; tendering independent and impartial advice to the disciplinary authorities in cases that involve a vigilance angle (having a bearing on integrity); supervising vigilance and anti-corruption work in ministries or departments of the central government; leading the selection committee for the appointment of the directors of the CBI and Enforcement Directorate (which is the investigating agency for economic offenses) and officers of the level of superintendent of police and above in the CBI.

d. The office of the Chief Vigilance Officer (CVO) acts as the CVC's arm heading vigilance units in the departments/organizations to which the advisory jurisdiction of the CVC extends. The function of the CVO is to minimize factors that provide opportunities for malpractices by initiating reviews of systems and procedures and by introducing suitable measures of preventive vigilance in a sustained and effective manner. On the punitive side, the CVO ensures speedy processing of vigilance and disciplinary cases.

References:

Ministry of Personnel, Public Grievances and Pension, persmin.nic.in/

The following agencies are mandated to check corruption in the central government:

- a) Administrative Vigilance Division
- b) Central Bureau of Investigation
- c) Central Vigilance Commission
- d) Chief Vigilance Officers

In the states, there are Anti-Corruption Bureaus, generally under the police departments and bodies similar to the Central Vigilance Commission, sometimes known as Lok Ayukta, with varying powers.

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.

69 VI-3. Rule of Law

77. Is there an appeals mechanism for challenging criminal judgments?

67

77a. In law, there is a general right of appeal.

YES | NO

References:

Section 374 of the Criminal Procedure Code, 1973, www.vakilno1.com/bareacts/CrPc/Criminal-Procedure-Code-1973-3.htm

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.

77b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Figures for delays in disposing criminal appeals are not available. One available figure, for Dec. 31, 2005, is that 531,477 cases pending in High Courts were more than 10 years old. As of June 30, 2009, 3,955,224 criminal cases were pending in different High Courts in India. Separate figures for criminal cases in the Supreme Court are not available, but the total number of pending cases as of June 30, 2009, was 52,592. It is estimated that, assuming no fresh cases and no increase in judge strength, it would take 9 months for the Supreme Court to clear all pending cases. On average, High Courts would need about 2 years and 7 months; Lower Courts about 1 year and 9 months.

References:

Rules of the Law-II," Bibek Debroy, Financial Express, Sept. 9, 2009, www.financialexpress.com/news/rules-of-the-lawii/514585/

Court News, Supreme Court of India, April-June 2009, www.supremecourtindia.nic.in/courtnews/court%20news%20apr-jun-09.pdf

PRS Legislative Research, Vital Stats, Pendency of Cases in Indian Courts, Aug. 26, 2009, www.prsindia.org/administrator/uploads/general/1251796330~~Vital%20Stats%20-%20Pendency%20of%20Cases%20in%20Indian%20Courts%2026Aug2009%20v10.pdf

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.

77c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Court fees are low in criminal cases. Advocate fees may be high and delays in dispensation of justice can raise the cost of pursuing appeals for the middle class. Free legal aid is available to those who need it, but the numbers of undertrial prisoners that languish in Indian jails are indicative of the fact that free legal aid is not always accessible.

References:

The Supreme Court Rules, 1966, Third Schedule, Table of Court Fees, www.supremecourtindia.nic.in/rulespdf.pdf

The Court Fees' Act, 1870, read with respective High Court Rules, www.vakilno1.com/bareacts/the_court_fees_act/courtfeeact.htm

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees are not a barrier to appeals.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees present somewhat of a barrier to pursuing appeal.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments. Attorney fees greatly discourage the use of the appeals process.

78. In practice, do judgments in the criminal system follow written law?

50

78. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

Comments:

The 2005 Corruption in Judiciary study indicates that 23 percent of bribes paid in courts were for a favorable judgment and 14% for getting bail. Corruption in the judiciary is rampant, particularly in the lower judiciary, and the written law is easily manipulated.

