

Overall Score:

70 - Weak

Legal Framework Score:

87 - Strong

Actual Implementation Score:

55 - Very Weak

Category 1. Non-Governmental Organizations, Public Information and Media

1.1. ⁷⁰Anti-Corruption Non-Governmental Organizations

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

67

01a. In law, citizens have a right to form NGOs focused on anti-corruption or good governance.

Yes | No

Comments:

Article 19(1)(c) of the Constitution of India states: "All citizens shall have the right ... to form associations or unions." This right is subject to reasonable restrictions that can be imposed under Article 19(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."

The 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, 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. A current list of unlawful organizations is on the ministry's website.

Further, under the Foreign Contribution Regulation Act 2010, the government has the power to cancel registration of a CSO for acting in contravention of this law, which regulates receiving and utilizing foreign funding.

References:

1. Constitution of India <<http://lawmin.nic.in/coi/coiason29july08.pdf>>
2. The Unlawful Activities (Prevention) Act of 1967 <http://www.mha.nic.in/pdfs/Unlawful_Activities_Prevention_Act1967.pdf>
3. A current list of unlawful organizations <http://www.mha.nic.in/uniquepage.asp?id_Pk=292>
4. Foreign Contribution Regulation Act of 2010 <<http://mha.nic.in/fcra.htm>>

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. Non-governmental organizations (NGOs) are defined here as any organized group that is separate from the state working on issues of governance, transparency, and/or anti-corruption.

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.

01b. In law, anti-corruption/good governance NGOs are free to accept funding from any foreign or domestic sources.

Yes | No

Comments:

The Foreign Contribution (Regulation) Act of 2010 came into effect from May 1, 2011, repealing the Foreign Contribution Regulation Act of 1976. This law regulates the acceptance and utilization of foreign contributions and hospitality by certain persons and associations. In respect to NGOs, the objective of the act is to prevent diversion of foreign funds towards activities detrimental to national interest.

There is no ban on civil society organizations (CSOs) receiving foreign funding, but such funding is regulated. The recently passed Foreign Contribution (Regulation) Act of 2010 makes it tougher for CSOs to receive foreign funds. It gives authorities sweeping powers to cancel the registration of a CSO to receive foreign funds and impose penalties for violation of the act.

The new act requires that CSOs register with the Ministry of Home Affairs every five years (previously, it was a one-time registration) and have administrative expenses that don't exceed 50 percent of the foreign contribution received in a year (there were no such limits earlier). It gives sweeping powers to authorities to reject applications for registration or prior permission for receiving foreign funds by unregistered CSOs and adds stiff conditions for maintaining registration status and harsher penalties for violators of the law. The reporting procedures have also become cumbersome.

Political parties are barred from receiving foreign funds under this act. The new act includes a category of organizations of a political nature that are prohibited from receiving foreign funds. Such organizations described in the rules framed under the act and includes trade unions to CSOs frequently indulging in street protests. Some definitions are broad or vague, which open up possibilities of abuse of power by authorities.

There are no regulatory restrictions for receiving domestic funding by CSOs.

References:

1. The Foreign Contribution (Regulation) Act of 2010

<<http://mha.nic.in/fcra.htm>>

2. "NGOs unhappy with new foreign contribution law," Aug. 30, 2010

<<http://www.business-standard.com/india/news/ngos-unhappynew-foreign-contribution-law/406297/>>

3. "NGOs and the FCRA: The Contentious Issues," May 26, 2011 <<http://www.csopartners.org.in/blog/?p=563>>

Yes: A YES score is earned if anti-corruption/good governance NGOs 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 NGOs focused on anti-corruption or good governance.

01c. In law, anti-corruption/good governance NGOs are required to disclose their sources of funding.

Yes | No

Comments:

There are no laws requiring disclosure of sources of funding except in the course of reporting audited accounts to the authorities under the respective laws forming such entities.

Laws enabling the formation of civil society organizations (CSOs), such as the Societies Registration Act of 1860, the Indian Trusts Act and Section 25 of the Companies Act, are just legal instruments of their formation and rules of association and these laws require maintaining annual financial audits.

CSOs substantially funded by the government come under the ambit of the Right to Information Act of 2005, which require budgeting and accounting information to be proactively disclosed.

Disclosure to the government is required under the Foreign Contribution Regulation Act of 2010, for foreign funding received in the form of audited accounts of the organization.

Charitable companies formed under Section 25 of the Companies Act of 1956 need to follow the same annual reporting formalities as for other companies. Companies are required file annual balance sheets with the Registrar of Companies, and shareholders are entitled to these documents in accordance with Section 219 of the Companies Act of 1956.

References:

1. The Right to Information Act of 2005 <<http://righttoinformation.gov.in/rti-act.pdf>>
2. Foreign Contribution Regulation Act of 2010 <<http://mha.nic.in/fcra.htm>>
3. Companies Act of 1956 <http://www.mca.gov.in/Ministry/pdf/Companies_Act_1956_13jun2011.pdf>

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

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

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

67

02a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance NGOs.

100 | 75 | 50 | 25 | 0

Comments:

Freedom House, Global Freedom of Association — Freedom in the World for the Year 2007, scores India at 10 (optimal score being 12).

Formalities of registering an NGO under the Societies Registration Act or as a trust or a charitable company can be cumbersome with a lot of paperwork and red tape leading to harassment by the registering authorities. Further 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. The proposed Direct Tax Code, which is expected to come into force beginning the next financial year, will curtail the tax concessions to NGOs enjoyed so far.

NGOs working in conflict areas have faced repression by governments as evident in the significant case of Dr. Binayak Sen, a medical professional and social activist who was working with tribals in the state of Chattisgarh. Sen was slapped with sedition charges and jailed for supporting the Naxalite movement — a group in armed conflict against the state. The Supreme Court granted bail to Sen after he had spent a year in jail.

References:

Freedom House, Global Freedom of Association <http://www.freedomhouse.org/uploads/2008_11_14_FOA_Report.pdf>

"That '70s feeling," Pratap Bhanu Mehta, Indian Express, June 16, 2011
<<http://www.indianexpress.com/news/that-seventies-feeling/804154/0>>

"Apex body appeals to Central government," The Hindu, June 29, 2010
<<http://www.thehindu.com/news/cities/Madurai/article490170.ece>>

"CIVICUS World Assembly Delegates Express Deep Disappointment at India's New Curbs on Civil Society," Sept. 6, 2010
<<http://www.civicus.org/media-centre/press-releases/archieve/313-civcus-world-assembly-delegates-express-deep-disappointment-at-indias-new-curbs-on-civil-society>>

"Maharashtra is the worst state to start an NGO," Dec. 21, 2010 <<http://www.moneylife.in/article/78/12455.html>>

"Chronicle of a Bail Foretold," Saroj Giri, April 20, 2011
<<http://kafila.org/2011/04/20/chronicle-of-a-bail-foretold-saroj-giri/>>

100: NGOs 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: NGOs 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 NGO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

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

02b. In practice, anti-corruption/good governance NGOs actively engage in the political and policymaking process.

100 | 75 | 50 | 25 | 0

Comments:

India has an estimated 3 million-plus NGOs, but the participation level rate of the population is still quite low. It is only lately that the growing influence of NGOs has become evident — in particular in that they could pressure the government on corruption issues.

In recent days, government has been forced to engage with civil society groups to enact the Lokpal Bill to set up an anti-corruption ombudsman. After a recent spate of scams hit the government in the Centre, there was an outpouring of public anger against corruption and growing support for the civil society movement, led by a 13-day hunger strike by the leader of the Anna Hazare group. The bitter interface with the government on the modalities of the bill has now raised the pitch on prelegislative consultations with the public in the legislative processes, which so far has been a formality with the parliamentary standing committees' nontransparent methods.

The National Advisory Council (NAC) is a formal body set up by the central government in 2004 as an interface with civil society groups. The role of the NAC is to provide policy and legislative input to government with a special focus on social policy and the rights of the disadvantaged groups.

Civil society previously engaged with the government to pass the Right to Information Act of 2005, the National Rural Employment Guarantee Scheme, electoral reforms and food security.

However, pre-legislative consultation is not the norm, and information about laws passed in Parliament is usually acquired by media and civil society groups post-facto. The lack of transparency and public scrutiny in the drafting of major bills such as the Civil Nuclear Liability Bill, has been a subject of intense criticism in recent years.

References:

1. Business Anti-Corruption Portal, India Country Profile 2010
<<http://www.business-anti-corruption.com/country-profiles/south-asia/india/initiatives/private-anti-corruption-initiatives/>>
2. "Civil society should take part in policymaking to fight corruption," Prashanth Bhushan, Aug. 8, 2011
<<http://www.thehindu.com/news/national/article2333953.ece>>
3. "Think before you strike," Samuel Paul, Business Standard, June 28, 2011
<<http://www.business-standard.com/india/news/samuel-paul-think-before-you-strike/440627/>>
4. "Playing fast and loose," Pratap Bhanu Mehta, Indian Express, June 3, 2011
<<http://www.indianexpress.com/news/playing-fast-and-loose/798740/0>>
5. "Transparency in Legislative Processes," Mandakini Devasher, Accountability Initiative Blog
<<http://www.accountabilityindia.in/accountabilityblog/1908-transparency-legislative-processes>>
6. "Reign of the Tin Men," Shoma Chaudhury, Tehelka
http://www.tehelka.com/story_main50.asp?filename=Ne270811COVERSTORY.asp
7. "Corrupt, repressive and stupid," The Hindu, Aug. 17, 2011
<<http://www.thehindu.com/opinion/editorial/article2362951.ece>>

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

75:

50: Anti-corruption/good governance NGOs are active, but may not be relevant to political decisions or the policymaking process. Those NGOs 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 NGOs are effectively prohibited from engaging in the political process. Those NGOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

02c. In practice, no anti-corruption/good governance NGOs have been shut down by the government for their work on corruption-related issues during the study period.

Yes | No

Comments:

No data was found of any anti-corruption CSO being forced to shut down. Legally, it is not possible to shut down a CSO in India because CSOs are formed as societies, trusts or nonprofit companies, and can be wound up by the association of persons themselves. Government restrictions and other repressive measures can at worst put CSOs out of business.

The recently passed Foreign Contribution Regulation Act 2010 will make it possible for the government to cancel CSOs' FCRA registration (to receive foreign funding) if they do not show any activity for two years or if they act in a manner that violates the law. The Ministry of Home Affairs website lists NGOs whose registration has been canceled under the act.

Some of the provisions of the new law are draconian and give the authorities sweeping powers that may lead to abuse. The proposed changes in tax concessions for CSOs will also make it difficult for smaller organizations to survive.

Activists have said that there is already a decline in the inflow of foreign funds for development work in view of the recession in the donor countries. This is not borne out by periodic reports put out by the government, which show an increase in foreign donations in the last five years with the highest inflows going to religious and charitable organizations. The total receipt of foreign contribution between 2005 and 2010 is \$ 9,587,006,488 (Rs. 47518 crores).

References:

1. "Rs 42,000-cr foreign funds for NGOs in last 5 years," Chetan Chauhan, Hindustan Times, July 5, 2011
<<http://www.hindustantimes.com/Rs-42-000-cr-foreign-funds-for-NGOs-in-last-5-years/Article1-717756.aspx>>
2. Ministry of Home Affairs, Annual Report 2010-2011 & FCRA Reports on Receipts and Utilization of Foreign Contribution by Voluntary Associations
<<http://mha.nic.in>>; <<http://mha.nic.in/fcra.htm>>
3. "Foreign funds to NGOs: Why better scrutiny is needed," May 17, 2011
<<http://www.rediff.com/business/slide-show/slide-show-1-why-more-scrutiny-of-foreign-funds-to-ngos-is-needed/20110517.htm?print=true>>

Yes: A YES score is earned if there were no NGOs 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 NGO 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 NGO's work may not be explicit, however the burden of proof here is low. If it seems likely that the NGO 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 anti-corruption/good governance NGO activists safe when working on corruption issues?

0

03a. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been imprisoned.

Yes | No

Comments:

The Right to Information Act 2005 has been used heavily and successfully to improve transparency by civil society activists and organizations. A large number of such activists have been the targets of individual government functionaries and vested interests outside the government whose interests are harmed by the exposure.

A recent report by the Asian Human Rights Centre states that 12 RTI activists have been killed allegedly for seeking information from government authorities as well as several instances of attempted murders, many of which go unreported. The report lists instances of false criminal cases foisted on activists and social ostracizing at the behest of village-level elected political functionaries.

References:

1. "Non-bailable cases against RTI activist in Assam," June 24, 2011
<http://www.newkerala.com/news/2011/worldnews-13920.html>

2. "RTI activists assaulted and murdered," Aug. 17, 2011, Hindustan Times
<http://www.hindustantimes.com/StoryPage/Print/734218.aspx>

3. "RTI activists – Sitting Ducks of India," Asian Centre for Human Rights
<http://www.achrweb.org/ihrrg/issue3-4/India-Sitting-Ducks-2011.pdf>

4. "Skeleton found in Assam pond, police fear it's missing whistleblower's"
Samudra Gupta Kashyap, Indian Express, Aug. 3, 2011
<http://www.indianexpress.com/news/skeleton-found-in-assam-pond-police-fear-its-missing-whistleblowers/826445/0>

5. "17 families ostracized for exercising RTI," Manosh Das, Times News Network, July 7, 2011
http://articles.timesofindia.indiatimes.com/2011-07-07/india/29746423_1_food-grains-village-headman-pds

Yes: A YES score is earned if there were no NGO 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.

03b. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been physically harmed.

Yes | **No**

Comments:

A recent report by the Asian Human Rights Centre states that 12 RTI activists have been killed allegedly for seeking information from government authorities as well as several instances of attempted murders, many of which go unreported. The report lists instances of false criminal cases foisted on activists and social ostracization at the behest of village-level elected political functionaries.

References:

1. "Non-bailable cases against RTI activist in Assam," June 24, 2011
<http://www.newkerala.com/news/2011/worldnews-13920.html>

2. "RTI activists – Sitting Ducks of India," Asian Centre for Human Rights,
<http://www.achrweb.org/ihrrg/issue3-4/India-Sitting-Ducks-2011.pdf>

3. "17 families ostracized for exercising RTI," Manosh Das, Times News Network, July 7, 2011
http://articles.timesofindia.indiatimes.com/2011-07-07/india/29746423_1_food-grains-village-headman-pds

Yes: A YES score is earned if there were no documented cases of NGO 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 on an activist who covers corruption. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

03c. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been killed.

Yes | **No**

Comments:

In the last one and half years, at least 12 RTI activists have been killed, allegedly for seeking uncomfortable information from public authorities.

References:

1. "RTI activists – Sitting Ducks of India," Asian Centre for Human Rights,
<http://www.achrweb.org/ihrrg/issue3-4/India-Sitting-Ducks-2011.pdf>

2. "RTI activists assaulted and murdered," Hindustan Times, Aug. 17, 2011
<http://www.hindustantimes.com/StoryPage/Print/734218.aspx>

Yes: A YES score is earned if there were no documented cases of NGO 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

04a. In law, citizens have a right to organize into trade unions.

Yes | No

Comments:

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

The Trade Unions Act of 1926, grants legal status to registered trade unions. Both labor and entrepreneurs may form trade unions. Trade unions are registered by the state's Registrar of Trade Unions.

References:

1. Constitution of India
<http://lawmin.nic.in/col/coiason29july08.pdf>

2. Trade Unions Act of 1926
http://pblabour.gov.in/pdf/acts_rules/trade_unions_act_1926.pdf

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.

04b. In practice, citizens are able to organize into trade unions.

100 | 75 | 50 | 25 | 0

Comments:

The Freedom House Freedom in the World Country Report on India for 2011, indicates that the status of India is "free." The Civil Liberties score (of which Associational and Organizational Rights is a part) for India is 3. (The rating is done in a scale of 1 to 7, with 1 representing the highest and 7 the lowest levels of freedom.) The report states: "Workers in the formal economy regularly exercise their rights to bargain collectively and strike. However, the Essential Services Maintenance Act enables the government to ban strikes in certain industries and limits public servants' right to strike."

The Annual Survey of Violations of Trade Union Rights 2011 by the International Trade Union Confederation's (ITUC) Annual Survey of Violations of Trade Union Rights has noted the following reported violations: Injuries — 3; Arrests — 520; Dismissals — 66.

The ITUC report noted that there were many incidents of police and company-sponsored violence against trade union officials and workers. Numerous trade union leaders were arrested and harassed for their activities. Companies used lockouts against protesting employees. Two workers were killed when police opened fire on protesting workers at Norwera Nuddy Tea Estate in West Bengal. Thousands of workers were arrested or faced criminal charges for engaging in illegal strikes and protests to establish basic rights to bargain and have union recognition. Government employees went on strike for wages and benefits.

The issue of nonrecognition of unions is a problem. Companies don't encourage more than one union; therefore, new unions face a problem of recognition.

Recent instances of industrial unrest largely concerns the recognition of unions. While the Trade Unions Act of 1926 gives workers the freedom to form trade unions, it doesn't make it mandatory for the management to recognize them.

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. Companies are increasingly hiring temporary workers to cut wage costs. These temporary workers have been wanting to organize themselves to seek parity in working conditions and social security benefits as regular workers and are coming into conflict with existing unions, which are seen as being "pro-management."

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

References:

1. Freedom House, Freedom in the World Country Report on India for 2011
<http://www.freedomhouse.org/template.cfm?page=22&year=2011&country=8055>
2. "When companies fail to recognize trade unions," Nov. 1, 2010
<http://www.rediff.com/business/column/guest-when-companies-fail-to-recognise-trade-unions/20101101.htm>
3. International Trade Union Confederation, Annual Survey of Violations of Trade Union Rights
<http://survey.ituc-csi.org/India.html>
<http://survey.ituc-csi.org/India.html#tabs-5>
4. "Maruti labor unrest may spread across belt," Amrit Raj & Shally Seth Mohile, Aug. 30, 2011
<http://www.livemint.com/2011/08/30001625/Maruti-labour-unrest-may-sprea.html?h=B>
5. "Maruti strike: The real battle in Manesar is about relevance of trade unions," Pallavi Polanki, Oct. 13, 2011
<http://www.firstpost.com/politics/maruti-strike-the-real-battle-in-manesar-is-about-relevance-of-trade-unions-106462.html>

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.

1.2. Media's Ability to Report on Corruption

5. Are media and free speech protected?

100

05a. In law, freedom of the media is guaranteed.

Yes | No

Comments:

Constitution of India, Article 19(1) states: All citizens shall have the right (a) to freedom of speech and expression.

Freedom of the media flows out of the right to free speech, which is guaranteed under the Constitution of India. This right is limited by 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."

Attempts to curtail media freedom through parliamentary/legislative assembly Privileges (enabled through Article 105 and Article 194 of the Constitution of India for the Parliament and State Legislature respectively) and the Contempt of Courts Act, 1971, have been made to punish criticism of members of parliament or state legislatures and the judiciary, respectively.

The government has also placed restrictions in Foreign Direct Investment and portfolio investments by recognized Foreign Institutional Investors (FIIs) in Indian entities publishing newspapers and periodicals dealing with news and current affairs. Such investment is permissible by foreign entities up to a ceiling of 26 percent of paid-up equity capital subject to certain conditions. Facsimile editions, in whole or in part(s), of foreign newspapers, is permitted by Indian entities, with or without foreign investment, and also by foreign companies owning the original newspaper, provided they get incorporated and registered in India under the Companies Act of 1956.

The Electronic Media Monitoring Centre under the Ministry of Information and Broadcasting is monitoring the content of FM and TV channels beaming over Indian territory for any violation of Programme and Advertisement Codes and any law covering the content of such channels.

The government also regulates salaries for regular journalists in the print media. This has often been seen as intrusion into the freedom of the press by print media owners while the government believes that journalists need to get reasonable salaries.

References:

1. Constitution of India

<http://lawmin.nic.in/coi/coiason29july08.pdf>

2. Registrar of Newspapers for India

https://rni.nic.in/mini_ib.asp

3. Electronic Media Monitoring Centre, Ministry of Information and Broadcasting

<http://emmc.gov.in/Index.aspx>

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.

05b. In law, freedom of speech is guaranteed.

Yes

No

Comments:

Article 19(1) of the Constitution of India states: "All citizens shall have the right – (a) to freedom of speech and expression."

Freedom of speech is limited by 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."

Attempts to curtail media freedom through parliamentary/legislative assembly privileges (enabled through Article 105 and Article 194 of the Constitution of India for the Parliament and State Legislature respectively) and the Contempt of Courts Act of 1971, have been made to punish criticism of members of parliament or state legislatures and the judiciary, respectively.

References:

1. Constitution of India

<http://lawmin.nic.in/coi/coiason29july08.pdf>

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?

06a. In practice, the government does not create barriers to form a print media entity.

100 | 75 | 50 | 25 | 0

Comments:

The Press and Registration of Books Act of 1867 and the Registration of Newspapers (Central) Rules of 1956 regulate printing presses and newspapers and preserves and registers copies of books and newspapers printed in India.

While the law enables the print media to freely start newspapers and magazines, the process of formation is not easy. The bureaucracy, particularly the lower rungs, can create procedural hurdles and demand bribes for seeking registration of titles.

The law also requires a number of requirements that can be a burden on the print media.

The government has also placed restrictions in Foreign Direct Investment and portfolio investments by recognized Foreign Institutional Investors (FIIs) in Indian entities publishing newspapers and periodicals dealing with news and current affairs. Such investment is permissible by foreign entities up to a ceiling of 26 percent of paid-up equity capital subject to certain conditions. Facsimile editions, in whole or in part(s) of foreign newspapers, is permitted by Indian entities, with or without foreign investment, and also by foreign companies owning the original newspaper, provided they get incorporated and registered in India under the Companies Act of 1956.

There is also a practice in India of the government setting up Wage Boards to determine salaries for regular journalists in the print media. This has often been seen as an intrusion into the freedom of the press by print media owners while the government believes that journalists need to get reasonable salaries. It also puts the survival of small newspapers at stake.

According to Sagarika Ghose, Deputy Editor, CNN-IBN: "Citizens find it difficult to form a broadcast entity because of large costs involved. On the other hand, a few magazines like Civil Society have emerged through citizens' initiatives. However, Internet is perhaps the most effective medium for creating a citizens' platform in the future. There are entry barriers, from the license fee to transponder costs for setting up a broadcast entity. For a print entity, the entry barrier is lower."

References:

1. Email interview with Sagarika Ghose, Deputy Editor, CNN-IBN, Sept. 21, 2011 (available on request)

2. Registrar of Newspapers for India
https://rni.nic.in/mini_ib.asp

3. "Government is scuttling freedom of print media," Vijay Darda, Times of India, June 17, 2011
http://articles.timesofindia.indiatimes.com/2011-06-17/india/29669404_1_wage-board-newspaper-establishments-justice-majithia

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.

06b. In law, where a print media license is necessary, there is an appeals mechanism if a license is denied or revoked.

Yes | No

Comments:

Section 5 of the Press and Registration of Books Act of 1867 requires the printer and the publisher of a newspaper to declare before a district or subdivisional 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.

If authentication is refused or canceled by the magistrate, then under Section 8C, the aggrieved person can appeal under section 8B to the Press and Registration Appellate Board [which is regulated by the Press and Registration Appellate Board (Practice

and Procedure) Order of 1961.

Since 1979, the Press Council of India has been assigned the responsibility of functioning as the Press & Registration Appellate Board under this section. Press Council of India is established under the Press Council of India Act of 1978, as a body for preserving the freedom of the press and of maintaining and improving the standards of newspapers and news agencies in India.

References:

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

2. 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.

06c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Registration of the title with the Registrar of Newspapers can be done in reasonable time. But this process has to be repeated for each location if a multi-edition publication is to be launched, which is a time-consuming affair. Foreign press entities wanting to start businesses in India have to go through a lot of procedures and paperwork. The government has also placed restrictions on the import of newsprint, which adds to the permit requirements.

According to reports, the print media business is growing at 10 percent a year, but the growth is more in the rural areas. There are more than 72,000 publications registered with the Registrar of Newspapers.

According to CNN-IBN Deputy Editor Sagarika Ghose: "Citizens find it difficult to form a broadcast entity because of large costs involved. On the other hand, a few magazines, like Civil Society, have emerged through citizens' initiatives. However, Internet is perhaps the most effective medium for creating a citizens' platform in the future. There are entry barriers, from the license fee to transponder costs for setting up a broadcast entity. For a print entity, the entry barrier is lower."

References:

1. Email interview with Sagarika Ghose, Deputy Editor, CNN-IBN, Sept. 21, 2011 (available on request)

2. "Print media business booming in India, but concerns over future," Economic Times, Oct. 15, 2011
http://articles.economictimes.indiatimes.com/2011-10-15/news/30283539_1_newspaper-circulation-print-media-editors-forum

3. "Should Media Barons be Cut to Size?" Paranjay Guha Thakurta and Alice Seabright, Tehelka Magazine, Vol. 8, Issue 42, Oct. 22, 2011
http://www.tehelka.com/story_main50.asp?filename=Ne221011coverstory.asp

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.

06d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

It is not expensive to get a print media license. No application fee has been mentioned for Indian newspapers. An application fee

of Rs.5000/- (about US \$100) is required for facsimile editions of foreign newspapers or foreign periodicals. The financial burden in print media would be more in the nature of bribes for obtaining title registration and permits to start business and import newsprint, etc.

According to CNN-IBN Deputy Editor Sagarika Ghose: "Citizens find it difficult to form a broadcast entity because of large costs involved. On the other hand, a few magazines, like Civil Society, have emerged through citizens' initiatives. However, Internet is perhaps the most effective medium for creating a citizens' platform in the future. There are entry barriers, from the license fee to transponder costs for setting up a broadcast entity. For a print entity, the entry barrier is lower."

References:

1. Email interview with Sagarika Ghose, Deputy Editor, CNN-IBN, Sept. 21, 2011 (available on request)

2. Registrar of Newspapers, Guidelines/Procedure for allotment of titles

<https://rni.nic.in/Titles-Guidelines.pdf>

https://rni.nic.in/mini_ib.asp

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

07a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

100 | 75 | 50 | 25 | 0

Comments:

Radio and TV 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.

News radio is completely under government monopoly. FM radio frequencies for entertainment purposes only are auctioned to private entities with restrictions on cross-media holdings (radio and TV) as and when the government decides to open up frequencies. FM license fees are expensive and favor big players and services mainly urban areas.

Community radio, which has the capacity to reach rural India, has been allocated limited frequency and faces complex, restrictive and opaque licensing procedures. However, with the innovative use of mobile phones and community radio, small players like CGNet Swara, have circumvented government regulations and reached out to remote areas of the country with news and socially relevant programs.

TV channel licenses are given as and when the government decides. There are more than 700 channels in India, most of them in the states.

Operators have to deal with a multiplicity of authorities to get started. There are restrictions relating to the purchase of satellite capacity for DTH (direct-to-home services), which has to be first routed through the Indian Space Research Organisation. Licenses are given by Ministry of Information & Broadcasting and spectrum allocated by the Telecommunication Ministry.

According to CNN-IBN Deputy Editor Sagarika Ghose: "Citizens find it difficult to form a broadcast entity because of large costs involved. There are entry barriers, from the license fee to transponder costs for setting up a broadcast entity."

References:

1. Community Radio News, Vol. 2, Issue 1, National Consultation Spurs New Hopes for Community Radio in India, January – March 2011, http://communityradioindia.org/cr%20newsletter/CR%20News%20Jan_Mar%2011_webrez.pdf

2. Jason Overdorf, Global Post, Can India Rise Up through Radio?, May 6, 2011, <http://www.globalpost.com/dispatch/news/regions/asia-pacific/india/110420/india-radio-news-freedom-of-speech>

3. CGNet Swara
http://www.cgnet.in/index.php?option=com_wrapper&view=wrapper&Itemid=56

4. "TV channels bloom despite ad crunch," Ashish Sinha, Financial Express, Jan. 24, 2011
<http://www.financialexpress.com/news/tv-channels-bloom-despite-ad-crunch/741306/0>

5. Q&A with Harit Nagpal, M.D. & CEO, Tata Sky: "The bureaucratic hurdles around the DTH business are very large", Business Standard, Sept. 2, 2011
<http://www.business-standard.com/india/news/ga-harit-nagpal-mdceo-tata-sky/447772/>

6. Email interview with Sagarika Ghose, Deputy Editor, CNN-IBN, Sept. 21, 2011 (available on request)

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.

07b. 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:

Section 4 of the Indian Telegraph Act of 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. The definition of "telegraph" under Section 3(1) includes all forms of broadcasting, telephony and information technology.

A prospective broadcaster must have two licenses: 1) a general license for telegraph services under the Indian Telegraph Act of 1885, and 2) a wireless operating license under the Wireless Telegraphy Act of 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. A provider of DTH [direct-to-home] services further needs to buy satellite space through the Indian Space Research Organization.

Section 7B of the Act 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 the 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 of 1933, which regulates the possession of wireless telegraphy apparatus in India. The telegraphy authority constituted under the Indian Telegraph Act of 1885 is also the authority that issues licenses to possess wireless telegraphy apparatus under this act on prescribed conditions and subject to such payments.

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 of 1997 is the appropriate forum.

References:

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

2. Indian Wireless Telegraphy Act of 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.

07c. 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:

Auction of spectrum/frequencies are opened up as and when the government decides. Application procedures can be time consuming and prone to corruption. There are long delays to get permission to buy satellite space, even on foreign satellites.

According to CNN-IBN Deputy Editor Sagarika Ghose: "It would take upwards of a year for such a license to be obtained for a TV channel, while radio frequencies are auctioned at periodic intervals but again with costs involved."

Community radio applications also suffer from red tape and take more than a year. Since they are largely small operators or NGOs applying from far-flung parts of the country, getting their applications cleared from the central ministry adds to the burden.

References:

1. Q&A with Harit Nagpal, M.D. & CEO, Tata Sky: "The bureaucratic hurdles around the DTH business are very large," Business Standard, Sept. 2, 2011
<http://www.business-standard.com/india/news/ga-harit-nagpal-mdceo-tata-sky/447772/>
2. Email interview with Sagarika Ghose, Deputy Editor, CNN-IBN, Sept. 21, 2011 (available on request)
3. Community Radio News, Vol. 1, Issue 1, National Consultation Spurs New Hopes for Community Radio in India, January – March 2011, http://communityradioindia.org/cr%20newsletter/CR%20News%20Jan_Mar%2011_webrez.pdf

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

75:

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

25:

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

07d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

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

Community radio applications also suffer from red tape and take more than a year. Since they are largely small operators or NGOs applying from far-flung parts of the country, getting their applications cleared from the central ministry adds to the burden. The cost of setting up a community radio station could range from less than US \$5,000 for a radio in a box to as high as US \$40,000 for a state-of-the-art community radio station.

According to CNN-IBN Deputy Editor Sagarika Ghose: "It would take upwards of a year for such a license to be obtained for a TV channel, while radio frequencies are auctioned at periodic intervals but again with costs involved."

References:

1. Q&A with Harit Nagpal, M.D. & CEO, Tata Sky: "The bureaucratic hurdles around the DTH business are very large," Business Standard, Sept. 2, 2011
<http://www.business-standard.com/india/news/ga-harit-nagpal-mdceo-tata-sky/447772/>
2. Email interview with Sagarika Ghose, Deputy Editor, CNN-IBN, Sept. 21, 2011 (available on request)
3. Community Radio News, Vol. 1, Issue 1, National Consultation Spurs New Hopes for Community Radio in India, January – March 2011, http://communityradioindia.org/cr%20newsletter/CR%20News%20Jan_Mar%2011_webrez.pdf

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

08a. In practice, the government does not prevent citizens from accessing content published on-line.

100 | 75 | 50 | 25 | 0

Comments:

The government introduced new rules on April 11, 2011, under the Information Technology Act of 2008, which allow officials and private citizens to demand that Internet sites and service providers remove content they consider objectionable. The long list of criteria includes content that is blasphemous, hateful, racially or ethnically objectionable, disparaging, threatens the unity, integrity, defense, security or sovereignty of India, friendly relations with foreign states or public order, etc.

While there have been some instances of the government asking Internet service providers in the past to block specific sites on the grounds of maintaining public order and for security reasons, users have been free of government manipulations in accessing Internet content. The era of more pervasive government intervention has probably begun with these rules. Companies that host Web sites or provide Internet connections have to respond to any demand to take down offensive content within 36 hours. The rules do not provide for an appeal of the decision.

Center for Internet and Society used the Right to Information Act and obtained and published a list of 11 Web sites banned by the Department of Information Technology. The department claimed that they were mostly on the directions of the judiciary, but the center suspects that other government agencies may also be involved in more blocked sites.

The new rules also set up an agency called the Indian Computer Emergency Response Team to serve as the national agency to ensure cybersecurity. The agency would monitor and coordinate responses to cyberincidents, which includes calling for information and giving directions to service providers, intermediaries, data centers and corporate bodies.

With 5 percent penetration in a population of 1.2 billion, the Freedom House Index on Internet Freedom gives the status as Partly Free. There have been a few arrests for posting of defamatory content by individuals. No instance of blocking of web applications were noted. Obstacles to access exist by way of low infrastructure, including poor electricity supply in rural areas and small towns.

According to CNN-IBN Deputy Editor Sagarika Ghose: "Internet is perhaps the most effective medium for creating a citizens' platform in the future."

This was evident from the manner in which the activists succeeded in mobilizing the public through the media and social networking sites and Internet blogs to corner the government on major corruption issues.

References:

1. Ministry of Information Technology

[http://www.mit.gov.in/sites/upload_files/dit/files/GSR3_10511\(1\).pdf](http://www.mit.gov.in/sites/upload_files/dit/files/GSR3_10511(1).pdf)

2. Centre for Internet and Society

<http://www.cis-india.org/internet-governance/blog/rti-response-dit-blocking>

3. "India Puts Tight Leash on Internet Free Speech," New York Times, April 27, 2011

<http://www.nytimes.com/2011/04/28/technology/28internet.html>

4. "Internet industry not happy with IT rules 2011," Economic Times, May 16, 2011

http://articles.economictimes.indiatimes.com/2011-05-16/news/29548486_1_search-engine-websites-open-internet/2

5. Freedom House Index on Internet Freedom 2011 <http://www.freedomhouse.org/images/File/FotN/India2011.pdf>

6. Email interview with Sagarika Ghose, Deputy Editor, CNN-IBN, Sept. 21, 2011 (available on request)

7. How Anna Hazare became a media phenomenon, Jaimon Joseph, CNN-IBN, Aug. 22, 2011

<http://ibnlive.in.com/news/how-anna-hazare-became-a-media-phenomenon/177680-3.html>

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.

08b. In practice, the government does not censor citizens creating content on-line.

100 | 75 | 50 | 25 | 0

Comments:

Certain instances of demands for pulling down online content have been complied with by web hosts on complaints from private persons and the government to maintain public order because of the content.

But the Internet has been largely free of government manipulations as evident from the success of the recent anti-corruption campaign against the government, where the social media was used to good effect to get urban Indians on the streets.

However, the new rules of April 11, 2011, under the Information Technology Act of 2008, which allow officials and private citizens to demand that Internet sites and service providers remove content they consider objectionable, may be the start of an era of more pervasive government intervention.

Center for Internet and Society used the Right to Information Act and obtained and published a list of 11 Web sites banned by the Department of Information Technology. The department claimed that they were mostly on the directions of the judiciary, but the center suspects that other government agencies may also be involved in more blocked sites.

The new rules also set up an agency called the Indian Computer Emergency Response Team to serve as the national agency to ensure cybersecurity. The agency would monitor and coordinate responses to cyberincidents, which includes calling for information and giving directions to service providers, intermediaries, data centers and corporate bodies.

With 5 percent penetration in a population of 1.2 billion, the Freedom House Index on Internet Freedom gives the status as Partly Free. There have been a few arrests for postings of defamatory content by individuals. No instance of blocking of web applications were noted. Obstacles to access exist by way of low infrastructure, including poor electricity supply in rural areas and small towns.

Anti-corruption activists successfully mobilized the public through the media and social networking sites and Internet blogs to corner the government on major corruption issues this year.

References:

1. Ministry of Information Technology

[http://www.mit.gov.in/sites/upload_files/dit/files/GSR3_10511\(1\).pdf](http://www.mit.gov.in/sites/upload_files/dit/files/GSR3_10511(1).pdf)

2. Centre for Internet and Society

<http://www.cis-india.org/internet-governance/blog/rti-response-dit-blocking>

3. "India Puts Tight Leash on Internet Free Speech," New York Times, April 27, 2011

<http://www.nytimes.com/2011/04/28/technology/28internet.html>

4. "Internet industry not happy with IT rules 2011," Economic Times, May 16, 2011

http://articles.economictimes.indiatimes.com/2011-05-16/news/29548486_1_search-engine-websites-open-internet/2

5. Freedom House Index on Internet Freedom 2011 <http://www.freedomhouse.org/images/File/FotN/India2011.pdf>

6. How Anna Hazare became a media phenomenon, Jaimon Joseph, CNN-IBN, Aug. 22, 2011

<http://ibnlive.in.com/news/how-anna-hazare-became-a-media-phenomenon/177680-3.html>

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?

83

09a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

Yes | No

Comments:

According to the 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 offense."

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 of 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 of 1971, with respect to the judiciary.

