

Global Integrity Scorecard:

India

India: Reporter's Notebook

By Ritu Sarin

India, which boasts of being the world's third-largest economy, is a country of contradictions. That remains true of the manner in which it continues to grapple with one of its most crippling problems: corruption. The international conventional wisdom seems to be that corruption in India is on the retreat, but this may be surprising news to many Indian citizens.

As India slowly shifts into an early election mode (imminent due to a rift between the ruling United Progressive Alliance (UPA) and its Left Front allies, it is evident that corruption will continue to be a major campaign issue, along with inflation and national security.

Even as the UPA government can take credit for initiating reforms to fight graft, the public perception of these efforts is poor. Evidence of this came from a CNN-IBN-Indian Express pre-poll survey in which 49 percent of respondents stated that corruption had gotten worse in three years of UPA rule. Only 11 percent felt there was a tangible improvement. The rest had no opinion on the subject.

This gap between government moves to curb corruption at an institutional level and their effects on the man on the street still dogged by the malaise is acknowledged by officials who head the most powerful anti-corruption agencies.

The multi-tiered system is led by the Central Bureau of Investigation (CBI), the country's premier investigation agency. Its director, Vijay Shankar, rated the 2005 enactment of the Right to Information Act as the most significant contribution aimed at bringing transparency and accountability into governance.

Shankar, however, admitted, "A determined political will is required to combat corruption, and the situation in the states is alarming. The criminal-political-bureaucrat nexus is worrying, and the criminal justice system is crumbling under its own weight."

This is a rare admission from the CBI chief, who describes how efforts to book the errant and corrupt are often stymied: "The rich and powerful are able to frustrate the trial process at will by filing frivolous petitions, and getting the trials stayed for years on end. Crucial witnesses are won over or suffer genuine memory loss owing to delays. As a result, the corrupt and the criminals escape scot-free, and fear of the law diminishes. The criminal justice system needs to be reformed and strengthened greatly. The state anti-corruption and vigilance organizations are in urgent need of empowerment."

For the CBI, 2005-2006 was marked by a curious absence of any mega-corruption scams being referred to it, while several high-profile corruption cases were wound up.

Two examples: Chief Minister Mayawati of Uttar Pradesh State was let off in 2007 for her role in the alleged embezzlement of 175 crore rupees (US\$ 4.4 million) from the Taj Mahal Heritage Corridor, a now defunct tourist facilities project. Because the governor did not provide the mandatory "sanction" to prosecute her, no trial took place, despite objections from advocates.

Then, there is the two-decade old Bofors scandal, in which Indian officials were allegedly given huge bribes in exchange for purchasing artillery from Bofors, a Swedish arms manufacturer. The agency lost its chance of extraditing Ottavio Quattrocchi – an Italian businessman accused of taking kickbacks – to trial in India because the Union Law Ministry withdrew its appeal in the Argentine Supreme Court.

However, even as political interference resulted in historic corruption cases ending in a whimper, the volume of cases being booked against middle-level government officials rose sharply.

A snapshot from among the dozens of corruption cases registered by the CBI in just two months shows a case against another commissioner of excise for accepting a 20-lakh rupee (US\$50,290) bribe from a company he was investigating, a municipal councilor and her husband being arrested for demanding bribes for use of a sewerage connection, an auditor working in the Defence Pension Unit being arrested for demanding a 25,000 rupee- (US\$628) bribe from a widow, and a case against one of CBI's own superintendents who was trapped while he was threatening and demanding bribes from an accused under investigation by the agency.

Such cases of "routine" corruption do not even make newspaper headlines in India. In fact, a large number of recent corruption scandals have been exposed by sting operations mounted by TV channels. But the government has proposed introducing a lengthy content code for the electronic media to regulate intrusive journalism and protect privacy.

While they may have been out of the loop of the CBI some corruption scandals did make news, such as the May 2007 report of the Asian Legal Resource Centre titled "Widespread Corruption in the Public Distribution System (PDS) Causing Starvation Deaths." The report concluded that the PDS management continued to suffer from corruption due to the failed criminal justice system and gave a set of recommendations on how to tackle the problem.

Another significant revelation came with the report of the World Bank's Anticorruption Unit (Department of Institutional Integrity), which shows how huge kickbacks were paid to Indian ministers and officials of the Union Health Ministry in its multi-million-dollar projects to reduce maternal and infant mortality. The 2005 report listed health projects in which evidence of corruption was traced, performance certificates forged and

substandard drugs purchased.