References:

Section 353 and 354 of the Criminal Procedure Code, 1973, lays down the form of a judgment, its language and content, www.vakilno1.com/bareacts/CrPc/Criminal-Procedure-Code-1973-3.htm

Ignoring judicial corruption in Gujarat?" Sevanti Ninan, The Hoot, July 6, 2008, www.thehoot.org/web/home/story.php?storyid=3210&pg=1&mod=1§ionId=21§ionname=MEDIA%20ACTIVISM&valid=true

Judge in a corruption case, by Amulya Gopalakrishnan,
Vol: 20, Issue 10, www.flonnet.com/fi2010/stories/20030523002904600.htm

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.

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

50

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

100 | 75 | 50 | 25 | 0

Comments:

The typical response of the state to judicial decisions is to go into appeal whether or not a case is worth appealing. Government litigation thus forms the highest component of cases before various courts and delays resolution of cases, sometimes by decades.

References:

Government itself to blame for backlog of cases," Kannan Kasturi, India Together, March 25, 2008, www.indiatogether.org/2008/mar/gov-litigant.htm

100: Judicial decisions are enforced quickly regardless of what is being decided or who is appearing before the court. Failure to comply brings penalties enforced by the state.

75:

50: Judicial decisions are generally enforced by the state, with some exceptions. Certain areas of law may be ignored, or certain parties appearing before the courts may evade or delay enforcement.

25:

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

80. Is the judiciary able to act independently?

69

80a. In law, the independence of the judiciary is guaranteed.

YES | NO

References:

Constitution of India, Articles 50 (separation of powers), 124(2) and 217(1) (appointment of judges), 124(2) and 217(1) (security of tenure), 125 and 221 (salaries), 124(2) and (4) (removal), and 129 and 215 (power to punish for contempt) ensure independence of the judiciary. Various Supreme Court decisions have confirmed that independence of the judiciary is a basic structure of the Indian Constitution.

Judicial Independence, Fiscal Autonomy and Accountability," Justice S.B. Sinha, Judicial Reform Network in the 21st Century Conference Papers, 2005, jrn21.supremecourt.gov.ph/index.php?links=documents

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 includes 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.

80b. In practice, national-level judges are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

It would be hard to find evidence, but it is a badly kept secret. The judiciary is not open to having its judgments criticized, and such attempts would invite action for contempt of the court. Political and executive interference is common in lower courts and tribunals (see Supreme Court citation above).

References:

No minister called up Madras High Court judge, says CJI Balakrishnan," Indian Express, July 5, 2009, www.indianexpress.com/news/no-minister-called-up-madras-high-court-judge-says-cji-balakrishnan/485249/0

Speech by Fali S. Nariman on the occasion of M.S. Oberoi Media Awards 2007 at Oberoi Hotel, March 15, 2008, www.transparencyindia.org/f_s_nariman.htm

"Lords on trial," Shafi Rahman, India Today, Aug. 27, 2009, indiatoday.intoday.in/site/Story/58750/Lords+on+trial.html?complete=1

L. Chandra Kumar v. the Union of India & Ors., 1995(1)Scc 400

100: National-level judges operate independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Judges never comment on political debates. Individual judgments are rarely praised or criticized by political figures.

75:

50: National-level judges are typically independent, yet are sometimes influenced in their judgments by negative or positive political incentives. This may include favorable or unfavorable treatment by the government or public criticism. Some judges may be demoted or relocated in retaliation for unfavorable decisions.

25:

0: National-level judges are commonly influenced by politics and personal biases or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include demotion, pay cuts, relocation, threats or harassment.

80c. In law, there is a transparent and objective system for distributing cases to national-level judges.

YES | NO

Comments:

The work distribution to benches is generally made subject-wise; for example, a bench may be devoted to tax matters or service matters, etc. The chief justice decides on the judges to be assigned the work. With enhanced computerization of courts in India, there is consistency on case assignments, and information about which judge is handling what kind of cases is available to the public.

References:
There is no legal requirement.