References:

1. Constitution of India

<http://lawmin.nic.in/coi/coiason29july08.pdf>

2. Indian Penal Code of 1870

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

3. Contempt of Court Act of 1971

http://mha.nic.in/pdfs/Contempt_Of_Courts_Act1971.pdf

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.

09b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

Indian media is generally free and has in fact been the single most significant source of unearthing corruption stories that has hit the country in recent times. In a true spirit of competition, media houses have tried to outdo each other in highlighting irregularities and wrongdoings in governance.

Some forms of government censorship exists in disturbed parts of India such as Jammu and Kashmir and insurgency-hit areas such as Chattisgarh and the North East.

However, the biggest challenge to press freedom that was highlighted in the last few years came not from the government but from private media owners. Self-censorship and corruption within the media are now the biggest threats to the freedom of the media. There were stories of manipulation of the media by politicians and corporations, news blackouts of corruption involving big corporate houses, sting operations that revealed the unholy nexus between journalists and corporate houses and their willingness to act in the interest of corporations to influence the government.

Also talked about a great deal since 2009 was the phenomenon of "paid news" and "private treaties." Paid news has been defined by the Press Council of India (the official media watchdog) in its report titled "Paid News: How corruption in the Indian media undermines Indian democracy" as "any news or analysis appearing in any media (print and electronic) for a price in cash or kind as consideration." Ironically, significant portions of the report were not made public under pressure from vested interests. The report speaks of the "deception or fraud" that paid news entails as having three levels. First: "the reader of the publication or the viewer of the television program is deceived into believing that what is essentially an advertisement is in fact, independently produced news content." Second: "By not officially declaring the expenditure incurred on planting 'paid news' items, the candidate standing for election violates the Conduct of Election Rules of 1961, which are meant to be enforced by the Election Commission of India under the Representation of the People Act of 1951." And third: "by not accounting for the money received from candidates, the concerned media company or its representatives are violating the provisions of the Companies Act of 1956 as well as the Income Tax Act of 1961, among other laws."

"Private treaties" involve deals where corporations pay media companies in shares for advertising, plus other favorable treatment.

Apart from reflecting the moral turpitude of individual journalists, these instances also highlighted the pressures of raising and preserving advertising revenues. Media owners (and increasingly owner-editors) are also known to have victimized the uncompromising lot of journalists.

According to CNN-IBN Deputy Editor Sagarika Ghose: "The media is by and large free to report on corruption. I think there is pressure when it comes to exposing corporate corruption since there are direct business interests involved. Just how much pressure is involved depends on the strength and independence of a media house. Governments do put pressure also, but again, this can be resisted if the media house shows intent."

The proactive role of the media was emphasized in its support to and coverage of the anti-corruption crusade even as there were criticisms that the media did not fairly report various shades of opinions in the anti-corruption debate including that of the government's.

References:

1. Daiji World, "Indian Press is Free but Attempts Made to Influence, Say Experts," May 3, 2011
http://www.daijiworld.com/news/news_disp.asp?n_id=100929&n_tit=World+Press+Freedom+Day+-+Indian+Press+is+Free+but+Attempts+Made+to+Influence%2C+Say+Experts
2. "New media tools as agents of change," Najam Sethi, The Hindu, May 3, 2011
<http://www.thehindu.com/news/national/article1986338.ece>
3. The Buried PCI Report on Paid News, April 2010
<<http://www.scribd.com/doc/35436631/The-Buried-PCI-Report-on-Paid-News#fullscreen-on>>
<<http://www.outlookindia.com/article.aspx?266542>>
4. "Paid news undermining democracy: Press Council report," P. Sainath, The Hindu, April 21, 2010
<http://www.thehindu.com/opinion/columns/sainath/article407201.ece>
5. "The Real Hero of Antilla," The Hoot, Sept. 9, 2011
<http://www.thehoot.org/web/home/story.php?storyid=5495&mod=1&pg=1&jonid=1&valid=true>
6. Email interview with Sagarika Ghose, Deputy Editor, CNN-IBN, Sept. 21, 2011 (available on request)
7. "How Anna Hazare became a media phenomenon," Jaimon Joseph, CNN-IBN, Aug. 22, 2011
<http://ibnlive.in.com/news/how-anna-hazare-became-a-media-phenomenon/177680-3.html>

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.

09c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

Comments:

In these days of greater transparency, the government has little scope to persecute media professionals for exposing corruption. Pre-censorship is really in the nature of self-censorship by the media itself as was evident in its disinclination to publish material on the huge corruption scandal to hit the government involving ministers, bureaucrats and corporates relating to allocation of telecom spectrum to a favored few. This is in contrast with the coverage of other corruption scams, including the Commonwealth Games, where big corporations were not involved.

According to CNN-IBN Deputy Editor Sagarika Ghose: "There is no pre-publication censorship as such of corruption stories, but there will always be individual pressure when powerful people are involved."

The proactive role of the media was emphasized in its support to and coverage of the anti-corruption crusade even as there were criticisms that the media did not fairly report various shades of opinions in the anti-corruption debate including that of the government's.

References:

1. "Oh What A Lovely Blackout," The Hoot, Nov. 26, 2010
<http://www.thehoot.org/web/home/story.php?storyid=4959&mod=1&pg=1&ionid=1>
2. "Indian journalists accused of secretly helping politicians, businesses," Emily Wax, Washington Post, Nov. 22, 2010
<http://www.washingtonpost.com/wp-dyn/content/article/2010/11/22/AR2010112203831.html>
3. "The Real Hero of Antilla," The Hoot, Sept. 9, 2011
<http://www.thehoot.org/web/home/story.php?storyid=5495&mod=1&pg=1&ionid=1&valid=true>
4. Email interview with Sagarika Ghose, Deputy Editor, CNN-IBN, Sept. 21, 2011 (available on request)

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?

80

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

Yes | No

Comments:

Section 3 of the Press and Registration of Books Act of 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: "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."

Names, etc. of owners, publishers and printers are required to be mentioned in every copy of a newspaper or other publication. If the entities are registered as companies under the Companies Act of 1956, they are required to submit annual returns in terms of various provisions of the act. Such information is publicly available on payment of requisite nominal fees.

References:

1. Press and Registration of Books Act of 1867

<https://rni.nic.in/prbact.asp>

2. Companies Act of 1956

http://www.mca.gov.in/Ministry/pdf/Companies_Act_1956_13jun2011.pdf

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.

The only law requiring broadcast media companies to publicly disclose ownership information is what is mandated under the Companies Act of 1956. Such information is publicly available on payment of requisite nominal fees. Media companies can operate in India after licenses are granted by the government. The licensing procedure is public, and information about licensees is also in the public domain. Private companies can suo moto give information on their corporate positions on their websites.

References:

1. Companies Act of 1956

http://www.mca.gov.in/Ministry/pdf/Companies_Act_1956_13jun2011.pdf

2. The Cable Television Network (Regulation) of 1995

<http://www.trai.gov.in/cablenetworkact.asp>

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:

The journalistic ethics and standards are mostly on paper. This is evident from the phenomenon of paid news, which is being hotly discussed in the press, and the government wants to intervene to restrain the practice.

This was evident in its disinclination to publish material on the huge corruption scandal to hit the government involving ministers, bureaucrats and corporates relating to allocation of telecom spectrum to a favored few. This is in contrast with the coverage of other corruption scams including the Commonwealth Games, where big corporations were not involved.

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

In a fallout of what was perceived as a government's efforts to control the media by the Broadcast Bill, the News Broadcasters Association (NBA), an association of private news and current affairs broadcasters in India, came into existence to, among other objectives, self-regulate itself. The NBA's Code of Ethics & Broadcasting Standards became operational in 2008. The NBA has also established the "News Broadcasting Standards (Disputes Redress) Authority" to enforce the code.

According to CNN-IBN Deputy Editor Sagarika Ghose: "There is a violation of ethical standards across the media, but it would be unfair to generalize."

References:

1. "Indian Press is Free but Attempts Made to Influence, Say Experts," May 3, 2011
http://www.dajiworl.com/news/news_disp.asp?n_id=100929&n_tit=World+Press+Freedom+Day+-+Indian+Press+is+Free+but+Attempts+Made+to+Influence%2C+Say+Experts
2. The Buried PCI Report on Paid News, April 2010
<<http://www.scribd.com/doc/35436631/The-Buried-PCI-Report-on-Paid-News#fullscreen:on>>
<<http://www.outlookindia.com/article.aspx?266542>>
4. "Paid news undermining democracy: Press Council report," P. Sainath, The Hindu, April 21, 2010
<http://www.thehindu.com/opinion/columns/sainath/article407201.ece>
5. "The Real Hero of Antilla," The Hoot, Sept. 9, 2011 <http://www.thehoot.org/web/home/story.php?storyid=5495&mod=1&pg=1&ionId=1&valid=true>
6. Email interview with Sagarika Ghose, Deputy Editor, CNN-IBN, Sept. 21, 2011 (available on request)
7. "Oh what a lovely blackout," The Hoot, Nov 26, 2010
<http://www.thehoot.org/web/home/story.php?storyid=4959&mod=1&pg=1&ionId=1>
8. "Indian journalists accused of secretly helping politicians, businesses," Emily Wax, Washington Post, Nov. 22, 2010
<http://www.washingtonpost.com/wp-dyn/content/article/2010/11/22/AR2010112203831.html>
9. "Paid News": First meeting of GoM tomorrow", Indian Express, Sept. 6, 2011
<http://www.indianexpress.com/news/paid-news-first-meeting-of-gom-tomorrow/842143/>
10. New broadcasters Association New Delhi, Code of Ethics & Broadcasting Standards, January 4, 2008
http://www.nbanewdelhi.com/pdf/final/NBA_code-of-ethics_english.pdf

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. The election commission issued guidelines to monitor advertisement by candidates on TV channels owned by political parties in the form of "paid news." The Election Commission described the problem of paid news as manifesting "in the forms of news articles/reports published about a particular candidate or a party eulogizing them, or similar news articles/reports denigrating the opponents, both intended at unduly influencing the voters."

As stated in an email from interviewee Sagarika Ghose, "By and large, I would say that most parties do get fair coverage. Individuals/parties may 'buy' news space during elections, but again it would be unfair to hold the entire media guilty for the acts of a few."

References:

1. Election Commission of India, Advertisement guidelines
http://eci.nic.in/eci_main/recent/Advt_guidelines.pdf
2. The Buried PCI Report on Paid News, April 1, 2010
<<http://www.scribd.com/doc/35436631/The-Buried-PCI-Report-on-Paid-News#fullscreen:on>>
<<http://www.outlookindia.com/article.aspx?266542>>
3. "Paid news undermining democracy: Press Council report," P. Sainath, The Hindu, April 21, 2010
<http://www.thehindu.com/opinion/columns/sainath/article407201.ece>
4. Email interview with Sagarika Ghose, Deputy Editor, CNN-IBN, Sept. 21, 2011 (available on request)
5. "Paid News": First meeting of GoM tomorrow", Indian Express, Sept. 6, 2011
<http://www.indianexpress.com/news/paid-news-first-meeting-of-gom-tomorrow/842143/>

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:

As an initiative of the Election Commission of India, state funding of recognized political parties, through free use of state-owned television and radio began in 1998 under direction of the commission with 110 hours of airtime on state-run television and radio channels 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 independent candidates very difficult.

References:

1. Election Commission to India, Instructions for General Elections 2009

http://eci.nic.in/eci_main/press/current/pn190309.pdf

2. Election Commission of India, Media Policy

http://eci.nic.in/archive/instruction/compendium/media_policy/mdpo84a.htm

100: The government ensures that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media. This obligation extends to news reports, editorial comment, and all other content. All parties and candidates are offered consistent and equivalent rates for campaign advertising on state-owned media outlets.

75:

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

25:

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

11. Are journalists safe when investigating corruption?

0

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

Yes | No

Comments:

According to the Press Freedom Index of 2010 brought out by Reporters Without Borders, India has fallen 17 places since the 2009 index and now stands at 122.

Freedom House Press Freedom 2011 rates India as partly free.

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 and extremist violence.

Since January this year, one journalist has been killed, and there have been nine other attacks on members of the media. There have been six instances of intimidation of journalists and writers, the blocking of 11 websites, telephone taps on political leaders and civil society activists, hate speech on Facebook and censorship of books and film.

In 2010, the Hub recorded 27 attacks on journalists, nine arrests or detentions of journalists on various charges, six instances of attacks on writers and civil liberties activists, three cases of sedition against writers and civil liberties activists, 33 instances of curbs by vigilante groups on books, films, television shows, mobile communications or theater performances and instances of state or judicial restrictions and regulations on books and television shows.

References:

1. Reporters without Borders Press Freedom Index 2010

http://en.rsf.org/press-freedom-index-2010_1034.html

http://en.rsf.org/report-india_63.html

2. Freedom House Press Freedom 2011

<http://www.freedomhouse.org/template.cfm?page=251&year=2011>

3. The Hoot Media Tracker

<http://www.thehoot.org/web/freetracker/freetracker.php#>

4. NBA Press Releases

<http://www.nbanewdelhi.com/press-releases.asp>

5. "Press freedom day & the Indian media," P.N. Vasanti, Mint, May 13, 2011

<http://www.livemint.com/2011/05/12222112/Press-freedom-day-amp-the-in.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 and extremist violence.

Since January this year, one journalist has been killed, and there have been nine other attacks on members of the media. There have been six instances of intimidation of journalists and writers, the blocking of 11 websites, telephone taps on political leaders and civil society activists, hate speech on Facebook and censorship of books and film.

In 2010, the Hub recorded 27 attacks on journalists, nine arrests or detentions of journalists on various charges, six instances of attacks on writers and civil liberties activists, three cases of sedition against writers and civil liberties activists, 33 instances of curbs by vigilante groups on books, films, television shows, mobile communications or theater performances and instances of state or judicial restrictions and regulations on books and television shows.

References:

1. Reporters without Borders Press Freedom Index 2010

http://en.rsf.org/press-freedom-index-2010_1034.html

http://en.rsf.org/report-india_63.html

2. Freedom House Press Freedom 2011

<http://www.freedomhouse.org/template.cfm?page=251&year=2011>

3. The Hoot Media Tracker

<http://www.thehoot.org/web/freetracker/freetracker.php#>

4. NBA press releases

<http://www.nbanewdelhi.com/press-releases.asp>

5. "Press freedom day & the Indian media," P.N. Vasanti, Mint, May 13, 2011

<http://www.livemint.com/2011/05/12222112/Press-freedom-day-amp-the-in.html>

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:

Since January this year, one journalist has been killed, and there have been nine other attacks on members of the media. There have been six instances of intimidation of journalists and writers, the blocking of 11 websites, telephone taps on political leaders and civil society activists, hate speech on Facebook and censorship of books and film.

In 2010, the Hub recorded 27 attacks on journalists, nine arrests or detentions of journalists on various charges, six instances of attacks on writers and civil liberties activists, three cases of sedition against writers and civil liberties activists, 33 instances of curbs by vigilante groups on books, films, television shows, mobile communications or theater performances and instances of state or judicial restrictions and regulations on books and television shows.

The Committee to Protect Journalists identifies one killing in 2010 where the motive has been confirmed as a direct fallout of the work of the journalist.

Indian Express Senior Reporter Vijay Pratap Singh was killed in a bomb blast intended to kill a politician in the state of Uttar Pradesh.

But the killing of J Dey, a crime reporter for Mumbai's Mid Day tabloid, shocked the country. Dey was a well-known journalist who covered stories relating to the underworld.

Though these killings may not be directly related to the uncovering of corruption, they were in some way related to criminal acts that would not be possible without overt or covert support from some sections of the police or the political class.

References:

1. Committee to Protect Journalists

<http://www.cpj.org/killed/asia/india/>

2. The Hindu, "India ranked 7th in list of unsolved journo murders," June 12, 2011

<http://www.thehindu.com/news/national/article2098467.ece>

3. "Press freedom precarious," The Hindu, May 4, 2011

<http://www.thehindu.com/news/national/article1991488.ece>

4. The Indian Express, Express Staffer's Death: Key Accused Names Samajwadi Party MLA, October 7, 2010

<http://www.indianexpress.com/news/express-staffers-death-key-accused-names-samajwadi-party-mla/693859/0>

5. India Today, J Dey Murder Solved, 7 Chhota Rajan Gangsters Arrested, June 27, 2011

<http://indiatoday.intoday.in/story/j-dey-murder-case-cracked-mumbai-police/1/142827.html>

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

12. Do citizens have a legal right to request information?

100

12a. In law, citizens have a right to request government information and basic government records.

Yes | No

Comments:

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

As with all FOI/RTI laws, disclosure is subject to exceptions, and these are listed in Section 8 of the act. There are other limits to the information that can be obtained, such as that pertaining to certain sensitive organizations or third-party information, etc.

References:

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

Yes: A YES score is earned if there is a formal right to request 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 a request for a basic government record is denied.

Yes | No

Comments:

Section 19(1) of the Right to Information Act of 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's. 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:

The Right to Information Act of 2005
<http://righttoinformation.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

Comments:

Section 6 of the Right to Information Act of 2005 prescribes the procedure for application for information. Section 7 lays down the procedure for the Public Information Officer or the public authority to deal with such requests. Section 4 requires public authorities to proactively disclose information on their functions and activities.

References:

Right to Information Act of 2005

<http://righttoinformation.gov.in/rti-act.pdf>

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 to information requests effective?

79

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

100 | 75 | 50 | 25 | 0

Comments:

Information is required to be furnished in 30 days, with a penalty for each day of delay after that.

There are no figures available for delays in furnishing information, but the Central Information Commission Annual Report 2009-10 shows that there is a steady increase in penalty figures since the inception of the act. This could be because of better implementation of the penalty provisions rather than increased instances of delay.

According to data published by the Central Information Commission, the percentage of rejection of information requests received by Central public authorities was 6.43 percent in 2009-10, down from 7.26 percent in 2008-09. The number of information requests received in 2009-10 (626,748) was 73% more than the number received in 2008-09 (362,520).

In Andhra Pradesh, the rejection rate was 2.15 percent in 2010.

References:

Central Information Commission, Annual Report 2009-10

<http://www.cic.gov.in/AnnualReports/AR-2009-10/AR2009-10E.pdf>

Andhra Pradesh State Information Commission, Annual Report 2010

[http://www.apic.gov.in/Documents/Annual%20Report%202010%20\(English\).pdf](http://www.apic.gov.in/Documents/Annual%20Report%202010%20(English).pdf)

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 information request mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The Right to Information (Regulation of Fee and Cost) Rules of 2005, notified under the Right to Information Act of 2005, fixes a nominal application fee of Rs 10/- (US \$0.21) and photocopying charge of Rs 2/- (US \$0.04) at the minimum.

This rate is largely the same for all state governments. For a comparative table on fee rules applicable across the country, see Annex 2 of the User's Guide to the RTI Act published by the Commonwealth Human Rights Initiative.

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 of 2006, where the application fee has been fixed at Rs 500/- (US \$11) and the copying fee at Rs. 15/- (US \$0.32). The Rajasthan High Court and the Patna High Court has fixed an application fee of Rs. 100/- (US \$2) at the minimum and Rs. 500/- (US \$11) at the maximum.

References:

1. The Right to Information (Regulation of Fee and Cost) Rules of 2005

<http://righttoinformation.gov.in/circulars/FeeCostRTI.pdf>

2. Annex 2 of the User's Guide to the RTI Act published by the Commonwealth Human Rights Initiative

http://www.humanrightsinitiative.org/publications/rti/guide_to_use_rti_act_2005_revised.pdf

3. Government of India, Comparative Study of Rules Framed by the Competent Authorities and Appropriate Governments Under Right to Information Act, 2005

http://righttoinformation.gov.in/Comparative_Study.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 NGOs. 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 NGOs trying to access this information.

13c. In practice, responses to information requests are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

According to data published by the Central Information Commission, the exemption provisions of section 8(1) were used to reject the requested information 58 percent of the time. The fact that 33 percent of the time, other provisions were invoked by the public authorities to reject requested information suggests the rejections were based on invalid grounds.

However, while absolute figures of appeals filed before the Central Information Commission in 2009-10 against information rejections or inadequacies show an increase in numbers, the rate of increase is slower when compared to appeals filed in the previous year (2008-09). This could be an indication that there are higher levels of satisfaction regarding the information received, at least in the Central Government.

In Andhra Pradesh, however, 87 percent of the rejections were under invalid/ frivolous grounds.

An earlier study sponsored by the government in 2009 had found a more than 75 percent dissatisfaction rate with the information furnished by public authorities. About 50 percent of the responses acknowledged that the intended objective of filing the RTI application had been met. About 20 percent to 30 percent of responses also indicated that filing the information request itself had the impact being sought in the application.

The levels of satisfaction with regard to the information received could vary from state to state.

While much of the information sought still relate to settling individual grievances relating to service delivery, information obtained from public authorities has been put to good use by the media in reporting corruption.

References:

1. Central Information Commission Annual Report 2009-2010

<http://www.cic.gov.in/AnnualReports/AR-2009-10/AR2009-10E.pdf>

2. Andhra Pradesh State Information Commission 2010

[http://www.apic.gov.in/Documents/Annual%20Report%202010%20\(English\).pdf](http://www.apic.gov.in/Documents/Annual%20Report%202010%20(English).pdf)

3. Study conducted by Pricewaterhouse Cooper 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>

4. The Prime Minister's address at the 6th Annual Convention of Information Commissioners, Oct. 14, 2011

<http://pmindia.gov.in/speech.asp?id=1103>

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 information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

In April 2011, the Central Information Commission had a backlog of 18,668 appeals/ complaints.

While there is no analysis of the length of delays, the cause list for the month of September 2011 showed some cases that were more than a year old.

According to data published by the Central Information Commission, the commission received 22,800 appeals or complaints in 2009-10 and disposed 85.44 percent, or 19,482.

In Andhra Pradesh, the disposal rate of appeals or complaints was about 66 percent.

References:

1. Central Information Commission Annual Report 2009-2010

<http://www.cic.gov.in/AnnualReports/AR-2009-10/AR2009-10E.pdf>

2. Monthly Disposal of the Central Information Commission

<http://www.cic.gov.in/>

3. Andhra Pradesh State Information Commission Annual Report 2010

[http://www.apic.gov.in/Documents/Annual%20Report%202010%20\(English\).pdf](http://www.apic.gov.in/Documents/Annual%20Report%202010%20(English).pdf)

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

75:

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

25:

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

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

100 | 75 | 50 | 25 | 0

Comments:

The central and state governments have prescribed appeals rules under the RTI Act. Though the RTI Act does not require any fee to be charged for filing appeals, some state governments have prescribed appeal fees in their rules, which is a violation of the act. The states where appeal fees have been prescribed are listed at Annex 3 of the User's Guide to the RTI Act published by the Commonwealth Human Rights Initiative.

References:

1. Annex 3 of the User's Guide to the RTI Act, published by the Commonwealth Human Rights Initiative
http://www.humanrightsinitiative.org/publications/rti/guide_to_use_rti_act_2005_revised.pdf
2. See also a comparative study of rules framed under the RTI Act
http://righttoinformation.gov.in/Comparative_Study.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:

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

There are no figures available to show how many information requests have been denied without giving reasons. However, according to data published by the Central Information Commission, the exemption provisions of section 8(1) were used to reject the requested information 58 percent of the time. The fact that 33 percent of the time, other provisions were invoked by the public authorities to reject requested information suggests the rejections were based on grounds which are not valid grounds under the Act. In Andhra Pradesh, this figure was 87 percent.

References:

1. Right to Information Act of 2005
<http://righttoinformation.gov.in/rti-act.pdf>
2. Central Information Commission Annual Report 2009-2010
<http://www.cic.gov.in/AnnualReports/AR-2009-10/AR2009-10E.pdf>
3. Andhra Pradesh State Information Commission 2010
[http://www.apic.gov.in/Documents/Annual%20Report%202010%20\(English\).pdf](http://www.apic.gov.in/Documents/Annual%20Report%202010%20(English).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.

2.1. ⁷¹Voting and Party Formation

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:

Article 19(1) of the Constitution of India provides: "All citizens shall have the right (a) to freedom of speech and expression."

The right to vote is derived from the constitutional guarantee of freedom of 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 the age of 18 years.

References:

Constitution of India

<http://lawmin.nic.in/coi/coiason29july08.pdf>

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:

Article 83(2) of the Constitution of India provides that the duration of the House of the People (Lower House) is five years and that the House shall stand dissolved on the expiration of this period.

Article 83(1) provides that the Council of States (Upper House) will not be subject to dissolution, but one-third of its members should retire on the expiration of every second year. Members of the Upper House are elected by the elected members of the State Legislative Assembly on the system of proportional representation by means of the single transferable vote.

In view of Article 83(2), elections must be called for every five 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 declared an emergency and postponed the election that was due to be held in 1976. This amendment was later rescinded, and regular elections were held in 1977.

In the history of the Indian Constitution, 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.

References:

Constitution of India

<http://lawmin.nic.in/coi/coiason29july08.pdf>

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:

While all adult citizens can vote without any discrimination, certain numbers invariably fail to exercise their rights for various reasons. In the General Elections 2009, 58 percent cast ballots.

The voter registration process is not flawless. There are administrative glitches that manifest at every election that find a certain number of voters missing from the voters list. Migratory population also find themselves left out of the voter list for lacking adequate identification linking them to the constituency they are currently residing in. Political parties and influential persons manage registration of bogus voters, or large-scale deletion of names of "unfriendly" voters.

Voter apathy is also considered a major factor in low voter turnouts. In recent years, several nongovernmental initiatives have begun targeting apathetic voters by educating them and encouraging them to get registered before every election.

References:

1. "The recurring miracle of Indian democracy," by Shashi Tharoor, Strait Times, April 16, 2009
<http://www.straitstimes.com/vgn-ext-templating/v/index.jsp?vgnextoid=eece35b378aa0210VgnVCM100000430a0a0aRCRD&vgnextchannel=0162758920e39010VgnVCM1000000a35010aRCRD>
2. "Unlucky day," The Economist, May 13, 2011
http://www.economist.com/blogs/banyan/2011/05/indias_state_elections
3. National Commission to Review the Working of the Constitution (2001)
<http://lawmin.nic.in/ncrwc/finalreport/v1ch4.htm>
4. Jaago, Voting
<http://www.jaagore.com/issues/voting>

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 occur at election time. Election Commission orders a revote in affected booths. Instances of rigging of elections through violence and intimidation has been reduced in recent elections primarily due to the use of electronic voting machines (EVM) and a number of steps taken by the Election Commission such as vulnerability mapping and stringent maintenance of law and order during the pre-polling and polling days.

After the results of the General Election of 2009 were announced, some political parties and individuals alleged possible manipulation of EVMs. Some went to court. The Supreme Court of India dismissed a petition filed by 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. However, challengers have not been able to so far demonstrate and prove the allegation of tampering of the EVMs, and the ECI made it clear that any such demonstration of the alleged tampering cannot include reverse-engineering of the machine as it would compromise security and sanctity of the entire election system.

References:

1. "Recommendations for Electoral Reforms to Ministry of Law and Justice, Government of India And Election Commission of India" submitted by Association for Democratic Reforms (ADR) and National Election Watch (NEW), April 2011
<http://adrindia.org/files/ADR-NEW%20Recomendations-April20%202011-Final.pdf>
2. "The recurring miracle of Indian democracy," by Shashi Tharoor, Strait Times, April 16, 2009
<http://www.straitstimes.com/vgn-ext-templating/v/index.jsp?vgnextoid=eece35b378aa0210VgnVCM100000430a0a0aRCRD&vgnextchannel=0162758920e39010VgnVCM1000000a35010aRCRD>
3. "Unlucky day," The Economist, May 13, 2011
http://www.economist.com/blogs/banyan/2011/05/indias_state_elections
4. Security Analysis of India's Electronic Voting Machines
<https://jhalderm.com/pub/papers/evm-ccs10.pdf>
5. Election Commission of India, EVM FAQs
http://eci.nic.in/eci_main/faq/evm.asp
6. Election Commission of India letter, March 29, 2010, to one group of EVM challengers
http://eci.nic.in/eci_main/recent/reply_sh_VVRao.pdf

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 must be called for every five 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 declared an emergency and postponed the election 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 aside, elections to both the Parliament and State Assemblies have always been held on schedule.

References:

1. Announcement of recent State Legislature Elections 2011
http://eci.nic.in/eci_main/press/current/PN_AE_010311.pdf
2. Map of Freedom in the World, 2011 Edition, India Report
<http://www.freedomhouse.org/template.cfm?page=363&year=2011&country=8055>

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?

85

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

Yes | No

Comments:

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

A "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.

References:

1. Constitution of India

<http://lawmin.nic.in/coi/coiason29july08.pdf>

2. Representation of People Act of 1951

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

3. Guidelines And Application Format For Registration of political parties under Section 29A of the Representation of the People Act of 1951

http://eci.nic.in/eci_main/ElectoralLaws/guidelinesandformat.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:

Articles 85 and 173 of the Constitution of India prescribe the qualifications for being a member of Parliament and a State Legislature, respectively.

Sections 3, 4 and 5 of the Representation of Peoples Act of 1951 prescribes further requirements for citizens to qualify for membership in the Upper and Lower Houses of Parliament and State Legislatures, respectively.

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:

1. Constitution of India

<http://lawmin.nic.in/coi/coiason29july08.pdf>

2. The Representation of People Act of 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:

While forming a political party is not difficult and the process is transparent, obtaining registration, particularly as a national party, and getting the election symbol of choice allotted, requires the fulfillment of certain conditions. Applications may be rejected by the Election Commission for nonfulfillment of the conditions. De-recognition from the status of a national party can happen, but the law does not allow for deregistration of parties, which has resulted in the registration of a large number of parties that have not contested elections in years. The Election Commission has proposed an amendment to the law to allow for deregistration.

The cost of application is reasonable – about \$225. There are many parties that have never sought registration but still participate in the electoral processes where the candidates contest as independents.

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 of 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, which remains undecided. An NGO had also filed a public interest case in the Supreme Court of India for removal of the term “socialism” from the Preamble of the Constitution and challenging the requirement of swearing by it under Section 29A of the RP Act. The Supreme Court has dismissed this petition on the grounds that it was an academic question.

References:

1. The current list of registered National and State parties and registered unrecognized parties as of March 8, 2011 (further amended by order on March 26, 2011)

http://eci.nic.in/eci_main/ElectoralLaws/OrdersNotifications/Notification_symbol_08032011.pdf

2. Election Commission of India, Proposed Electoral Reforms

http://eci.nic.in/eci_main/PROPOSED_ELECTORAL_REFORMS.pdf

3. “We’re All (Still) Socialists in India,” Barun S. Mitra, Wall Street Journal, Opinion India, July 26, 2010

<http://online.wsj.com/article/SB10001424052748703977004575392521877896304.html>

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 cost of running for political office is so expensive that it acts as a huge disincentive. 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 of 1951).

The Election Commission of India has put a cap of US \$50,000 per candidate as permissible election expenses, accounts for which, under the law, have to be filed before the EC. But a lot of unaccounted money flows during election time.

According to Jagdeep Chhokar, a former director of Indian Institute of Management, Ahmedabad, and a founding member of the Association for Democratic Reforms, theoretically and legally all citizens can run for political office, but practically it is not that easy.

An Election Expense analysis of MLAs of Assembly Elections 2011 says that "although money power was blatantly at display during the recent elections, the new MLAs to these assemblies (TN, WB, Assam, Kerala and Puducherry) have declared the average amount of total money spent in their election to be only between Rs 3.12 lakhs (approx US \$6,800) and Rs 9.39 lakhs (approx US \$21,000) (39 percent and 59 percent of the expense limit) in their declarations to the Election Commission of India.

References:

1. "At one point during the polls, I thought we were losing the battle to money power. That didn't happen," The Financial Express, May 29, 2011

<http://www.financialexpress.com/news/at-one-point-during-the-polls-i-thought-we-were-losing-the-battle-to-money-power.-that-didnt-happen/796638/0>

2. "Top honor for official for poll-time cash haul," Express Buzz, Aug. 16, 2011

<http://expressbuzz.com/states/tamilnadu/top-honour-for-official-for-poll-time-cash-haul/304566.html>

3. "Where did Rs 3cr seized in Kadapa come from: EC to I-T," Hindustan Times, May 9, 2011

<http://www.hindustantimes.com/Where-did-Rs-3cr-seized-in-Kadapa-come-from-EC-to-I-T/Article1-695480.aspx>

4. Election Expense analysis of MLAs of Assembly Elections 2011

<http://adrindia.org/Frontpage-Articles/Content-Front-Page/upcoming-state-assembly-election-2011.html>

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

Comments:

India has a tradition of vocal opposition parties with the ability to put ruling governments under pressure.

References:

1. Democracy Asia, K.C. Suri, Parties Under Pressure: Political Parties in India Since Independence, Section on "Opposition Parties in India,"

<http://www.democracy-asia.org/ga/india/KC%20Suri.pdf>

2. "India all-party talks fail to end parliament deadlock," Nov. 22, 2010

<http://www.bbc.co.uk/news/world-south-asia-11808365>

3. Parliament Paralysed Ruling Party Opposition Must End the Impasse, January 27,

2011, <http://www.hkdua.in/2011/01/27/parliament-paralysed-ruling-party-opposition-must-end-the-impasse/>

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.

2.2. Election Integrity

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

100

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

Yes | No

Comments:

Article 324 of the Constitution of India 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.

References:

Constitution of India,
<http://lawmin.nic.in/coi/coiason29july08.pdf>

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

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

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.

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

Comments:

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.

References:

Constitution of India

<http://lawmin.nic.in/coi/coiason29july08.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

Comments:

Jagdeep Chhokar, a former director of Indian Institute of Management, Ahmedabad and a founding member of the Association for Democratic Reforms, believes the appointments of election commissioners "by and large" support independence.

The chief election commissioners and election commissioners are invariably former civil servants appointed by the president. The control, superintendence and discipline of all officers and staff concerned with elections in every state, vests not with the state government which has appointed them, but with the Election Commission of India. The checks and balances inherent in the law have contributed to the development of the independence of the Election Commission.

Though the propriety of some of the appointments have been questioned, the independence of the institution has not been undermined because of the strict application of a model code of conduct for political parties and for governments, which cuts across all political formations.

The Association of Democratic Reforms has recommended the appointment of the chief electoral officers of states to be deputed from a state other than the state in which the officer is employed with to enable the CEO to work fearlessly without apprehensions of being victimized by the political formations.

The National Commission to Review the Working of the Constitution recommended in 2001 that the chief election commissioner and the other election commissioners should be appointed on the recommendation of a body consisting of the prime minister, leader of the opposition in the Lok Sabha, leader of the opposition in the Rajya Sabha, the speaker of the Lok Sabha and the deputy chairman of the Rajya Sabha. Similar procedures were recommended for adoption for the appointment of state election commissioners.

The Second Administrative Reforms Commission also recommended a similar procedure of a colloquium headed by the prime minister with the speaker of the Lok Sabha, the leader of opposition in the Lok Sabha, the law minister and the deputy chairman of the Rajya Sabha as members to recommend appointment of the chief election commissioner and the election commissioners.

References:

1. "Advani for rivals' say in CEC choice," The Telegraph, March 7, 2011

http://www.telegraphindia.com/1110307/jsp/nation/story_13677464.jsp

2. "Experts favor panel to select CEC," Afternoon Despatch and Courier, March 21, 2011

http://www.afternooncd.in/city-news/experts-favour-panel-to-select-cec/article_20587

3. Email interview with Jagdeep Chhokar, a former director of Indian Institute of Management, Ahmedabad, and a founding member of the Association for Democratic Reforms, Sept. 4, 2011 (available on request)

4. "Recommendations for Electoral Reforms to Ministry of Law and Justice, Government of India And Election Commission of India" submitted by Association for Democratic Reforms (ADR) and National Election Watch (NEW), April 2011

<http://adrindia.org/files/ADR-NEW%20Recommendations-April20%202011-Final.pdf>

5. Para 2.1.5 of the Fourth Report of the Second Administrative Reforms Commission

<http://arc.gov.in/4threport.pdf>

6. Para 4.22 of the Report of the National Commission to Review the Working of the Constitution (2001)

<http://lawmin.nic.in/ncrcwcfinalreport/v1ch4.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:

Article 324(6) of the Constitution of India 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.

The Election Commission (ECI) of India has its own secretariat. In addition, the administrative machinery for 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. This is detailed in the Representation of Peoples Act of 1951.

References:

1. Constitution of India

<http://lawmin.nic.in/coi/coiason29july08.pdf>

2. Representation of the Peoples Act of 1951

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

3. Election Commission of India

<http://eci.nic.in>

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

75:

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

25:

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

18d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

100 | 75 | 50 | 25 | 0

Comments:

The Election Commission of India's (ECI) website is an excellent source of information on the most recent as well as past elections. Thanks to electronic voting machines, the election results can be declared on the website from across the country in one day. Similar information is also made available on the websites of States all through the process of elections.

Statistical analysis on various aspects of the elections are also available.

The ECI and several state election offices also make available candidate information, such as asset declarations and affidavits declaring their criminal pasts, on their websites.

The information put out by the Election Commission has spawned some nongovernmental organizations using the information for analytical purposes.