Pritush Sinha, the head of the country's other major anti-corruption unit, the Central Vigilance Commission (CVC), which has supervisory powers over the CBI, acknowledges that such instances do reflect a corruption-ridden society. "Unlike more developed economies, in India corruption is more pervasive in the case of delivery of public services," Sinha says. "This is a fact which affects the poorer sections the most, and is more intractable to address in terms of effective anticorruption measures."

Sinha adds, "Institutional corruption is another aspect of corruption in India. Corruption stems from complex rules and procedures and from delays. The opening-up of the economy and large all-around investments allow greater opportunity for graft and bribery. There is a general impression that, in the wake of the promulgation of the Right to Information Act, the liberalization of the economy and the use of technology, there has been some improvement in the perception of corruption in India. But I cannot say there has been a significant improvement as far as the average citizen is concerned."

It is for this reason that the head of Transparency International India, retired Adm. R. H. Tahiliani, says it has been decided to make rural India and "below poverty level" states the focus of its next corruption report, on which work has just begun. TI India's 2005 report concluded that 62 percent of Indians had a firsthand experience of paying a bribe or "using a contact" to get a job done in a public office. The report listed the Indian police highest on the corruption score in India, followed by the judiciary of the lower courts, hospitals, electricity services and the PDS.

"The country may be headed in the right direction in its fight against corruption, but the political will is largely lacking," Tahiliani says. "This is the reason why we felt the target for our forthcoming corruption study should be the rural masses living below poverty levels. They continue to be affected by corruption in their day-to-day existence."

On the plus side of the government's response to the corruption problem is implementation of the 2005 Right to Information Act, increasingly being used by Indians as a tool to expose corruption. The "whistle-blower" legislation, called the Public Interest Disclosure Resolution (PIDR), has logged over 1,300 complaints in the three years of its existence, and provided a secure route for exposing wrongdoing in officialdom.

However, the CVC has recently reported to the Union Home Ministry that over 30 of these whistle-blowers were harassed or victimized despite the supposedly secret PIDR complaints.

On the flip side, key pieces of proposed anti-corruption legislation have been held up for years, some for decades.

The most significant is the Lok Pal Bill, meant to curb corruption in high offices, including the office of the prime minister. The bill was first introduced in Parliament in 1968. Meanwhile the Corrupt Public Servants Bill has been pending since 1999. Besides these, the Election Commission's recommendation to debar candidates with a criminal background from parliamentary or State Assembly elections is held up, as is the controversial Judges Inquiry Bill, designed to set up an inquiry mechanism for allegations and complaints against members of the judiciary.

This is probably why so many Indians feel political will to fight corruption is lacking.

India: Corruption Timeline

April 1987 – Swedish State Radio reports that a 60 billion rupee (US\$1.3 billion) deal for 400 self-propelled howitzers between the Indian government and Swedish arms manufacturer Bofors in 1986 had been tainted by bribery. Prime Minister Rajiv Gandhi orders an investigation into the matter. In June, the Swedish government reveals that the company spent 1.3 billion to 1.8 billion rupees (US\$29 million to US\$39 million) on consultancy fees which were allegedly used to bribe Indian officials.

November 1989 – With the Bofors scandal as a backdrop, Gandhi's Congress Party, which had ruled India for 42 years, is ousted from power in elections that leave the party with fewer than 200 of the 543 seats in Parliament.

May 1991 – Former Prime Minister Gandhi is assassinated by a suicide bomber at an election rally. The Congress Party installs veteran politician P.V. Narasimha Rao as provisional leader; Rao becomes prime minister following his party's victory in June elections.

April 1992 – The Bombay stock market plummets as banks fail to meet payments on purchases of government securities. According to investigators, several banks had illegally conspired to funnel money held by Indian and foreign banks to stockbrokers in order to speculate on the Bombay exchange. The market collapse costs millions of Indian investors an estimated 69 billion rupees (US\$1.5 billion).

June 1993 – Harshad Mehta, a stockbroker known as Big Bull and one of the main suspects implicated in the ongoing Bombay securities scandal, alleges that in late 1991 he delivered suitcases containing 10 million rupees (US\$217,000) in political donations to Prime Minister Rao. In July, Rao and his Congress Party barely escape a no-confidence vote.

December 1993 – The Joint Parliamentary Committee investigating the 1992 Bombay securities scandal concludes it was a deliberate and criminal misuse of public funds by four banks caused by lax enforcement by the government, stock exchanges and banks. The committee criticizes the Ministry of Finance for not noticing problems, then failing to respond to them.

December 1994 – On the same day, two cabinet members quit due to their roles in the Bombay securities scandal, and a third resigns after a government report links him to a scandal in which sugar imports were intentionally delayed, enabling sugar companies to earn hundreds of millions of dollars in profits.