YES: A YES score is earned if there is an objective system that is transparent to the public that equitably or randomly assigns cases to individual judges. The executive branch does not control this process.

NO: A NO score is earned if the case assignment system is non-transparent or subjective where judges themselves have influence over which cases they adjudicate. A NO score is also earned if the executive branch controls this process.

80d. In law, national-level judges are protected from removal without relevant justification.

YES | NO

Comments:
A judge of the Supreme Court or a High Court cannot be removed from office except by an order of the president passed after an address in each House of Parliament that is supported by a majority of the total membership of that House and by a majority of not less than two-thirds of members present and voting, and presented to the president in the same session for such removal, only on the ground of proved misbehavior or incapacity.

References:
Article 124(2) and (4) of the Constitution of India

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.

81. Are judges safe when adjudicating corruption cases?

100

81a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

YES | NO

References:
No source given.

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.

81b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

YES | NO

References:
No source given.

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.

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

64

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

Comments:

Judicial decisions in lower courts sometimes reflect the bias of individual judges. This has been significant in the functioning of trial courts in a state polarized along religious lines, such as Gujarat, where the Supreme Court had to intervene and either transfer cases for trial in another state or get its own team to re-investigate and monitor the trial, relating communal riots that happened in 2003.

References:

Article 15 bars discrimination on the grounds of religion, race, caste, sex, place of birth or any of them. Article 25 of the Indian Constitution grants freedom of religion, which can be the subject to restrictions on grounds such as public order, morality, health and all the other fundamental rights.

india.gov.in/govt/documents/english/coi_part_full.pdf

Individual Rights in India: A perspective from the Supreme Court, by K.G. Balakrishnan, chief justice of the Supreme Court of India, www.supremecourtindia.nic.in/speeches/speeches_2009/Presentation_at_Roundtable_-_University_of_Georgia.pdf

A significant intervention, by V. Venkatesan, Frontline, Volume 20, Issue 17, Aug. 16-29, 2003, www.thehindu.com/fline/fi2017/stories/20030829008200800.htm

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.

82b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

Despite constitutional protections and positive laws, women face gender bias in the judicial process because of the attitudes of individual judges and lawyers. This is particularly marked in cases in which women are victims of violence. There are concerns regarding a lack of a progressive approach by the judiciary when interpreting personal laws relating to marriage and succession. There are gaps between the intent of the legislation to empowering women and the actual practices in courts.

References:

Article 14 of the Constitution grants every person equality before the law and equal protection of laws. Article 15(1) bars discrimination on the grounds of religion, race, caste, sex, place of birth or any of them.

india.gov.in/govt/documents/english/coi_part_full.pdf

Single & Unsafe," Kaveree Bamzai and Anjali Doshi, India Today, May 30, 2005, www.india-today.com/itoday/20050530/cover.html

All India Meeting of Chief Justices of High Courts on Women Empowerment Vis-a-Vis Legislation and Judicial Decisions, Dec. 11, 2004, ncw.nic.in/pdfreports/All%20India%20Meeting%20of%20chief%20Justice.pdf

"State, Gender and the Rhetoric of Law Reforms," Flavia Agnes, SNDT Women's University, Mumbai, 1995

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.

82c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

YES | NO

References:

Article 39A of the Constitution of India provides that state shall secure that the operation of the legal system promotes justice on a basis of equal opportunity and shall, in particular, provide free legal aid by suitable legislation or schemes or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disability.

india.gov.in/govt/constitutions_of_india.php

The Legal Services Authorities Act, 1987, was enacted to give a statutory basis to legal aid programs throughout India and came into effect in 1995.

causelists.nic.in/nalsa/

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.

82d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | 25 | 0

Comments:

The 2006 prison statistics show that the numbers of undertrial prisoners being held in jails across the country is 2,45,244 (65.7 percent of the total inmates). While Legal Aid Services of the states maintain a panel of advocates, clearly, legal aid is not reaching enough of these undertrial prisoners, many of whom are in jail beyond the sentence period likely to have been handed down. Many who have been ordered released are still inside because they have not been able to furnish the necessary bonds.