References:

1. Election Commission of India
<http://lawmin.nic.in/coi/coiason29july08.pdf>
2. Association for Democratic Reforms
<http://www.adrindia.org/>
3. Empowering India
<http://www.empoweringindia.org/new/home.aspx>
4. India Governs
<http://www.indiagoverns.org/>

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

75:

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

25:

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

18e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

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

Comments:

The Representation of People Act of 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 inquiries 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 and the ECI can only recommend. The EC maintains a list of disqualified candidates and their period of disqualification on its website.

The trials and challenges by way of election petitions can take years to resolve. There have also been several recommendations for enhancing penalties for election-related offenses.

References:

1. The Representation of People Act of 1951
<http://lawmin.nic.in/legislative/election/volume%201/representation%20of%20the%20people%20act,%201951.pdf>
2. Election Commission of India's Proposals on Electoral Reforms
http://eci.nic.in/eci_main/electoral_ref.pdf
3. Report of the National Commission to Review the Working of the Constitution (2001)
<http://lawmin.nic.in/ncrcw/finalreport/v1ch4.htm>
4. "Chidambaram's plea dismissed," The Hindu, Aug. 4, 2011
<http://www.thehindu.com/news/states/tamil-nadu/article2321971.ece>

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

75:

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

25:

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

19. Are elections systems transparent and effective?

92

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

100 | 75 | 50 | 25 | 0

Comments:

Voters registration drives start well before any elections are scheduled. The Election Commission sets out a electoral roll revision schedule that allows voters to check and correct information about themselves. 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.

The voter registration process is not flawless. There are administrative glitches that manifest at every election that find a certain number of voters left off the voters list. Migratory population also find themselves left off the voters list for lacking adequate identification linking them to the constituency they are currently residing in. Political parties and influential persons manage registration of bogus voters, or large-scale deletion of names of "unfriendly" voters.

In recent years, several nongovernmental initiatives have begun targeting apathetic voters by educating and encouraging them to get themselves registered before every elections.

References:

1. "What Team Anna is missing on poll reform," Economic Times, Sept. 9, 2011
http://articles.economictimes.indiatimes.com/2011-09-04/news/30110112_1_lakh-voters-voters-list-congress-candidate
2. National Commission to Review the Working of the Constitution (2001)
<http://lawmin.nic.in/ncrwc/finalreport/v1ch4.htm>
3. Jaago Voting
<http://www.jaagore.com/issues/voting>
4. Election Commission of India, Schedule for Revision of Electoral Rolls
http://eci.nic.in/eci_main/eroll&epic/ER_Schedule2012.pdf

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:

The Representation of People Act of 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.

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 of 1951
<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 under Section 80 of the Representation of People Act of 1951 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.

Even after the courts decide, the actual disqualification has to be ordered by the president after the proposal moves through the concerned legislature to which the member belongs.

Given that the longevity of a House is five years, most election challenges are fruitless because of the time it takes for the courts to decide a case and proscribe the procedure for overturning the election.

The Election Commission, in its proposed electoral reforms, have sought to amend the law to have the powers vested on itself to expedite the process.

References:

1. "HC rejects Chidambaram's plea against election petition," FirstPost, Aug. 4, 2011
<http://www.firstpost.com/twire/hc-rejects-chidambarams-plea-against-election-petition-54178.html>
2. Times of India, "SC stays HC proceedings on election petition against Maken," September 13, 2011,
http://articles.timesofindia.indiatimes.com/2011-09-13/india/30149067_1_election-petition-hc-proceedings-bjp-s-vijay-goel
3. Election Commission of India, Proposed Electoral Reforms, Item 3, 2004

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

75:

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

25:

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

19d. In practice, the military and security forces remain neutral during elections.

100 | 75 | 50 | 25 | 0

Comments:

Huge numbers of security forces are deployed to assist the Election Commission to conduct free and fair polls. But Indian military/security forces have generally been neutral during elections.

There have been exceptions in the early 1990s when the government of the day held elections in “disturbed” states, such as Jammu, Kashmir, Punjab and Assam, and used the army to compel people to vote.

References:

1. Election Commission of India

http://eci.nic.in/eci_main/CurrentElections/ECI_Instructions/Security_Plan_&_Force_Deployment_Instructions.pdf

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:

Under section 20B of the Representation of the People Act of 1951, the Election Commission of India nominates government officers as observers (general observers and election expenditure observers) for parliamentary and assembly constituencies. They perform such functions as are entrusted to them by the commission and report directly to the commission.

There is no law permitting or barring international election observers.

References:

1. Representation of the People Act of 1951

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

2. “EC Appoints about 1000 Observers for Assemblies Elections,” March 10, 2011

<http://pib.nic.in/newsite/erelease.aspx?relid=70818>

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

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

19f. In practice, election observers are able to effectively monitor elections.

100 | 75 | 50 | 25 | 0

Comments:

Election observers are senior-level civil servants who are appointed by and accountable to the Election Commission for the purpose of elections. Their job is to oversee election arrangements, voting, election expenses and candidates’ code of conduct. They have powers to stop elections in the event of any voting irregularity.

While they may have unfettered access to the poll process, one significant area where the observers have failed is in checking the use of money power by candidates during elections. This includes bribing voters, paid news, closer monitoring of election expenses, etc.

References:

1. "Electoral reforms needed to curb money power: Quraishi," The Hindu, Jan. 9, 2011

<http://www.thehindu.com/news/national/article1075234.ece>

2. "EC Appoints about 1000 Observers for Assemblies Elections," March 10, 2011

<http://pib.nic.in/newsite/erelease.aspx?relid=70818>

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.

92 2.3. Political Financing Transparency

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

33

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

Yes

No

Comments:

Section 29B of the Representation of People Act of 1951 provides that "subject to the provisions of the Companies Act of 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 of 1976, (49 of 1976)."

There are no limits on individual donations. Under Section 80GGC of the Income Tax Act of 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. However, the FCRA Act of 2010 prohibits donations from foreign sources to candidates for elections and political parties, registered or unregistered.

References:

1. The Representation of People Act of 1951, Section 29B

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

2. Income Tax Act of 1961, Section 80GGC

<http://law.incometaxindia.gov.in/DIT/Income-tax-acts.aspx>

3. Foreign Contribution (Regulation) Act of 2010, Section 3

<http://mha.nic.in/fcra.htm>

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

Comments:

Section 29B of the Representation of People Act of 1951 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 of 1976, (49 of 1976)."

The Companies Act of 1956, Section 293A, prohibits political contributions by (a) 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."

References:

1. The Representation of People Act of 1951, Section 29B
<http://lawmin.nic.in/legislative/election/volume%201/representation%20of%20the%20people%20act.%201951.pdf>
2. The Companies Act of 1956, Section 293A
http://www.mca.gov.in/Ministry/pdf/Companies_Act_1956_13jun2011.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

Comments:

Section 77 of the Representation of People Act of 1951, read with Rule 90 of the Conduct of Election Rules of 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 on Feb. 23, 2011, the limits have been increased to:

For Lok Sabha seats in bigger states, it is about US \$87,000; in other states and Union Territories, it varies between US \$48,000 and US \$58,000.

For Assembly seats, it is between US \$18,000 and \$34,000, depending on the size of the state and Union Territories.

References:

1. Representation of People Act of 1951, Section 77
<http://lawmin.nic.in/legislative/election/volume%201/representation%20of%20the%20people%20act.%201951.pdf>
2. Conduct of Election Rules of 1961, Rule 90
http://eci.nic.in/eci_main/Election/Laws/HandBooks/MANUAL_OF_LAW_VOL_II.pdf
3. Revised ceiling of election expenditure, Ministry of Law and Justice, Legislative Department Notification No. H-11019(1)/2011-Leg.II, Feb. 23, 2011
http://eci.nic.in/eci_main/CurrentElections/ECI_Instructions/ins25022011.pdf

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

Comments:

Section 29C of the Representation of People Act of 1951 requires political parties to prepare a report of "(a) the contribution in excess of 20,000 rupees (US \$424) received by such political party from any person in that financial year; (b) the contribution in excess of 20,000 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. A political party that fails to do that would not be entitled to any tax relief under the Income Tax Act of 1961.

No public disclosure of such reports are required to be made by the political parties, but the Election Commission compiles annual contribution reports submitted by various political parties and puts them on its website.

Under Section 293A(4) of the Companies Act of 1956, "Every company shall disclose in its profit and loss account any amount or amounts contributed by it to any political party or for any political purpose to any person during the financial year to which that account relates, giving particulars of the total amount contributed and the name of the party or person to which or to whom such amount has been contributed."

References:

1. The Representation of People Act of 1951, Section 29C
<http://lawmin.nic.in/legislative/election/volume%201/representation%20of%20the%20people%20act.%201951.pdf>
2. Companies Act of 1956, Section 293A(4)
http://www.mca.gov.in/Ministry/pdf/Companies_Act_1956_13jun2011.pdf
3. Election Commission of India, Contribution Reports of Political Parties
http://eci.nic.in/eci_main/mis-Political_Parties/political_parties.asp

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. Systems where only certain donation amounts are required to be made public (above a non-trivial amount) also earn a NO score.

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

Comments:

There is no requirement in law for any independent auditing of political parties. There has been a lot of discussions in this regard and the Election Commission is working toward a law relating to auditing political finances.

References:

1. "Audit corporate funding to political parties: CEC," The Hindu, June 14, 2011
<http://www.thehindu.com/news/national/article2102073.ece>
2. "Parties to go corporate, EC mulls accounting rules," Indian Express, May 30, 2011
<http://www.indianexpress.com/news/parties-to-go-corporate-ec-mulls-accounting/797058/>

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:

There is no separate agency to monitor political financing.

Under the Representation of People Act of 1951, and the Conduct of Elections Rules of 1961, the Election Commission of India has limited powers to ask for accounts or information regarding political parties' and candidates' contributions and campaign expenditures. While election expenditure is monitored, political contributions made available to the EC by parties are placed on the public domain (on the EC website).

The law provides for civil and criminal consequences for violations of financing or accounting norms. (Sections 7(b), 8A, 10A, 123 of Representation of People Act of 1951; Section 89 of Conduct of Election Rules of 1961; Section 171 of Indian Penal Code of 1860).

The relevant provisions under the Companies Act of 1956, and the Income Tax Act of 1961, enforces political contributions made by contributors and tax violations by the donor and the receiver.

References:

1. The Representation of People Act of 1951, Section 29C
<http://lawmin.nic.in/legislative/election/volume%201/representation%20of%20the%20people%20act.%201951.pdf>
2. Companies Act of 1956, Section 293A(4)
http://www.mca.gov.in/Ministry/pdf/Companies_Act_1956_13jun2011.pdf
3. Election Commission of India, Contribution Reports of Political Parties
http://eci.nic.in/eci_main/mis-Political_Parties/political_parties.asp
4. "Audit corporate funding to political parties: CEC," The Hindu, June 14, 2011
<http://www.thehindu.com/news/national/article2102073.ece>
5. "Parties to go corporate, EC mulls accounting rules," Indian Express, May 30, 2011
<http://www.indianexpress.com/news/parties-to-go-corporate-ec-mulls-accounting/797058/>

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 non-governmental 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

Comments:

There are no limits on individual donations.

Section 29B of the Representation of People Act of 1951 provides that "subject to the provisions of the Companies Act of 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 of 1976, (49 of 1976)."

Under Section 80GGC of the Income Tax Act of 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.

References:

1. The Representation of People Act of 1951, Section 29B
<http://lawmin.nic.in/legislative/election/volume%201/representation%20of%20the%20people%20act.%201951.pdf>
2. Income Tax Act of 1961
<http://law.incometaxindia.gov.in/DIT/Income-tax-acts.aspx>

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

Comments:

Section 29B of the Representation of People Act of 1951 provides that "subject to the provisions of the Companies Act of 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 of 1976, (49 of 1976)."

The Companies Act of 1956, Section 293A, prohibits political contributions by (a) 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."

Under Section 80GGB and 80GGC of the Income Tax Act of 1961, while corporate and individual donations are 100 percent tax exempt when given to political parties, such donations are not accounted for tax exemption when given to individual candidates.

References:

1. The Representation of People Act of 1951, Section 29B
<http://lawmin.nic.in/legislative/election/volume%201/representation%20of%20the%20people%20act.%201951.pdf>
2. The Companies Act of 1956, Section 293A
http://www.mca.gov.in/Ministry/pdf/Companies_Act_1956_13jun2011.pdf
3. Income Tax Act of 1961
<http://law.incometaxindia.gov.in/DIT/Income-tax-acts.aspx>

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

Comments:

Only companies donating to individual candidates need to disclose such donations. Individual candidates themselves need to submit their expenditure accounts to the election commission at the time of the elections.

Under Section 293A(4) of the Companies Act of 1956, "Every company shall disclose in its profit and loss account any amount or amounts contributed by it to any political party or for any political purpose to any person during the financial year to which that account relates, giving particulars of the total amount contributed and the name of the party or person to which or to whom such amount has been contributed."

References:

1. The Representation of People Act of 1951, Section 29C
<http://lawmin.nic.in/legislative/election/volume%201/representation%20of%20the%20people%20act.%201951.pdf>
2. Companies Act of 1956, Section 293A(4)
http://www.mca.gov.in/Ministry/pdf/Companies_Act_1956_13jun2011.pdf

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. Systems where only certain donation amounts are required to be made public (above a non-trivial amount) also earn a NO score.

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

Yes | **No**

Comments:

There is no regulatory requirement for independent auditing of an individual candidate's campaign finances. Expenditures incurred in the course of the elections are monitored by the Election Commission, and any violation can be an election offense. Such monitoring is limited to ensuring that the expenditure limits are not violated by independent candidates.

Under Section 10A of the Representation of People Act of 1951, the Election Commission has the powers to disqualify a person for failure to lodge an account of election expenses.

Under Section 80, the High Court can entertain an election petition against a returned candidate for violations of election laws, among other grounds.

References:

1. Election Commission of India, Instructions on Expenditure Monitoring in Elections
http://www.kerala.gov.in/docs/election_2011/Instruction_expenditure.pdf

2. Representation of People Act of 1951, Section 10A and Section 80
<http://lawmin.nic.in/legislative/election/volume%201/representation%20of%20the%20people%20act.%201951.pdf>

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**

Comments:

There is no such agency to monitor and enforce laws on financing of individual political candidates' campaigns. The individual would be generally liable to comply with the income tax law as any other person.

References:

1. Election Commission of India, Instructions on Expenditure Monitoring in Elections
http://www.kerala.gov.in/docs/election_2011/Instruction_expenditure.pdf

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 non-governmental organizations.

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

4

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:

There are no limits on individual donations to political parties. This score is therefore not valid.

References:

1. The Representation of People Act of 1951, Section 29B

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

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

Comments:

Corporate donations are underreported in the books of account of companies even though it is permissible under the law.

According to Mohit Satyanand, investment analyst and management consultant, one of the reasons why companies would not officially reflect their political donations "is that they are scared of vindictiveness/pressure if their contributions are in black and white." According to Satyanand, the major source of political financing by corporates "is collections, contributions [and] extortion related to favors granted, breach of law ignored, or major case of 'crony capitalism.' ... Such sums would not appear in the books of the company."

In a study conducted by the Association for Democratic Reforms of the political contributions made by corporations, it appears that official corporations would not like to be seen as discriminatory in their "on-record" contributions to political parties.

References:

1. Email Interview with Mohit Satyanand, investment analyst and management consultant, New Delhi, Sept. 26, 2011 (available on request).

2. "Audit corporate funding to political parties: CEC," The Hindu, June 14, 2011

<http://www.thehindu.com/news/national/article2102073.ece>

3. "Political donors don't discriminate: Study," Himanshi Dhawan, TNN, Jan. 4, 2011

<http://timesofindia.indiatimes.com/india/Political-donors-dont-discriminate-Study/articleshow/7213773.cms>

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

Comments:

The elections expenses of candidates are blatantly underreported by candidates and parties. In the elections to five state legislatures in May 2011, a record amount of cash was seized by the Election Commission that was meant for voters or to meet election expenses. According to an election expenditure analysis done by the Association of Democratic, in one state alone (Tamilnadu) Rs. 60 crores (about US \$13 million) was seized and yet candidates of that state reported utilization between 39 percent and 59 percent of the limit of Rs. 40 lakh (about \$ 86,000) in their declarations to the Election Commission of India.

Absence of proper audits and the inadequacies in the process and consequences of filing election petitions challenging these reports make accountability of candidates and political parties impossible.

An interesting study finds that the quid pro quo between the politicians and companies is most visible in the real estate business in India, which is where politicians allegedly park their illicit assets and the real estate businesses rely on politicians for favorable dispensation. At election time, builders need to reroute funds to politicians as a form of indirect election financing. The implication of this nexus has been seen in the demand for cement, the indispensable raw material used in the sector, which contracts during elections as builders need to inject funds into campaigns.

References:

1. Election Commission of India, Proposed Electoral Reforms

http://eci.nic.in/eci_main/electoral_ref.pdf

2. ADR/NEW Recommendations for Electoral Reforms, April 2011

<http://adrindia.org/files/ADR-NEW%20Recommendations-April20%202011-Final.pdf>

3. "Quid Pro Quo: Builders, Politicians and Election Finance in India," Devesh Kapur, University of Pennsylvania & Milan Vaishnav, Columbia University, draft report, July 18, 2011

<http://vaishnavmilan.files.wordpress.com/2011/08/july-2011-circulation-draft.pdf>

4. "I-T department wants to assess political parties under charity laws,"

Press Trust Of India in New Delhi, June 13, 2011

<http://www.business-standard.com/india/news/i-t-dept-wants-to-assess-political-parties-under-charity-laws/438887/>

5. Election Expense analysis of MLAs of Assembly Elections 2011

<http://www.adrindia.org/Frontpage-Articles/Content-Front-Page/upcoming-state-assembly-election-2011.html>

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:

Since there is no agency that monitors political financing of parties except to collect contribution reports and monitor individual candidate election expenditure reports, the score is not valid here.

However, there is a lot of discussion in this regard, and Election Commission is working toward a law relating to auditing political finances.

References:

1. "Audit corporate funding to political parties: CEC," The Hindu, June 14, 2011
<http://www.thehindu.com/news/national/article2102073.ece>
2. "Parties to go corporate, EC mulls accounting rules," Indian Express, May 30, 2011
<http://www.indianexpress.com/news/parties-to-go-corporate-ec-mulls-accounting/797058/>
3. Election Commission of India, Proposed Electoral Reforms,
http://eci.nic.in/eci_main/electoral_ref.pdf
4. ADR/NEW Recommendations for Electoral Reforms, April 2011
<http://adrindia.org/files/ADR-NEW%20Recommendations-April20%202011-Final.pdf>
5. "Quid Pro Quo: Builders, Politicians and Election Finance in India," Devesh Kapur, University of Pennsylvania & Milan Vaishnav, Columbia University, draft report, July 18, 2011
<http://vaishnavmilan.files.wordpress.com/2011/08/july-2011-circulation-draft.pdf>
6. "I-T department wants to assess political parties under charity laws,"
Press Trust Of India in New Delhi, June 13, 2011
<http://www.business-standard.com/india/news/i-t-dept-wants-to-assess-political-parties-under-charity-laws/438887/>
7. Election Expense analysis of MLAs of Assembly Elections 2011
<http://www.adrindia.org/Frontpage-Articles/Content-Front-Page/upcoming-state-assembly-election-2011.html>
8. NDTV, Interview with S.Y Qureshi, Chief, Election Commission, November 14, 2011
<http://www.ndtv.com/article/india/elections-have-become-the-biggest-source-of-corruption-sy-qaureshi-136798>

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, though 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:

Penalties for political offenses are inconsequential and ineffective. The process of conviction is takes a long time to wind through the judicial system and does not result in a timely outcome. The Election Commission has sought enhancement of penalties and powers to speed up the disqualification process.

References:

1. Election Commission of India, Proposed Electoral Reforms
http://eci.nic.in/eci_main/electoral_ref.pdf
2. ADR/NEW Recommendations for Electoral Reforms, April 2011
<http://adrindia.org/files/ADR-NEW%20Recommendations-April20%202011-Final.pdf>

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:

In the absence of a law, there is no auditing done of political parties. There has been a lot of discussion in this regard, and the Election Commission is working towards a law relating to auditing of political finances.

The Association of Democratic Reforms has attempted to place in the public domain the income tax returns filed by political parties.

References:

1. "Audit corporate funding to political parties: CEC," *The Hindu*, June 14, 2011
<http://www.thehindu.com/news/national/article2102073.ece>
2. "Parties to go corporate, EC mulls accounting rules," *Indian Express*, May 30, 2011
<http://www.indianexpress.com/news/parties-to-go-corporate-ec-mulls-accounting/797058/>
3. Election Commission of India, Proposed Electoral Reforms
http://eci.nic.in/eci_main/electoral_ref.pdf
4. ADR/NEW Recommendations for Electoral Reforms, April 2011
<http://adrindia.org/files/ADR-NEW%20Recommendations-April20%202011-Final.pdf>
5. Association of Democratic Reforms, IT Returns and Assessment Orders of Political Parties
<http://www.adrindia.org/Miscellaneous/Content-Miscellaneous/it-returns-and-assessment-orders-of-political-parties.html>

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?

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. The scoring against this indicator is therefore, not valid.

In any case, according to Mohit Satyanand, investment analyst and management consultant, the major source of political financing is through "collections, contributions [and/or] extortions related to favors granted, breach of law ignored, or major case of 'crony capitalism.'" "

However, by a recent amendment to the Income Tax Act (amended by the Finance Act of 2011), political parties can now receive donations through Electoral Trusts from individuals and corporates which would have a 100 percent tax deduction. Electoral trusts have to be approved by the Central Board of Direct Taxes.

References:

1. "BSP MLA, Shekhar Tiwari gets life imprisonment in PWD engineer murder case," Economic Times, May 7, 2011
http://articles.economictimes.indiatimes.com/2011-05-07/news/29520517_1_shekhar-tiwari-life-imprisonment-auraiya

2. "Donations to political parties now tax-free," The Mint, July 7, 2009
<http://www.livemint.com/2009/07/07004834/Donations-to-political-parties.html>

3. Email Interview with Mohit Satyanand, investment analyst and management consultant, New Delhi, Sept. 26, 2011 (available on request).

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

Comments:

Corporate donations, whether to political parties or individual candidates, are underreported in the books of accounting by companies, even though it is permissible under the law.

According to Mohit Satyanand, investment analyst and management consultant, one of the reasons why companies would not officially reflect their political donations "is that they are scared of vindictiveness/pressure if their contributions are in black and white." According to Satyanand, the major source of political financing by corporates "is collections, contributions [and/or] extortions related to favors granted, breach of law ignored, or major case of 'crony capitalism.'" "... Such sums would not appear in the books of the company."

In a study conducted by the Association for Democratic Reforms of the political contributions made by corporations, it appears that officially, corporations would not like to be seen as discriminatory in their "on the record" contributions to political parties.

References:

1. Email Interview with Mohit Satyanand, investment analyst and management consultant, New Delhi, Sept. 26, 2011 (available on request).

2. "Audit corporate funding to political parties: CEC," The Hindu, June 14, 2011
<http://www.thehindu.com/news/national/article2102073.ece>

3. "Political donors don't discriminate: Study," Himanshi Dhawan, TNN, Jan. 4, 2011
<http://timesofindia.indiatimes.com/india/Political-donors-dont-discriminate-Study/articleshow/7213773.cms>

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:

Under Section 10A of the Representation of People Act of 1951, the Election Commission has the powers to disqualify a person for failure to lodge account of election expenses.

Under Section 80, the High Court can entertain an Election Petition against a returned candidate for violations of election laws, among other grounds.

Expenditures incurred in the course of the elections are monitored by the Election Commission, and any violation can be an election offense. Such monitoring is limited to ensuring that the expenditure limits are not violated by candidates.

According to Jagdeep Chhokar, a former director of Indian Institute of Management, Ahmedabad, and a founding member of the Association for Democratic Reforms, the Election Commission "is independent but its investigative capacity is not enough."

There have been some disqualifications affected by the Election Commission, but the grounds are not known.

References:

1. Election Commission of India, Instructions on Expenditure Monitoring in Elections
http://www.kerala.gov.in/docs/election_2011/Instruction_expenditure.pdf

2. Election Expense analysis of MLAs of Assembly Elections 2011
<http://www.adrindia.org/Frontpage-Articles/Content-Front-Page/upcoming-state-assembly-election-2011.html>

3. "EC asks RBI to probe Trinamul for violation," Asian Age, April 28, 2011
<http://www.asianage.com/india/ec-asks-rbi-probe-trinamul-violation-575>

4. "MK Stalin's election challenged in Madras high court," Daily News & Analysis, Jun 27, 2011
http://www.dnaindia.com/india/report_mk-stalin-s-election-challenged-in-madras-high-court_1559840

5. Order of the Election Commission of India In re: Account of election expenses of Shri Ashok Chavan, returned candidate from 85-Bhokar Assembly Constituency at the general election to the Maharashtra Legislative Assembly, 2009 – Scrutiny of account under section 10A of the Representation of the People Act of 1951.
http://eci.nic.in/eci_main/notice_ashokchauhan.pdf

6. Representation of the People Act of 1951, Section 10A & Section 80
<http://lawmin.nic.in/legislative/election/volume%201/representation%20of%20the%20people%20act.%201951.pdf>

7. List of Disqualified Persons, Election Commission of India
http://eci.nic.in/eci_main/ElectionLaws/FinalListofDisqualification.pdf

8. Email interview with Jagdeep Chhokar, a former director of Indian Institute of Management, Ahmedabad, and a founding member of the Association for Democratic Reforms, Sept. 4, 2011 (available on request)

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:

There have been some disqualifications affected by the Election Commission, but the grounds are not known.

According to Jagdeep Chhokar, a former director of Indian Institute of Management, Ahmedabad, and a founding member of the Association for Democratic Reforms, the Election Commission "is independent but its investigative capacity is not enough."

Corrupt practices by a winning candidate can be contested before the High Court in an Election Petition. No figures of the outcomes of such petitions over the years could be found. But there are long delays in deciding these petitions. For instance, an election petition filed over a Kerala state assembly election held in 2001 was disposed of by the Supreme Court in 2010 (Joseph M. Puthussery vs.T.S. John & Ors).

References:

1. Election Commission of India, List of Disqualified Persons
http://eci.nic.in/eci_main/Electorallaws/FinalListofDisqualification.pdf
2. Email interview with Jagdeep Chhokar, a former director of Indian Institute of Management, Ahmedabad, and a founding member of the Association for Democratic Reforms, Sept. 4, 2011 (available on request)

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

Comments:

No auditing is required under the law. Only elections accounts are submitted to the Election Commission and accounts of returned candidates are scrutinized by expenditure observers after the elections and before the candidate is notified.

References:

1. Election Commission of India, Instructions on Expenditure Monitoring in Elections

2. Representation of People Act of 1951, Section 10A and Section 80

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

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?

31

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

100 | 75 | 50 | 25 | 0

Comments:

Candidates are required 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.

Political parties' contribution information is available on the Election Commission website, but it is not up to date.

Information obtained through right to information applications indicate inadequate and/or incomplete information has often been disclosed by political parties.

References:

1. Association for Democratic Reforms, Analysis of Voluntary Contributions received by Political Parties for Financial Year 2007-08 and Financial Year 2008-09, Jan. 3, 2011 (document attached)

2. Election Commission of India, Political Parties — Contribution Report for 2009-2010

http://eci.nic.in/eci_main/mis-Political_Parties/political_parties_Contribution_report2011.asp

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:

While information is available to citizens, it requires deals of great effort and difficulty according to Jagdeep Chhokar, a former director of Indian Institute of Management, Ahmedabad, and a founding member of the Association for Democratic Reforms.

Political parties' contribution information is available on the Election Commission website, but it is not up to date.

Information obtained through right to information applications indicate inadequate or incomplete information is often disclosed by political parties.

References:

1. Association for Democratic Reforms, Analysis of Voluntary Contributions received by Political Parties for Financial Year 2007-08 and Financial Year 2008-09, Jan. 3, 2011 (document attached)

2. Election Commission of India, Political Parties — Contribution Report for 2009-2010
http://eci.nic.in/eci_main/mis-Political_Parties/political_parties_Contribution_report2011.asp

3. Email interview with Jagdeep Chhokar, a former director of Indian Institute of Management, Ahmedabad, and a founding member of the Association for Democratic Reforms, Sept. 4, 2011 (available on request)

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:

The costs of accessing information on political financing may not be a lot but, according to Jagdeep Chhokar, a former director of Indian Institute of Management, Ahmedabad, and a founding member of the Association for Democratic Reforms, costs are not only monetary or financial, but are of various other types of burdens.

References:

1. Email interview with Jagdeep Chhokar, a former director of Indian Institute of Management, Ahmedabad, and a founding member of the Association for Democratic Reforms, Sept. 4, 2011 (available on request)

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 NGOs. 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 NGOs 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:

According to Mohit Satyanand, investment analyst and management consultant, the major source of political financing by corporations "is collections, contributions [and/or] extortions related to favors granted, breach of law ignored, or major case of 'crony capitalism.' ... Such sums would not appear in the books of the company." It follows that the disclosures made by political parties does not quite reflect their financing accurately.

References:

1. Email Interview with Mohit Satyanand, investment analyst and management consultant, New Delhi, Sept. 26, 2011 (available on request)

2. "Political donors don't discriminate: Study," Himanshi Dhawan, TNN, Jan. 4, 2011

<http://timesofindia.indiatimes.com/India/Political-donors-dont-discriminate-Study/articleshow/7213773.cms>

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.

25. Can citizens access records related to the financing of individual candidates' campaigns?

50

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:

Individual candidates make disclosures on their expenses only at the time of elections along with affidavits on assets and liabilities.

Of late, some elected members of parliament and government ministers have begun to publish their assets and liabilities.

References:

Analysis of assets declaration of Union Council of Ministers in the PMO website

<http://www.adrindia.org/Frontpage-Articles/Content-Front-Page/analysis-of-assets-declaration-of-union-council-of-ministers-in-the-pmo-website.html>

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:

Election Expense analysis of MLAs of Assembly Elections 2011

<http://www.adrindia.org/Frontpage-Articles/Content-Front-Page/upcoming-state-assembly-election-2011.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 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 costs are minimal.

References:

Election Expense analysis of MLAs of Assembly Elections 2011

<http://www.adrindia.org/Frontpage-Articles/Content-Front-Page/upcoming-state-assembly-election-2011.html>

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 NGOs. 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 NGOs 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:

According to Jagdeep Chhokar, a former director of Indian Institute of Management, Ahmedabad, and a founding member of the Association for Democratic Reforms, the records are not accurate, reliable and realistic.

Given the election expenditure limits fixed by the Election Commission, the perceived spending of the candidates is invariably more than what they report. For example, an analysis of the recently concluded state assembly election in Tamilnadu, the average amount of money spent by the candidates as reported was only 45 percent of the expenditure limit. But the income tax department seized huge amount of cash from the state during the election period believed to be for use during the elections.

References:

1. Election Expense analysis of MLAs of Assembly Elections 2011

<http://www.adrindia.org/Frontpage-Articles/Content-Front-Page/upcoming-state-assembly-election-2011.html>

2. Email interview with Jagdeep Chhokar, a former director of Indian Institute of Management, Ahmedabad, and a founding member of the Association for Democratic Reforms, Sept. 4, 2011 (available on request)

3. Analysis of Election Expenses of MLA in the Tamilnadu Assembly Elections 2011
<http://adrindia.org/research-and-reports/state-assemblies/tamil-nadu/analysis-election-expenses-mlas-tamil-nadu-2011-assembly-elections>

4. MSN India News, "It's raining cash in poll-bound states," April 6, 2011
<http://news.in.msn.com/national/assemblypolls2011/article.aspx?cp-documentid=5103022>

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 3. Government Conflicts of Interest Safeguards & Checks and Balances

3.1. ⁶⁰Conflicts of Interest Safeguards & Checks and Balances: Executive Branch

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

100

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

Yes | No

Comments:

Articles 32 and 226 of the Constitution of India give 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.

The Supreme Court read Articles 32 and 226 together with Article 300 and held that where there has been a violation of fundamental rights or the enforcement of public duties, the remedy would be available under public law and a suit could also be filed for damages under private law. In *Rudal Shah vs. 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, 226 and 300
<http://lawmin.nic.in/coi/coiason29july08.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.

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

69

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

100 | 75 | 50 | 25 | 0

Comments:

Increased scrutiny on governance by the media and the civil society in the recent past has coincided with improved public communication by the government, at least at the level of the central government. Weekly press briefings to convey decisions of the cabinet is a routine in the central government and some states. The government regularly issues press statements on policy matters. The prime minister has also been holding press conferences and taking critical questions on matters of public concern or controversy. The ministry of external affairs has taken to digital diplomacy by having its own Facebook page, blog site, Twitter account and Youtube channel.

With better implementation of proactive disclosures under the Right to Information Act, government websites have improved vastly in quality and a source for inviting public discourse. The system of Results Framework Documents begun in 2010 has started ranking ministries on their performance and placing the ratings on public domain.

Such publicity of government policy or performance does not always include discussion on every policy, administrative or delegated action with the public where much of the violations and abuse of power occur. In fact, in crucial policy areas, the government has failed to articulate clearly its rationale for decisions raising suspicions on its intentions. The spectrum allocation and pricing is one such issue where huge revenue losses have been reported. Similar lack of clarity and confusion was evident in the appointment of the Central Vigilance Commission and in its approach to the anti-corruption movement to create the Lok Pal as well as relating to some major environmental clearances.

Also, ministers enjoy a great deal of discretionary powers to grant largesse in their function areas, such as allotting land, petrol stations, etc., which is a source for corruption. There are issues of conflict of interest as well with ministers having private interests in the portfolios assigned to them.

References:

1. Prime Minister's Office, Corrected transcript of the interaction between the PM and Newspaper Editors, June 29, 2011
<http://pmindia.nic.in/prelease/content4print.asp?id=1275>
2. "Cabinet approves Lokpal Bill, Gargi Parsai," The Hindu, July 28, 2011
<http://www.thehindu.com/news/national/article2302010.ece>
3. Briefing by Official Spokesperson and Joint Secretary (Europe West) on visit of German chancellor, May 30, 2011
<http://meaindia.nic.in/mystart.php?id=530317691>
4. Draft Consultation Paper on Mobile Governance Policy Framework, March 2011, Department of Information Technology
http://www.mit.gov.in/sites/upload_files/dit/files/Draft_Consultation_Paper_on_Mobile_Governance_110411.pdf
5. "Ranking Our Netas," Forbes India, Feb. 17, 2010
<http://business.in.com/article/boardroom/ranking-our-netas/10202/0>
6. "When to stop," Editorial, Indian Express, Oct. 13, 2011
<http://www.indianexpress.com/news/when-to-stop/859054/0>

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

Comments:

Under Article 32 of the Constitution of India, the Supreme Court has the powers of writ jurisdiction to enforce fundamental rights of citizens. Under Article 226, High Courts in the States also have writ jurisdiction as well as powers to redress any other injury or illegality caused by contravention of any ordinary law.

References:

Constitution of India, Articles 32 and 226
<http://lawmin.nic.in/coi/coiason29july08.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:

Judiciary steps in to check legislative and executive excesses and intervenes where the government is nonfunctioning and ineffective.

There have been some significant interventions and judgments from the Supreme Court in recent months, which has forced the government to tackle governance issues, particularly ones relating to acts of grand corruption, such as the allocation of telecom spectrum and black money issues.

Other examples of significant judicial intervention concern arbitrary and illegal acquisition of land by the state governments to favor builders and industrialists and arming of tribals by the state as an extra-legal police force to contain armed conflict.

There is criticism as well of judicial activism and of some brazenly political statements made by the judiciary which have been seen as intemperate and as "aggrandizement of power".

Given 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, there is a vast amount of administrative action that happens. While the courts have been alert to strike down extra-legal policies/orders, recourse to justice is out of reach of the poor and when citizens do knock the doors of the courts, the justice delivery system is slow.

References:

1. "SC's activism: Is it judicial overreach or government under-reach?" Bibek Debroy, Economic Times, July 17, 2011
http://articles.economictimes.indiatimes.com/2011-07-17/news/29784490_1_judiciary-civil-society-black-money.

2. "Constitutional excesses," A.G. Noorani, Frontline, Volume 28 – Issue 20, Sept. 24-Oct. 7, 2011
<http://www.frontlineonnet.com/fl2820/stories/20111007282010400.htm>

3. "Development, Justice and the Constitution," Kalpana Kannabiran, The Hindu, July 27, 2011
<http://www.thehindu.com/opinion/op-ed/article2296451.ece>

4. "Talk of judicial overreach is bogey: Supreme Court," The Hindu, July 15, 2011
<http://www.thehindu.com/todays-paper/tp-national/article2228591.ece>

5. "Supreme Court slams U.P. over land acquisition," The Hindu, June 28, 2011
<http://www.hindu.com/2011/06/28/stories/2011062857950100.htm>

6. "Earthy reality needs soaring rhetoric," Arun Kumar, The Hindu, July 9, 2011
<http://www.thehindu.com/opinion/op-ed/article2211510.ece>

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). Judicial review acts as a check on the misuse of powers vested upon the administrative authorities.

Executive orders without legislative authority is not so pervasive as administrative action without the authority of law. However, there are a few instances of major government programs and authorities set up to undertake these programs without the sanction of law and which have drawn a lot of criticism, such as the Unique Identity Authority of India and the Pension Fund Regulatory and Development Authority.