January 1996 – After a four-year inquiry into the so-called hawala scandal, the Central Bureau of Investigation (CBI) charges 10 political leaders with accepting 650 million rupees (US\$14 million) in bribes from the leader of a money-laundering racket. Hawala is a popular form of black market trading, whereby money from abroad is laundered through street dealers to family members in order to avoid taxes. Three cabinet ministers immediately resign.

March 1996 – A national newspaper reports that in July 1995, National Fertilizers Limited (NFL) contracted to buy 2 million metric tons of urea from the Turkish firm Karsan, yet despite an advance payment of 1.7 billion rupees (US\$38 million) by NFL, Karsan never delivered any urea. Authorities uncover a kickback scheme surrounding the deal involving Karsan and NFL executives, as well as relatives of high-level government officials. Charges are brought in December 1998, but motions by the accused and other procedural snags draw the case out over many years. As of early 2006, nine defendants are facing trial, including B. Sanjiva Rao, a relative of former Prime Minister Rao, and Prakash Chandra Yadav, son of former Union Minister Ram Lakhan Singh Yadav.

May 1996 – After two key governors of India's ruling Congress Party are linked to the hawala scandal, the Congress Party is defeated in elections. In the ensuing political chaos, first Atal Behari Vajpayee of the Bharatiya Janata Party (BJP), then H. D. Deve Gowda of the newly created United Front Party, become prime minister.

August 1996 – Federal police discover 60 million rupees (US\$1.3 million) in cash and a stash of jewelry during raids on two homes owned by Sukh Ram, former Telecommunications minister under Rao. Investigators discover Ram had undeclared assets worth 390 million rupees (US\$8.5 million). Ram, who supervised 1.1 trillion rupees (US\$25 billion) worth of tender offers for the privatization of the Indian telephone system, is accused of accepting bribes, but the charges are later dropped.

April 1997 – Prime Minister Gowda is overwhelmingly defeated in a no-confidence vote. Inder Kumar Gujral of the Janata Dal party becomes prime minister, pledging a "clean government."

April 1997 – The CBI implicates 56 suspects in the so-called "fodder scam," an alleged 20-year scheme that looted 1.9 billion rupees (US\$280 million) from agricultural support programs in the state of Bihar. Among the suspects is Laloo Prasad Yadav, national president of Janata Dal and powerful ally of Prime Minister Gujral.

May 1997 – Former Prime Minister Rao is indicted on bribery charges for conspiring to buy votes in Parliament prior to a 1993 no-confidence vote.

July 1997 – Yadav splits the Janata Dal Party, taking 16 of its 45 members to found the new Rashtriya Janata Dal. He quits as chief minister of Bihar after the Supreme Court denies his appeal for protection from imprisonment and the CBI orders his arrest. Yadav arranges to install his wife Rabri Devi as the new chief minister, even though she has no political experience and is reportedly illiterate. Yadav surrenders to

authorities a week after resigning, and is released on bail in December.

November 1997 – India's fourth government in 18 months collapses. Prime Minister Gujral resigns after the Congress Party withdraws its support from the ruling coalition. Parliament is officially dissolved in December.

March 1998 – Atal Behari Vajpayee of the BJP becomes the fourth prime minister in two years. The Congress Party picks Sonia Gandhi, the widow of assassinated Prime Minister Rajiv Gandhi, as its new president.

April 1999 – Prime Minister Vajpayee resigns after his government loses a vote of no-confidence. Vajpayee agrees to stay on until a new government is formed.

October 1999 – The Bofors scandal resurfaces when corruption and conspiracy charges are filed against five people, including deceased ex-prime minister Rajiv Gandhi, who is accused of blocking an investigation into Bofors. Former Defense Minister D. K. Bhatnagar and arms dealer Win Chadha are also charged.

January 2000 – The Central Vigilance Commission, charged with attacking corruption, publishes the names of 74 senior bureaucrats and 20 police officers whom the agency believes should face corruption charges. Most are from elite branches of the civil service, and some are retired.

September 2000 – Former Prime Minister Rao is convicted of criminal conspiracy and corruption in the 1993 vote-buying scandal – the first Indian prime minister to be convicted in a criminal case. He is sentenced to three years in prison but is acquitted on appeal in March 2002.