References:

Judges to inform undertrials of free legal aid , " Utkarsh Anand, Expressindia, May 6, 2009, www.expressindia.com/latest-news/judges-to-inform-undertrials-of-free-legal-aid/455024/

National Crime Records Bureau, Prison Statistics 2006, ncrb.nic.in/PSI2006/prison2006.htm

"CJI signals speedier justice for undertrials," Times of India, Aug. 17, 2009, timesofindia.indiatimes.com/news/india/CJI-signals-speedier-justice-for-undertrials/articleshow/4900450.cms

Access to Justice for Undertrial Prisoners: Problems and Solutions, R. Sreekumar, Commonwealth Human Rights Initiative, New Delhi, www.humanrightsinitiative.org/artres/Access%20to%20Justice%20for%20Undetrial%20Prisoners.pdf

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.

82e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

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

Comments:

Advocate fees are high, given that the legal process is so slow. Civil suits have an additional burden of court fees, which is a proportion (roughly 7.5%) of the value of the suit. The Supreme Court and the Law Commission have frequently recommended having a reasonable fixed court fee charge instead of an ad valorem fee. State governments (which have the powers to regulate) see it more as a revenue-earning mechanism than a charge to offset the administration of justice. The hardest hit are the poor and the middle classes fighting property-related suits.

References:

Law Commission of India, Need to Fix Maximum Chargeable Court Fees in Subordinate Civil Courts, Report No. 220, March 2009, lawcommissionofindia.nic.in/reports/report220.pdf

Women and Access to Justice, Geeta Sajjanshetty, Lawyers Collective HIV/AIDS Unit, Bangalore, www.lawyerscollective.org/magazine/aug-sept-2008/feature-1

SC anguished over high cost of litigation in the country," Y. Prakash, Feb. 4, 2009, www.lawyersclubindia.com/news/2009/2/sc_anguished_over_high_cost_of_litigation_in_the_country.asp

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. Attorney fees do not represent a major cost to citizens.

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. Attorney fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits. Attorney fees are high enough to discourage most citizens from bringing a case.

82f. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

Advocate fees are high, given that the legal process is so slow. Civil suits have an additional burden of court fees, which is a proportion (roughly 7.5%) of the value of the suit. The Supreme Court and the Law Commission have frequently recommended having a reasonable fixed court fee charge instead of an ad valorem fee. State governments (which have the powers to regulate) see it more as a revenue-earning mechanism. Small businesses are oppressed by permit/license regimes and consequent litigation with the government, which has enough resources to keep the litigation dragging from one court to another, even though it loses most of time.

References:

Law Commission of India, Need to Fix Maximum Chargeable Court Fees in Subordinate Civil Courts, Report No. 220, March 2009, lawcommissionofindia.nic.in/reports/report220.pdf

Law Commission of India, Cost of Litigation, Report No. 128, 1988,
Women and Access to Justice, Geeta Sajjanshetty, Lawyers Collective HIV/AIDS Unit, Bangalore,
www.lawyerscollective.org/magazine/aug-sept-2008/feature-1

PM's address at the Conference of the Chief Ministers & Chief Justices, Sept. 18, 2004,
New Delhi, pmindia.nic.in/speech.asp?id=22

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. Attorneys fees do not represent a major cost to small businesses.

75:

50: In some cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. In other cases, the cost is prohibitive. Attorney fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits. Attorney fees are high enough to discourage most small businesses from bringing a case.

82g. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | 50 | 25 | 0

Comments:

Inadequate/expensive access to the court system for geographical reasons has long been an issue. It is only with the Gram Nyayalaya Act, 2008, which came into effect on Oct. 2, 2009, that bringing justice to the people will, hopefully, be realized.