Considering that there are more than 3,000 central laws and perhaps more than 30,000 state laws dating from 1836 that are still on the statute books, it is difficult to estimate the extent of executive action without the authority of law unless the courts have intervened.

An example of a law passed by the government of Kerala — Kovalam Palace (Taking over By Resumption) Act of 2005 — which was struck down by the Kerala High Court as unconstitutional is cited. The Court held that the legislation was without authority and in violation of the doctrine of separation of powers, under which the legislature does not get the power to adjudicate disputes.

The administrative excesses are largely seen in tax administration and also in the exercise of eminent domain.

References:

1. High Court Of Kerala judgement on "Kovalam Hotels Ltd. vs. State Of Kerala" (2011) (document attached)
2. "Delhi, Mumbai airport development fee without 'authority of law': SC," Indian Express, April 27, 2011
<http://www.indianexpress.com/news/delhi-mumbai-airport-development-fee-without-authority-of-law-sc/782113/0>
3. Lawetel News, "New pension scheme for railway employees challenged," April 26, 2011
<http://www.lawetelnews.com/NewsDetail.asp?newsid=3870>
4. "Pandora's Real Estate Box," Ranjeev C. Dubey, Business World, Aug. 6 2011
<http://www.businessworld.in/businessworld/businessworld/content/Pandoras-Real-Estate-Box.html>
5. "Prominent citizens issue legal notices to UIDAI and Planning Commission over Aadhaar," July 7, 2011
<http://www.suchetadala.com/?id=8858ed8f-6c6a-7f5b-4e1594fdbaa6&base=sections&f>

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?

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

Yes | No

Comments:

Article 56 of the Constitution of India provides for impeachment of the President (the nominal head of State) for violation of the Constitution:

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 of 1988, and can be prosecuted.

There has been a lot of debate in recent months whether or not to bring the office of the prime minister under the purview of the Lokpal, the proposed institution of the ombudsman.

References:

1. Constitution of India, Article 56
<http://lawmin.nic.in/coi/coiason29july08.pdf>

2. Indian Penal Code, 1860, Section 21
<http://mha.nic.in/pdfs/IPC1860.pdf>

3. Prevention of Corruption Act, 1988. Section 2(c)
http://cbi.nic.in/rt_infoact/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

Comments:

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

There is currently a lot of debate is on to investigate and prosecute ministers by the proposed institution of the ombudsman.

References:

1. Indian Penal Code, 1860, Section 21
<http://mha.nic.in/pdfs/IPC1860.pdf>

2. Prevention of Corruption Act of 1988, Section 2(c)
http://cbi.nic.in/rt_infoact/pcact.pdf

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?

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

Yes | No

Comments:

No declaration is required by the president (head of state) under law. However, the president has declared her assets.

Ministers of the government, including the prime minister (head of government) are required to submit their asset declarations under the Code of Conduct for Ministers.

As candidates for election, asset declarations are required under Section 75A of the Representation of the People Act of 1951.

As members of parliament, asset declarations are required under the Members of Lok Sabha (Declaration of Assets and Liabilities) Rules, 2004, and Members of Rajya Sabha (Declaration of Assets and Liabilities) Rules, 2004, as applicable to the members.

References:

1. Representation of the People Act of 1951, Section 75A
<http://lawmin.nic.in/legislative/election/volume%201/representation%20of%20the%20people%20act,%201951.pdf>
2. Members of Lok Sabha (Declaration of Assets and Liabilities) Rules, 2004,
http://164.100.47.133/ls/templates/Rules_L_A_2004_E.pdf
3. Members of Rajya Sabha (Declaration of Assets and Liabilities) Rules, 2004
http://rajyasabha.nic.in/rsnew/members/declaration_assets_rules_2006.pdf
4. Code of Conduct for Minister (Centre and State), 2010
<http://www.mha.nic.in/pdfs/codeofconduct-160810.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

Comments:

Ministers of the government, including the prime minister (head of government) are required to submit their asset declarations under the Code of Conduct for Ministers. The ministry of home affairs has only recently placed the Code of Conduct for Ministers in the public domain. This code was so far kept confidential.

As candidates for election, asset declarations are required under Section 75A of the Representation of the People Act of 1951.

As members of parliament, asset declarations are required under the Members of Lok Sabha (Declaration of Assets and Liabilities) Rules, 2004, and Members of Rajya Sabha (Declaration of Assets and Liabilities) Rules, 2004, as applicable to the members.

References:

1. Representation of the People Act of 1951, Section 75A
<http://lawmin.nic.in/legislative/election/volume%201/representation%20of%20the%20people%20act,%201951.pdf>
2. Members of Lok Sabha (Declaration of Assets and Liabilities) Rules, 2004,
http://164.100.47.133/ls/templates/Rules_L_A_2004_E.pdf
3. Members of Rajya Sabha (Declaration of Assets and Liabilities) Rules, 2004
http://rajyasabha.nic.in/rsnew/members/declaration_assets_rules_2006.pdf
4. Code of Conduct for Minister (Centre and State), 2010
<http://www.mha.nic.in/pdfs/codeofconduct-160810.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:

The ministry of home affairs has only recently placed the Code of Conduct for Ministers in the public domain. This code was so far kept confidential.

References:

1. Code of Conduct for Minister (Centre and State), 2010
<http://www.mha.nic.in/pdfs/codeofconduct-160810.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

Comments:

There is no requirement for independent audit of the declarations. But the Code of Conduct for Ministers states that the concerned authority designation to ensure observance of the code (the prime minister or chief minister as the case may be) needs to "follow such procedure as it might deem fit, according to the facts and circumstances of each case, for dealing with or determining any alleged or suspected breach of this code."

References:

Code of Conduct for Ministers (Centre and State), 2010
<http://www.mha.nic.in/pdfs/codeofconduct-160810.pdf>

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 (based on desk research).

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

Comments:

As there are no legal restrictions on post-government employment, this score is not relevant or valid.

References:

No sources exist.

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:

While there is a Code of Conduct for Ministers, which regulates gifts and hospitality, there is no information on how the gifts and hospitality regulations contained in the code is being enforced. There is also no auditing done of the reporting related to gifts and hospitality.

However, an IFC Enterprise Survey 2006 indicates that firms are expected to give gifts for obtaining operating licenses and contracts and meeting tax officials.

Another study by Trace International's BRIBELine indicates that 5 percent of bribes demanded were in the nature of gifts and 1 percent in the nature of hospitality.

References:

1. Enterprise Surveys, India Snapshot 2006, IFC
<http://www.enterprisesurveys.org/ExploreEconomies/?economyid=89&year=2006>

2. Business Registry for International Bribery and Extortion (BRIBELine)
India Report, 2009
<https://secure.traceinternational.org/data/public/documents/IndiaReportPressKit011009-64642-1.pdf>

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

Comments:

There is no auditing of asset disclosures by the executive branch.

The media have investigated and nongovernmental organizations have analyzed the assets disclosed in the public domain.

References:

1. Association for Democratic Reforms, Analysis of assets declaration of Union Council of Ministers in the PMO website, Sept. 15, 2011

<http://www.adrindia.org/Frontpage-Articles/Content-Front-Page/analysis-of-assets-declaration-of-union-council-of-ministers-in-the-pmo-website.html>

2. "Sharad Pawar fooled all with Rs12 crore assets disclosure," Daily News and Analysis, Sept. 14, 2011

http://www.dnaindia.com/india/report_sharad-pawar-fooled-all-with-rs12-crore-assets-disclosure_1586905

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:

The head of state (the president) of India is not required by law to file asset disclosures. But the president's asset disclosures are available on the website of the president's secretariat.

While there is a law requiring declaration of assets by the head of the government (the prime minister) and other cabinet ministers, there is no law requiring these asset disclosure records to be made accessible to citizens.

However, repeated requests through the Right to Information Act for such disclosures have made such disclosures accessible to the citizens so much so these disclosures are now proactively placed on the websites of the prime minister's office and the president's office.

References:

Code of Conduct for Minister (Centre and State), 2010
<http://www.mha.nic.in/pdfs/codeofconduct-160810.pdf>
<http://presidentofindia.nic.in/assets.html>

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:

Annual statements of assets of the head of state (the president) and government (the prime minister) are now placed on the websites and are easily accessible to citizens.

References:

1. President of India
<http://presidentofindia.gov.in/assets.html>
2. Prime Minister's Office
<http://pmindia.gov.in/rti.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:

Annual statements of assets of the head of state (the president) and government (the prime minister) are now placed on the websites and are easily accessible to citizens without any cost.

References:

1. President of India
<http://presidentofindia.gov.in/assets.html>
2. Prime Minister's Office
<http://pmindia.gov.in/rti.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 NGOs. 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 NGOs 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:

Format of the asset declarations requires giving details on movable and immovable assets. In the absence of any audit, it is not possible to say whether the declarations are complete and accurate.

References:

1. President of India

<http://presidentofindia.gov.in/assets.html>

2. Prime Minister's Office

<http://pmindia.gov.in/rti.htm>

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.

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

50

31a. 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 for political parties and candidates. The code doesn't have the force of law and hasn't completely done away with the misuse of public money for partisan purposes, but has perhaps limited it, as rivals are quick to complain of any misuse, and the election commission sends out notices of violation.

Though the conduct rules mandate that the government personnel should not to take part in any political activities, in practice the line is difficult to draw. Large sections of government personnel are seen as "committed" bureaucrats, particularly in the states where political interference in governance is more marked.

Government programs, particularly those derived out of MP/MLA funds, result in local politicians closely monitoring/ influencing implementation of the programs, blurring the line between the party and the government.

References:

1. Election Commission of India, Model Code of Conduct for Political Parties and Candidates

http://eci.nic.in/eci_main/faq/faq_mcc.pdf

2. "Government machinery being misused: Congress," The Hindu, April 3, 2011

<http://www.hindu.com/2011/04/03/stories/2011040357470300.htm>

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.

3.2. Conflicts of Interest Safeguards & Checks and Balances: Legislative Branch

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:

Writ jurisdiction provided under Articles 32 and 226 of the Constitution of India allows the Supreme Court and the High Court to decide on the constitutionality of laws passed by the legislature.

While the parliament has in the past tried to restrict the powers of the judiciary to review laws passed by the parliament, the judiciary has drawn a line to hold that it has powers of judicial review concerning some basic features of the Constitution like sovereignty, the democratic and secular character of the nation, rule of law, independence of the judiciary and the fundamental rights of citizens.

References:

Constitution of India, Articles 32 and 226
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 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 judiciary is known to aggressively review the constitutionality of laws challenged before it, but the court has also buckled to executive pressures and overreached itself by way of judicial activism. It has generally refused to review economic policies.

References:

1. High Court of Kerala in Kovalam Hotels Ltd. vs. State Of Kerala (2011) (attached document)
2. "Singur Act constitutional, valid: Calcutta High Court," Daily News and Analysis, Sept. 28, 2011
http://www.dnaindia.com/india/report_singur-act-constitutional-valid-calcutta-high-court_1592501
3. Saumya Ann Thomas vs. Union of India I.L.R. 2010 (1) Kerala High Court striking down Section 10A(1) of the Indian Divorce Act 1869
4. "35 years later, a former Chief Justice of India pleads guilty," Indian Express, Sept. 16, 2011
<http://www.indianexpress.com/news/35-yrs-later-a-former-chief-justice-of-india-pleads-guilty/847392/0>

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:

Legislators have no immunity from criminal prosecution. The speaker/ chairman of the Lok Sabha/Rajya Sabha has to be informed of any arrest or 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, members of parliament are public servants within the meaning of Section 21 of the Indian Penal Code 1860 and Section 19 of the Prevention of Corruption Act of 1988, and therefore require sanction for prosecution from the concerned sanctioning authority.

References:

1. Indian Penal Code 1860, Section 21
<http://mha.nic.in/pdfs/IPC1860.pdf>
2. Prevention of Corruption Act of 1988, Section 19
http://cbi.nic.in/rt_infoact/pcact.pdf
3. Constitution of India, Article 105
india.gov.in/govt/documents/english/coi_part_full.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

Comments:

Candidates for parliamentary and state elections are required to declare their assets and liabilities when filing their nomination for the elections in terms of instructions issued under the Representation of People Act of 1951. These affidavits are available on the website of the Election Commission of India.

Members of parliament are further required to declare assets and liabilities within 90 days of taking the oath of office under Section 75A of the Representation of the People Act of 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.

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). There is no requirement of the declarations to be updated annually after the initial declaration.

In the Rajya Sabha (Upper House), the disclosures are required to be updated annually and can be made public only with the approval of the chairman of the Rajya Sabha.

References:

1. Representation of the People Act of 1951, Section 75A
<http://lawmin.nic.in/legislative/election/volume%201/representation%20of%20the%20people%20act.%201951.pdf>
2. Members of Lok Sabha (Declaration of Assets and Liabilities) Rules, 2004,
http://164.100.47.133/ls/templates/Rules_L_A_2004_E.pdf
3. Members of Rajya Sabha (Declaration of Assets and Liabilities) Rules, 2004
http://rajiyasabha.nic.in/rsnew/members/declaration_assets_rules_2006.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

Comments:

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

References:

No sources exist.

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:

The regulations relating to gifts and hospitality relating to members of parliament are vague. The Rajya Sabha Handbook says

that a member should not take gifts that hamper performance of his duties.

The Foreign Contribution Regulation Act of 2010 prohibits candidates for election, political party or members of parliament or legislative assemblies from receiving any foreign contribution. Gifts or hospitality can be received only as per laid down procedure.

Article 102 and 191 of the Constitution of India bars members of parliament or legislative assemblies from holding any office of profit while they are members. Legislators may be disqualified if they hold any office of profit in the central or state government other than the ones exempted by law.

Rajya Sabha members file a "register of interests," which is not made public. No such requirement exists for Lok Sabha members.

References:

1. Constitution of India, Articles 102 and 191
india.gov.in/govt/documents/english/coi_part_full.pdf
2. Members of Lok Sabha (Declaration of Assets and Liabilities) Rules, 2004,
http://164.100.47.133/s/templates/Rules_L_A_2004_E.pdf
3. Members of Rajya Sabha (Declaration of Assets and Liabilities) Rules, 2004
http://rajasabha.nic.in/rsnew/members/declaration_assets_rules_2006.pdf
4. Code of Conduct for Minister (Centre and State), 2010
<http://www.mha.nic.in/pdfs/codeofconduct-160810.pdf>
<http://presidentofindia.nic.in/assets.html>
5. Foreign Contribution Regulation Act of 2010
<http://mha.nic.in/fcra.htm>
6. Handbook for Members of Rajya Sabha
<http://rajasabha.nic.in/rsnew/handbook/handbookmain.asp>

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 has been referred, no law covering this indicator (based on desk research).

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**

Comments:

Since there are no such restrictions, this scoring of this indicator is not valid.

References:

No sources exist.

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

Comments:

The regulations relating to gifts and hospitality relating to members of parliament are vague.

Political party or members of parliament or legislative assemblies are barred from receiving any foreign contribution. Gifts or hospitality can be received only as per laid down procedure. Rajya Sabha (Upper House) members file a “register of interests,” which is not made public. No such requirement exists for Lok Sabha member.

The scoring of the indicator reflects that it has not been possible to assess the effectiveness of the regulations since they are either vague or absent.

References:

No sources exist.

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

Comments:

There is no requirement for asset disclosures to be audited. Therefore, this indicator score is not valid.

References:

No sources exist.

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?

38

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

Yes | No

Comments:

Though the legislatures are required to declare their assets, this information is not available to the public. This can be disclosed at the discretion of the speaker/ chairman of the house on an application filed under the Right to Information Act.

References:

1. Representation of the People Act of 1951, Section 75A
<http://lawmin.nic.in/legislative/election/volume%201/representation%20of%20the%20people%20act.%201951.pdf>
2. Members of Lok Sabha (Declaration of Assets and Liabilities) Rules, 2004,
http://164.100.47.133/ls/templates/Rules_L_A_2004_E.pdf
3. Members of Rajya Sabha (Declaration of Assets and Liabilities) Rules, 2004
http://rajyasabha.nic.in/rsnew/members/declaration_assets_rules_2006.pdf
4. Code of Conduct for Minister (Centre and State), 2010
<http://www.mha.nic.in/pdfs/codeofconduct-160810.pdf>
<http://presidentofindia.nic.in/assets.html>

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, non-governmental 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:

While asset and liability affidavits of candidates for the Lok Sabha (lower house) filed before the ECI prior to the elections are in the public domain, the MPs asset disclosures are not public. In the Rajya Sabha (Upper House), the disclosures can be made public only with the approval of the chairman of the Rajya Sabha.

Though the law exists for submission of asset disclosures in some form, not all MPs actually submit them and in any case, making them available to citizens would be by way of filing applications under the right to information.

References:

1. "Providing travel expenditure details of MPs not 'feasible': LS," Asian Age, Sept. 18, 2011
<http://www.asianage.com/india/providing-travel-expenditure-details-mps-not-feasible-ls-837>
2. "Asset disclosure: Meira threatens action against Lalu, Kalyan," Indian Express, April 23, 2010
<http://www.indianexpress.com/news/asset-disclosure-meira-threatens-action-aga/610467/>

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:

Obtaining information from public authorities under the Right to Information Act is not expensive, but information relating to asset declarations of MPs is difficult to access.

References:

1. "Providing travel expenditure details of MPs not 'feasible': LS," Asian Age, Sept. 18, 2011
<http://www.asianage.com/india/providing-travel-expenditure-details-mps-not-feasible-ls-837>

2. "Asset disclosure: Meira threatens action against Lalu, Kalyan," Indian Express, April 23, 2010
<http://www.indianexpress.com/news/asset-disclosure-meira-threatens-action-aga/610467/>

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 NGOs. 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 NGOs 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:

The declaration is as per a format that requires information relating to movable and immovable properties to be given in detail. However, in the absence of any auditing, it is difficult to assess the quality of the declarations.

Media investigations and NGO analysis is the only means of assessing quality as evident in the case of one member of parliament or minister cited above.

References:

"Sharad Pawar fooled all with Rs12 crore assets disclosure," Daily News and Analysis, Sept. 14, 2011,
http://www.dnaindia.com/india/report_sharad-pawar-fooled-all-with-rs12-crore-assets-disclosure_1586905

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?

100

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

Yes

No

Comments:

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.

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

References:

1. Rules of Procedure and Conduct of Business in the Lok Sabha, Rule 379 and Rule 382
<http://loksabha.nic.in/>

2. Rules of Procedure and Conduct of Business in the Rajya Sabha, Rule 260
<http://rajyasabha.nic.in/rsnew/rsweb.asp>

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:

Information on legislative business and debates is freely available on the websites of the respective houses.

References:

1. Rules of Procedure and Conduct of Business in the Lok Sabha, Rule 379 and Rule 382
<http://loksabha.nic.in/>

2. Rules of Procedure and Conduct of Business in the Rajya Sabha, Rule 260
<http://rajyasabha.nic.in/rsnew/rsweb.asp>

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:

Information on legislative business and debates is freely available on the websites of the respective houses.

References:

1. Rules of Procedure and Conduct of Business in the Lok Sabha, Rule 379 and Rule 382
<http://loksabha.nic.in/>

2. Rules of Procedure and Conduct of Business in the Rajya Sabha, Rule 260
<http://rajyasabha.nic.in/rsnew/rsweb.asp>

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 NGOs. 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 NGOs trying to access this information.

61 3.3. Conflicts of Interest Safeguards & Checks and Balances: Judicial Branch

36. Are judges appointed fairly?

42

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

Yes | No

Comments:

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.

References:

Constitution of India, Articles 124(2) and 217

<http://lawmin.nic.in/coi/coiason29july08.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.

100 | 75 | 50 | 25 | 0

Comments:

The current system of appointment of judges to the Supreme Court and the High Courts gives primacy to the judiciary through a collegium system. The process is nontransparent, and the quality of judges selected have come into question, largely due to integrity related allegations. There are a large number of vacancies in the higher judiciary, and the closed selection process is stated to be one of the reasons why good law practitioners stay away from judgeships.

The Supreme Court is currently hearing a petition to revisit the collegium system brought into operation by a 1993 judgement of the Supreme Court.

The government is also considering a constitutional amendment to make the appointment system transparent and ensure better quality of judges.

The government had separately introduced the Judicial Standards and Accountability Bill of 2010 in the Parliament. The bill was considered by the Parliamentary Standing Committee, which returned it to the government to comprehensively address systematic lacunae in the judiciary and redraft the bill. The most significant lacuna highlighted by the committee relates to the present method of appointment of judges in the higher judiciary.

References:

1. "Wrong people sometimes elevated to higher judiciary: Ex-CJI Verma," The Times of India, June 27, 2011

http://articles.timesofindia.indiatimes.com/2011-06-27/india/29708763_1_higher-judiciary-js-verma-cji

2. "Supreme Court to consider 10 questions," The Hindu, April 6, 2011

<http://www.thehindu.com/news/national/article1603135.ece>

3. "Centre planning to revisit collegium system of judicial appointments: Moily," J. Venkatesh, The Hindu, June 4, 2011

<http://www.thehindu.com/todays-paper/tp-national/article2075493.ece>

4. Rajya Sabha, Department related Parliamentary Standing Committee on Personnel, Public Grievances, Law And Justice, Forty Seventh Report on the Judicial Standards and Accountability Bill of 2010 (presented to the Rajya Sabha on Aug. 30, 2011 and laid on the Table of the Lok Sabha on Aug. 30, 2011)

<http://164.100.47.5/newcommittee/reports/EnglishCommittees/Committee%20on%20Personnel.%20PublicGrievances.%20Law%20and%20Justice/47.pdf>

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:

There is no requirement of a confirmation process.

The current procedure is set out by judicial interpretation (Supreme Court Advocates-on-Record Association vs. Union of India, 1998). The concept of a "collegium" was introduced by this interpretation, which is not envisaged in the Constitution and requires a "consultation". 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 most senior 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. For the appointment to the High Court, the recommendation must be made in consultation with the two seniormost -puisne judges of the Supreme Court.

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:

While the common law tradition requires that every judicial or quasijudicial decision has to be based on reasons, there are instances of violations. From time to time, the higher judiciary strikes down decisions that have been passed without giving reasons.

References:

Supreme Court of India, Assistant Commissioner, Commercial Tax Department, Works Contract & Leasing, Kota Vs. M/s Shukla & Brothers (2010) (attached document)

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:

A judge of the Supreme Court and the high court can be removed as per the provisions laid out in Articles 124 and 217, respectively, which require that an order of the president be passed after an address by each House of Parliament supported by a majority of the total membership of that house and by a majority of not less than two-thirds of the members of that house present and voting has been presented to the president in the same session for such removal on the ground of proved misbehavior or incapacity.

The procedure for investigating and proving misbehavior and incapacity of judges is contained in the Judges (Inquiry) Act of 1968. 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 follows the provisions of Articles 124 and 217 of the Constitution.

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 does not warrant impeachment.

The existing laws and procedures have been found inadequate, and increasing instances of corruption and misconduct have come to light where the judiciary have not responded appropriately to address the deterioration standards. The government has introduced the Judicial Standards and Accountability Bill of 2010, which was considered by the Parliamentary Standing Committee and returned to the government for redrafting on several issues that the committee pointed out.

References:

1. Constitution of India, Articles 124 and 217

<http://lawmin.nic.in/coi/coiason29july08.pdf>

2. Judges Enquiry act of 1968

<http://www.vakilno1.com/bareacts/Laws/The-Judges-Inquiry-Act-1968.htm>

3. Rajya Sabha, Department related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, Forty Seventh Report on the Judicial Standards And Accountability Bill of 2010 (presented to the Rajya Sabha on Aug. 30, 2011, and laid on the Table of the Lok Sabha on Aug. 30, 2011)

<http://164.100.47.5/newcommittee/reports/EnglishCommittees/Committee%20on%20Personnel,%20PublicGrievances,%20Law%20and%20Justice/47.pdf>

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:

Under the Judges (Inquiry) Act of 1968, which regulates the procedure for investigating and proving misbehavior and incapacity of a judge, the investigation is done by a three-member Inquiry Committee consisting of two judges and a jurist.

In the Constitutional framework of checks and balances, the actual removal on the basis of the investigation is 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.

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

The government has moved the Judicial Standards And Accountability Bill of 2010, which has been returned to the government by the Parliamentary Standing Committee for the government to reconsider some the issues raised by the committee.

References:

1. Constitution of India, Articles 124 and 217

<http://lawmin.nic.in/coi/coiason29july08.pdf>

2. Judges Enquiry act, 1968

<http://www.vakilno1.com/bareacts/Laws/The-Judges-Inquiry-Act-1968.htm>

3. Rajya Sabha, Department related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, Forty Seventh Report on the Judicial Standards And Accountability Bill of 2010 (presented to the Rajya Sabha on Aug. 30, 2011, and laid on the Table of the Lok Sabha on Aug. 30, 2011)

<http://164.100.47.5/newcommittee/reports/EnglishCommittees/Committee%20on%20Personnel,%20PublicGrievances,%20Law%20and%20Justice/47.pdf>

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:

There have been a number of cases involving judges against whom serious allegations of misconduct have been made. But it is very difficult to actually investigate and impeach a judge if the misconduct is established. The resistance comes from within the judiciary where the Supreme Court has been seen to push cases under the carpet to protect their turf or fearing adverse publicity.

In a rare case recently, a high court judge was recommended for impeachment on the findings of the enquiry committee. The Rajya Sabha (Upper House) found his misconduct established and voted for his removal. Before the motion could be passed by the Lok Sabha (Lower House), the judge resigned, and the impeachment motion was dropped. In the case of another high court judge against whom several allegations of corruption were to be investigated, the inquiry committee, which had been constituted under the Judges (Inquiry) Act, was disbanded when this judge resigned.

There have been some instances where criminal prosecutions have been initiated, but this needs to be approved by the Supreme Court chief justice.

The Judicial Standards And Accountability Bill of 2010, introduced in the Parliament recently, has attempted to set statutory standards for judges and make transparent the process of disciplining them.

References:

1. "Why is it so hard to budge a judge," P.P. Rao, Financial Express, Aug. 19, 2011

<http://www.financialexpress.com/news/why-is-it-so-hard-to-budge-a-judge/834013/0>

2. "Dinakaran's pre-emptive resignation scuttles probe," Manoj Mitta, TNN, Oct. 2, 2011

<http://timesofindia.indiatimes.com/india/Dinakarans-pre-emptive-resignation-scuttles-probe/articleshow/10201564.cms>

3. "Justice Soumitra Sen resigns," Indian Express, Sept. 1, 2011

<http://www.indianexpress.com/news/justice-soumitra-sen-resigns/840331/>

4. Rajya Sabha, Department related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, Forty Seventh Report on the Judicial Standards And Accountability Bill of 2010 (presented to the Rajya Sabha on Aug. 30, 2011, and

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:

Corrupt judges are almost always allowed to resign before any inquiry is taken to a logical conclusion. There appears to be only one known conviction of a member of the lower judiciary in a corruption case (report cited).

References:

1. "Why is it so hard to budge a judge," P.P. Rao, Financial Express, Aug. 19, 2011

<http://www.financialexpress.com/news/why-is-it-so-hard-to-budge-a-judge/834013/0>

2. "Dinakaran's pre-emptive resignation scuttles probe," Manoj Mitta, TNN, Oct. 2, 2011

<http://timesofindia.indiatimes.com/India/Dinakarans-pre-emptive-resignation-scuttles-probe/articleshow/10201564.cms>

3. "Justice Soumitra Sen resigns," Indian Express, Sept. 1, 2011

<http://www.indianexpress.com/news/justice-soumitra-sen-resigns/840331/>

4. Rajya Sabha, Department related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, Forty Seventh Report on the Judicial Standards And Accountability Bill of 2010 (presented to the Rajya Sabha on Aug. 30, 2011, and laid on the Table of the Lok Sabha on Aug. 30, 2011)

<http://164.100.47.5/newcommittee/reports/EnglishCommittees/Committee%20on%20Personnel,%20PublicGrievances,%20Law%20and%20Justice/47.pdf>

5. "Court convicts JMIC Bhardwaj for graft," Times of India, May 16, 2009

http://articles.timesofindia.indiatimes.com/2009-05-16/chandigarh/28151345_1_rm-gupta-cbi-sleuths-sessions-judge

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?

21

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.

But subsequent to a ruling by the Central Information Commission decision asking the Supreme Court to disclose whether judges declared their assets or not and upheld by the Delhi High Court, the Supreme Court decided to "voluntarily" declare their assets on their website.

The decision of the Supreme Court earlier to challenge the Central Information Commission and the High Court rulings resulted in individual judges of various high courts "revolting" and voluntarily placing their assets declarations on the high court websites or their personal blogs and articulating their support for disclosures.

References:

"Accountability, M'Lord," Prashant Bhushan, Outlook Magazine, Sept .15, 2009

<http://www.outlookindia.com/article.aspx?261830>

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 is no law, but the full bench of the Supreme Court adopted a "Restatement of Values of Judicial Life," which states: "A judge shall not accept gifts or hospitality except from his family, close relations and friends."

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, etc., are prohibited from accepting foreign contribution.

The Judicial Standards and Accountability Bill of 2010 proposes a statutory backup to the Judicial Standards as set out in the Restatement of Values as adopted in the Conference of Chief Justices in 1999.

References:

1. Restatement Of Values Of Judicial Life

(As Adopted by Full Bench of Supreme Court on May 7, 1997)

http://www.judicialreforms.org/files/restatement_of_values_jud_life.pdf

2. Judicial Standards and Accountability Bill of 2010

http://164.100.47.5/newcommittee/press_release/bill/Committee%20on%20Personnel,%20PublicGrievances,%20Law%20and%20Justice/Judicial%20sta

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 has been referred, no law or regulation covering this indicator. This is based on desk research.

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:

The only restriction which exists is that for judges of the Supreme Court under Article 124(7) which mandates: "No person who has held office as a judge of the Supreme Court shall plead or act in any court or before any authority within the territory of India."

References:

Constitution of India, Article 124(7)
<http://lawmin.nic.in/coi/coiason29july08.pdf>

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:

There is no restriction on post-government employment for the higher judiciary. Therefore, this score is not valid.

The only restriction which exists is that for judges of the Supreme Court under Article 124(7) which mandates that a judge of the Supreme Court cannot plead or act in any court or before any authority within the territory of India.

However, that doesn't stop the judges of the higher judiciary from accepting assignment with commissions and regulatory bodies as post retirement sinecures. In one recent instance, a Supreme Court judge had been appointed to head a tribunal even before he completed his tenure in the judiciary.

References:

"SC judge gets tribunal job before retirement," Indian Express, April 19, 2011
<http://www.indianexpress.com/news/sc-judge-gets-tribunal-job-before-retirement/778019/>

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

Comments:

The Restatement of Values of Judicial Life bars judges from accepting gifts and hospitality, but there is little information in the public domain regarding implementation of this aspect. There is some indications of conflict of interest situations when parties complain or judges themselves recuse from hearing particular cases. Such instances of recusal are not frequent.

The Judicial Standards and Accountability Bill of 2010 proposes a statutory backup to the Judicial Standards as set out in the Restatement of Values as adopted in the Conference of Chief Justices in 1999.

References:

"The fine line for judges," Latha Jishnu, Down to Earth magazine, Sept. 30, 2011

<http://www.downtoearth.org.in/content/fine-line-judges>

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

Comments:

There is no auditing done of asset declarations. In the case of the former chief justice of India, huge assets held by his family members have come to light that were not reflected in his asset disclosures when he was the chief justice of the Supreme Court. He is now the chairman of the National Human Rights Commission, and there have been many calls for his resignation.

References:

Letter to the President , April 4, 2011, Campaign for Judicial Accountability and Judicial Reforms

http://www.judicialreforms.org/files/letter_to_president-KGB.pdf

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?

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

Yes | **No**

Comments:

There is no law, but judges of the higher judiciary have begun to place their asset declarations on court websites.

References:

1. Supreme Court of India, Asset Disclosures of Sitting Judges
<http://supremecourtindia.nic.in/assets.htm>

2. Delhi High Court, Asset Disclosures of Sitting Judges
<http://delhihighcourt.nic.in/assets.asp>

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:

Asset disclosures of judges of the Supreme Court and most high courts are now publicly available on court websites. Subsequent to a full court decision by the Supreme Court in 2009, the Supreme Court has been disclosing asset of its judges on its website since 2010. High courts have been gradually following the Supreme Court's lead .

References:

1. Supreme Court of India, Asset Disclosures of Sitting Judges
<http://supremecourtindia.nic.in/assets.htm>

2. Delhi High Court, Asset Disclosures of Sitting Judges
<http://delhihighcourt.nic.in/assets.asp>

3. "Supreme Court judges to disclose assets," Dhananjay Mahapatra, Times of India, Aug. 27, 2009
http://articles.timesofindia.indiatimes.com/2009-08-27/india/28160981_1_full-court-meeting-assets-and-liabilities-judges

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:

Asset disclosures are freely available on court websites.

References:

1. Supreme Court of India, Asset Disclosures of Sitting Judges

<http://supremecourtindia.nic.in/assets.htm>

2. Delhi High Court, Asset Disclosures of Sitting Judges

<http://delhihighcourt.nic.in/assets.asp>

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 NGOs. 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 NGOs 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:

The asset declarations are in the form that require judges to report all movable and immovable properties held by the judge and his/her spouse. But since these declarations are not audited, their quality is doubtful, given the allegations of corruption that besets the judiciary, particularly the higher judiciary.

The instance of the former chief justice is cited.

References:

Letter to the President, April 4, 2011, for action against former Supreme Court chief justice and current chairman of the National Human Rights Commission

http://www.judicialreforms.org/files/letter_to_president~KGB.pdf

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.

3.4. Budget Process Oversight & Transparency

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

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

Yes | No

Comments:

Article 112 of the Constitution provides: "The president shall, in respect of every financial year, cause to be laid before Parliament, [an] annual financial statement."

Article 265 provides that "no tax shall be levied or collected except by authority of law."

Article 266 provides that no expenditure can be incurred except with the authorization of the Legislature.

For the rules of procedure for conduct of financial business and annual budgets is laid out in the Rules of Procedure and Conduct of Business in Lok Sabha, Chapter XIX, Financial Business, Budget.

References:

1. Constitution of India, Articles 112, 265 and 266

<http://lawmin.nic.in/col/coliason29july08.pdf>

2. 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:

By design, the annual budget and finance bill requires legislative approval. In practice, though public finances go through the process of legislative approvals, the quality of this legislative oversight is questionable. Budgets are passed without any serious debate or discussions on the demands for grants of ministries or departments nor is there any significant scrutiny of expenses and outcomes.

References:

1. "Financial Oversight by Parliament : Background Note for the Conference on Effective Legislatures," PRS Legislative Research

<http://www.prsindia.org/uploads/media/Conference%20note/Conference%20note%20on%20financial%20oversight.pdf>

2. "Economic implications of the Union budget," The Hindu, March 7, 2011

<http://www.hindu.com/biz/2011/03/07/stories/2011030753361700.htm>

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, even assuming the legislatures are interested. Also of concern are parliamentary competence to understand the complexity of the accounting issues and program overview to enable any meaningful oversight.

A study conducted by PRS Legislative research indicates that about 90 percent of the demand for grants (expenditure required to be voted) are passed without any discussions.

Accountability Initiative director Yamini Aiyar, in New Delhi, says: "In fact, the problem lies in the fact that government of India (and state governments) have very few incentives to monitor expenditures as the accounting system enables them to book releases as expenditure. Final expenditures are collated through the comptroller General of Accounts' office once the final accounts are audited. There is a two-year time lag before actual expenditures are made available. These are extremely difficult to understand. There is no system of demystifying and analyzing these reports to make sense of them.

"Increasingly, for many flagship government of India programs, departments are being encouraged to set up MIS systems that are now meant to report on expenditures based on monthly and quarterly progress reports prepared by various implementing authorities. In practice, these MIS systems are not updated regularly and there are serious quality concerns. As a result, the MIS systems are not considered reliable sources of data.

"Last, legislators themselves do not consider monitoring and tracking expenditures as a critical element to their day-to-day work, even in their constituencies and thus do not concern themselves with questions related to expenditure."

References:

1. Email interview with Yamini Aiyar, director, Accountability Initiative, New Delhi, Sept. 16, 2011 (available on request)
2. Financial Oversight by Parliament: Background Note for the Conference on Effective Legislatures, PRS Legislative Research <http://www.prsindia.org/uploads/media/Conference%20note/Conference%20note%20on%20financial%20oversight.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.

41. Can citizens access the national budgetary process?

42

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. However, the budget presentation and consequent legislation is recorded and reported and available to the public.

Accountability Initiative Director Yamini Aiyar, in New Delhi, does not think that the budget process is transparent. "The budget is presented in Parliament every year. However, the preparation is shrouded in secrecy. Moreover, parliamentary debate over the budget (there is a three-week period when Parliament is expected to debate the budget) is almost never undertaken with any degree of seriousness."

According to a study by PRS Legislative Research, the main discussion of the budget takes place through a general discussion of the budget presented followed by voting and a subsequent ministry-wise discussion on the demand for grant. "However, not all the demands are discussed within the allotted number of days. The remaining undiscussed demands are disposed of by the speaker after the agreement of the House. This process is known as the 'guillotine.'" Records of the number of demands discussed and guillotined over the last five years, show "that nearly 90 percent of the demands are not discussed every year."