March 2001 – An Indian news Web site, Tehelka.com, releases a secretly filmed documentary apparently showing 31 politicians, bureaucrats, and army officials receiving bribes from undercover journalists posing as arms dealers. The scandal leads to the resignation of Defense Minister Georges Fernandes, the leaders of the Samata Party and the ruling BJP, and the suspension of four Defense Ministry officials. However, Fernandes is later reinstated, and the CBI never files charges in the incident. Tehelka.com suspends its operations in October 2002 due to lack of funding – its chief investor, a brokerage firm named First Global, withdrew all of its Indian operations after being served with over 200 summonses by the government.

March 2002 – Parliament enacts the Prevention of Terrorism Act (POTA), a controversial anti-terrorism measure that grants the government far-reaching powers, which are allegedly used to target religious minorities and political opponents. Much of POTA resembles the defunct Terrorists and Disruptive Activities (Prevention) Act (TADA), under which tens of thousands of human rights violations were committed against minorities, union activists, and political opponents in the 1980s and 1990s. After acknowledging these abuses, the government lets TADA lapse in 1995.

December 2002 – Parliament passes the Freedom of Information Bill, which gives citizens the right to access certain government information, and the Representation of the People Bill, which requires candidates for parliamentary or assembly elections to disclose any criminal records and declare assets and liabilities after being elected.

December 2002 – The New Delhi High Court stops the trial of the Hinduja brothers, who run a multibillion-dollar global business empire, and dismisses the case, arguing that the CBI did not follow proper procedures in filing charges of criminal conspiracy, cheating, and bribery related to the Bofors scandal. In July 2003, the Supreme Court reverses the lower court and orders resumption of the trial.

March 2003 – Investigators looking into an inter-state counterfeit stamp operation file charges against 39 people, including government clerk and alleged mastermind Abdul Karim Telgi. The detainees are accused of printing and selling fake stamps used for government notary purposes.

July 2003 – The Anti-Corruption Bureau reveals that as many as 2,642 government employees arrested on bribery charges over the past 10 years have not been prosecuted. The lack of progress is attributed to supervisors, since under Indian law investigators must obtain permission from the head of the department in which the accused employee works in order to proceed with charges.

November 2003 – Two congressmen and 11 senior police officers are detained pending an investigation related to the Telgi stamp scandal, now estimated to have cost the government 200 billion to 300 billion rupees (US\$4.3 billion to US\$6.5 billion). About 60 people, including 13 police officers, have been arrested during the investigation.

November 2003 – Satyendra Dubey, the supervisor for a national highway project in Bihar, accuses road contractors of colluding with gangsters to steal from the 550 billion rupee (US\$12 billion) project. Dubey is assassinated after his identity is revealed.

November 2003 – Dilip Singh Judeo, a junior environment minister and BJP leader, resigns after a video is broadcast showing him taking money from a businessman representing an Australian mining company. The "businessman" later tells the CBI he was a journalist running a sting operation.

February 2004 – The Delhi High Court posthumously clears Rajiv Gandhi, D. K. Bhatnagar and Win Chadha of corruption charges in the Bofors scandal. The Hinduja brothers are cleared of corruption charges, but not cheating and conspiracy charges.

May 2004 – The Congress Party scores a surprise victory in general elections. Manmohan Singh becomes

prime minister.

April 2005 – Defense Minister Pranab Mukherjee suspends all transactions with South African weapons manufacturer Denel after a South African newspaper reports that Denel had improperly obtained confidential information relating to Indian arms purchases. Denel secured a 220 million rupee (US\$4.8 million) contract in 2003 to supply rifles to India.

September 2005 – Railway Minister Laloo Prasad Yadav is charged with misappropriating state funds in the long-running "fodder scam." Both Yadav and Bihar Chief Minister Jagannath Mishra are charged with embezzling over 1.8 billion rupees (US\$40 million) in state funds intended for the purchase of animal fodder and with illegally withdrawing an additional 9.2 million rupees (US\$200,000) from the treasury in the state of Jharkhand. In all, a total of 170 people have been charged in connection with the scandal.

January 2006 – Prahlad Goala, a reporter with the newspaper Asomiya Khabar in the northeastern state of Assam, is murdered. Goala had recently written articles accusing local forestry service officials of having links to timber smuggling. The forest warden, who had made death threats against Goala soon after the articles were published, is arrested in connection with the killing.

March 2006 – The BJP alleges corruption in the military's contract to buy six submarines from two French companies. The BJP claims the government overpaid for the submarines by approximately 5.2 billion rupees (US\$113 million) and used the excess to pay commissions to middlemen who helped secure the deal. Commissions in defense deals are forbidden under the law.

December 2006 – A former cabinet minister, Shibu Soren, is given a life sentence for murdering his aide, Shashinath Jha, 12 years ago. He is found guilty on charges of abduction, murder and criminal conspiracy. Soren is the first Indian cabinet minister to be convicted of murder. Federal investigators claim Jha was murdered because he was aware of kickbacks paid to Soren's party members.