References:

Law Commission of India, Reforms in the Judiciary, Some Suggestions, Report No. 230, August 2009,
lawcommissionofindia.nic.in/reports/report230.pdf

Nyaya Panchayat: Doorstep to Access to Justice, Shadab Mansoori, www.indialaws.info/display.aspx?808AAE43-A34E-4E54-945A-B8B545FFB8C7

Gram Nyayalaya Act ,2008, to come into effect on Mahatma Gandhi Jayanti," Press Information Bureau, Delhi , Sept. 29, 2009,
pibmumbai.gov.in/scripts/detail.asp?releaseId=E2009PR1038

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

75:

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

25:

0: Courts are unavailable to some regions without significant travel on the part of citizens.

VI-4. Law Enforcement

83. Is the law enforcement agency (i.e. the police) effective?

50

83a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

Article 309 provides for making laws to regulate recruitment and conditions of service of public servants, which would be subject to provisions of the Constitution and Article 312. Under Article 320 of the Constitution, the Public Service Commissions (PSC) are entrusted with conducting competitive examinations for appointment to the central government and the states. Despite recruitment rules fixing academic and professional criteria, irregularities do occur in recruitment. Members of the PSCs are not always chosen for the right reasons. They are not persons of eminence, and some have doubtful integrity. These factors have no doubt impacted the quality of public servants, including police personnel selected.

References:

Final Report on Civil Services Reforms (Hota Committee), darpn.nic.in/arpg-website/ReportsAndPublication/HotaCommittee.asp

Police recruitment scam: UP gov't forms new panel," Express India, Oct. 25, 2007, www.expressindia.com/latest-news/police-recruitment-scam-up-govt-forms-new-panel/224534/

"Scam-hit CRPF to change recruitment process," The Mint, May 5, 2009, www.livemint.com/2009/05/06151853/Scamhit-CRPF-to-change-recrui.html

"Self Service Commission," The Financial Express Editorial, April 13, 2002, www.financialexpress.com/printer/news/43186/

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.

83b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

Law enforcement agencies suffer from huge vacancies, poor training and outdated equipment and technology. The states rely on the central government for funds. States are also lax in proper utilization of funds meant for the police.

References:

Fill up police vacancies, Chidambaram tells states," Business Standard, Aug. 18, 2009, www.business-standard.com/india/news/fillpolice-vacancies-chidambaram-tells-states/367328/

States get Rs 1,158 crore under police modernization in 08-09, PTI, New Delhi, Sept. 27, 2009, indiatoday.intoday.in/site/Story/63779/India/States+get+Rs+1,158+crore+under+police+modernisation+in+08-09.html

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.

83c. In practice, the law enforcement agency is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The police forces in the states are the most corrupt and most politicized of departments, according to the Transparency International India Corruption Study 2005. Successive police-reform recommendations and Supreme Court reforms have not had much impact in freeing the police from the clutches of the executive.

References:

Police reforms, by Doel Mukherjee, The Hindu, Jan. 18, 2009, www.hindu.com/op/2009/01/18/stories/2009011850021400.htm

Many Police Officers Have Been Reduced to a Football," Speech by the Union Home Minister, P. Chidambaram, printed in the Outlook Web, Sept. 14, 2009, www.outlookindia.com/article.aspx?261821

Police Reform Debate in India, Commonwealth Human Rights Initiative, 2007, www.humanrightsinitiative.org/publications/police/police_reform_debates_in_india.pdf

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.

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

67

84a. In law, there is an independent mechanism for citizens to complain about police action.

YES | NO

Comments:

National Human Rights Commissions and similar commissions set up in states are the forum to complain about human rights violations by the police. The commission takes up cases relating to illegal detention, custodial deaths, encounter killings, conditions in prisons, etc. To complain about corruption matters, anti-corruption ombudsmen such as the Central Vigilance Commission and Lok Ayukta in the states, and investigating agencies like the Central Bureau of Investigation and State Anti-Corruption Bureaus may be approached.

The Second Administrative Reforms Committee on Public Order has recommended setting up Independent Police Complaints Authorities in every district to inquire into allegations against the police within the district.