References:

1. Email interview with Yamini Aiyar, director, Accountability Initiative, New Delhi, Sept. 16, 2011 (available on request)
2. Financial Oversight by Parliament: Background Note for the Conference on Effective Legislatures, PRS Legislative Research <http://www.prsindia.org/uploads/media/Conference%20note/Conference%20note%20on%20financial%20oversight.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 adviser 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. There is no citizen access to this process.

Accountability Initiative Director Yamini Aiyar, in New Delhi, finds this ironic. "Increasingly, for social sector schemes, de jure plans (which provide the basis for the budget) are meant to be 'bottom up' with community groups (eg. School management committees, health committees). Guidelines for most programs mandate the creation of local level plans, which then get aggregated up at the district and state level and eventually form the basis of the annual budget. De facto, however, these plans are rarely made. In fact, for the most part, local planning processes are defunct.

"Of late, however, owing in no small measure to pressure from budget groups, ministry of finance has begun to organize civil society consultations as part of the regular consultations they hold when finalizing the budget. However, most civil society organizations argue that these consultations are not taken very seriously."

The Planning Commission, the central planning agency, in soliciting participation through the website and consultations with citizens groups, has taken an important step toward putting people back on the agenda.

References:

1. Email interview with Yamini Aiyar, director, Accountability Initiative, New Delhi, Sept. 16, 2011 (available on request)
2. "There's no such thing as a local plan," Yamini Aiyar, Indian Express, Nov. 1, 2010 <http://www.indianexpress.com/news/theres-no-such-thing-as-a-local-plan/705365/0>

100: Citizens, usually acting through NGOs, 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 NGOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or NGOs 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:

Once the budget is presented before the Parliament, the detailed information on itemized allocation is available to the public.

The Open Budget Index 2010 ranks India in the "significant" category of countries providing information to its citizens.

References:

1. Ministry of Finance, Union Budget and Economic Survey

<http://indiabudget.nic.in/>

2. Open Budget Index 2010, International Budget Partnership

http://internationalbudget.org/wp-content/uploads/2011/06/2010_Rankings.pdf

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

75:

50: Citizens, journalists and NGOs 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.

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

100

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

Yes | No

Comments:

The Parliament scrutinizes the annual budget (a) on the floor of the House, and (b) by the relevant standing committees.

Once the budget is passed, three financial committees of Parliament, (a) the Public Accounts Committee, (b) Estimates Committee, and (c) the Committee on Public Undertakings, serve as important means of parliamentary control over government agencies.

The Public Accounts Committee is the most significant and is constituted every year under Rule 308 of the Rules of Procedure and Conduct of Business in Lok Sabha. The PAC 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 seven 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:

1. Rules of Procedure and Conduct of Business in Lok Sabha, Chapter XXVI

<http://164.100.47.132/LssNew/rules/rules.aspx>

2. Public Accounts Committee, Lok Sabha

http://164.100.47.134/committee/committee_informations.aspx

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).

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

42

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

100 | 75 | 50 | 25 | 0

Comments:

The parliamentary standing committees for departments consider the demands for grants of the ministries under their supervision. Demands for grants are expenditures that require votes by the Lok Sabha. A demand is required to be presented for each department of the government.

In mid-March, Parliament adjourns and the committees prepare reports on individual demands for grants submitted by various departments. The reports are presented in the house when Parliament reconvenes. The government is also expected to reply to the committees' recommendations. The committee then frames an Action Taken Report on the basis of the government's reply, and the ATR is also laid on the table of the house.

A study by PRS Legislative Research shows that demands of a very small proportion of the total number of ministries get discussed in Parliament. This implies that a large portion of the demands for grants is not discussed in the Lok Sabha.

References:

Financial Oversight by Parliament: Background Note for the Conference on Effective Legislatures, PRS Legislative Research
<http://www.prsindia.org/uploads/media/Conference%20note/Conference%20note%20on%20financial%20oversight.pdf>

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:

In recent months, the Public Accounts Committee entrusted with the task of scrutinizing how the expenditure authorized by parliament is being spent and headed by an opposition party member, has been embroiled in an open confrontation between the opposition members of the committee and the ruling party members on the PAC's probe in the telecom scam.

A similar confrontation happened in a joint parliamentary probe on the telecom scam.

References:

1. Financial Oversight by Parliament: Background Note for the Conference on Effective Legislatures, PRS Legislative Research
<http://www.prsindia.org/uploads/media/Conference%20note/Conference%20note%20on%20financial%20oversight.pdf>

2. "2G scam: Angry arguments in PAC," April 22, 2011
<http://www.ndtv.com/article/india/2g-scam-angry-arguments-in-public-accounts-committee-98621>

3. "PAC to examine CAG reports on KG Basin, Air India," Economic Times, Sept. 23, 2011
http://articles.economicstimes.indiatimes.com/2011-09-23/news/30194060_1_reports-on-kg-basin-cag-reports-audit-report

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 Public Accounts Committee (PAC), which scrutinizes how the expenditure authorized by Parliament was spent generally sticks to its mandate.

A study conducted by PRS Legislative Research has found that through the 54 reports the PAC has presented in the last five years, it has examined ministries which have cumulatively received around 80 percent of the budgetary allocations in the last five financial years. The ministries submit Action Taken Reports on the recommendations of the PAC. The study found that on average, 70 percent of the recommendations of the PAC are accepted by the concerned ministry. The PAC also scrutinizes the working of the ministries as per the audit findings of the comptroller & auditor general (CAG). Since it is not possible to examine every audit finding in a formal manner, ministries have to submit Action Taken Notes to the PAC on all audit paragraphs raised by the CAG. A 2009-10 report of the PAC noted that there were 4,934 audit paragraphs still pending with various ministries.

Accountability Initiative Director Yamini Aiyar, in New Delhi, says the parliament committees do not initiate investigations: "There are too many vested interests. There is very little empirical data on this but anecdotal evidence indicates that even the PAC is not able to adequately follow up and ensure that ministry's comply with audit findings."

Ad hoc joint parliamentary committees have been formed from time to time to investigate corruption issues. But their record of completing the job or being effective in getting its recommendations accepted and implemented by the government is poor. Currently, a JPC has been formed to inquire into the telecom scam after an opposition-led outcry in the Parliament on the corruption in allocation of telecom spectrum by the current government.

References:

1. Email interview with Yamini Aiyar, director, Accountability Initiative, New Delhi, Sept. 16, 2011 (available on request)
2. Financial Oversight by Parliament: Background Note for the Conference on Effective Legislatures, PRS Legislative Research <http://www.prsindia.org/uploads/media/Conference%20note/Conference%20note%20on%20financial%20oversight.pdf>
3. Wall Street Journal Blogs, Joint Parliamentary Committee's P.C. Chacko, March 16, 2011, <http://blogs.wsj.com/indiarealtime/2011/03/16/the-joint-parliamentary-committees-p-c-chacko/>

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.

4.1. Civil Service: Conflicts of Interest Safeguards and Political Independence

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

Comments:

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.

Article 311 of the Constitution protects government servants from arbitrary removal from service.

The civil service in India is permanent. Initial recruitment is largely through a competitive process and subsequent appointments to various positions are also expected to be performance based in accordance with regulations relating to promotions, selections and performance appraisals.

References:

Constitution of India, Articles 309, 311 and 312,
<http://lawmin.nic.in/coi/coiason29july08.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:

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, through a competitive process. Similar recruitment bodies, though not creatures of the Constitution, exist for the competitive recruitment of lower ranking employees as well as other departments such as the railways, defense forces, etc.

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 intended to protect recruits from nepotism, cronyism and patronage.

References:

Constitution of India, Articles 309, 312, and 315-320
<http://lawmin.nic.in/coi/coiason29july08.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 Tribunal, which is a 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, which is akin to a trade union, takes up issues on behalf of employees with the government.

References:

Administrative Tribunals Act of 1985

http://persmin.gov.in/EmployeesCorner/Acts_Rules/Admin_Tribunal_Act/Admin_Tribunal_ACT.pdf

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:

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."

References:

1. Central Civil Services (Classification, Control and Appeal) Rules of 1965,

<http://persmin.gov.in/DOPT.asp>

2. All India Service (Discipline and Appeals) Rules of 1969,

http://persmin.gov.in/DOPT/Acts_Rules/AIS_Rules/Revised_AIS_Rules_Vol_I_Updated_Upto_31Oct2010/Revised_AIS_Rule_Vol_I_Rule_12.pdf

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?

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

100 | 75 | 50 | 25 | 0

Comments:

A senior civil servant interviewed said, "Political interference is there, and expecting protection is utopian." Even in instances where there is no collusion, bureaucrats prefer toeing the line or inaction, rather than standing up against political bosses for the fear of reprisals.

Some instances of reprisals have been cited. Some of the recent corruption scandals that hit the country in the last couple of years show clearly how politically influenced the bureaucracy is.

The senior civil servant further says, "We live in a political economy where political interference is understandable. Many times, such interference can be rated positive as civil servants may have overlooked certain genuine claims, and there are occasions when such interference can be for twisting and bending rules to provide benefits to underserving cases, which is usually resisted but may have to be accommodated to get going with the administration."

Recent instances of grand corruption, which saw arrests or resignations of some ministers, have put the political executives on a back-foot. Analysts note that there appears to be a proportional rise in the visibility of civil servants who were traditionally "faceless." Present and past bureaucrats are found to be publicly questioning government policies and even challenging them judicially.

References:

1. "The Minister versus the civil servant," R. K. Raghavan, The Hindu, Feb. 11, 2011

<http://www.thehindu.com/opinion/lead/article1327692.ece>

2. Email Interview with a senior civil servant on Sept. 25, 2011, who prefers to remain anonymous.

3. 10th Report of the Administrative Reforms Commission, 2008, Chapter 15

http://arc.gov.in/10th/ARC_10thReport_Ch15.pdf

4. "Modiphobia has gripped police, bureaucracy: Ex-Guj DGP," Indian Express, Oct. 3, 2011

<http://www.indianexpress.com/news/modiphobia-has-gripped-police-bureaucracy-exguj-dgp/855145/0>

5. "UP suspends whistleblower IAS officer," Arvind Singh Bisht, Times of India, Sept. 24, 2011

http://articles.timesofindia.indiatimes.com/2011-09-24/india/30197888_1_ias-officer-ncr-mayawati-government

6. "The Officer Raj," Indian Express, Oct. 14, 2011

<http://www.indianexpress.com/news/national-interest-the-officer-raj/860142/>

7. "IPS officers in Gujarat pledge support to Sanjiv Bhatt," India Today, Oct. 10, 2011

<http://indiatoday.intoday.in/story/ips-officers-in-gujarat-pledge-support-to-sanjiv-bhatt/1/154358.html>

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:

The civil service in India is permanent. Initial recruitment is largely through a competitive process, and subsequent appointments

to various positions are also expected to be performance-based in accordance with regulations relating to promotions, selections and performance appraisals. However, in practice, such appointments are based on political patronage or by accessing the right people at the right place. Positions that are known to be "lucrative" are actually sold by the appointing authorities. The situation in the states is grave, particularly in the police departments.

The Administrative Reforms Commission in its 10th Report on "Refurbishing Personnel Administration" recommended: "It is essential to lay down certain norms for recruitment in government to avoid complaints of favoritism, nepotism, corruption and abuse of power."

A senior civil servant interviewed said: "Theoretically, I would say civil servants are appointed and evaluated according to professional criteria, but in practice ... evaluation of civil servants is highly subjective and often in no way relates to their actual performance."

A case in point is the striking down of the appointment of the Central Vigilance Commission by the Supreme Court where the court found the decision to appoint the officer as "official arbitrariness" and not an "informed decision."

References:

1. 10th Report of the Administrative Reforms Commission, 2008, Chapter 15
http://arc.gov.in/10th/ARC_10thReport_Ch15.pdf
2. "Supreme Court strikes down P J Thomas as vigilance chief," Indian Express, March 3, 2011
<http://www.indianexpress.com/news/supreme-court-strikes-down-p-j-thomas-as-vigilance-chief/757204/0>
3. Email Interview with a senior civil servant, Sept. 25, 2011, who prefers to remain anonymous

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:

In-service appointments are based on political patronage or by accessing the right people at the right place. Positions that are known to be "lucrative" are actually sold by the appointing authorities. The situation in the states is grave, particularly in the police departments. Performance appraisals, which are the basis for promotions, lack objectivity or is easily overlooked for other considerations.

There is a scramble to appoint pliant officials in crucial positions just prior to the elections — so much so the Election Commission's Model Code of Conduct bans transfer of all officers and officials connected with the conduct of the election with effect from the date elections are announced.

The Administrative Reforms Commission in its 10th Report on "Refurbishing Personnel Administration" recommended: "It is essential to lay down certain norms for recruitment in government to avoid complaints of favoritism, nepotism, corruption and abuse of power."

According to a senior civil servant interviewed, "Civil service management actions for hiring, firing, promotions, etc., are substantially based on nepotism, cronyism and often for distribution of patronage. Civil service is huge, so my statement reflects a general perception, though I do believe for various crucial posts there may be objective decision making as well."

A case in point is the striking down of the appointment of the Central Vigilance Commission by the Supreme Court where the court found the decision to appoint the officer as "official arbitrariness" and not an "informed decision".

Public sector undertaking under the state governments are a major source of political patronage as they are usually headed by ruling party politicians who then use their positions to resort to nepotism and cronyism in appointments.

It is however, difficult to fire a government employee because of the constitutional protections and a responsive judiciary. Suspensions are resorted to, often for long durations as a short cut to sacking.

References:

1. 10th Report of the Administrative Reforms Commission, 2008, Refurbishing Personnel Administration, Chapter 15
http://arc.gov.in/10th/ARC_10thReport_Ch15.pdf
2. "Supreme Court strikes down P J Thomas as vigilance chief," Indian Express, March 3, 2011
<http://www.indianexpress.com/news/supreme-court-strikes-down-p-j-thomas-as-vigilance-chief/757204/0>
3. Email Interview with a senior civil servant Sept. 25, 2011, who prefers to remain anonymous
4. Election Commission of India, Application of Model Code of Conduct, Circular, March 1, 2011
http://eci.nic.in/eci_main/CurrentElections/ECI_Instructions/AppIn_MCC01032011.pdf
5. "UP suspends whistleblower IAS officer," Arvind Singh Bisht, Times of India, Sept. 24, 2011
http://articles.timesofindia.indiatimes.com/2011-09-24/india/30197888_1_ias-officer-ncr-mayawati-government

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. Hires, 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:

Job descriptions of positions held by civil servants are generally contained in induction material of the concerned ministry/ department and are also publicly available. See sample.

A senior civil servant interviewed said: "By and large, civil servants have clarity in job descriptions, but there are positions at senior levels where this may not be there, and senior civil servants can expand the scope of their work to take initiatives on responsibilities beyond their usual job descriptions. But at lower and middle level, the descriptions are reasonably clear."

A survey of civil servants conducted by the government shows that job descriptions were not so much the problem, but rather the right person not being chosen for the right job. Some 52 percent of the respondents believed that the postings to important posts and sought after stations are not decided on the basis of merit while 58 percent of officers feel that the transfer orders are not issued keeping in mind the specific needs of the officers. However, 64 percent of respondents are satisfied with the postings they have had as well as the tenures they were given in those postings. {Para 6}

References:

1. Email Interview with a senior civil servant, Sept. 25, 2011, who prefers to remain anonymous
2. Example of Work Allocation among officers of Department of Commerce, Government of India
<http://commerce.nic.in/bottomlinks/WorkAllocation.pdf>
3. Civil Service Survey 2010 [document attached]

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:

A certain proportion of lower-level government employees (Group C and D) are eligible for bonuses. The government grants non-productivity linked bonus (maximum of about US \$75 in 2010-2011) and for a government commercial enterprise, such as the railways, productivity-linked bonuses (78 days' wages in 2010-2011).

References:

1. Ministry of Finance Order on Non-Productivity linked bonus for 2010-2011, Sept. 13, 2011
http://finmin.nic.in/the_ministry/dept_expenditure/notification/bonus/bonus2011.pdf

2. Production-Linked Bonus for Railway Employees, 2010-2011
<http://pib.nic.in/newsite/erelease.aspx?relid=76348>

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 annually, along with the authorized power of persons in the position, is more prevalent.

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. Compliance of this information is increasing with better implementation of the act.

References:

1. Civil List, Indian Administrative Service
<http://persmin.gov.in/CivilList/IndexCL.htm>

2. Monthly remuneration received by officers and employees disclosed under Section 4(1)(d)(x) (example)
[http://mha.nic.in/pdfs/RTI4\(1\)\(b\)\(x\).pdf](http://mha.nic.in/pdfs/RTI4(1)(b)(x).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:

There is no formal independent grievance redressal machinery for government employees. This has resulted in employees approaching the administrative tribunals and using the right to information act to get their grievances resolved.

A survey conducted by the government on the civil services sought responses from officials on "harassment" and "discrimination." The survey revealed that 36 percent of respondents had been a victim of harassment in their service. The proportion was marginally higher among the male officers (36 percent) than females (34 percent). Harassment of these officers was mainly by individuals with authority over them (86 percent) and political representatives (40 percent). Some 77 percent of respondents gave the cause of harassment as "refusal to comply with unjust orders." Affiliation to a particular caste or category (35 percent) and being seen as close to someone (24 percent) were other important reasons. Two percent of respondents cited refusal to extend sexual favors as a reason.

Some 20 percent of the officers surveyed responded that they had faced discrimination. The main reason was found to be the one based on community (53 percent), followed by sex (18 percent). Some 57 percent of the victims of discrimination felt that it had led to a loss of a prestigious assignment for them, while 55 percent felt that they had lost out on recognition or reward that was rightfully theirs. Some 45 percent of respondents felt they got negative appraisals as compared with others. Some 57 percent of civil servants said there were no grievance redressal mechanisms. [Para 13 of the attached document]

A senior civil servant interviewed for this report agreed and said that redressal mechanisms are not very strong in organizations.

References:

1. Civil Services Survey 2010 [document attached]
2. Email Interview with a senior civil servant, Sept. 25, 2011, who prefers to remain anonymous

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:

Government employees received their salaries in time. There may be stray instances of delay.

References:

"First day salary promise to teachers-Mamata to implement pay pledge by July," The Telegraph, May 25, 2011
http://www.telegraphindia.com/1110525/jsp/nation/story_14027013.jsp

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 indicate that any government employee has been re-employed despite a corruption-related conviction. 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 for 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 is not imposed.

According to the government's Vigilance Manual, it is the duty of a chief vigilance officer (CVO) attached to offices/departments 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 Vigilance Commission, Vigilance Manual Part I, (Para 2.13.vi)
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?

42

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 is part of the comprehensive code of conduct. The All India Services (Conduct) Rules of 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 rules provide for an annual declaration of immovable property returns only. There are no annual returns to be filed for movable property, such as stocks and other forms of investments. However, each transaction on movable property purchased in the name of the government employee or in the name of the employee's family should be reported to the government, if the value of such property exceeds two months' basic pay of the government servant.

References:

1. All India Services (Conduct) Rules, 1968, Rule 16
http://persmin.gov.in/DOPT/Acts_Rules/AIS_Rules/Revised_AIS_Rules_Vol_I_Updated_Upto_31Oct2010/Revised_AIS_Rule_Vol_I_Rule_10.pdf

2. Central Civil Services (Conduct) Rules, 1964, Rule 18
<http://persmin.gov.in/DOPT.asp>
http://circulars.nic.in/WriteReadData/CircularPortal/D2/D02est/11013_8_2009-Estt.A09052011.pdf

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:

There are no specific rules/regulations but 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 favor or ill will in the official dealings of a government employee.

The Conduct Rules also provides that a government servant shall not use his position or influence directly or indirectly to secure employment for any member of his family in any company or firm.

The Rules also prohibit a government servant from giving a contract to any company or firm in which he or his family has interests in.

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 a judge in his own case. (A.K. Kraipak v. Union of India, 1969 (2) SCC 262)

References:

1. Central Civil Service (Conduct) Rules, 1964, Rule 4

2. DOPT OM No. 41/2/55(II)-Estt. (A), April 23, 1955, and OM No. 11013/10/93-Estt.(A), June 10, 1993
<http://persmin.gov.in/DOPT.asp>

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

Comments:

The Rules prohibits Group 'A' category officers (senior civil servants) from taking up post-retirement commercial employment up to a year after they have retired, without the permission of the government.

References:

1. Central Civil Service (Pension) Rules, Rule 10
<http://pensionersportal.gov.in/procedures/Procedure1-f.asp>

2. All India Services (Death cum Retirement Benefits) Rules, Rule 26
http://persmin.gov.in/DOPT/Acts_Rules/AIS_Rules/Revised_AIS_Rules_Vol_I_Updated_Upto_31Oct2010/Revised_AIS_Rule_Vol_I_Rule_13.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:

1. AIS (Conduct) Rules 1968, Rule 11

http://persmin.gov.in/DOPT/Acts_Rules/AIS_Rules/Revised_AIS_Rules_Vol_I_Updated_Upto_31Oct2010/Revised_AIS_Rule_Vol_I_Rule_10.pdf

2. CCS (Conduct) Rules, 1964, Rule 13

www.persmin.nic.in/EmployeesCorner/Acts_Rules/CCSRules_1964/ccs_conduct_rules_1964_index.htm

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 to 1955 and 1959 (which remain on the books) requiring that property returns be scrutinized in the department.

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.

References:

All India Services (Conduct) Rules, Rule 16, Executive instructions G.I., M.H.A. letter and O.M. No. 8/2/54—AIS (II), dated 8th November, 1955, and O.M. No. 18/2/55—AIS (III), May 23, 1956, read with letter No. 12(2)—E.O. III/69, Nov. 13, 1959

http://persmin.gov.in/DOPT/Acts_Rules/AIS_Rules/Revised_AIS_Rules_Vol_I_Updated_Upto_31Oct2010/Revised_AIS_Rule_Vol_I_Rule_10.pdf

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 cooling-off period for post-retirement private-sector employment was reduced from two years to one in 2008. The government said that information on how many officers have joined the private sector is not centrally monitored, but newspaper reports say that several senior officers have sought permission and been allowed to do so by the government. The cooling off is almost never enforced as the government permits officers to take up post-retirement commercial employment as a rule.

The senior civil servant interviewed also agrees that these restrictions are not very effective.

References:

1. "DoPT seeks change in norms for post-retirement jobs of bureaucrats," Bharti Jain, Economic Times, Sept. 27, 2011
http://articles.economictimes.indiatimes.com/2011-09-27/news/30208517_1_dopt-post-retirement-jobs-cooling-off-period
2. "Shyamal Majumdar: When exceptions become the rule," Business Standard, Sept. 30, 2011
<http://business-standard.com/india/news/shyamal-majumdar-when-exceptions-become-rule/450899/>
3. Email Interview with a senior civil servant, Sept. 25, 2011, who prefers to remain anonymous

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 Conduct Rules for civil servants require reporting of each event of acceptance of gifts and hospitality and seeking permission of the government if the amount is over the statutory limits. There is no monitoring of such transactions and therefore, no information on how the gifts and hospitality regulations contained in the statute is being enforced.

However, an IFC's Enterprise Survey 2006 indicates that firms are expected to give gifts for obtaining operating licenses and contracts and meeting tax officials.

Another study by Trace International's BRIBELine in 2009 indicates that 5 percent of bribes demanded were in the nature of gifts and 1 percent in the nature of hospitality.

References:

1. Enterprise Surveys, India Snapshot 2006, IFC
<http://www.enterprisesurveys.org/ExploreEconomies/?economyid=89&year=2006>
2. Business Registry for International Bribery and Extortion (BRIBELine)
India Report, 2009
<https://secure.traceinternational.org/data/public/documents/IndiaReportPressKit011009-64642-1.pdf>

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.

Comments:

There is no law requiring recusal by civil servants but principles that demand recusal are built into other conduct rules and common law principles followed by civil servants in their administrative and quasi-judicial functions.

However, there is information that a good number of senior officers join private companies after their retirement — companies they may have regulated while in service. An instance of one such appointment, that of a telecom regulator who went on to become a director in a PR firm advising telecom companies, has come under scrutiny recently as a direct fallout of the telecom scam.

References:

1. "Shyamal Majumdar: When exceptions become the rule," Business Standard, Sept. 30, 2011
<http://business-standard.com/india/news/shyamal-majumdar-when-exceptions-become-rule/450899/>
2. "CBI interrogates Bajaj, Abhishek Anand and Samiran Saha," Tehelka, Nov. 23, 2010
http://www.tehelka.com/story_main47.asp?filename=Ws2311102G_SPECTRUM_FALLOUT.asp

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.

Comments:

There is no requirement under the law to audit asset declarations.

References:

No source.

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?

63

47a. In law, citizens can access the asset disclosure records of senior civil servants.

Yes | No

Comments:

In effect since Jan. 1, 2011, the Immovable Property Returns by the higher civil service officers are being placed on the public domain. Failure to file the returns on time will invite denial of vigilance clearance that is necessary to be considered for promotion and other positions.

The asset disclosures that are placed in the public domain relate only to immovable property. There is no requirement to place declarations related to movable property in the public domain. In fact, there is no requirement to file regular returns with regard to movable property, but only report each transaction if the value of such transaction exceeds two months' basic pay of the government servant.

References:

1. Circular F.No.1117/I2011-EO(PR), April 4, 2011

http://circulars.nic.in/WriteReadData/CircularPortal/D2/D02eod/11_7_2011-EOPR.pdf

2. All India Services (Conduct) Rules, 1968, Rule 16

http://persmin.gov.in/DOPT/Acts_Rules/AIS_Rules/Revised_AIS_Rules_Vol_I_Updated_Upto_31Oct2010/Revised_AIS_Rule_Vol_I_Rule_10.pdf

3. Central Civil Services (Conduct) Rules, 1964, Rule 18

<http://persmin.gov.in/DOPT.asp>

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:

Asset declarations of senior civil servants are available in the public domain. However, these declarations are limited to immovable property.

References:

Immovable Property Returns of IAS officers,

<http://ipr.ias.nic.in/StartIPR.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.

47c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Asset declarations of senior civil servants are available in the public domain freely. However, these declarations are limited to immovable property only.

References:

Immovable Property Returns of IAS officers,
<http://ipr.ias.nic.in/StartIPR.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 NGOs. 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 NGOs 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

Comments:

There is no audit done on the asset declarations of senior civil servants to determine their quality. However, the declarations are limited to immovable property, and there is no record of movable property such as investments, etc.

References:

Immovable Property Returns of IAS officers,
<http://ipr.ias.nic.in/StartIPR.htm>

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.

4.2. Whistle-blowing Protections

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 protection policy for whistleblowers is in the form of a resolution that was passed on the direction of the Supreme Court of India. The government had tabled the Public Interest Disclosure and Protection to Persons Making the Disclosures Bill of 2010 (Whistleblower Bill) in the Parliament. The Standing Committee of the Parliament has submitted its report with suggestions to the Government for certain amendments to the bill.

References:

1. The Public Interest Disclosure and Protection of Informer Resolution of 2004
cvc.nic.in/whistleblow.pdf
2. Public Interest Disclosure and Protection to Persons Making the Disclosures Bill of 2010
http://persmin.gov.in/DOPT/EmployeesCorner/Acts_Rules/DisclosureBill/DisclosureBill_2010_Eng.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

Comments:

The Central Vigilance Commission, which is charged with the implementation of the Public Interest Disclosure and Protection to Informers Resolution, has procedures in place to protect informers from victimization. The Joint Secretary (Home), Ministry of Home Affairs is the nodal authority for protecting whistleblowers as directed by the commission.

The commission reported in its annual report for 2010 that it received 439 complaints from whistleblowers in 2010. It said 155 of them were actionable and passed on to the anti-corruption agency or to the concerned department. No information is available in the reports on feedback from these entities on action taken on these or previous years' complaints, even though the Commission stated in its report that complaints received under the Whistleblower Resolution provided more specific and verifiable allegations than provided in other complaints received by the commission.

There were some serious victimization of whistleblowers reported in the press as cited in the sources. But there is no information regarding the number of such cases brought to the notice of CVC. The annual report, in fact, states that some whistleblowers themselves revealed their identity by sending copies of their complaints to multiple authorities.

References:

1. "Ex-SEBI member to PM: ID leaked, family at grave risk," Financial Express, P. Vaidyanathan Iyer, Aug. 30, 2011
<http://www.financialexpress.com/news/exsebi-member-to-pm-id-leaked-family-at-grave-risk/838990/>
2. "Modiphobia has gripped police, bureaucracy: Ex-Guj DGP," Indian Express, Oct. 3, 2011
<http://www.indianexpress.com/news/modiphobia-has-gripped-police-bureaucracy-exguj-dgp/855145/0>
3. "UP suspends whistleblower IAS officer," Arvind Singh Bisht, Times of India, Sept. 24, 2011
http://articles.timesofindia.indiatimes.com/2011-09-24/india/30197888_1_ias-officer-ncr-mayawati-government
4. Central Vigilance Commission, Annual Report 2010

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:

While the Public Interest Disclosure and Protection to Informers Resolution of the government is applicable to central government and public sector enterprises including public sector banks, the Reserve Bank of India has issued separate whistleblower norms for private and foreign banks.

Similarly, a voluntary whistleblower policy is included in the corporate government structure by the Securities and Exchange Board of India for listed companies. The policy outlines 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 would also provide for adequate safeguards against victimization of employees who avail themselves of the mechanism and can also provide for direct access to the chairman of the audit committee in exceptional cases.

References:

1. Protected Disclosures Scheme for Private Sector and Foreign Banks, Reserve Bank of India
<http://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=3427&Mode=0>

2. 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:

Since it is non-mandatory, some listed companies have incorporated the whistleblower policy in their corporate governance structure. No information is available on this implementation and use by employees and outcomes. In fact, there is increasing demand from corporate analysts to make it a mandatory requirement for listed companies. This indicator, therefore, is a "no score."

References:

1. "The global market turmoil & Clause 49", Pratip Kar, Business Standard, Aug. 8, 2011
<http://www.business-standard.com/india/news/pratip-kar-global-market-turmoilclause-49-/445106/>

2. "Ex-SEBI member to PM: ID leaked, family at grave risk," P. Vaidhyanathan Iyer, Financial express, Aug. 30, 2011
<http://www.financialexpress.com/news/exsebi-member-to-pm-id-leaked-family-at-grave-risk/838990/>

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.

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

49a. 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 CVC provides toll-free numbers and helplines to report instances of corruption.

Similarly, the CBI, the anti-corruption agency, also has listed contact details of its offices across the country for anyone to report corruption.

References:

1. The Central vigilance Commission
<http://www.cvc.nic.in/>

2. Central Bureau of Investigation
<http://cbi.nic.in/contact.php>

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.

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

56

50a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The CVC Annual Report 2010 states that a considerable number of positions are vacant in the CBI, the anti-corruption agency, particularly at the level of investigating officers and prosecutors. The CVC has superintending powers over the investigations done by CBI.

In paragraph 1.15.2, the commission has stated that the volume of work the CVC itself handles has progressively increased, and there was a need felt for increasing manpower.

References:

1. Central Vigilance Commission Annual Report 2010
http://www.cvc.nic.in/ar2010_01092011.pdf

2. "CVC for more resources," Press Trust of India, July 19, 2011
http://www.thestatesman.net/index.php?option=com_content&view=article&id=377097&catid=36&show=archive&year=2011&month=7&day=20&Itemid=66

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:

The anti-corruption entities such as the CVC and CBI come under the administrative control of the Ministry of Personnel, Public Grievances and Pension. The funding of these entities are met out of the budget of the ministry. The funding may be less than what was demanded by the organization, but it is regular.

References:

1. Budget of the Ministry of Personnel, Public Grievances and Pension, www.persmin.nic.in/

2. "CVC for more resources," Press Trust of India, July 19, 2011

http://www.thestatesman.net/index.php?option=com_content&view=article&id=377097&catid=36&show=archive&year=2011&month=7&day=20&Itemid=66

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:

The Commission reported in its Annual Report 2010 that it received 439 complaints from whistleblowers in 2010; 155 of them were actionable and passed on to the anti-corruption agency or to the concerned department.

In response to a question in the Lok Sabha, the government disclosed that of 1111 whistleblower complaints received from 2009 to June 2011, 379 complaints were sent for investigation.

The data does not inform about the time taken for acting on them.

References:

1. Central Vigilance Commission, Annual Report 2010
http://www.cvc.nic.in/ar2010_01092011.pdf

2. Whistleblower Complaints Received by CVC — Information submitted to the Indian Parliament (Lok Sabha) on Aug. 17, 2011
<http://pib.nic.in/newsite/erelease.aspx?relid=74660>

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.

100 | 75 | 50 | 25 | 0

Comments:

In its Annual Report, the CVC has reported (paragraph 3.23) that it received 16,689 general complaints, with 945 complaints found serious enough to warrant follow up. These 945 were forwarded to the concerned ministries for necessary action. There is no information regarding the outcome of these complaints or previous years' complaints passed on to the concerned authorities.

The commission reported in its Annual Report 2010 that it received 439 complaints from whistleblowers in 2010; 155 of them were actionable and passed on to the anti-corruption agency or to the concerned department. No information is available on feedback from these entities on action taken on these or previous years' complaints even though the commission stated in its report that complaints received under the Whistleblower Resolution provided more specific and verifiable allegations than provided in other complaints received by the commission.

In response to a question in the Lok Sabha, the government disclosed that of 1111 whistleblower complaints received from 2009 to June 2011, 379 complaints were sent for investigation. There is no indication as to the outcomes.

References:

1. Central Vigilance Commission, Annual Report 2010
http://www.cvc.nic.in/ar2010_01092011.pdf

2. Whistleblower Complaints Received by CVC — Information submitted to the Indian Parliament (Lok Sabha) on Aug. 17, 2011
<http://pib.nic.in/newsite/erelease.aspx?relid=74660>

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.

73
4.3. Government Procurement: Transparency, Fairness, and
Conflicts of Interest Safeguards

51. Is the public procurement process effective?

65

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 government officials.

Rule 4 of the Central Civil Services (Conduct) Rules of 1964 and Rule 4 of the All India Services (Conduct) Rules of 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.

References:

1. Central Civil Services (Conduct) Rules, 1964, Rule 4

www.persmin.nic.in/EmployeesCorner/Acts_Rules/CCSRules_1964/ccs_conduct_rules_1964_details.htm#

2. All India Services (Conduct) Rules, 1968, Rule 4

[www.persmin.nic.in/EmployeesCorner/Acts_Rules/AISRRule/AISManual_Updated_27112007/10.The%20All%20India%20Services%20\(Conduct\)%20Rules](http://www.persmin.nic.in/EmployeesCorner/Acts_Rules/AISRRule/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:

1. Manual of Procedures for Purchase of Goods

finmin.nic.in/the_ministry/dept_expenditure/GFRS/Mpproc4ProGod.pdf

2. 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.

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

Comments:

India does not have a specialized public procurement law or policy. The existing policies are a string of instructions on tendering and integrity pacts issued by the Central Vigilance Commission.

As recent grand scams involving the Commonwealth Games and auctioning of the telecom spectrum indicate that public procurement is a major source of corruption in India. There is collusion involving political executive and bureaucracy and any enforcement is only after the event.

According to Global Economic Forum's Global Competitiveness Index 2011-2012, in the category of diversion of public funds to companies, individuals and groups, India ranks 87 with a value of 2.9 (where 1 is "very common" and 7 "never occurs"), down from its value of 3.2 in the Index 2010-2011.

The government has now decided to bring an all-encompassing public procurement bill in Parliament by the end of the current year. This was part of the prime minister's commitment in his Independence Day speech.

References:

1. "Corrupt Babus will face speedy action," India Today, Sept. 15, 2011
<http://indiatoday.intoday.in/story/corrupt-babus-will-face-speedy-action/1/151312.html>
2. "Public procurement woes: The modernisation of railways," Pradeep S Mehta, Economic Times, Sept. 26, 2011
<http://economictimes.indiatimes.com/features/business/whistleblowers-can-now-earn-a-bounty/articleshow/6494311.cms>
3. Coalition compulsions amid crony capitalism, January 14, 2011
<http://blogs.hindustantimes.com/singly-political/2011/01/14/coalition-compulsions-amid-crony-capitalism/>
4. "Corruption scandal hits 2010 Games, organizers deny charges," July 31, 2010, NDTV
<http://www.ndtv.com/article/india/corruption-scandal-hits-2010-games-organisers-deny-charges-40991&cp>
5. Central Vigilance Commission, Deficiencies Observed by CTEO During Inspection Of CWG Related Works,
<http://cvc.nic.in/cwg18082010.pdf>
6. Money Control, "Kalmadi arrested by CBI in CWG scam case," April 25, 2011
http://www.moneycontrol.com/news/current-affairs/kalmadi-arrested-by-cbicwg-scam-case_538069.html
7. Global Economic Forum's Global Competitiveness Index 2011-2012
<http://reports.weforum.org/global-competitiveness-2011-2012/>

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:

Rules of conduct for government employees and general guidelines for vigilance administration for all public servants apply to officials dealing with procurement as well. The vigilance officers are expected to keep a special eye on officials manning 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.

References:

Vigilance Manual
www.cvc.nic.in/man04.pdf

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:

India doesn't have a comprehensive public procurement law. The institutional and legal framework for procurement is derived from the Constitution of India. Article 298 authorizes the union and state governments to contract for goods and services and requires the executive to protect the fundamental rights of all citizens to be treated equally. Article 299 of the Constitution deals with contracts on behalf of the union and state governments, and Article 300 deals with suits and proceedings thereon. The broad framework for contracts is regulated by the Contract Act, the Sale of Goods Act, the Arbitration Act, the Limitation Acts and the Right to Information Act of 2005.