In a landmark ruling pertaining to another case, the Supreme Court says prosecutors do not need prior permission to begin proceedings against politicians facing corruption charges. Until now assent was needed from the Parliament speaker or a state governor to charge an MP or a legislator. The judgment is announced while dismissing petitions filed by politicians arguing that the prosecution must have permission from competent authority prior to filing corruption charges against them.

Aug. 2, 2007 – The Manipur state government issues a directive banning the publication of any statement made by unlawful organizations. This order pertains to books, newspapers and any document, whether printed or in electronic form. If any of these printed materials contain content that the state finds necessary to ban, the publication will be forfeited. The All Manipur Working Journalists Union urges the state government to withdraw the orders by Aug. 9.

Aug. 14, 2007 – A group of men who identify themselves as members of Shiv Sena, A Hindu Nationalist Party, attack the office of an Indian weekly newspaper Outlook. The assailants are angered by the political journal's depiction of Bal Thackeray, founder of the party, as a "villain" in the current issue of the magazine. Outlook magazine editor Vinod Mehta calls the incident a "clear and blatant attack on the freedom of press."

India: Facts

The Global Integrity Report provides a mix of qualitative and quantitative data. The Integrity Indicators, which provide a framework for qualitative reporting, also include detailed quantitative scores on 304 discrete measures of governance. To encourage comparisons between our data and existing international datasets, we have collected some of the latest and most relevant work and made it available for download here in an Excel spreadsheet. We encourage our readers to use this data to make comparisons to the Integrity Indicators, and to use our source data in their original research. If you have done work based on the Integrity Indicators, or are considering it, we want to hear from you.

Press Freedom Index	35.00
Economic Freedom Index	55.60
Human Development Index	0.61
Bribe Payers Index	4.62
Corruption Perception Index	3.50
Failed States Index	70.80
WBI: Control of Corruption	-0.21
WBI: Political Stability	-0.84
WBI: Government Effectiveness	-0.04
WBI: Voice and Accountability	0.35
Combined Gross Enrollment Ratio for Primary, Secondary and Tertiary schools (%)	62.00
GDP per Capita(Constant 2000 US dollars)	633.74
Foreign Aid Per capita (US dollars)	2.00
Total Government Expenditure %GDP	
Unemployment, total (% of total labour force)	5.00
Gross External Debt (US\$ millions)	155,033.00
Poverty Rate	28.60
GINI	32.50
Net Foreign Direct Investment inflows (as% of GDP)	0.80
Female Economic activity rate %	34.00
Life Expectancy	63.60
Legatum Prosperity Index (Material Wealth)	45.00
Legatum Prosperity Index (Life Satisfaction)	49.00
Religious Freedom	No

India: Integrity Indicators Scorecard**Overall Score: 75 - Moderate**

Category I	Civil Society, Public Information and Media	74	Moderate
I-1	Civil Society Organizations	71	Moderate
I-2	Media	69	Weak
I-3	Public Access to Information	83	Strong
Category II	Elections	79	Moderate
II-1	Voting & Citizen Participation	98	Very Strong
II-2	Election Integrity	97	Very Strong
II-3	Political Financing	43	Very Weak
Category III	Government Accountability	65	Weak
III-1	Executive Accountability	77	Moderate
III-2	Legislative Accountability	74	Moderate
III-3	Judicial Accountability	26	Very Weak
III-4	Budget Processes	83	Strong
Category IV	Administration and Civil Service	79	Moderate
IV-1	Civil Service Regulations	66	Weak
IV-2	Whistle-blowing Measures	71	Moderate
IV-3	Procurement	88	Strong
IV-4	Privatization	93	Very Strong
Category V	Oversight and Regulation	69	Weak
V-1	National Ombudsman	0	Very Weak
V-2	Supreme Audit Institution	98	Very Strong
V-3	Taxes and Customs	92	Very Strong
V-4	State-Owned Enterprises	85	Strong
V-5	Business Licensing and Regulation	72	Moderate
Category VI	Anti-Corruption and Rule of Law	82	Strong
VI-1	Anti-Corruption Law	100	Very Strong
VI-2	Anti-Corruption Agency	84	Strong
VI-3	Rule of Law	78	Moderate
VI-4	Law Enforcement	67	Weak

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

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

Score: YES

References: Article 19 of the constitution

Social Scientist's Comments: Article 19 deals with the broad right to freedom. As part of the right to freedom, citizens have the right to form associations (including civil society organizations) that focus on any issue (including fighting against corruption and ensuring good governance) as long as the goals of the association are not contrary to the constitution and the laws of the state. CSO's can also use another constitutional provision of Article 19, which allows citizens to carry out any trade, occupation of business.