References:

National Human Rights Commission, nhrc.nic.in/

Central Vigilance Commission, cvc.nic.in/

Central Bureau of Investigation, cbi.nic.in/

The Second Administrative Reforms Committee on Public Order, arc.gov.in/5th%20REPORT.pdf

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

84b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen's complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

National Human Rights Commission: A Survey, Halsbury Law Monthly, December 2008, www.halsburys.in/national-human-rights-commission.html

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

75:

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

25:

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

84c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

YES | NO

Comments:

Since police are also public servants, laws that apply to public servants apply to the police as well. Investigating agencies mandated to investigate corruption cases cover the police.

References:

Central Bureau of Investigation

State Anti-Corruption Bureaus

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.

84d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | 50 | 25 | 0

Comments:

The corruption-investigation machinery is the same for law enforcement officials as for other public servants. Although no figures are available at a national level for corruption investigations in the police, according to the Transparency International India Corruption Study 2005, the police department is the most corrupt, www.cmsindia.org/cms/events/corruption.pdf. If general-investigation figures are indicative (See the Ethics in Government report), it reflects on corruption investigations in the police too.

References:

Blowing the Whistle," Prashant Bhushan, V.K. Shunglu, Arvind Kerjiwal, Madhu Bhaduri, Outlook Magazine, outlookindia.com/printarticle.aspx?261960

The Report of the Administrative Reforms Committee, Ethics in Government

100: When irregularities are discovered, the agency/entity is aggressive in investigating government law enforcement officials or in cooperating with other investigative agencies.

75:

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

25:

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

84e. In law, law enforcement officials are not immune from criminal proceedings.

YES | NO

Comments:

Sections 96-106 of the Indian Penal Code, 1860, (right to private defense): The police officer must prove that the death was caused in the legitimate exercise of the right of private defence.

Section 46 (1) of the Code of Criminal Procedure, 1973, empowers a police officer to "touch or confine" the body of a person being arrested if s/he does not submit to the officer's custody by "word or action," (2) empowers a police officer to use "all means necessary" to effect an arrest if the person being arrested "forcibly resists the endeavour to arrest him," (3) includes a rider that "nothing in this section gives a right to cause the death of a person who is not accused of an offense punishable with death or with imprisonment for life".

Section 197 from the Code of Criminal Procedure and Section 19 of the Prevention of Corruption Act, 1988, allow immunity from prosecution without the sanction of the government.

Section 80 of the Civil Procedure Code, 1908, mandates a two months' notice period before a civil suit can be brought against the government or an official on duty.

References:

There is no immunity and every use of excessive force is subject to investigation. In case of death or bodily injury, certain penal provisions allow the right to private defense and the use of force if arrest is resisted:

Sections 96-106 of the Indian Penal Code, 1860

Section 46 (1) of the Code of Criminal Procedure, 1973 (Civil Procedure Code)

Section 197 of the Civil Procedure Code

Section 80 of Civil Procedure Code 1908

YES: A YES score is earned if law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

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

84f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | 75 | 50 | 25 | 0

Comments:

The legal protections from criminal prosecution available to public servants are the same for law enforcement officials as well. While these protections are not blanket immunity, it is harder to prosecute law enforcement personnel because investigations into violations of the law may be neglected or not done fairly. To give an example, of 141 reported cases of custodial deaths in police custody in 2007, only 67 cases were brought against police personnel, and only 52 policemen were actually charged. No convictions were reported in this period. (See Chapter 13 of Crime In India 2007).

References:

Police not immune from prosecution for custodial torture SC, Press Trust of India, printed in the Indian Express, Mumbai, www.indianexpress.com/ie/daily/20000906/ina06041.html

Reforming the police, The Hindu, Oct. 30, 2001, www.hinduonnet.com/op/2001/10/30/stories/2001103000030101.htm

Crime in India 2007, National Crime Records Bureau, ncrb.nic.in/cii2007/cii-2007/Table%20Contents.htm

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.