There are executive instructions and guidelines in the form of manuals for operations of various kinds of contracts issued by the Ministry of Finance, but department-specific, like Defense, Health, Food, guidelines also exist.

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. Procurements above a certain threshold value have to be undertaken through e-procurement.

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:

1. Constitution of India, Articles 298, 299 and 300

<http://lawmin.nic.in/coi/coiason29july08.pdf>

2. General Financial Rules of 2005

finmin.nic.in/the_ministry/dept_expenditure/GFRS/GFR2005.pdf

3. 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

4. Central Vigilance Commission, No.005/CRD/19, May 9, 2006, Guidelines for nominations/limited tendering, and amended by order dated May 19, 2010

www.cvc.nic.in/005crd19.pdf

<http://cvc.gov.in/Transparency20052010.pdf>

5. Ministry of Finance, Procurement Manuals for Goods, Works and Employment of Consultants

http://finmin.nic.in/the_ministry/dept_expenditure/acts_codes/index.asp

6. Defense Procurement Procedure 2011

www.mod.nic.in

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

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

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:

1. 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

2. Central Vigilance Commission, No.005/CRD/19, May 9, 2006, Guidelines for nominations/limited tendering, and amended by Order dated May 19, 2010

www.cvc.nic.in/005crd19.pdf

<http://cvc.gov.in/Transparency20052010.pdf>

3. Ministry of Finance, Procurement Manuals for Goods, Works and Employment of Consultants
http://finmin.nic.in/the_ministry/dept_expenditure/acts_codes/index.asp

4. ADB/OECD Anti-Corruption Initiative for Asia and the Pacific, Thematic review on provisions and practices to curb corruption in public procurement – Self-assessment report India
<http://www.oecd.org/dataoecd/51/7/36759785.pdf>

5. Defence Procurement Procedure 2011
www.mod.nic.in

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:

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. Individual bidding documents may incorporate review mechanisms.

References:

1. General Financial Rules of 2005
finmin.nic.in/the_ministry/dept_expenditure/GFRS/GFR2005.pdf

2. Manual on Policy and Procedure for Purchase of Goods, Rule 11
finmin.nic.in/the_ministry/dept_expenditure/GFRS/Mpproc4ProGod.pdf

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 provided for in the Constitution, unsuccessful bidders can appeal any administrative action that violates their fundamental rights.

References:

Constitution of India, Articles 32 and 226
<http://lawmin.nic.in/coi/coiason29july08.pdf>

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:

The manuals provide eligibility conditions of parties to contract with the government and grounds for debarment and suspension. 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 contract agreement.

Department-specific guidelines for procurement are also additionally determined which may provide for the blacklisting of contractors.

References:

1. Ministry of Finance, Manuals on Policy and Procedure for Purchase of Goods, Works Contract and Consultants,
http://finmin.nic.in/the_ministry/dept_expenditure/acts_codes/MPProc4ProGod.pdf
http://finmin.nic.in/the_ministry/dept_expenditure/acts_codes/MPProc4ProCons.pdf
http://finmin.nic.in/the_ministry/dept_expenditure/acts_codes/Structure%20CP%20WG.pdf

2. Sample Integrity Pact
www.cvc.nic.in/41122007.pdf

3. ADB/OECD Anti-Corruption Initiative for Asia and the Pacific, Thematic review on provisions and practices to curb corruption in public procurement – Self-assessment report India
<http://www.oecd.org/dataoecd/51/7/36759785.pdf>

5. Defense Procurement Procedure 2011
www.mod.nic.in

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:

There is a lack of information on procurement market and implementation of policies. Though there are provisions to blacklist, there is no data on how effective such blacklisting has been, given the huge public procurement that happens in the country.

In the defense sector, which has been afflicted by large-scale corruption scandals in the past, blacklisting of vendors is known. In recent years, there have been calls for removing the blacklists as it has adversely affected defense procurements.

In other problems areas such as health or food for public distribution to the poor, there is little effort to make systemic changes unless there is an adverse outcome to the poor procurement policies.

References:

1. "Blacklisting Foreign Vendors," Maj Gen Mrinal Suman, Indian Defense Review, Issue: Vol. 23.4 Oct.-Dec. 2008
<http://www.indiandefencereview.com/defence-industry/Blacklisting-Foreign-Vendors.html>

2. "Deaths force government to reform procurement of drugs," Times of India, March 11, 2011
http://articles.timesofindia.indiatimes.com/2011-03-11/ajipur/28679306_1_health-services-district-hospitals-medicines

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?

88

52a. In law, citizens can access public procurement regulations.

Yes | No

Comments:

Procurement regulations are available in the public domain.

References:

1. General Financial Rules of 2005
finmin.nic.in/the_ministry/dept_expenditure/GFRS/GFR2005.pdf
2. 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
3. Central Vigilance Commission, No.005/CRD/19, May 9, 2006, Guidelines for nominations/limited tendering, and amended by Order dated May 19, 2010
www.cvc.nic.in/005crd19.pdf
<http://cvc.gov.in/Transparency20052010.pdf>
4. Ministry of Finance, Procurement Manuals for Goods, Works and Employment of Consultants
http://finmin.nic.in/the_ministry/dept_expenditure/acts_codes/index.asp
5. Defense Procurement Procedure 2011
www.mod.nic.in

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

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

52b. In law, the government is required to publicly announce the results of procurement decisions.

Yes | No

Comments:

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. This may not be true for all types of contracts.

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:

- Manual on Policy and Procedure for Purchase of Goods, Rule 11
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:

The information is freely available on government websites. Further, under Right to Information of 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:

1. General Financial Rules of 2005
finmin.nic.in/the_ministry/dept_expenditure/GFRS/GFR2005.pdf
2. 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
3. Central Vigilance Commission, No.005/CRD/19, May 9, 2006, Guidelines for nominations/limited tendering, and amended by order dated May 19, 2010
www.cvc.nic.in/005crd19.pdf
<http://cvc.gov.in/Transparency20052010.pdf>
4. Ministry of Finance, Procurement Manuals for Goods, Works and Employment of Consultants
http://finmin.nic.in/the_ministry/dept_expenditure/acts_codes/index.asp
5. Defense Procurement Procedure 2011
www.mod.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. 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:

The information is freely available on government websites. Further, under the Right to Information Act of 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:

1. General Financial Rules of 2005
finmin.nic.in/the_ministry/dept_expenditure/GFRS/GFR2005.pdf
2. 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
3. Central Vigilance Commission, No.005/CRD/19, May 9, 2006, Guidelines for nominations/limited tendering, and amended by order dated May 19, 2010
www.cvc.nic.in/005crd19.pdf
<http://cvc.gov.in/Transparency20052010.pdf>
4. Ministry of Finance, Procurement Manuals for Goods, Works and Employment of Consultants
http://finmin.nic.in/the_ministry/dept_expenditure/acts_codes/index.asp
5. Defense Procurement Procedure 2011
www.mod.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. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. 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 NGOs trying to access this information.

52e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

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.

Government departments also separately place tender notices on their websites.

Tender information is widely published in newspapers. There are a large number of private sources that also advertise public procurement information.

References:

Indian Government Tenders Information System
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 results of the tenders. The centralized Indian Government Tender Information System publication of awards comes with a disclaimer that award details would be available as and when published by the concerned department. While calls for tenders are made regularly on the department's website, the awards are not always mentioned. However, bidders generally are aware of the outcomes and information on the processes followed and reasons to award one entity as opposed to another can now be obtained under the right to information.

References:

1. Indian Government Tender Information System
<http://tenders.gov.in/innerpage.asp?choice=bd0>

2. Sample of a Department website (Coffee Board) where results have been published.
<http://indiacoffee.org/indiacoffee.php?page=ResultsoftheAdvertisementsTender>

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.

4.4. Privatization of Public Administrative Functions: Transparency, Fairness, and Conflicts of Interest Safeguards

53. Is the privatization process effective?

92

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. Current policy effective since Nov. 5, 2009, is for the government to disinvest only sick public sector undertaking which cannot be revived. For profit making undertakings government would retain majority shareholding and managerial control.

References:

Disinvestment Policy, Ministry of Finance
http://www.divest.nic.in/Dis_Current.asp

Past Disinvestment Policy, Ministry of Finance
http://www.divest.nic.in/Dis_past.asp

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

Comments:

Rule 4 of the Central Civil Services (Conduct) Rules of 1964 and Rule 4 of the All India Services (Conduct) Rules of 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) and 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. It also 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 Handbook on Disinvestment through Public Offerings, Department of Disinvestment, requires all concerned parties in the bidding process 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 memorandum O.M. No. 5/3/2011-Policy, June 8, 2011.

References:

Central Civil Services (Conduct) Rules, 1964, Rule 4
www.persmin.nic.in/EmployeesCorner/Acts_Rules/CCSRules_1964/ccs_conduct_rules_1964_details.htm#04

All India Services (Conduct) Rules, 1968, Rule 4

[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)

3. Handbook on Disinvestment through Public Offerings, Department of Disinvestment, Ministry of Finance
http://www.divest.nic.in/MoF_Handbook.pdf

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 with the recent updating of the norms in June 2011. Various entities participating in the disinvestment process are required to certify that there is no conflict of interest.

The published results of the disinvestment process since 2009 show that partial disinvestment have taken place in about nine undertakings. No reports could be found on allegations relating to conflicts of interest in the disinvestment process.

References:

1. Ministry of Finance, Department of Disinvestment, Handbook on Disinvestment through Public Offerings, June 2011
http://www.divest.nic.in/MoF_Handbook.pdf

2. Ministry of Finance, Department of Disinvestment, Summary of Receipts from Disinvestment
<http://www.divest.nic.in/SummarySale.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

Comments:

There is no law governing privatization, only government policy. While there is no requirement under any law to allow citizen's access privatization regulations, the Department of Disinvestment provides comprehensive information on the policy, procedures,

templates of documents for public sector undertakings, investors and intermediaries. Also available is information on future offerings as well as past disinvestments.

References:

Department of Disinvestment

<http://www.divest.nic.in/default.asp>

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:

The Department of Disinvestment provides comprehensive information on the policy, procedures, templates of documents for public sector undertakings, investors and intermediaries. Also available is information on future offerings as well as past disinvestments.

The process has been streamlined after a lack of transparency in its early years.

References:

1. Department of Disinvestment

<http://www.divest.nic.in/default.asp>

2. Forthcoming Disinvestment, Department of Disinvestment

<http://www.divest.nic.in/ForthDis.asp>

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:

There is no law governing privatization, only government policy. While there is no requirement under any law to publicly announce outcomes of privatization, the Department of Disinvestment provides comprehensive information on the outcomes of disinvestments that have taken place. The media also extensively reports on the results.

References:

1. Department of Disinvestment

<http://www.divest.nic.in/default.asp>

2. "Public Sector Disinvestment: A Greedy Government?" April 22, 2010, India Knowledge@Wharton

<http://knowledge.wharton.upenn.edu/india/article.cfm?articleid=4469>

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 Department of Disinvestment provides comprehensive information on the policy, procedures, templates of documents for public sector undertakings, investors and intermediaries on its website. Also available is information on future offerings as well as past disinvestments.

References:

1. Department of Disinvestment

<http://www.divest.nic.in/default.asp>

2. Forthcoming Disinvestment, Department of Disinvestment

<http://www.divest.nic.in/ForthDis.asp>

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:

The Department of Disinvestment provides comprehensive information on the policy, procedures, templates of documents for public sector undertakings, investors and intermediaries on its website for free. Also available is information on future offerings as well as past disinvestments.

References:

1. Department of Disinvestment

<http://www.divest.nic.in/default.asp>

2. Forthcoming Disinvestment, Department of Disinvestment

<http://www.divest.nic.in/ForthDis.asp>

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 NGOs. 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 NGOs trying to access this information.

Category 5. Government Oversight and Controls

5.1. National Ombudsman

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

100

55a. 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. What India has are the statutorily independent Central Vigilance Commission (CVC) for central government employees and the Lok Ayukta in the some state governments. The indicators in this section cover the Central Vigilance Commission.

The CVC came into through a government resolution in 1964 as an apex body for exercising general superintendence and control over vigilance administration. After directions from the Supreme Court of India to confer a statutory status to the CVC, the CVC Act was passed in 2003. This body now has the powers to inquire into corruption 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 of 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.

This demand for a national ombudsman was at the center stage of the anti-corruption crusade that is currently going on. The legislation for an institution of Lok Pal designed to serve as the national ombudsman has been introduced in Parliament eight times since 1968 but has lapsed without becoming law. The current movement for a Lok Pal is led by a civil society body, which has presented its version of the Lok Pal legislation. Similar versions were presented by other civil society bodies as well. There was also an attempt to have a joint drafting exercise between the government and one group of civil society.

Reacting to a nationwide outcry on major corruption scandals and the demand for passing the Lok Pal law, the government has introduced a bill in the Parliament. It is currently being considered by the standing committee.

Many states have the institution of Lok Ayukta, which is generally headed by a retired High Court or Supreme Court judge.

References:

1. The Central Vigilance Commission Act of 2003
cvc.nic.in/cvcact.pdf

2. Rajya Sabha Standing Committee Press Release on Lok Pal Bill 2011
http://164.100.47.5/newcommittee/press_release/press/Committee%20on%20Personnel,%20PublicGrievances,%20Law%20and%20Justice/PR%20-%20LB,%202011.pdf

3. India Against Corruption, Jan Lok Pal Bill
<http://www.indiaagainstcorruption.org/salient.html>

4. National Campaign for Peoples' Right to Information (NCPRI), Collective and Concurrent Lokpal Anti Corruption and Grievance Redress Measures
<http://righttoinformation.info/ncpri-public-consultations-on-the-lok-pal-bill/public-consultations-on-collective-and-concurrent-lokpal-anti-corruption-and-grievance-redress-measures-by-the-ncpri-nehru-memorial-museum-and-library-and-inclusive-media-4-change-csds/>

5. A Quick Guide to the Lokpal Bills
<http://blogs.wsj.com/corruption-currents/2011/08/24/a-quick-guide-to-the-lokpal-bills/?mod=WSJBlog>

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.

56. Is the national ombudsman effective?

64

56a. In law, the ombudsman is protected from political interference.

Yes | No

Comments:

The indicators in this section cover the Central Vigilance Commission.

Under Section 4 of the Central Vigilance Commission Act of 2003, the chief vigilance commissioner and the two 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. The Annual Report of the CVC is required to be submitted to the Parliament (Section 14).

References:

Central Vigilance Commission Act of 2003, Section 4
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:

A survey on the history of the Central Vigilance Commission and the Central Bureau of Investigations (the anti-corruption agency) done by the Commonwealth Human Rights Initiative says: "The central government's management of these two organizations shows that it has never wanted them to become professionally strong and effective" because "the political executive must have complete control over police organizations so that it can misuse these for partisan purposes."

Though the Supreme Court in a 1997 judgment directed institutional autonomy for CVC and gave supervision of investigations conducted by CBI to the CVC instead of the government, it had little impact on the ground. CVC appears to have little control over the investigations of CBI or over government departments as evident in the delays in sanctions for prosecution, inquiring into complaints as well as completion of various stages of departmental inquiries.

The worst blow to the independence of the organization came in 2011 when the Supreme Court struck down the appointment of PJ Thomas as the CVC on the ground that the government had not considered "relevant material" (a corruption case in which he was accused) to decide his appointment despite a dissenting note from the leader of the opposition (a member of the selection committee).

References:

1. The Central Vigilance Commission and the Central Bureau of Investigation: A brief history of some developments, GP Joshi, Commonwealth Human Rights Initiative, 2011
http://www.humanrightsinitiative.org/publications/police/cvc_cbi_some_developments_a_brief_history.pdf

2. "High power committee failed to consider relevant material in CVC appointment: Supreme Court," J. Venkatesan, The Hindu, March 4, 2011
<http://www.hindu.com/2011/03/04/stories/2011030464721400.htm>

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:

Specific grounds for removal are laid out in Section 6 of the CVC Act, and the CVC can be removed only on the orders of the president.

The appointment of PJ Thomas as CVC was cancelled by the president this year as the Supreme Court struck down his appointment since proper procedures were not followed and relevant material wasn't considered by the government while appointing him.

References:

"President cancels Thomas' appointment as CVC," Press Trust of India, IBNLive, March 15, 2011
<http://ibnlive.in.com/news/president-cancels-appointment-of-thomas-as-cvc/145939-3.html>

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:

The CVC receives its staffing through a central recruitment process. This is mostly done annually or as and when demands are placed by the departments. It results in delays. Persons with vigilance experience are preferred for the organization but in senior positions, merit may not always be the criteria for appointments. This however, is not a circumstance typical of the CVC but prevails in all government departments.

In paragraph 1.15.2 of the CVC Annual Report 2010, the commission stated that the volume of work the CVC handles has progressively increased and there was a need for increasing manpower.

References:

Central Vigilance Commission Annual Report 2010
http://www.cvc.nic.in/ar2010_01092011.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:

The central vigilance commissioner and vigilance commissioners are appointed under the provisions of the CVC Act of 2003. All other officials of the CVC are permanent civil servants appointed 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.

In fact, as pointed out in the survey on the history of the Central Vigilance Commission and the Central Bureau of Investigations (the anti-corruption agency) done by the Commonwealth Human Rights Initiative (CHRI), the government diluted the appointment parameters directed by the Supreme Court which had laid out that appointment of the CVC should be made from a "panel of outstanding civil servants and others with impeccable integrity." The CVC Act 2003 dropped "others," "outstanding" and "impeccable integrity" from the statute.

In senior positions, merit may not always be the criteria for appointments. This however, is not a circumstance typical of the CVC but prevails in all government departments. In the case of CVC, this was highlighted by the Supreme Court striking down the appointment of PJ Thomas as CVC that was pushed through by the government despite a corruption case pending against him.

References:

1. The Central Vigilance Commission Act of 2003
[cvc.nic.in/cvcact.pdf](http://www.cvc.nic.in/cvcact.pdf)

2. Central Vigilance Commission Annual Report 2010
http://www.cvc.nic.in/ar2010_01092011.pdf

3. Supreme Court judgment on appointment of CVC (document attached)

4. The Central Vigilance Commission and the Central Bureau of Investigation: A brief history of some developments, GP Joshi, Commonwealth Human Rights Initiative
http://www.humanrightsinitiative.org/publications/police/cvc_cbi_some_developments_a_brief_history.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:

The anti-corruption entities such as the CVC and CBI come under the administrative control of the Ministry of Personnel, Public Grievances and Pension. The funding of these entities are met out of the budget of the ministry.

References:

Budget of the 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:

Under Section 14 of the CVC Act, the Central Vigilance Commission is required to present an annual report of its work done to the president within six months of the close of the year. The report is also required to contain a separate part on the functioning of the CBI. The president is then required to lay the report before each House of Parliament.

Reports on CVC activities including the annual report are available on its website. A monthly performance report is also placed on the website. Requests for information under the Right to Information Act are an option for getting other kinds of information.

References:

1. Central Vigilance Commission Act of 2003, Section 14
<http://cvc.gov.in/cvact.pdf>

2. Central Vigilance Commission Annual Report 2010
http://www.cvc.nic.in/ar2010_01092011.pdf

3. "CVC asks government to reduce time in preparing letters rogatory," The Economic Times, Sept. 2, 2011
http://articles.economictimes.indiatimes.com/2011-09-02/news/30105792_1_rogatory-central-vigilance-commission-cvc

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 inquire or cause inquiries on the basis of complaints it receives or as follow-ups on reports from chief vigilance officers of government departments and offices mostly through its chief

technical examination organization relating to government projects and procurements. CVC's role is advisory and it does not have the power to punish or remove from service the wrongdoers.

According to the 2010 annual report of the CVC, about 5,000 departmental inquiries were pending with government departments. Government departments refused to grant sanction for prosecution of 222 out of 587 cases referred to them by CBI. There were also several cases where departments did not accept the advice of the CVC or deviated from it. The report lists some instances of deliberate flouting of the commission's advice. Government departments also delayed inquiring into complaints referred by the Commission — 7.10 percent were delayed more than three years, 50.80 percent were delayed between one and three years and there were no responses to 42.10 percent complaints pending up to one year.

The CVC has attempted to initiate coordinated anti-corruption approaches to effective vigilance management by its National Anti-Corruption Strategy and a user-friendly corruption hotline called the "Vigeye," but its powers to enforce its strategies and decisions is limited. A recent example of CVC's investigations was on the mammoth Commonwealth Games procurement scam, which was widely reported in the media. There has been little follow-up on its findings.

According to survey on the history of the Central Vigilance Commission and the Central Bureau of Investigations (the anti-corruption agency) done by the Commonwealth Human Rights Initiative (CHRI), "the central government's management of these two organizations shows that it has never wanted them to become professionally strong and effective" because "the political executive must have complete control over police organizations so that it can misuse these for partisan purposes."

The CHRI document further discusses the manner in which the government diluted the directions of the Supreme Court while enacting the CVC Act 2003 that gave the body statutory status. The government retained the provision giving protection to senior officers from investigations by CBI without government approval (single directive). Such approvals are often delayed or not granted at all.

Further, by giving superintendence to the CVC over investigations by CBI only in matters falling under the Prevention of Corruption Act, the government has effectively placed CBI under dual control of the government and the CVC since CBI's investigating mandate extends far beyond corruption cases. CBI also investigates conventional crimes as well as economic crimes, cyber crimes, etc.

The CHRI document also points out to the dilution of the appointment parameters of the CVC on which the Supreme Court had directed that should be made from a "panel of outstanding civil servants and others with impeccable integrity". The CVC Act 2003 dropped "others," "outstanding" and "impeccable integrity" from the statute.

The purely advisory role of this ombudsman is what the civil society movement for an independent Lok Pal wants to change. The Lok Pal bill proposes, in varying degrees (by different entities), powers to have its own investigation and prosecution wing and be the final authority for removing a public servant from office.

References:

1. Central Vigilance Commission Annual Report 2010
http://www.cvc.nic.in/ar2010_01092011.pdf
2. The Central Vigilance Commission and the Central Bureau of Investigation: A brief history of some developments, GP Joshi, Commonwealth Human Rights Initiative
http://www.humanrightsinitiative.org/publications/police/cvc_cbi_some_developments_a_brief_history.pdf
3. Deficiencies Observed Bby CTEO During Inspection of CWG Related Works
<http://cvc.nic.in/cwg18082010.pdf>
4. A Quick Guide to the Lokpal Bills
<http://blogs.wsj.com/corruption-currents/2011/08/24/a-quick-guide-to-the-lokpal-bills/?mod=WSJBlog>

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:

Statutorily, the CVC doesn't have powers to penalise public servants. It has an advisory role and after wrongdoing has been established, it can only recommend appropriate penalties. In case of corruption cases, on the basis of investigations by the CBI, it is only the courts that can impose punishment in a conviction.

However, these efforts are limited because, according to the survey on the history of the Central Vigilance Commission and the Central Bureau of Investigations (the anti-corruption agency) done by the Commonwealth Human Rights Initiative, "the central government's management of these two organizations shows that it has never wanted them to become professionally strong and effective" because "the political executive must have complete control over police organizations so that it can misuse these for partisan purposes."

CVC's jurisdiction is over a very small proportion of government employees and it is well known 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.

According to the Annual Report of the CVC of 2010, government departments refused to grant sanction for prosecution of 222 out of 587 cases referred to them by CBI. There were also several cases where departments did not accept the advice of the CVC or deviated from it. The report lists some instances of deliberate flouting of the commission's advice. Government departments delayed implementation of CVC's final (second stage) advice in 848 cases in 2010 for more than six months. (It has not been correlated but in 2010 the CVC gave final advice in 1180 cases.)

The CVC has attempted to initiate coordinated anti-corruption approaches to effective vigilance management by its National Anti-Corruption Strategy and a user-friendly corruption hotline called the "Vigeye," but its powers to enforce its strategies and decisions is limited.

The purely advisory role of this ombudsman is what the civil society movement for an independent Lok Pal want to change. The Lok Pal bill proposes in varying degrees (by different entities) the powers to have its own investigation and prosecution wing and final authority on removing a public servant from office.

References:

1. Central Vigilance Commission Annual Report 2010

http://www.cvc.nic.in/ar2010_01092011.pdf

2. The Central Vigilance Commission and the Central Bureau of Investigation: A brief history of some developments, GP Joshi, Commonwealth Human Rights Initiative

http://www.humanrightsinitiative.org/publications/police/cvc_cbi_some_developments_a_brief_history.pdf

3. A Quick Guide to the Lokpal Bills

<http://blogs.wsj.com/corruption-currents/2011/08/24/a-quick-guide-to-the-lokpal-bills/?mod=WSJBlog>

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:

Statutorily, the CVC has only an advisory role and after wrongdoing has been established, it can only recommend appropriate penalties. In case of corruption cases, on the basis of investigations by the CBI, it is only the courts that can impose punishment if convicted.

However, these efforts, too, are limited because, according to the survey on the history of the Central Vigilance Commission and the Central Bureau of Investigations (the anti-corruption agency) done by the Commonwealth Human Rights Initiative, "the central government's management of these two organizations shows that it has never wanted them to become professionally strong and effective" because "the political executive must have complete control over police organizations so that it can misuse these for partisan purposes."

CVC's jurisdiction is over a very small proportion of government employees and it is well known 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, and the big fish almost always get away.

According to the Annual Report of the CVC of 2010, about 5,000 departmental inquiries were pending with government departments. Government departments refused to grant sanction for prosecution of 222 out of 587 cases referred to them by CBI. There were also several cases where departments did not accept the advice of the CVC or deviated from it. The report list some instances of deliberate flouting of the commission's advice. Government departments delayed implementation of CVC's final (second stage) advice in 848 cases in 2010 for more than 6 months. (It has not been correlated, but in 2010 the CVC gave final advice in 1,180 cases). Government departments also delayed inquiring into complaints referred by the Commission — 7.10

percent were delayed more than three years, 50.80 percent were delayed between one and three years, and there were no responses to 42.10 percent of complaints pending up to one year.

The CVC has attempted to initiate coordinated anti-corruption approaches to effective vigilance management by its National Anti-Corruption Strategy and a user-friendly corruption hotline called the "Vigeye," but its powers to enforce its strategies and decisions is limited.

The purely advisory role of this ombudsman is what the civil society movement for an independent Lok Pal want to change. The Lok Pal bill proposes in varying degrees (by different entities) the powers to have its own investigation and prosecution wing and final authority on removing a public servant from office.

The scoring of this indicator is limited to the CVC as sufficient information relating to its functioning is available to assess its performance. The equivalent or higher institutions in the states (the Lok Ayukta is headed by a retired judge of the High Court or the Supreme Court) would not fare this well. Most of them are non-functional.

The impact of the anti-corruption crusade in the last six months by itself seems to have had an effect on how the otherwise weak ombudsman institutions function in the country and its impact on the respective governments. A recent report of the Lok Ayukta of Karnataka on illegal mining was damning enough for the chief minister to resign. The Lok Ayukta of Uttar Pradesh (a state well known for its corrupt government) has indicted several ministers on corruption charges in recent months who have then been sacked.

References:

1. Central Vigilance Commission Annual Report 2010

http://www.cvc.nic.in/ar2010_01092011.pdf

2. The Central Vigilance Commission and the Central Bureau of Investigation: A brief history of some developments, GP Joshi, Commonwealth Human Rights Initiative

http://www.humanrightsinitiative.org/publications/police/cvc_cbi_some_developments_a_brief_history.pdf

3. A Quick Guide to the Lokpal Bills

<http://blogs.wsj.com/corruption-currents/2011/08/24/a-quick-guide-to-the-lokpal-bills/?mod=WSJBlog>

4. Behind Mayawati's clean-up act, Anna effect and poll concerns, Indian Express, 13 October 2011

<http://www.indianexpress.com/news/behind-mayawatis-cleanup-act-anna-effect-and-poll-concerns/859081/>

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:

According to the 2010 annual report, the CVC received 16,689 complaints. It took no action on 5.1 percent of them because they were anonymous or pseudonymous. Only 945 (5.8 percent) of these were found serious enough to warrant further action and were forwarded to the chief vigilance officers of government department/ offices.

The report further states that 6,453 complaints were pending with the chief vigilance officers of government departments and offices, of which 2,404 were pending for more than six months. Government departments also delayed inquiring into complaints referred by the commission — 7.10 percent were delayed more than three years, 50.80 percent were delayed between one and three years, and there were no responses to 42.10 percent of complaints pending up to one year.

The Commission launched the VigEye Project — Vigilance Complaint Management System, which would enable citizens to lodge complaints through mobile phones and web-based technologies. Citizens would be able to upload evidence in the form of audio, video or pictures on corruption.

In fact redress of public grievances is a major thrust of the Lok Pal bills, which has been floated by various sections. However, the government bill was silent on this aspect and one impact of the anti-corruption crusade has been the government's belated commitment to come up with a public grievances law to lay out a proper system of filing complaints for deficiency of service, maladministration and redress.

References:

1. Central Vigilance Commission Annual Report 2010

http://www.cvc.nic.in/ar2010_01092011.pdf

2. A Quick Guide to the Lokpal Bills

<http://blogs.wsj.com/corruption-currents/2011/08/24/a-quick-guide-to-the-lokpal-bills/?mod=WJSJBlog>

3. "Government Fast-Tracks Grievance Redressal Bill," Urmi A Goswami, Economic Times, Aug. 30, 2011

http://articles.economictimes.indiatimes.com/2011-08-30/news/29945235_1_draft-bill-lokpal-bill-entitlements

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?

100

57a. In law, citizens can access reports of the ombudsman(s).

Yes

No

Comments:

Section 14 of the CVC Act provides for the annual report of the Central Vigilance Commission to be laid in Parliament. The reports are then placed on the website of the CVC. Other activities of the commission are also uploaded on its website.

References:

Central Vigilance Commission Act of 2003, Section 14

<http://cvc.gov.in/cvcact.pdf>

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:

The annual reports of the CVC, the current form of the ombudsman in India, is available on its website along with other information on its activities and performance. More information can also be obtained through filing of RTI applications within a reasonable time.

References:

Central Vigilance Commission Annual Report 2010

http://www.cvc.nic.in/ar2010_01092011.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:

The annual reports of the Central Vigilance Commission is freely available on its website along with other information on its activities and performance. More information can also be obtained through filing of RTI applications at a minimal cost.

References:

Central Vigilance Commission Annual Report 2010

http://www.cvc.nic.in/ar2010_01092011.pdf

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 NGOs. 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 NGOs trying to access this information.

5.2. Supreme Audit Institution

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

100

58a. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

Yes | No

Comments:

Articles 148 to 152 of the Constitution of India lays down the special status of the comptroller and auditor general (CAG) of India.

The Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Act of 1971 regulates the duties, powers and conditions of service of the comptroller and auditor general of India.

References:

1. Constitution of India, Articles 148 to 152
<http://lawmin.nic.in/coi/coiason29july08.pdf>

2. The Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Act of 1971
http://www.cag.gov.in/html/about_legal_dpc.htm

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.

59. Is the supreme audit institution effective?

75

59a. In law, the supreme audit institution is protected from political interference.

Yes

No

Comments:

Article 148 of the Constitution of India provides for the appointment of a comptroller and auditor general (CAG) of India by the president by warrant under his/her hand and seal and for his/ her removal from office only in like manner and grounds as a judge of the Supreme Court (which is impeachment by the Parliament).

Though the appointment of the CAG is made by the president, the C&AG as a body is answerable only to Parliament.

The independence of the CAG and its staff is ensured by:

- 1) His salary and other conditions of service being determined by Parliament by law. This cannot be varied to his disadvantage after his appointment.
- 2) The ineligibility of the CAG for further office under the central government or the state government after he has ceased to hold office.
- 3) The conditions of service of persons serving in the Indian Audit and Accounts Department and the administrative powers of the CAG being prescribed by rules made by the president after consultation with the Comptroller and Auditor-General.
- 4) The administrative expenses of the office of the CAG including all salaries, allowances and pensions payable to persons serving in that office is charged (not voted) under the Consolidated Fund of India.

References:

Constitution of India, Articles 148-152
<http://lawmin.nic.in/coi/coiason29july08.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 institution that a comptroller and auditor general of India was removed from his position.

References:

Comptroller & Auditor General of India
http://saiindia.gov.in/english/home/about_us/CAG_India.html

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 and auditor general employs about 45,000 personnel across the country and claims to be the largest supreme audit institution in the world. In its Performance Activity Report 2010, the CAG states that in 2009-2010 it recruited 3,365 personnel. The report does not indicate any constraints due to inadequate staffing.

References:

Comptroller & Auditor General, Performance Activity Report 2010
http://saiindia.gov.in/english/home/about_us/Performance_Activity/Performance_rep_Activity10.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.

59d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

There has been a longstanding grievance of officials of the Indian Audit & Accounts Service that the comptroller & auditor general is not appointed from that service but rather from the Indian Administrative Service, a generalist service that is considered higher in status and the most powerful of all the organized civil services in the country.

There have been reports in the press on the corruption and conflicts of interest allegations against the audit staff of the CAG. The Audit and Accounts Department, which assists the CAG, is a specialized workforce and its independence is preserved as provided in the Constitution.

References:

1. "Fraud to bribes: CAG quietly buries report on corruption and rot within," Ritu Sarin, Indian Express, Sept. 04, 2011
<http://www.indianexpress.com/news/fraud-to-bribes-cag-quietly-buries-report-on-corruption-and-rot-within/841334/0>

2. Comptroller & Auditor General
http://saiindia.gov.in/english/home/about_us/Performance_Activity/2005/chap-6.pdf

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

Comments:

The CAG funding is ensured by Article 148 of the Constitution and is charged upon the Consolidated Fund of India. That is, it is not voted by the Parliament but is charged directly to the government revenue.

The performance activity report for 2010 of the CAG does not mention any constraints to its funding.

References:

Comptroller & Auditor General, Performance Activity Report 2010

http://saiindia.gov.in/english/home/about_us/Performance_Activity/Performance_rep_Activity10.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.

59f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

The CAG reports are placed before the Parliament first and are then placed on the agency's website.

CAG reports attract a lot of media attention as many times, they unearth huge financial irregularities as in recent cases of the telecom allocation.

References:

1. Comptroller & Auditor General, Audit Reports

http://saiindia.gov.in/english/home/Our_Products/Audit_Report/Audit_Report.html

2. "CAG report on Commonwealth Games submitted in Parliament," The Times of India, Aug. 5, 2011

http://articles.timesofindia.indiatimes.com/2011-08-05/india/29854559_1_cag-report-comptroller-and-auditor-general-fertiliser-subsidies

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:

Since the comptroller and auditor general lacks enforcement powers, the reports are generally ignored by government departments. 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.

According to Yamini Aiyer, director, Accountability Initiative: "Audit reports are tabled in Parliament and debated in the Public Accounts Committee of the Parliament. However, there is no constitutional mechanism (or institutional culture) for ensuring that findings are complied with."

The prime minister of India in his speech at the Inauguration of 150 years celebrations of the Institution of CAG of India acknowledged the "concerns regarding the inadequate and delayed response to the reports of the comptroller and auditor general." He also said that "the ministry of finance has taken a number of initiatives which I hope will lead to an improvement in this area."

References:

1. Email interview with Yamini Aiyar, director, Accountability Initiative, New Delhi, Sept. 16, 2011 (available on request)
2. Speech of the Prime Minister of India at the Inauguration of 150 years celebrations of the Institution of CAG of India, Nov. 16, 2010
<http://pmindia.gov.in/speech/content4print.asp?id=983>

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 CAG only has powers to audit government expenditure and point out gaps and irregularities. Government departments are expected to act on "audit paras." It has no investigation powers to fix individual responsibility or recommend appropriate action either departmental or criminal.

There have been discussions for amending the CAG Act of 1971 to bring it on par with the changing economy and to give CAG more powers of enforcement.

References:

1. 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
<http://lawmin.nic.in/ncrcw/finalreport/v2b1-11.htm>
2. "The CAG's mandate," The Hindu, editorial, June 28, 2011
<http://www.thehindu.com/opinion/editorial/article2142587.ece>
3. "CAG deserves a more prominent role in public financial management," Mukul G Asher, Daily News & Analysis, Aug. 3, 2011
http://www.dnaindia.com/analysis/column_cag-deserves-a-more-prominent-role-in-public-financial-management_1572053-all

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?

92

60a. In law, citizens can access reports of the audit agency.

Yes | No

References:

Comptroller & Auditor General, Audit Reports

http://saiindia.gov.in/english/home/Our_Products/Audit_Report/Audit_Report.html

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:

The CAG reports are available to the public on the website of the organization. The performance report put out by the CAG acknowledges delays in certifying accounts of departments as well as other wings of the organizations. The CAG came in for criticism in recent months for not auditing in time certain departments where financial irregularities later surfaced.

References:

1. Comptroller & Auditor General, Audit Reports

http://saiindia.gov.in/english/home/Our_Products/Audit_Report/Audit_Report.html:

http://saiindia.gov.in/english/home/about_us/Performance_Activity/Performance_rep_Activity10.html

3. "CAG monocracy, not accountable, Shunglu tells PM," Amitav Ranjan, Financial Express, June 30, 2011

<http://www.financialexpress.com/news/cag-monocracy-not-accountable-shunglu-tells-pm/810746/>

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:

The reports are available for free on the CAG website.