Peer Reviewer's Comments: This constitutional guarantee, however, is limited by the strong and overwhelming presence of an executive that resorts to abusive provisions of Preventive Detention Laws against activists forming such associations

Peer Reviewer's Comments: Only response to the first part of 1a is true. That is, citizens have a right to form civil society organizations. The second part, forming CSOs focusing on the issues mentioned (anti-corruption and good governance), is not explicit. However, neither the government nor the judiciary has prevented the use of this article for forming CSOs to fight against corruption or for good governance.

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

Score: YES

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

Social Scientist's Comments: They are free to accept funding from any source but are required to declare it if it is from a foreign source. Funding from foreign sources can be accepted only after certain requirements are met as per the Foreign Contribution Regulation Act. The CSO should have been registered and working for at least three years before it applies for permission to seek funds from outside India. Any such funds received (after securing the permission) need to be declared to the government in a prescribed format. The government has the power to cancel permission granted to a CSO to receive foreign funds on a wide range of grounds, including non-compliance with the norms prescribed.

Peer Reviewer's Comments: The Ministry of Home Affairs is granted a lot of discretionary powers by the law and it is used more often against CSOs that do not conform.

Peer Reviewer's Comments: First and foremost, in India no civil society organization exists that is specifically labeled as anti-corruption or for good governance. Of course, some CSOs, or non-governmental organizations as they are better known, focus on these issues exclusively or as part of their larger agenda. Their sources of income from foreign agencies are regulated and subject to government scrutiny. There is also a waiting period. No NGO that has just registered can immediately attempt to obtain foreign funds.

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

Score: YES

References: Foreign Contribution Regulation Act, 1976;
Web site of the Home Ministry: www.mha.gov.in;

Also guideline in Foreign Contributions -
www.mha.gov.in/fcaweb/fc_online.htm

Social Scientist's Comments: They are required to disclose their source of funding in the case of funding received from abroad. Further, if the CSOs want to claim exemption from taxation on the grounds of being a non-profit organization, they must apply for specific permissions. CSOs are required to be registered organizations (which by virtue of registration have to conform to state laws), either trusts or societies or even companies. Such registered organizations are mandatorily required to file their income returns, which will have to include sources of funding. All organizations have to necessarily disclose their funding from foreign sources. However, it is also true that a lot of this funding is not officially disclosed and remains as unaccounted donations.

Peer Reviewer's Comments: The disclosure required is to the concerned department of the government. There is no public disclosure, in the sense of making the funding sources transparent through the media. But, as mentioned in the response, a number of civil society organizations evade disclosure and even misuse income from funding sources.

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

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

Score: 75

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

Social Scientist's Comments:

Many CSOs have been formed to fight corruption and promote good governance. As many of the CSOs are located in specific regions/cities, some have formed federative organizations across the country to coordinate their activities. Alliance for Democratic Rights (ADR) is one such group which moved the Supreme Court through a PIL (Public Interest Litigation) seeking a directive to be issued to the government that all candidates contesting elections to state legislatures and Parliament be mandatorily required to file an affidavit providing details of assets and convictions/cases pending in the court. This PIL and the subsequent Court action resulted in a historic victory for CSO's and made it mandatory for all candidates to file such affidavits at the time of filing nomination. Further, the initiatives of Lok Satta in Andhra Pradesh and Janaagraha in Karnataka are being duplicated in other states. In reality, the government is often a little apprehensive of such CSOs. Both the political leadership and the bureaucracy often see some of the CSOs as being breaks from the independent function. There have been instances in which the government has taken recourse to quoting laws, rules and regulations when dealing with CSOs. This has often made the smooth functioning of CSOs more difficult. This is especially true in the case of CSOs which seek to use the Right to Information Act to secure information and thus expose acts of administrative indiscretion. From another perspective, it could be argued that some measure of accountability with regard to the CSOs is important and critical. Part of the governments unease with CSOs is also linked to the lack of transparency in CSOs with regard to their functioning and also sources of funding.

Peer Reviewer's Comments: (1) The Supreme Court's direction on the PIL also requires the candidates to election to declare their educational qualifications in addition to assets and criminal background.
(2) Mazdor Kisan Sangar Samiti in Rajasthan took the initiative and mobilised farmers and sought information from the government on their rights and privileges, which ultimately led to enactment of the Right to Information Act.
(3) It is true that the accountability level of CSOs is not adequate.