References:

Comptroller & Auditor General, Audit Reports

http://saiindia.gov.in/english/home/Our_Products/Audit_Report/Audit_Report.html

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 NGOs. 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 NGOs trying to access this information.

89

5.3. Taxes and Customs: Fairness and Capacity

61. In law, is there a national tax collection agency?

100

61a. In law, is there a national tax collection agency?

Yes | No

Comments:

Under Articles 246 and 265, read with Schedule VII of the Constitution, taxes are levied by both the central and state governments.

Under the central government, direct and indirect taxes are regulated by the Ministry of Finance, Department of Revenue. The authorities involved in tax collection are the Central Board of Direct Taxes and the Central Board of Excise and Customs.

State governments can levy sales tax on goods sold in the state, stamp duty on transactions, etc.

References:

Constitution of India, Articles 246 and 265, read with Schedule VII

<http://lawmin.nic.in/coi/coiason29july08.pdf>

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.

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 Revenue Department is manned by officials with specialized training who are recruited on a centralized basis as with other government employees.

The Annual Report of the Ministry of Finance 2010-11 does not indicate any staff constraints.

References:

Ministry of Finance, Annual Report 2010-2011

<http://finmin.nic.in/reports/AnnualReport2010-11.pdf>

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 funding for the Department of Revenue is part of the budget allocation of all departments and is consistent.

References:

Ministry of Finance, Budget, Demand for Grants 2011-2012

<http://indiabudget.nic.in/ub2011-12/eb/alldg.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.

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

25

63a. 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 Direct Taxes Code 2010, which was revised after public discussion and then introduced in the Parliament on Aug. 30, 2010. It is expected to be passed before the next financial year. Electronic filing of direct taxes and refunds has seen a decline in corruption and maladministration in the Income Tax departments and increased revenues.

With regard to indirect taxes, similar moves to have a pan-India goods and services tax is bogged down by political pressures as interests of states are involved. An amendment to the Constitution in March 2011 has been introduced in the Parliament to give powers of regulating taxes on goods and services for inter-state trade and commerce. The amendment is still to be passed. E-filing of VAT, excise and service tax returns have been made mandatory.

According to Srinivas Kotni, managing associate of the New Delhi-based law firm Corporate Lexport, "in view of the vastness of the country and subjectivity involved in the enforcement and a plethora of interpretation issues involved in tax legislation (both direct and indirect taxes), the enforcement is definitely not uniform except for issues which have been finally decided by the highest court of the country, i.e., the Supreme Court of India. Further, discrimination cannot be ruled out at all in view of the widely perceived corrupt practices by those involved in the tax administration."

World Bank/ IFC Doing Business 2011 notes: "India eased business start-up by establishing an online VAT registration system and replacing the physical stamp previously required with an online version. India reduced the administrative burden of paying taxes by abolishing the fringe benefit tax and improving electronic payment." However, India still ranks 164 in the category of paying taxes, faring worse than comparable economies such as China and Brazil, but improving its ranking marginally from 168 in 2010.

Tax evasion is still rampant and "bring back black money" was one of the core areas of focus of recent the anti-corruption movement. The judiciary also has been active in monitoring investigations on black money accounts which is the source of political corruption in India. The government has been pushed in a corner to come up with ways of arresting the flight of tax evaded money to tax havens abroad.

References:

1. Direct Taxes Code 2010
<http://finmin.nic.in/DTCode/index.asp>
2. Goods and Services Tax, Constitutional Amendment Bill 2011
http://finmin.nic.in/GST/Constitutional_115th_Amendment_Bill_2011.pdf
3. Interview with Srinivas Kotni, managing associate, Corporate Lexport, Advocates & Legal Consultants, New Delhi, Sept. 19, 2011 (available on request)
4. Doing Business – India – 2011 (document attached)
5. "Men in Black 'Follow the Money' as India's Chief Justice Leads Graft Fight," Andrew MacAskill and Mehul Srivastava, Aug. 2, 2011
<http://www.bloomberg.com/news/2011-08-01/men-in-black-follow-the-money-as-india-top-judge-busts-graft.html>
6. Measures Taken By Government To Tackle Black Money, Ministry of Finance,
http://dor.gov.in/sites/upload_files/revenue/files/blackmoney051011_0.pdf

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

64a. In law, is there a national customs and excise agency?

Yes | No

Comments:

The Ministry of Finance regulates customs and excise duties. The agency set up to do it is the Central Board of Excise and Customs.

References:

Ministry of Finance
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.

65. Is the customs and excise agency effective?

88

65a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The Revenue Department, which is the department concerned with customs and central excise, is manned by officials with specialized training who are recruited on a centralized basis as with other government employees.

The annual report of the Ministry of Finance 2010-11 does not indicate any staff constraints. There may, however, be instances of localized shortage of staff (in the states), as some reports in the media seem to suggest.

References:

1. Ministry of Finance, Annual Report 2010-2011

<http://finmin.nic.in/reports/AnnualReport2010-11.pdf>

2. "Central excise and Customs duty collections rise in northern region,"

Vijay C Roy, Business Standard, Feb. 14, 2011

<http://www.business-standard.com/india/news/central-excise-customs-duty-collections-rise-in-northern-region/425051/>

3. "Disconnect between Board and Field – In-House Manthan – CBEC Chairman Plays Role of Devil's Advocate," Taxindia Online, No. 246

June 30, 2011

http://www.taxindiaonline.com/RC2/inside2.php3?filename=bnews_detail.php3&newsid=12708

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 funding for the Department of Revenue is part of the budget allocation of all departments and is consistent.

References:

Ministry of Finance, Budget, Demand for Grants 2011-2012

<http://indiabudget.nic.in/ub2011-12/eb/alldg.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.

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

25

66a. 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.

World Bank/ IFC Doing Business 2011 notes that India ranks 100 in the category of Trading Across Borders, faring better than comparable economies such as Russia and Brazil, but worsening its ranking of 93 in 2010.

According to Srinivas Kotni, managing associate of the New Delhi-based law firm Corporate Lexport, "in view of the vastness of the country and subjectivity involved in the enforcement and a plethora of interpretation issues involved in tax legislation (both direct and indirect taxes), the enforcement is definitely not uniform except for issues which have been finally decided by the highest court of the country, i.e. the Supreme Court of India. Further, discrimination cannot be ruled out at all in view of the widely perceived corrupt practices by those involved in the tax administration."

The government has been trying to pass a pan-India goods and services tax law which is bogged down by political pressures as interests of states are involved. An amendment to the Constitution in March 2011 has been introduced in the Parliament to give powers of regulating taxes on goods and services for interstate trade and commerce. The amendment is still to be passed. E-filing of VAT, excise and service tax returns have been made mandatory.

The Global Economic Forum's Global Competitiveness Report 2011-2012 puts India's "Burden of Customs Procedures" ranking at 89 and earning a value of 3.8 (in a scale of 1 to 7).

References:

1. Doing Business – India – 2011 (document attached)

2. Interview with Srinivas Kotni, managing associate, Corporate Lexport, Advocates & Legal Consultants, New Delhi, Sept. 19, 2011 (available on request)

3. Global Economic Forum's Global Competitiveness Report 2011-2012

http://www3.weforum.org/docs/WEF_GCR_Report_2011-12.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.

5.4. Oversight of State-Owned Enterprises

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

100

67a. 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 Public Sector Enterprises (PSE) and assists with policy formulation pertaining to the role of PSEs in the economy and laying down guidelines on performance improvement, evaluation, financial accounting, personnel management, etc. DPE also provides an interface between the administrative ministries and the PSEs.

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
<http://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.

68. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

50

68a. In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.

Yes | No

Comments:

Public Sector Enterprises are administratively controlled by the ministries/departments concerned with the specific industry. This includes deciding policy issues, appointments, etc. In certain sectors, government intervenes into pricing and other commercial decisions.

References:
Department of Public Enterprises
<http://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 which includes appointments. 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. The Central Vigilance Commission is concerned with overseeing the anti-corruption machinery for public enterprises.

According to the Public Sector Enterprise Survey 2009-2010, CPSEs employed 1,491,000 people (excluding casual workers) in 2009-10, down 2.80% compared with 2008-09. The Public Sector Enterprises are known to be over-staffed, which is why the government has put in place Voluntary Retirement Schemes and Counseling, Retraining and Redeployment for which a National Renewal Fund was set up in 1992.

References:
Public Sector Enterprise Survey 2009-2010
<http://dpe.nic.in/newsite/survey0910/Survey01/Overview.pdf#Employment>

"J&K introduces Golden Handshake scheme for PSU employees," The Economic Times, July 13, 2011
http://articles.economicstimes.indiatimes.com/2011-07-13/news/29769129_1_psus-public-sector-undertakings-golden-handshake

"Selling the family silver to pay the grocer's bill? The case of privatization in India," Nandini Gupta, Indiana University, March 18, 2011
http://www.ncaer.org/popuppages/EventDetails/E31March2011/04_11_paper_8.pdf

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 Department of Public Enterprise as well as the administrative ministries/departments concerned with oversight of state-owned enterprises, are fully funded through the central budget.

References:
Ministry of Finance, Budget, Demand for Grants

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 Department of Public Enterprises, the nodal department for Public Sector Enterprises, does not have the powers to initiate investigations relating to state-owned enterprises.

The Central Vigilance Commission handles corruption related issues in central public sector undertakings for employees falling within its jurisdiction. The CVC's chief technical examiner's organization can scrutinize technical and financial aspects of occupational fraud and financial irregularities, and can recommend investigations. It is a small proportion of senior officials who are covered by the CVC. Most of the investigations relate to irregularities in public procurements.

The Serious Fraud Offices is 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. Since the PSEs are organized as companies under the Companies Act, any violation of the law can be investigated by the Ministry of Corporate Affairs.

There are no centrally available reports relating to the performance of PSEs on their anti-corruption enforcements. The annual report of the CVC on its vigilance performance includes its coverage of personnel in the PSEs.

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:

1. Central Vigilance Commission, Separate Chapter in Vigilance Manual on PSE
<http://cvc.gov.in/spchpse.pdf>

2. Central Vigilance Commission, Annual Report 2010
http://www.cvc.nic.in/ar2010_01092011.pdf

3. Department of Public Enterprises, Accountability
<http://dpe.nic.in/newq1/glch1index.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.

Comments:

Statutorily neither the Department of Public Enterprises nor the Central Vigilance Commission have powers to penalize employees of Public Sector Enterprises. The CVC has an advisory role and after wrongdoing has been established, it can only recommend appropriate penalties. In case of corruption cases, on the basis of investigations by the CBI, it is only the courts which can impose punishment if convicted. The concerned PSEs are responsible for acting and penalizing their employees.

CVC's jurisdiction to investigate is over a very small proportion of senior PSE employees and it is well known that there is far more corruption than what gets noticed by the CVC or is pursued aggressively. There is no report of involvement of the lower level functionaries.

According to the annual report of the CVC of 2010, the chief technical examiner's organization inspected 58 procurements related irregularities concerning PSEs. There are no separate figures on the outcomes of these inspection reports.

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:

1. Central Vigilance Commission, Annual Report 2010

http://www.cvc.nic.in/ar2010_01092011.pdf

2. CBI Registered 1156 Corruption Cases Against Central, State & PSU Employees, Press Information Bureau, 7 December 2011

<http://piib.nic.in/newsite/erelease.aspx?relid=78259>

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?

90

69a. In law, citizens can access the financial records of state-owned companies.

Yes

No

Comments:

Sections 209, 210 and 610 and Part VI of the Companies Act of 1956 allow any person to inspect companies' financial records, including those of state-owned companies.

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 from the ministry of company affairs website.

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:

Companies Act of 1956, Sections 209, 210 and 610 and Part VI

http://www.mca.gov.in/Ministry/pdf/Companies_Act_1956_13jun2011.pdf

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 in terms of filing financial records.

References:

1. Ministry of Company Affairs, MCA21
<http://www.mca.gov.in/MCA21/>

2. "Toward Six Sigma financial audit," Hindu Business Line, Jan. 6, 2011
<http://www.thehindubusinessline.com/todays-paper/tp-opinion/article2325520.ece>

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:

Under Section 619 of the Companies Act of 1956, the statutory auditor of a government company including deemed government company is appointed by the comptroller & auditor general (CAG) and conducts the audit of accounts of the companies. The CAG issues comments upon or supplements the audit report of the statutory auditor. There are also some Public Sector Enterprises where the CAG is the sole auditor. Statutes governing some corporations require that their accounts be audited by the CAG and a report be given to Parliament.

In addition, according to the mandatory Corporate Governance Guidelines, PSEs are required to have internal audit committees to oversee the company's financial reporting process and the disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible. All PSEs also must prepare consolidated financial statements as per accounting standards issued by the Institute of Chartered Accountants of India in relation to the consolidation of financial statements.

In Report No. 2 of 2010-11 for the period ended March 2010 Financial Reporting by Central Public Sector Undertakings, the CAG notes that "out of 451 CPSUs including six statutory corporations, annual accounts for the year 2009-10 were received from 352 PSUs including five statutory corporations and 89 deemed government companies. Of these, accounts of 249 PSUs including five statutory corporations were reviewed in audit."

References:

1. Companies Act of 1956, Section 619
http://www.mca.gov.in/Ministry/pdf/Companies_Act_1956_13jun2011.pdf

2. Comptroller & Auditor General, Report No. 2 of 2010-11 for period ended March 2010 Financial Reporting by Central Public Sector Undertakings
http://saiindia.gov.in/english/home/Our_Products/Audit_Report/Government_Wise/union_audit/recent_reports/union_compliance/2010_2011/Commercial

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:

To the extent returns have been filed, Information can be obtained online on the website of the ministry of corporate affairs or by applying to the registrar of companies and paying a fee. 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.

Audit reports of the CAG are also available on its website.

References:

1. Ministry of Corporate Affairs, MCA 21
www.mca.gov.in/MCA21/index.html.

2. Comptroller & Auditor General
<http://www.cag.gov.in/>

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

75:

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

25:

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

Comments:

The documents available for public scrutiny from the ministry of corporate affairs by applying to the registrar of companies 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 on payment of a small fee.

Audit reports of the CAG are also available on its website.

References:

1. Ministry of Corporate Affairs, MCA 21
www.mca.gov.in/MCA21/index.html.

2. Comptroller & Auditor General
<http://www.cag.gov.in/>

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

75:

50: Records impose a financial burden on citizens, journalists or NGOs. 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 NGOs trying to access this information.

80 5.5. Business Licensing and Regulation

70. Are business licenses available to all citizens?

69

70a. In law, anyone may apply for a business license.

Yes | No

Comments:

Article 19(1)(g) of the Constitution of India allows all citizens the right "to practice 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.

Since 1991, the business sector in India has been liberalized tremendously and many entry barriers and licensing requirements hitherto applicable have been done away with leaving only a miniscule of industry and business under licensing. The industrial licensing is governed by Industrial (Development and Regulation) Act of 1951 read with the Industrial Policy of India.

References:

Constitution of India, Article 19(1)(g) and 19(6)

Department of Industrial Policy & Promotion, Industrial (Development and Regulation) Act of 1951 & the Industrial Policy of India

<http://dipp.nic.in/English/default.aspx>
(<http://dipp.nic.in/English/Policies/Policy.aspx>)

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:

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.

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 appeals and writ petitions are possible under the constitutional provisions in the high courts and the Supreme Court.

References:

Department of Industrial Policy & Promotion, Industrial (Development and Regulation) Act, 1951
<http://dipp.nic.in/English/default.aspx>

Industrial Policy of India

<http://dipp.nic.in/English/Policies/Policy.aspx>

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 2011 data on starting a business, it takes an average of 29 days to complete all legal and regulatory formalities. To obtain a construction permit takes about 195 days.

References:

1. World Bank/ IFC, Doing Business 2011 – India (document attached)

2. "Bribes, Bureaucracy Hobble India's New Entrepreneurs," Wall Street Journal Asia, Nov. 1, 2011
http://online.wsj.com/article/SB10001424052970204479504576639233537716542.html?mod=WSJ_article_comments#articleTabs%3Darticle

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:

According to Doing Business 2011, the cost (percent of income per capita) to start a business is 56. To get a construction permit, the cost (percent of income per capita) is 2,143.7. These figures do not include bribes or professional fees.

References:

1. World Bank Doing Business 2011 – India (document attached)

2. "Bribes, Bureaucracy Hobble India's New Entrepreneurs," Wall Street Journal Asia, Nov. 1, 2011
http://online.wsj.com/article/SB10001424052970204479504576639233537716542.html?mod=WSJ_article_comments#articleTabs%3Darticle

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:

Environment and health standards are contained in legislation of the Ministry of Environment and Forests as well as under the Factories Act and Shops and Establishments Acts in different states.

Various environment protection legislation covers the preservation and protection of the environment — air, water, forests, land, biodiversity, wildlife, noise pollution, management of hazardous substances — which generally takes care of health issues, too. Factories Act and Shops and Establishment Acts provide for regulations on workplaces. Depending on the kind of business activity, such as food or pharmaceuticals, relevant laws would apply.

References:

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:

The statutes and regulations are available on the websites of the concerned departments and governments.

References:

1. Ministry of Environment and Forests
www.envfor.nic.in/legis/legis.html

2. Factories Act of 1948
<http://indiacode.nic.in/fullact1.asp?tfnm=194863>

3. Delhi Shops & Establishments Act of 1954
<http://www.legalte.com/BARE-ACTS/Delhi%20Shops%20&%20Establishments%20Act.%201954.pdf>

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 are contained in the Factories Act of 1948, the Mines Act of 1952 and the Dock Workers (Safety, Health & Welfare) Act of 1986. Public liability insurance is contained in the environment-related laws. Industry specific laws such as atomic energy, tobacco, etc., may contain specific measures for public safety.

References:

Factories Act of 1948
Mines Act of 1952
Dock Workers (Safety, Health & Welfare) Act of 1986

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 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 and are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

Poor working conditions and employment of child labor in sweatshops even in and around the capital city exists despite a large number of labor and environmental laws. A recent radiation leak from scrap handled in a scrapyard killed one person and exposed several to radiation.

Comprehensive labor inspections are not possible because of the numbers involved, and when they do occur, it becomes a source of rent seeking. The labor laws are dated and not harmonized, making it difficult to implement. Penalties have not changed with time and are therefore hardly deterrents.

Inspections under various laws is a huge burden on businesses, particularly those involved in manufacturing and small and medium industries. Industry associations have long demanded replacing inspections with self-certifications.

References:

1. "The missing inspector raj," Sreelatha Menon, Business Standard, Nov. 27, 2010
<http://www.business-standard.com/india/news/sreelatha-menonmissing-inspector-raj/416300/>
2. "Labor laws are not to blame," Vinita Kumar, Hindu Businessline, June 22, 2011
<http://www.thehindubusinessline.com/opinion/article2123740.ece>
3. "Labor law reforms make it to UPA policy agenda finally," Vikas Dhoot, Economic Times, May 31, 2011
http://articles.economicstimes.indiatimes.com/2011-05-31/news/29604263_1_labour-laws-contract-labour-firms
4. Radiation Incident in Mayapuri: Disquieting Signals to Labor
Babu P. Remesh, C P Vinod
<http://www.indiaenvironmentportal.org.in/files/Radiation%20Incident%20in%20Mayapuri.pdf>

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:

Poor working conditions and employment of child labor in sweatshops even in and around the capital city exists despite a large number of labor and environmental laws. A recent radiation leak from scrap handled in a scrapyard killed one person and exposed several to radiation.

Comprehensive labor inspections are not possible because of the numbers involved, and when they do occur, it becomes a source of rent seeking. The labor laws are dated and not harmonized, making it difficult to implement. Penalties have not changed with time and are therefore hardly deterrents.

Inspections under various laws is a huge burden on businesses, particularly those involved in manufacturing and small and medium industries. Industry associations have long demanded replacing inspections with self-certifications.

References:

1. "The missing inspector raj," Sreelatha Menon, Business Standard, November 27, 2010
<http://www.business-standard.com/india/news/sreelatha-menonmissing-inspector-raj/416300/>
2. "Labor laws are not to blame," Vinita Kumar, Hindu Businessline, June 22, 2011
<http://www.thehindubusinessline.com/opinion/article2123740.ece>
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<http://www.indiaenvironmentportal.org.in/files/Radiation%20Incident%20in%20Mayapuri.pdf>

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:

Poor working conditions and employment of child labor in sweatshops even in and around the capital city exists, despite a large number of labor and environmental laws. A recent radiation leak from scrap handled in a scrapyard killed one person and exposed several to radiation.

Comprehensive labor inspections are not possible because of the numbers involved, and when they do occur, it becomes a source of rent seeking. The labor laws are dated and not harmonized making it difficult to implement. Penalties have not changed with time and are therefore hardly deterrents.

Inspections under various laws is a huge burden on businesses, particularly those involved in manufacturing and small and medium industries. Industry associations have long demanded replacing inspections with self-certifications.

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<http://www.business-standard.com/india/news/sreelatha-menonmissing-inspector-raj/416300/>
2. "Labor laws are not to blame," Vinita Kumar, Hindu Businessline, June 22, 2011
<http://www.thehindubusinessline.com/opinion/article2123740.ece>
3. "Labor law reforms make it to UPA policy agenda finally," Vikas Dhoot, Economic Times, May 31, 2011
http://articles.economictimes.indiatimes.com/2011-05-31/news/29604263_1_labour-laws-contract-labour-firms
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Babu P. Remesh, C. P. Vinod
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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 6. Anti-Corruption Legal Framework, Judicial
Impartiality, and Law Enforcement Professionalism

6.1. ⁶⁴Anti-Corruption Law

73. Is there legislation criminalizing corruption?

89

73a. In law, attempted corruption is illegal.

Yes | No

Comments:

Under the Prevention of Corruption Act of 1988, attempted corruption is illegal. Though the act does not define "corruption," attempts by a public servant in taking a gratuity other than legal remuneration to perform an official act (Section 7); taking gratification by corrupt or illegal means to influence a public servant (Section 8); taking gratification to exercise influence with a public servant (Section 9); obtaining something valuable without consideration from a person concerned in a proceeding or business transacted by the public servant (Section 11); and criminal misconduct by a public servant (Section 13), are all offenses under the act.

India ratified the U.N. Convention against Corruption in May 2011 but attempted acts of corruption have been illegal since the inception of the Prevention of Corruption Act of 1988.

References:

Prevention of Corruption Act of 1988, Sections 7, 8, 9, 11 and 13
http://cbi.nic.in/rt_infoact/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

Comments:

"Extortion" is defined in the Indian Penal Code of 1860 in Section 383 as: "Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property, or valuable security or anything signed or sealed that can be converted into a valuable security, commits 'extortion.' "

References:

Indian Penal Code of 1860, Section 383
<http://mha.nic.in/pdfs/IPC1860.pdf>

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:

Under the Prevention of Corruption Act of 1988, offering a bribe is an offense and is covered under Section 12 which provides for punishment for abetting offenses defined in Section 7 (public servant taking gratification other than legal remuneration in respect of an official act) or Section 11 (public servant obtaining valuable thing, without consideration from person concerned in proceeding or business transacted by such public servant). Section 14 states that whoever habitually commits an offense under Section 12 "shall be punishable with imprisonment for a term which shall be not less than two years but which may extend to seven years and shall also be liable to fine."

Bribe-givers are granted immunity under Section 24 of the Prevention of Corruption Act if he/she gives a statement in a court of law that he/she offered a bribe.

The Second Administrative Reforms Committee, Ethics in Government has recommended that "collusive bribery" should be defined and no immunity be given to the bribe-giver under the act.

References:

1. Prevention of Corruption Act of 1988, Sections 12 and 14
http://cbi.nic.in/rt_infoact/pcact.pdf

2. The Fourth Report of the Second Administrative Reforms Committee, Ethics in Government, Paragraph 3.2.3 (document attached)

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

Comments:

Under the Prevention of Corruption Act of 1988, passive bribery is illegal. Though the act does not define "corruption," a public servant taking a gratuity other than legal remuneration to perform an official act (Section 7); taking gratification by corrupt or illegal means to influence a public servant (Section 8); taking gratification to exercise influence with a public servant (Section 9); obtaining something valuable without consideration from a person concerned in a proceeding or business transacted by the public servant (Section 11); and criminal misconduct by a public servant (Section 13), are all offenses under the act.

India ratified the U.N. Convention against Corruption in May 2011 but passive bribery was already an offense under the Indian laws.

References:

Prevention of Corruption Act of 1988, Sections 7, 8, 9, 11 and 13
http://cbi.nic.in/rt_infoact/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:

Currently there is no law which criminalizes bribing of foreign public officials. A bill has been presented before the Parliament in March 2011, but is yet to be passed.

India ratified the U.N. Convention against Corruption in May 2011.

References:

The Prevention of Bribery of Foreign Public Officials and Officials of Public International Organisations Bill, 2011 (document attached)

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

Comments:

Under Section 13(1)(c) of the Prevention of Corruption Act of 1988, 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."

References:

Prevention of Corruption Act of 1988, Section 13(1)(c)
http://cbi.nic.in/rt_infoact/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

Comments:

Under Section 13(1)(d) of the Prevention of Corruption Act of 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.

Section 6 of the Official Secrets Act of 1923 (a law intended to criminalize spying) makes it an offense to make unauthorized use of information that may affect the security of the state. The purpose of such use whether for private gain or otherwise, is irrelevant under this act.

References:

1. Prevention of Corruption Act of 1988, Section 13(1)(d)
http://cbi.nic.in/rt_infoact/pcact.pdf

2. Official Secrets Act of 1923, Section 6
http://mha.nic.in/pdfs/Official_Secret_Act1923.pdf

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

Comments:

Section 3 of the Prevention of Money-Laundering Act of 2002 (as amended in 2005 and 2009) defines money laundering as: "Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime and projecting it as untainted property shall be guilty of the offense of money laundering."

References:

Prevention of Money-Laundering Act of 2002, Section 3
<http://fiuindia.gov.in/pmla2002.htm>

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:

Criminal conspiracy is an offense under Section 120B of the Indian Penal Code of 1860. The offenses under the Prevention of Corruption Act of 1988 are read with Section 120B of the penal code to prosecute corruption-related offenses.

References:

1. Prevention of Corruption Act of 1988,
http://cbi.nic.in/rt_infoact/pcact.pdf

Yes: A YES score is earned if organized crime is illegal.

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

6.2. Anti-Corruption Agency or Equivalent Mechanisms

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

74a. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

Yes

No

Comments:

Under the administrative control of the Ministry of Personnel and Training, the following agencies are mandated to prevent corruption and investigate and prosecute offenders in the central government:

a) 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.

b) The Central Bureau of Investigation is the anti-corruption agency for investigating and prosecuting corruption cases involving all central government departments. The jurisdiction of CBI 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, which received statutory status in 2003, is the ombudsman body for exercising general superintendence and control over vigilance administration in the central government. The CVC has powers to inquire or cause inquiries to be conducted into offenses alleged to have been committed under the Prevention of Corruption Act of 1988 by certain categories of public servants of the central government. [See more against Indicator 55]

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.

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.

References:

Ministry of Personnel, Public Grievances and Pension, Annual Report 2010-2011, Chapter 8
[http://persmin.gov.in/AnnualReport/AR2010_2011\(Eng\).pdf](http://persmin.gov.in/AnnualReport/AR2010_2011(Eng).pdf)

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.

75. Is the anti-corruption agency effective?

58

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

Yes | No

Comments:

The only attempt at statutorily providing for independence from political interference is in respect of the Central Vigilance Commission (CVC), which is the ombudsman body for the central government. The vigilance commissioners (three 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.

Though attempt was made to statutorily place the Central Bureau of Investigation (CBI) under the supervision of the CVC in respect of the investigations conducted by it, the government still controls appointments to the CBI as well as other legal controls like powers under Section 6A of DSPE Act (for prior approval before conducting investigation against a senior officer), Section 19 of PC Act (for prosecution sanction), Section 377 and 378 CrPC (approval for filing of Appeals and Revisions in case of acquittals, etc. by lower courts), Section 24 CrPC (Appointment of Special Public Prosecutors), Section 4 of Criminal Law Amendment Ordinance (permission for initiation of attachment of property), etc.

References:

1. The Central Vigilance Commission Act of 2003, Section 26
cvc.nic.in/cvcact.pdf

2. Prevention of Corruption Act of 1988, Sections 19
http://cbi.nic.in/rt_infoact/pcact.pdf

3. Criminal Procedure Code of 1973, Sections, 24, 377 and 378
<http://mha.nic.in/pdfs/ccp1973.pdf>

4. Criminal Law Amendment Ordinance of 1944, Section 4

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:

Credibility of the current ombudsman and anti-corruption investigating agency is so low that the Supreme Court is directly monitoring some major corruption cases such as the telecom spectrum allocation, black money, etc.

The Court has also struck down the appointment of PJ Thomas stating that the HPC (the statutory High Powered Selection Committee) "for whatsoever reason, has failed to consider the relevant material keeping in mind the purpose and policy of the 2003 Act." In this case, the government had pushed through the appointment of PJ Thomas overruling the objections of the leader of opposition who is a member of the selection committee.

Members of Parliament have also been seeking more independence and accountability for CBI.

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.

The recent crusade against corruption has proposed bringing the Central Bureau of Investigation (CBI) under the control of the Lok Pal, a powerful National Ombudsman institution demanded by the civil society.

According to survey on the history of the Central Vigilance Commission and the Central Bureau of Investigations (the anti-corruption agency) done by the Commonwealth Human Rights Initiative, "the central government's management of these two organizations shows that it has never wanted them to become professionally strong and effective" because "the political executive must have complete control over police organizations so that it can misuse these for partisan purposes."

The Supreme Court in its ruling on the appointment of PJ Thomas as the CVC (who was facing corruption charges in a case) observed that, "If the selection adversely affects institutional competency and functioning, then it shall be the duty of the HPC not to recommend such a candidate. Thus, the institutional integrity is the primary consideration which the HPC is required to consider while making recommendation under Section 4 for appointment of Central Vigilance Commissioner." In this judgment, the court also noted how the CVC had overturned its own earlier advice relating to grant of vigilance clearance for Thomas without giving any reasons.

References:

1. The Central Vigilance Commission and the Central Bureau of Investigation: A brief history of some developments, GP Joshi, Commonwealth Human Rights Initiative
http://www.humanrightsinitiative.org/publications/police/cvc_cbi_some_developments_a_brief_history.pdf
2. Supreme Court judgment on the appointment of PJ Thomas as CVC, 2010 (document attached)
3. Outlook India, BJP, JD(U) Question CBI's Independence, Nov. 9, 2010
<http://news.outlookindia.com/items.aspx?artid=700597>
4. "Independence with accountability," B. S. Raghavan, Hindu Businessline, Feb. 16, 2011
<http://www.thehindubusinessline.com/opinion/columns/b-s-raghavan/article1458605.ece>
5. "Bofors case: Close case against Ottavio Quattrocchi, Delhi court tells CBI," India Today, March 4, 2011
<http://indiatoday.intoday.in/story/bofors-scam-closure-cbi-to-shut-ottavio-quattrocchi-case/1/131523.html>
6. A Quick Guide to the Lokpal Bills
<http://blogs.wsj.com/corruption-currents/2011/08/24/a-quick-guide-to-the-lokpal-bills/?mod=WSJBlog>

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 inquiry 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 of 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.

Since enactment of the 2003 act, there have not been any instance of removal of the heads of anti-corruption agencies. The Supreme Court recently struck down the appointment of PJ Thomas as the CVC, stating that the HPC (the statutory High Powered Selection Committee) "for whatsoever reason, has failed to consider the relevant material keeping in mind the purpose and policy of the 2003 act." In this case, the government had pushed through the appointment of PJ Thomas overruling the objections of the leader of opposition, who is a member of the selection committee.

References:

1. Central Vigilance Commission Act of 2003, Sections 5 and 6 and Section 26
cvc.nic.in/cvcact.pdf
2. "High power committee failed to consider relevant material in CVC appointment: Supreme Court," J. Venkatesan, The Hindu, March 4, 2011
<http://www.hindu.com/2011/03/04/stories/2011030464721400.htm>

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:

The anti-corruption agencies is staffed by permanent civil servants and police officers. They receive their staffing through a central recruitment process. This is mostly done annually or as and when demands are placed by the departments. This results in delays.

Further, in senior positions, merit may not always be the criteria for appointments and this is not a circumstance typical of anti-corruption agencies but prevails in all government departments. In the Central Bureau of Investigation, there are skewed appointment and promotion policies that discriminate between senior police officers from the premier police service (the Indian Police Service) who are deputed to the organization and the permanent executive officers of CBI.

References:

1. Central Vigilance Commission Annual Report 2010

http://www.cvc.nic.in/ar2010_01092011.pdf

2. Rajya Sabha Department related Parliamentary Standing Committee on Personnel, Public Grievances, Law And Justice, 38th Report on Demands for Grants (2010-11) of the Ministry Of Personnel, Public Grievances and Pensions April 2010, Paragraph 27.12

<http://164.100.47.5/newcommittee/reports/EnglishCommittees/Committee%20on%20Personnel.%20PublicGrievances.%20Law%20and%20Justice/38th%20D%20for%20G%20-%20Website.pdf>

3. Central Bureau of Investigation, Annual Report 2010

http://cbi.nic.in/annualreport/cbi_annual_report_2010.pdf

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:

Though the staff members are professionally qualified, they may not always be the best people for the job in an anti-corruption agency. Their appointments, particularly in senior positions, are not always made on merit.

But the large vacancies in the Central Bureau of Investigation is particularly alarming. The Annual Report 2010 of the Central Bureau of Investigation indicates that out of an authorized strength of 4,484 police officers, 946 posts are vacant and of 298 posts of legal officers, 155 posts are vacant and 100 of the 155 technical posts are vacant. The Parliamentary Standing Committee had in a report submitted to the Parliament in 2010 said in paragraph 27.12: "The committee strongly recommends that concrete action on war footing should be taken to ensure that the vacancies are filled up in a time-bound manner. It desires that necessary changes in the rules and procedures should be made to ensure that qualified and capable persons join this organization, particularly in the specialized fields."

In para 1.15.2 of the Central Vigilance Commission's Annual Report 2010, the commission has stated that the volume of work the CVC itself handles has progressively increased and there was a need for increasing manpower.

References:

1. Central Vigilance Commission Annual Report 2010

http://www.cvc.nic.in/ar2010_01092011.pdf

2. Rajya Sabha Department related Parliamentary Standing Committee on Personnel, Public Grievances, Law And Justice, 38th Report on Demands for Grants (2010-11) of the Ministry Of Personnel, Public Grievances and Pensions April 2010, Paragraph 27.12

<http://164.100.47.5/newcommittee/reports/EnglishCommittees/Committee%20on%20Personnel.%20PublicGrievances.%20Law%20and%20Justice/38th%20D%20for%20G%20-%20Website.pdf>

3. Central Bureau of Investigation, Annual Report 2010

http://cbi.nic.in/annualreport/cbi_annual_report_2010.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 responses to this indicator is the same as in the case of the national ombudsman and public enterprises. The anti-corruption entities, such as the CVC and CBI, which oversee the central government employees come under the administrative control of the Ministry of Personnel, Public Grievances and Pension. The funding of these entities are met out of the budget of the ministry.

References:

Budget of the 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: 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

Comments:

Under Section 14 of the Central Vigilance Commission Act, the commission is required to present an annual report of its work done to the president within six months of the close of the year. The report is also required to contain a separate part on the functioning of the Central Bureau of Investigation. The president is then required to lay the report before each House of Parliament.

CBI also makes annual reports available separately on its website.

In a retrograde move, CBI has been exempted as an organization under the Right to Information Act on the ground that the information held by the agency was sensitive and its disclosure would harm investigation and prosecution of corruption cases.

Citizens will, therefore, have restricted information about CBI's performance.

References:

1. Central Vigilance Commission Act of 2003, Section 14
<http://cvc.gov.in/cvcact.pdf>
2. Central Vigilance Commission Annual Report 2010
http://www.cvc.nic.in/ar2010_01092011.pdf
3. Central Bureau of Investigation Annual Report 2010
http://cbi.nic.in/annualreport/cbi_annual_report_2010.pdf
4. Department of Personnel & Training, Notification of June 9, 2011, amending Schedule II of the Right to Information Act of 2005
http://circulars.nic.in/WriteReadData/CircularPortal/D2/D02rti/1_3_2011-IR09062011.pdf

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:

Political interference, legal limitations and a lack of professionalism have restricted the performance of anti-corruption agencies to a fraction of what is required and what it would be capable of.

Investigating agency or departmental inquiries are prevented from independently pursuing corruption due to the legal protections given to public servants and administrative controls that the government holds to manipulate investigations: a) 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. b) Section 6A of the Delhi Special Police Establishment Act of 1946, prohibits initiation of any inquiry 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; c) 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; d) Section 377 and 378 CrPC (approval for filing of Appeals and Revisions in case of acquittals, etc. by lower courts), e) Section 24 CrPC (Appointment of Special Public Prosecutors), Section 4 of Criminal Law Amendment Ordinance (permission for initiation of attachment of property).

Government manipulation of appointments at the highest level was apparent when the Supreme Court struck down the appointment of the CVC chief on the ground the government had not considered "relevant material" (a corruption case in which he was an accused) before pushing through his appointment despite a dissenting note from the leader of the opposition (a member of the selection committee).

The inadequate performance of the CBI is reflected in the information made available in its annual report for 2010. Barely 1,000 cases are registered in a year against the corrupt. There are 3,500,000 central government employees (not including the armed forces and public sector companies). Given that there was such a huge outcry against grand corruption and governance deficit this year, the numbers of corruption cases registered are miniscule. The CBI claims 70 percent conviction rates. But there is no information on how many of these cases survive appeals in the higher courts. The Supreme Court has monitored investigations by CBI almost on a day-to-day basis further underscoring the ineffectiveness of the agency.

With its inclusion as an exempted organization under the Right to Information Act, there is even less information likely to be disclosed regarding its performance nor would there be any incentive to proactively disclose information about the organization.

The performance of the CVC, the current ombudsman body, shows up the indifference with which government departments tend to treat the agency and its incapacity to be an effective instrument to check corruption.

The cynicism about the independence and effectiveness of anti-corruption agencies was reflected in the civil society led anti-corruption crusade demanding a national ombudsman, Lok Pal, with powers over CBI and the government's anti-corruption machinery since the perception is that the government has manipulated the anti-corruption agencies to shield the corrupt.

References:

1. Central Bureau of Investigation, Annual Report 2010
http://cbi.nic.in/annualreport/cbi_annual_report_2010.pdf

2. Department of Personnel & Training, Notification of June 9, 2011, amending Schedule II of the Right to Information Act of 2005
http://circulars.nic.in/WriteReadData/CircularPortal/D2/D02rti/1_3_2011-IR09062011.pdf

3. Central Vigilance Commission Annual Report 2010
http://www.cvc.nic.in/ar2010_01092011.pdf

4. "BJP, JD(U) Question CBI's Independence," Nov. 9, 2010
<http://news.outlookindia.com/items.aspx?artid=700597>

5. The Gazette of India, The Central Vigilance Commission Act of 2003, Section 26
cvc.nic.in/cvcaact.pdf

6. Prevention of Corruption Act of 1988, Sections 19
http://cbi.nic.in/rt_infoact/pcact.pdf

7. Criminal Procedure Code, 1973, Sections, 24, 377 and 378
<http://mha.nic.in/pdfs/ccp1973.pdf>

8. A Quick Guide to the Lokpal Bills
<http://blogs.wsj.com/corruption-currents/2011/08/24/a-quick-guide-to-the-lokpal-bills/?mod=WSJBlog>

9. "High power committee failed to consider relevant material in CVC appointment: Supreme Court," J. Venkatesan, The Hindu, March 4, 2011
<http://www.hindu.com/2011/03/04/stories/2011030464721400.htm>

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 inadequate performance of the CBI is reflected in the information made available in its annual report for 2010. Barely 1,000 cases are registered in a year against the corrupt. There are 3,500,000 central government employees (not including the armed forces and public sector companies). Considering the huge outcry against corruption and governance deficit this year, the reality of corruption in public service is much higher than the numbers of registered corruption cases reflects.

The CBI claims 70 percent conviction rates. But there is no information on how many of these cases survive appeals in the higher courts, making it difficult to assess the quality of the investigations. The Supreme Court has monitored investigations by CBI almost on a day-to-day basis further underscoring the ineffectiveness of the agency and a mistrust that it was capable of acting fairly.

With CBI's inclusion as an exempted organization under the Right to Information Act, there is even less information likely to be disclosed regarding its performance, and there would be no incentive to proactively disclose information about the organization.

The performance of the CVC, the current ombudsman body, shows up the indifference with which government departments tend to treat the agency and its incapacity to be effective instrument to check corruption.

The cynicism about the independence and effectiveness of anti-corruption agencies was reflected in the civil society led anti-corruption crusade demanding a national ombudsman, Lok Pal, with powers over CBI and the government's anti-corruption machinery since the perception is that the government has manipulated the anti-corruption agencies to shield the corrupt.

References:

1. Central Bureau of Investigation, Annual Report 2010
http://cbi.nic.in/annualreport/cbi_annual_report_2010.pdf

2. Department of Personnel & Training, Notification of June 9, 2011, amending Schedule II of the Right to Information Act of 2005
http://circulars.nic.in/WriteReadData/CircularPortal/D2/D02rti/1_3_2011-IR09062011.pdf

3. Central Vigilance Commission Annual Report 2010
http://www.cvc.nic.in/ar2010_01092011.pdf

4. A Quick Guide to the Lokpal Bills

<http://blogs.wsj.com/corruption-currents/2011/08/24/a-quick-guide-to-the-lokpal-bills/?mod=WSJBlog>

5. "High power committee failed to consider relevant material in CVC appointment: Supreme Court," J. Venkatesan, The Hindu, March 4, 2011

<http://www.hindu.com/2011/03/04/stories/2011030464721400.htm>

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?

25

76a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Though the Central Bureau of Investigation maintains a hotline for reporting corruption and an online registration of complaints, it provides no information about the numbers of complaints received and their outcome.

According to the CVC's 2010 annual report, CVC received 16,689 complaints. It took no action on 5.1 percent of them because they were anonymous/ pseudonymous. Only 945 (5.8 percent) of these were found serious enough to warrant further action and were forwarded to the CBI or the chief vigilance officers of government departments and offices.

The report further states that 6,453 complaints were pending with the chief vigilance officers of government department and offices, of which 2,404 were pending for more than six months. Government departments also delayed inquiring into complaints referred by the commission — 7.10 percent were delayed more than three years, 50.80 percent were delayed between one and three years, and there were no responses to 42.10 percent of complaints pending up to one year.

There is no mention of what came of the complaints sent to CBI to investigate.

Despite the reaction against rampant corruption involving politicians, senior officials and cutting edge public officials, the poor response to complaints by the anti-corruption agencies acts as a deterrent for the public to complain against corruption. The perception is that the citizen grievances are unlikely to be heard.

One of the major thrust areas of the Lok Pal bills, which have been floated by various sections, is redress of public grievances. Not surprisingly, the government bill was silent on this aspect. One visible impact of the anti-corruption crusade has been the government's belated commitment to come up with a public grievances law to lay out a proper system of filing complaints for deficiency of service and maladministration and their redress.

References:

1. Central Bureau of Investigation

<http://cbi.nic.in>

2. Central Vigilance Commission Annual Report 2010

http://www.cvc.nic.in/ar2010_01092011.pdf

3. "Government Fast-Tracks Grievance Redressal Bill," Urmi A Goswami, Economic Times, Aug. 30, 2011

http://articles.economictimes.indiatimes.com/2011-08-30/news/29945235_1_draft-bill-lokpal-bill-entitlements

4. A Quick Guide to the Lokpal Bills

<http://blogs.wsj.com/corruption-currents/2011/08/24/a-quick-guide-to-the-lokpal-bills/?mod=WSJBlog>

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.

100 | 75 | 50 | 25 | 0

Comments:

Anonymous and pseudonymous complaints are not entertained. The carelessness or deliberateness with which some whistleblowers have been outed in the past discourages complainants as evident from the low numbers of complaints that are received.

In the CVC Annual Report 2010, the CVC received 439 whistleblower complaints, of which six were filed for being anonymous/pseudonymous. Some 155 of them were passed on to departments or CBI for inquiry or investigations as they were verifiable. Considering the whistleblower law has been in existence since 2004, these are small figures.

The CVC has stated in the report that the Joint Secretary (Home) in the Ministry of Home Affairs has been made the nodal authority to arrange for protection of whistleblowers.

This year saw a large number of civil society activists who were attempting to unearth corruption using the right to information act killed or attacked. Clearly, the environment to challenge corruption through legal means is fraught with danger. It is not surprising that a relatively free media has been at the forefront of corruption "scoops," given their immunity from intimidation that an ordinary citizen would be subject to from vested interests.

The government's whistleblower bill was considered by the Parliament standing committee and returned to tighten loopholes relating to protection of complainants among other issues.

References:

1. "Hooda government indicted for hounding forest scam whistleblower," India Today, Feb. 4, 2011
<http://indiatoday.intoday.in/story/haryana-cm-hooda-slammed-for-harassing-ifs-officer/1/128650.html>

2. "Ex-SEBI member to PM: ID leaked, family at grave risk," Indian Express, Aug. 30, 2011
<http://www.indianexpress.com/news/exsebi-member-to-pm-identity-leaked-famil/838990/>

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.

61 6.3. Judicial Independence, Fairness, and Citizen Access to Justice

77. Is there an appeals mechanism for challenging criminal judgments?

77a. In law, there is a general right of appeal.

Yes | No

References:

Criminal Procedure Code of 1973, Section 374
<http://mha.nic.in/pdfs/ccp1973.pdf>

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:

There are 4,000,000 cases pending before various high courts and about 50,000 cases before the Supreme Court, which are the courts of appeals. According to the National Litigation Policy 2010, the government proposes to carry out litigation reforms to reduce the average time of pending cases in India from 15 years to three years.

References:

1. National Litigation Policy 2010 (attached document)

2. "Courts clogged up with huge arrears," V. Eshwar Anand, The Tribune, Nov. 1, 2010
<http://www.tribuneindia.com/2010/20101101/edit.htm#6>

3. "Pending Litigations – 2009-10: 3.13 crore cases, 3054 judges required,"
Bar & Bench News Network, July 15, 2010
<http://barandbench.com/brief/2/843/pending-litigations-2009-10-313-crore-cases-3054-judges-required>

4. CJI's calculation puts arrears at 1cr cases, not oft-cited 3cr, Dhananjay Mahapatra, Times of India, Aug. 1, 2010
http://articles.timesofindia.indiatimes.com/2010-08-01/india/28320090_1_trial-courts-arrears-justice-kapadia

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 reasonable. Advocate fees may be high, and delays in dispensation of justice raises the cost of litigation. It follows that the poor are left out of the formal justice delivery system. This is evident from the numbers of undertrial prisoners that languish in Indian jails despite the provision of free legal aid to indigent litigants (in 2009, there were 250,204 undertrial prisoners in various jails – 66.4% of total inmates).

References:

1. The Supreme Court Rules of 1966, Third Schedule, Table of Court Fees, www.supremecourtindia.nic.in/rulespdf.pdf
2. The Court Fees' Act of 1870, read with respective High Court Rules, http://mha.nic.in/pdfs/Court_Fee_Act_1870.pdf
3. Prison Statistics 2009, National Crime Records Bureau, Ministry of Home Affairs <http://ncrb.nic.in/PSI2009/Prison2009.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?

25

78a. In practice, do judgments in the criminal system follow written law?

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

Comments:

Section 353 and 354 of the Criminal Procedure Code, 1973, lays down the form of a judgment, its language and content.

According to a study of the court dockets (as contained in the National Legal Mission document), maximum cases which clog the court system are criminal matters.

Corruption in the judiciary is rampant, particularly in the lower judiciary, and the written law is easily manipulated. Over 90 percent of regular hearing cases in the Supreme Court are civil, criminal, service, labor, tax, land and business matters, which are generally routine appeals to correct a lower court's decision.

Analysts believe that this pressure on the Supreme Court ends up diverting the court's attention from pressing constitutional issues and working to make the judicial system more just for those without the resources to reach the Supreme Court's corridors.

References:

1. "Flood of appeals affecting quality of judgments: SC," Times of India, March 21, 2010 http://articles.timesofindia.indiatimes.com/2010-03-21/india/28149636_1_apex-court-appeals-judicial-review
2. "Corruption in judiciary: Time for action," The Tribune, Dec. 3, 2010 <http://www.tribuneindia.com/2010/20101203/edit.htm#6>
3. Criminal Procedure Code of 1973, Section 353 and 354 <http://mha.nic.in/pdfs/ccp1973.pdf>
4. Public Interest Litigation in India: Overreaching or Underachieving, Varun Gauri, World Bank, November 1, 2009, World Bank Policy Research Working Paper No. 5109 http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1503803#%23
5. "Hard to reach," Nick Robinson, Frontline, Volume 27, Issue 3, Jan. 30-Feb. 12, 2010 <http://www.frontlineonnet.com/fl2703/stories/20100212270304600.htm>
6. National Legal Mission, November 2009, Ministry of Law and Justice http://lawmin.nic.in/doj/justice/National_Legal_Mission-7NOV2009.pdf

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?

25

79a. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | 25 | 0

Comments:

The government is the biggest litigator burdening courts with repeated appeals even on settled issues. This is a way of delaying or not enforcing judgments of the lower courts. An example of a property related judgment of the Supreme Court is cited where the police department repeatedly appealed a case which had gone against it in three lower courts.

The National Litigation Policy states that "the purpose underlying this policy is also to reduce government litigation in courts so that valuable court time would be spent in resolving other pending cases so as to achieve the goal in the National Legal Mission to reduce average pendency time from 15 years to three years."

References:

1. National Litigation Policy 2010 (document attached)
2. "Hard to reach," Nick Robinson, Frontline, Volume 27, Issue 3, Jan. 30-Feb. 12, 2010
<http://www.frontlineonnet.com/fl2703/stories/20100212270304600.htm>
3. "Flood of appeals affecting quality of judgments: SC," Times of India, March 21, 2010
http://articles.timesofindia.indiatimes.com/2010-03-21/india/28149636_1_apex-court-appeals-judicial-review
4. State of Haryana vs. Mukesh Kumar & Ors, Supreme Court Special Leave to Appeal (Civil) No. 28034/2011 (document attached)

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?

88

80a. In law, the independence of the judiciary is guaranteed.

Yes | No

Comments:

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) of the Constitution ensure the independence of the judiciary.

Various Supreme Court decisions have also confirmed that independence of the judiciary is a basic structure of the Indian Constitution.

References:

1. Constitution of India, Articles 50, 124(2), 217(1), 124(2), 217(1), 125, 221, 124(2) and (4), 129 and 215.
<http://lawmin.nic.in/coi/coiason29july08.pdf>

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:

The collegium system gives primacy to the judiciary and to that effect determines appointments and security of tenure of judges. But political and other forms of influence though not documented cannot be ruled out.

A recent admission of a retired chief justice of the Supreme Court that he had buckled to political expectations (he was eventually made the chief justice) in a significant ruling on a "habeas corpus" case during the national emergency in the 1970s, is a case in point.

The appointment of a serving Supreme Court judge being appointed to a post-retirement job in a tribunal four month before his retirement was criticized as being "...not illegal, ... but certainly questionable," according to a former chief justice. However, just post-retirements sinecure are pretty routine for judges of the higher judiciary raising questions about their in-service independence.

References:

1. "The collegium controversy," Krishnadas Rajagopal, Indian Express, Aug. 24, 2011
<http://www.indianexpress.com/news/the-collegium-controversy/836029/0>
2. "A Chief Justice of India says 'I am sorry' but 30 years too late," Shanmugham D Jayan and Raghul Sudheesh, Sept. 16, 2011
<http://www.firstpost.com/politics/a-chief-justice-of-india-says-i-am-sorry-but-thirty-years-too-late-85799.html>
3. "SC judge gets tribunal job before retirement," Indian Express, April 19, 2011
<http://www.indianexpress.com/news/sc-judge-gets-tribunal-job-before-retirement/778019/>
4. "Political protection should not be given to corrupt judges: CJI," Indian Express, April 16, 2011
<http://www.indianexpress.com/news/political-protection-should-not-be-given-to-corrupt-judges-cji/777079/0>

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:

There is no requirement in law and it is the duty of the chief justice of the Supreme Court or the high court to allocate matters to judges.

However, in recent years courts have been computerizing their work. The Supreme Court has computerized allocation of matters to benches into 47 subject categories, which have been further divided into various sub-categories. Each subject category has been allocated to one or more judges, and fresh cases are allocated electronically. As far as possible, matters involving same question of law and arising out of the same cause of action are heard by the same Honorable Judges. The court website clearly states that since the allocation is made by computer, as per subject-category, there is no scope for any bench-hunting.

Since the Supreme Court and high courts have become progressively computerized, this pattern of allocation of cases is followed by high courts and to some extent in some of the lower courts as well.

References:

Supreme Court of India, Handbook of Practice and Procedure, Chapter VI – Allocation, Listing of Cases & Cause Lists
<http://supremecourtindia.nic.in/handbook3rdedition.pdf>

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:

Under Article 124(2) and (4) of the Constitution of India, 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:

Constitution of India, Article 124(2) and (4)
<http://lawmin.nic.in/coi/coiason29july08.pdf>

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

Comments:

There have been no reported incidents.

References:

No source.

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

Comments:

There have been no documented incidents (based on desk research).

References:

No sources.

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?

54

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

Comments:

Article 15 of the Indian Constitution bars discrimination on the grounds of religion, race, caste, sex or place of birth. Article 25 grants freedom of religion, which can be subject to restrictions on grounds such as public order, morality, health and all the other fundamental rights.

However, the judiciary, particularly the lower judiciary, are not immune to the general failings of society with regard to caste/ class and communal bias while delivering justice. Research suggests (see reference no. 2), that cases relating to fundamental rights and public interest litigation is being used increasingly for the concerns of the middle class and the wealthy and hearings over the past 30 years finds that the Supreme Court has ruled increasingly against the socially disadvantaged. Since caste/class bias would imply affecting depressed sections of society, it can be said that judicial decisions have generally favored the well off.

References:

1. Manuski : Humanism for All Blog, "Judiciary And Its Brahmanical Prejudices In India," Vidya Bhushan Rawat, Feb. 10 2011
<http://www.countercurrents.org/rawat100211.htm>

2. Public Interest Litigation in India: Overreaching or Underachieving, Varun Gauri, World Bank, Nov. 1, 2009, World Bank Policy Research Working Paper No. 5109
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1503803#%23

3. "Hard to reach," Nick Robinson, Frontline, Volume 27, Issue 3, Jan. 30-Feb. 12, 2010
<http://www.frontlineonnet.com/f12703/stories/20100212270304600.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:

Article 14 of the Indian 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 or place of birth.

The judiciary is perceived to have a gender bias, which is evident in the trials of rape cases. However, attitudes of the higher judiciary favors correcting such bias when matters relating to crime and property rights are decided.

References:

"Rape & Remedy," Vandana Shukla, The Tribune, Sept. 18, 2011
<http://www.tribuneindia.com/2011/20110918/edit.htm#1>

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

Comments:

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.

The Legal Services Authorities Act of 1987 was enacted to give a statutory basis to legal aid programs throughout India and came into effect in 1995. All states have set up their legal aid authorities to provide assistance to indigent litigants.

References:

1. Constitution of India, Article 39A
<http://lawmin.nic.in/coi/coiason29july08.pdf>

2. The Legal Services Authorities Act of 1987
<http://nalsa.gov.in/actrules.html>

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:

According to Prison Statistics 2009, brought out by the government, the numbers of undertrial prisoners that languish in Indian jails despite the provision of free legal aid to indigent litigants was 250,204, which was 66.4 percent of the total inmates. Some 4.3 percent of the undertrials are women. And 1 percent of the total undertrials had been in jail for more than five years at the end of 2009.

The Commonwealth Human Rights Initiative Report of Jail Adalats states that disproportionately high undertrial population is largely due to underutilized bail provisions and indeterminate delay in the disposal of cases. Despite Supreme Court rulings asking trial courts to abandon the antiquated concept under which pretrial release is ordered only against bail with sureties. Instead, trial courts were urged that if "the accused has his ties in the community and there is no substantial risk of non-appearance, the accused may, as far as possible, be released on his personal bond."

Amendments were also made in Chapter XXXIII of the Cr.P.C. relating to the right to bail and the procedures in 2005 which empowered court officers to give bail to an undertrial if he is unable to post bail within a week of the date of his arrest presuming him to be indigent and release him on personal bond. The amendment also introduced section 436A, which prescribed a maximum period for which an undertrial prisoner can be detained.

Though State Legal Aid Authorities have been created in all states, the National Legal Aid Authority reports that it has provided legal aid for 26096 undertrial prisoners till October 2010; 1848 Lok Adalats were conducted in jails for settlement of compoundable criminal cases enabling the undertrial prisoners for securing early release from the prisons and 15,707 such cases were settled through the Lok Adalats organised in jails. Free legal aid has clearly not caught up with the large numbers of undertrials continuing to languish in jails.

The study conducted by Commonwealth Human Rights Initiative in 2009 shows that Jail Adalats (trial courts set up in jail from 1999) have not really worked and are also unconstitutional and in violation of fair trial guarantees and should be wound up. The report makes recommendations to make system changes such as decriminalizing petty offenses (such as vagrancy), curtailing the wide powers of arrest by the police, enforcement of directions of the Supreme Court to liberalize bail procedures by trial courts, etc.

References:

1. Prison Statistics 2009, National Crime Records Bureau, Ministry of Home Affairs
<http://ncrb.nic.in/PSI2009/Prison2009.htm>

2. NALSA Newsletter April-November 2010 (document attached)

3. Liberty at the Cost of Innocence, A Report on Jail Adalats, Commonwealth Human Rights Initiative, 2009
http://www.humanrightsinitiative.org/publications/prisons/liberty_at_the_cost_of_innocence.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 percent) of the value of the suit and without a cap. 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.

One of the conditions for legal aid prescribed under Section 12 of the Legal Services Authorities Act of 1987 is that the annual income of a person seeking legal aid should be less than Rs. 50,000.

The Law Commission of India in its Report No. 236 has called for revising court fees (frozen at 1966 level) with an across the board increase of ad valorem court fee subject to a cap at a reasonable level. The commission has recommended prescription of higher court fees for corporate litigation with a classification based on the financial capacity to bear the burden of court-fee.

References:

1. Court-fees in Supreme Court vis-à-vis Corporate Litigation, Law Commission of India, Report No. 236, December 2010
<http://lawcommissionofindia.nic.in/reports/report236.pdf>

2. Speech by the President of India on the Occasion of the Golden Jubilee Celebrations of the Karnataka State Bar Council, Bangalore, Karnataka, Aug. 6, 2011
<http://presidentofindia.nic.in/sp060811-2.html>

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 percent) of the value of the suit and without a cap. 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.

The Law Commission of India in its Report No. 236 has called for revising court fees (frozen at the 1966 level) with an across-the-board increase of ad valorem court fee subject to a cap at a reasonable level. The commission has recommended prescription of higher court fees for corporate litigation with a classification based on the financial capacity to bear the burden of court fees.

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.

The World Bank Doing Business Report 2011 ranked the Indian economy at 182 on the "Enforcing Contracts" indicator. In this survey, world economies are ranked on their ease of doing business, from 1 to 183, where a high ranking on the ease of doing business index means the regulatory environment is more conducive to starting and operating a local firm. Following the evolution of a sale of goods dispute, tracking the time, cost and number of procedures involved from the moment the plaintiff files the lawsuit until actual payment, the survey found that the average time taken was 1,420 days, the cost was 39.6 percent of the claim, and there were 46 procedures that had to be followed.

References:

1. Court-fees in Supreme Court vis-à-vis Corporate Litigation, Law Commission of India, Report No. 236, December 2010
<http://lawcommissionofindia.nic.in/reports/report236.pdf>

2. World Bank Doing Business 2011, Ranking of Economies
<http://www.doingbusiness.org/Rankings>
<http://www.doingbusiness.org/data/exploreeconomies/india/enforcing-contracts>

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 or expensive access to the court system for geographical reasons is a major problem. The Gram Nyayalaya (Village Courts) Act of 2008 came into effect in 2009, which is expected to provide speedy and inexpensive access to justice to the citizens at their door steps.

State governments have been slow in setting up infrastructure for the village courts as the commitment to partly fund these courts is by the central government. Some states have demanded more funds from the central government to start implementing the scheme.

According to the Report of the Parliamentary Standing Committee on Law & Justice, April 29, 2010, four states have set up about 47 village courts so far (paragraph 6.21).

References:

1. "State gets first 'Gram Nyayalaya,' " Daily Bhaskar, Nov. 28, 2010
<http://daily.bhaskar.com/article/state-gets-first-gram-nyayalaya-1594667.html>

2. Report of the Parliamentary Standing Committee on Law & Justice, April 29, 2010 (document attached)

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.

6.4. Law Enforcement: Conflicts of Interest Safeguards and Professionalism

83. Is the law enforcement agency (i.e. the police) effective?

33

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 of the Constitution 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. Lower level appointments are decentralized. Despite recruitment rules fixing academic and professional criteria, irregularities do occur in recruitment, sometimes resulting in scandals.

A spate of terrorist attacks and armed conflict in Naxal affected states have exposed the inadequacy of the police force, which is chronically understaffed and badly trained. The overall perception is one of lacking competence and being corrupt. Almost all of the bomb blast remain to be solved. The casualties in the line of duty of police officers has been on the rise.

The Supreme Court had given seven directives in 2006 to state government for carrying out widespread police reforms and had carefully monitored the progress by the states. These directions focus on selecting the best man for senior police positions and giving them security of tenure, separation of investigation & law and order functions, drafting of a new police act, etc. Since law enforcement agencies are very politicized in the states, governments are unwilling to let go their powers to appoint persons of their choice and to arbitrarily transfer those who don't toe the line.

The Commonwealth Human Rights Initiative Report on the progress of implementation of police reforms by the states. Most states, particularly those with large populations, were found to be non-compliant in the most crucial of the directives.

References:

1. "Rebuild India's police forces," editorial, The Hindu, Sept. 9, 2011
<http://www.thehindu.com/opinion/editorial/article2439809.ece>
2. Seven Steps To Police Reform, Commonwealth Human Rights Initiative Report, 2011 http://humanrightsinitiative.org/programs/aj/police/Seven_Steps_to_Police_Reform_JULY2011.pdf
3. Express India, "Inhuman conditions, simmering anger led to IRB jawans' revolt," Sabyasachi Bandopadhyay, Sept. 25, 2011
<http://www.expressindia.com/latest-news/inhuman-conditions-simmering-anger-led-to-irb-jawans-revolt/851437/>
4. "Uttar Pradesh government sanctions prosecution of 2 retired IPS officers," Daily News & Analysis, Jan 5, 2010
http://www.dnaindia.com/india/report_uttar-pradesh-govt-sanctions-prosecution-of-2-retired-ips-officers_1331133

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.

Terrorist attacks and armed conflict in Naxal dominated areas in recent years have seen the central government allocating funds for police modernization. However, corruption and general lack of competence and coordination has ensured that the outcome of the huge funding and procurements have not been commensurate with the objects. The problems with inadequate funds for investigation and prosecution expenses and also not putting the existing funds to optimal use by the anti-corruption agency has been commented upon by the Department Related Parliament Standing Committee.

References:

1. "The Indian fine art of faking security," Praveen Swami, The Hindu, July 21, 2011
<http://www.thehindu.com/opinion/lead/article2277386.ece?homepage=true>
2. Department Related Parliamentary Standing Committee, ATR on 38th Report, 2010-2011, Paragraphs 7 to 9
<http://164.100.47.5/newcommittee/reports/EnglishCommittees/Committee%20on%20Personnel,%20PublicGrievances,%20Law%20and%20Justice/43.pdf>

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 Supreme Court had given 7 directives in 2006 to state government for carrying out widespread police reforms and had carefully monitored the progress by the states. These directions focus on selecting the best man for senior police positions and giving them security of tenure, separation of investigation & law and order functions, drafting of a new Police Act, etc. Since law enforcement agencies are very politicized in the states, governments are unwilling to let go their powers to appoint persons of their choice and to arbitrarily transfer those who don't toe the line.

The Commonwealth Human Rights Initiative Report addressed the progress of implementation of police reforms by the states. Most states, particularly those with large populations, were found to be non-compliant in the most crucial of the directives.

Political patronage of the police force in the states is a major reason for illegalities committed by the police in the line of duty, whether torture or extortion, with impunity. According to the National Human Rights Commission, most of the human rights violation complaints received by it are against the police.

References:

1. "Rebuild India's police forces," editorial, The Hindu, Sept. 9, 2011
<http://www.thehindu.com/opinion/editorial/article2439809.ece>
2. Seven Steps To Police Reform, Commonwealth Human Rights Initiative Report, 2011 http://humanrightsinitiative.org/programs/aj/police/Seven_Steps_to_Police_Reform_JULY2011.pdf
3. "Are the Police Law unto Themselves?" Social Watch Perspective 3, 2011 (document attached)

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?

58

84a. In law, there is an independent mechanism for citizens to complain about police action.

Yes | No

Comments:

Currently, the only recourse under law is through the Protection of Human Rights Act of 1993, under which complaints regarding police misconduct can be brought before the National Human Rights Commission (NHRC) and the various state human rights commissions, institutions specifically assigned with protecting human rights in India. The Police Acts of the Centre as well as state versions are silent on the processes that can be taken against police misconduct by the aggrieved citizenry.

In Prakash Singh vs. Union of India, Writ Petition (Civil) No. 310 of 1996, the Supreme Court had directed wide-ranging police reforms. One of the directions related to setting up a police complaints authority at the district level to look into complaints against

police officers of and up to the rank of the deputy superintendent of police and another police complaints authority at the state level to look into complaints against officers of the rank of superintendent of police and above. NHRC is following up on this direction with the state governments and only about six states have set up such authorities.

Courts act as an external mechanism of police oversight. Complainants can directly sue police officers for harms caused to them by the police. Prosecutions can be brought by the state against police officers. Public interest litigation option can be pursued for large-scale police atrocities. Courts also refuse to convict persons if the evidence was obtained illegally, for example through warrantless searches and coerced confessions.

Corruption related allegations can be brought before the anti-corruption agencies such as the Central Vigilance Commission, Central Bureau of Investigation and Lok Ayuktas of the states.

References:

1. Protection of Human Rights Act of 1993

<http://www.nhrc.nic.in/>

2. National Human Rights Commission, Human Rights Issues

<http://www.nhrc.nic.in/>

3. Seven Steps To Police Reform, Commonwealth Human Rights Initiative Report, 2011

http://humanrightsinitiative.org/programs/aj/police/Seven_Steps_to_Police_Reform_JULY2011.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

Comments:

In *Prakash Singh vs. Union of India*, Writ Petition (Civil) No. 310 of 1996, the Supreme Court directed wide-ranging police reforms. One of the directions related to setting up a police complaints authority at the district level to look into complaints against police officers of and up to the rank of deputy superintendent of police and another police complaints authority at the state level to look into complaints against officers of the rank of superintendent of police and above. NHRC is following up on this direction with the state governments, and only about six states have set up such authorities.

A compliance study by the Commonwealth Human Rights Initiative on the Supreme Court direction by various State and Union Territories found that no State/UT had fully complied with the specifics of the Supreme Court's directions. Three states had partly complied. Two states, Andhra Pradesh and Uttar Pradesh, had refused to comply with the directive. It is interesting to note that according to the annual report of the National Human Rights Commission 2008-2009, the largest number of complaints registered with the Commission was from the state of Uttar Pradesh — 53,492 complaints.

The Annual Report of the National Human Rights Commission 2008-2009 states that during this period it had disposed of 9,176 cases on merit against a total of 103,996 cases received or carried forward from previous year. Some 86,612 cases were either dismissed in limine, disposed with directions or transferred to the state HRCs. The cases dealt with on merit involved complaints regarding custodial violence/ deaths, alleged fake encounters/ false implications/ disappearance, illegal arrests, unlawful detention and other alleged police excesses.

According to the annual report, during 2008-2009, the NHRC recommended monetary relief amounting to Rs.5,02,49,000 to the victims/next of kin of the deceased in 373 cases. Out of these 373 cases, it also recommended disciplinary action against the delinquent police officials/public servants in 11 cases and prosecution of the errant police officials in one case. The NHRC received compliance reports in 111 cases out of 373 cases relating to monetary relief and one compliance in respect of disciplinary action. NHRC also reported that it had not received compliance reports in 71 cases for the period from 1999-2000 to 2007-2008.

These data show that the complaints mechanism does not work. The law enforcement agencies are indifferent or reluctant to have any oversight imposed on them, and mechanisms such as NHRC's recommendation role are easily flouted.

According to National Crime Records Bureau Crime in India Report 2009, 14,975 cases against police personnel were actually registered for action after preliminary inquiry versus the 54,873 complaints that were received during the year. Of these, 9,759 were for departmental inquiries and 1,618 were for criminal prosecution.

References:

1. Police Reforms: State And UT Compliance With Supreme Court Directives, As of June 2010, Commonwealth Human Rights Initiative

http://humanrightsinitiative.org/programs/aj/police/india/initiatives/chri_state_compliance_with_supreme_court_directives_chart.pdf

2. Accountability for the Indian Police: Creating an External Complaints Agency, Adam Shinar, Human Rights Law Network, 2009

http://hrln.org/hrln/pdf/interm_work/Indian%20Police%20Reform%20Report%20-

[%20Adam%20Shinar%20_formatted%20by%20Ka.pdf](#)

3. Annual Report of the National Human Rights Commission 2008-2009

<http://www.nhrc.nic.in/Documents/AR/Final%20Annual%20Report-2008-2009%20in%20English.pdf>

4. National Crime Records Bureau, Crime in India 2009

Complaints/Cases Registered Against Police Personnel During 2009

http://ncrb.nic.in/CII-2009-NEW/cii-2009/Table%2016_1.pdf

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 law enforcement officers are public servants, the anti-corruption framework that applies to other government employees applies to the police as well.

References:

Central Vigilance Commission
cvc.nic.in

Central Bureau of Investigation
cbi.nic.in

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 police officials as for other public servants.

According to National Crime Records Bureau Crime in India Report 2009, 14,975 cases against police personnel were actually registered for action after preliminary inquiry versus 54,873 complaints that were received during the year. Of these, 9,759 were for departmental inquiries and 1,618 were for criminal prosecution. There is no separate record for corruption cases but would presumably form part of the cases under criminal prosecution.

The police generally are slow to act against one of their own. In fact, bringing the lower level police officers who are known to be the most corrupt, under the ambit of the national ombudsman (the legislation is in the process of being debated in the Parliament) is a significant demand of the anti-corruption crusaders.

References:

1. National Crime Records Bureau, Crime in India 2009
Complaints/Cases Registered Against Police Personnel During 2009
<http://ncrb.nic.in/CII-2009-NEW/cii-2009/Table%2016.1.pdf>
2. "Delhi Police, MCD top list of most corrupt departments," Indian Express, July 19, 2011
<http://www.indianexpress.com/news/delhi-police-mcd-top-list-of-most-corrupt-depts/648617/0>
3. "How should corruption of Group C officials be checked?" India Against Corruption, Dec. 5, 2011
http://news.indiaagainstcorruption.org/?p=3810&utm_source=rss&utm_medium=rss&utm_campaign=how-should-corruption-of-group-c-officials-be-checked

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:

There is no blanket immunity from criminal proceedings for law enforcement officials. However, there are protections available under the law. 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. Under Sections 96-106 of the Indian Penal Code of 1860, (right to private defense), the police officer must prove that the death was caused in the legitimate exercise of the right of private defense.

Section 46 (1) of the Code of Criminal Procedure of 1973 empowers a police officer to touch or confine the body of a person being arrested if s/he does not submit to the officers' 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 endeavor 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 of 1988 allow immunity from prosecution without the sanction of the government.

Section 80 of the Civil Procedure Code of 1908 mandates two months' notice before a civil suit can be brought against the government or an official on duty.

References:

- Sections 96-106 of the Indian Penal Code of 1860 — Right of private defense
<http://mha.nic.in/pdfs/IPC1860.pdf>
- Section 46 (1) of the Code of Criminal Procedure of 1973 — Making arrests
Section 197 of the Code of Criminal Procedure, 1973 — Immunity for actions in the line of duty
<http://mha.nic.in/pdfs/ccp1973.pdf>
- Section 80 of Civil Procedure Code of 1908 — Suit notice for inaction by public servants
<http://www.vakilno1.com/bareacts/civilprocedure/Civil-Procedure-Code-1908.htm>

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.

Comments:

According to the National Crime Records Bureau Crime in India Report 2009, 14,975 cases against police personnel were actually registered for action after preliminary inquiry as against 54,873 complaints that were received during the year. Of these, 9,759 were for departmental inquiries and 1,618 were for criminal prosecution.

According to the annual report, during 2008-2009, the NHRC recommended monetary relief amounting to Rs.5,02,49,000 to the victims/next of kin of the deceased in 373 cases. Out of these 373 cases, it also recommended disciplinary action against the delinquent police officials/public servants in 11 cases and prosecution of the errant police officials in one case. The NHRC received compliance reports in 111 cases out of 373 cases relating to monetary relief and one compliance in respect of disciplinary action. NHRC also reported that it had not received compliance reports in 71 cases for the period from 1999-2000 to 2007-2008.

The statistics data on criminal proceedings against errant police officials is not commensurate with the numbers of complaints received against them through the NHRC and other police complaints mechanism and with the perception of corruption in the police force.

References:

1. National Crime Records Bureau, Crime in India 2009
Complaints/Cases Registered Against Police Personnel During 2009
<http://ncrb.nic.in/CII-2009-NEW/cii-2009/Table%2016.1.pdf>
2. Accountability for the Indian Police: Creating an External Complaints Agency, Adam Shinar, Human Rights Law Network, 2009
http://hrln.org/hrln/pdf/intern_work/Indian%20Police%20Reform%20Report%20-%20Adam%20Shinar%20formatted%20by%20Ka.pdf
3. Annual Report of the National Human Rights Commission 2008-2009
<http://www.nhrc.nic.in/Documents/AR/Final%20Annual%20Report-2008-2009%20in%20English.pdf>

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.