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

Score: 50

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

**Social Scientist's
Comments:**

CSOs are registering a greater presence in the political and policy-making process. There is some resistance to their entry from the conventional players who dominated this arena. The reluctance to accept the role of the CSOs also comes from the contest over space argument. CSOs claim to represent the citizen voice. The traditional players in the political and policy-making process gain their legitimacy too from being the voice of citizens, most times being elected through democratic channels. They often see the participation of the CSOs as an 'extra constitutional' player who is seeking to challenge the legitimate space they claim as being their very own. Increasingly, CSOs that have been able to gain both greater legitimacy and visibility, have begun carving out a space for themselves in the political/policy-making process. However, the fault lines are not yet clear, and more often than not the capacity of CSOs to be recognized as legitimate stake holders has much to do with their networking skills with those in positions of power and influence. It is not surprising that many CSOs have retired government officials as consultants to facilitate this task.

Peer Reviewer's Comments: Though the numbers are less, there are CSOs like ADR, MKSS, Jansatta and Transparency International which have influenced the process of policymaking without being political.

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

Score: YES

References: [\[LINK\]](#);
newspaper reports

**Social Scientist's
Comments:**

No CSO has been forcibly/formally shut down by the government. There may be instances of CSOs having faced various forms of harassment from state agencies for their fight against corruption. This could include bureaucratic bottlenecks being created in the form of the plethora of procedures and regulations that CSOs are asked to adhere to/ comply with. This includes the regulations governing foreign contributions.

Peer Reviewer's Comments: Instances where CSOs have been co-opted into the system by way of arm-twisting by the politician-bureaucrat nexus cannot be glossed over. They may not have been shut down, but they have been slowed down.

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

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

Score: NO

References: [\[LINK\]](#)

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

Peer Reviewer's Comments: The social activists mentioned in the report are not working on corruption issues directly.

Peer Reviewer's Comments: Although the situation is improving, many obstacles remain. Human Rights Watch worked with the AIDS relief organization Sampada Gramin Mahila Sanstha (SANGRAM) earlier this year, documenting how the Indian police and local thugs obstructed the organization's work through harassment and abuse of its outreach workers.

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

Score: NO

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

Social Scientist's Comments: Reports have suggested that civil society activists have been harmed both by those they were investigating and by the state machinery.

Peer Reviewer's Comments: The report refers to the SK Dubey Foundation. Dubey was a whistle-blower and not a social activist.

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

Score: YES

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

Social Scientist's Comments: There are no documented and verified instances of a civil society activist being killed for specifically investigating corruption issues.

Peer Reviewer's Comments: It is important to note here that CSO activists working against corruption are also political activists involved in struggles against land alienation and other forms of oppression. And where they are killed, such killings are registered as "encounter" deaths and treated as legitimate acts by the state. The March 14, 2007 killings in Nandhigram, for instance, cannot but fall in this category.

4: Can citizens organize into trade unions?

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

Score: YES

References: Article 19 of the constitution

Social Scientist's Comments: Article 19 of the constitution allows citizens to form associations (including trade unions). Further, the Trade Unions Act also guarantees the right. However, the act covers registered trade unions only. The act defines a trade union, outlines provisions for its registration, cancellation and dissolution and also enumerates the rights and obligations of unions. With globalization and economic reforms, there has been a movement to amend the Labor/ Trade Union Laws to bring it in consonance with the provisions of the World Trade Organization. It is also important to note that a bulk of the Indian work force is in the un-organized sector, which does not have access to being represented by organized trade unions.

Peer Reviewer's Comments: This right, though recognized, is somewhat vague. The right to organize into trade unions also means the right of government employees to organize into employees unions. From time to time, the government tries to scuttle any direct action by such unions by invoking the Essential Services Maintenance Act, and, on the eve of a strike, declaring certain services essential. The government's position is therefore vague. The same is true of the judiciary.

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

Score: 50

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

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

Peer Reviewer's Comments: The fact that only about 10 percent of employees in India are in the organized sector itself speaks against the citizens' right to organize into trade unions. India's unorganized sector is too vast and too insecure. It consists of construction workers and various other forms of daily wage earners. They have no right to organize into unions. Even if they had the right, they have no ability, in the sense of political and other external support, to organize. Even within the 10 percent of the organized sector, only a fraction is in trade unions. Over the years, with the dismantling of large-scale assembly line industries, the dismantling of a number of public sector undertakings through what may be termed "disinvestment," the earlier ardor of workers and employees to organize into unions has been dampened. The new work rhythm, work culture and work arrangements brought about by numerous multinationals through call centers, the country's balance of payments and so on also have been working against citizens' rights and abilities to organize into trade unions.

5: Are media and free speech protected?

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

Score: YES

References: Article 19 of the constitution

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

Peer Reviewer's Comments: The Law on Defamation and the Contempt Law continue to hang like the proverbial sword of Damocles over the heads of reporter in India. The latest instance is the case involving the nexus between a Judge in the "Sealing Case" and his son's business interests. The journalist was hauled in for contempt and sent to jail. Though the sentence is now stayed, the threat remains very real.

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

Score: YES

References: Article 19 of the constitution

Social Scientist's Comments: Article 19 (1) (a) of the constitution grants freedom of speech and expression as a fundamental right. As a caveat it must be added that there are serious challenges in people exercising a capacity to enjoy this right in the light of the hierarchical social structure, which limits access to opportunities and the benefits of education.

6: Are citizens able to form print media entities?

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

Score: 75

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

Social Scientist's Comments: There are no specific restrictions on forming media entities. They need to conform to the laws that are in place with regard to formation of such entities. It must be added that much of the media in India is business-driven and business-controlled. As a result, it becomes sensitive to the 'cues' of the more privileged sections of society.

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

Score: YES

References: Freedom of the Media regulations

Social Scientist's Comments: There is a legal mechanism.

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

Score: 50

References: Ministry of Information: www.mib.gov.in/;
www.indiantelevision.com/dth/dth11.htm; www.pib.nic.in/focus/foyr2001/fomar2001/dth_glines.pdf ;
www.freemedia.at/cms/ipi/freedom_detail.html?country=KW0001/KW0003/KW0049/&year=2001

Social Scientist's Comments: In practice, there is a maze of bureaucratic procedures involved, and ordinary citizens can encounter delays in procuring media licenses within a reasonable time period. Given the comments to previous questions, one's capacity to secure the required licenses is directly linked to their contacts and influence within the system.

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

Score: 50

References: www.mib.gov.in

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

Peer Reviewer's Comments: The costs are purely in terms of opportunity costs. The monetary cost is not an issue.

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

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

Score: 75

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

Social Scientist's Comments: In theory it can be argued that there are no specific restrictions on forming media entities. They need to conform to the laws that are in place with regard to formation of such entities is the mandatory requirement. The media in India is largely (financially) controlled by a few business conglomerates. As a result, in reality the capacity of ordinary citizens successfully venturing into this domain remains a big question mark.

Peer Reviewer's Comments: The issue is not about setting up TV media. The challenge is to establish it as a business model and gather a viewership that helps raise advertising revenue and thus sustain the setup.

Peer Reviewer's Comments: It is very difficult for small organizations with few financial resources to form into media entities. The advantages available to the large conglomerates that carry great political and bureaucratic clout cannot be matched by small entities.

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

Score: YES

References: www.ibnlive.com/news/darjeeling-tense;
[\[LINK\]](#)

Social Scientist's Comments: There is a legal mechanism. There is an appeal mechanism in place to challenge the revoking or non-granting of broadcast rights. The Press Council of India is an autonomous body with the mandate to maintain a high degree of responsibility in the media. The government is planning to introduce the Broadcasting Service Regulation Bill, which would provide for an authority for regulating broadcasting issues, including programs and advertisements. As of late, the question has assumed serious proportion on an important count. The media (electronic, print and radio) have not been serious about imposing self-regulation and norms. Two cases can be cited in this regard. Firstly, the winner of the Indian Idol, who hails from a particular part of India was commented on in a derisive manner on a FM Radio channel by a radio jockey. This sparked off riots and protests. The radio channel has now been asked to apologize and there is also the threat of further action (www.ibnlive.com/news/darjeeling-tense). Secondly, the television channel Live has been in the dock for airing a fake sting operation and has been banned for a month. The ban was imposed by the Information and Broadcasting Ministry by invoking the Cable Television Networks Regulation Act, of 1995 (www.hindu.com/2007/09/21/stories/2007092162961700.htm).

Peer Reviewer's Comments: However, the two examples quoted are not related to the issue of broadcast media licenses.

7c *In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.*

Score: 50

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

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

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

Score: 50

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

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

8: Can citizens freely use the Internet?

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

Score: 75

References: [\[LINK \]:](#)

[\[LINK \]:](#)

www.censorship.wikia.com/wiki/Blogs_and_RTI_Acg/faife/report/intro.htm

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

Peer Reviewer's Comments: Content available on Web sites from government sources is extremely limited and is in the nature of reports from commissions and committees. Since Internet in India is still a luxury, accessing even limited information is difficult. Sometimes, people use the Right to Information Act to get the content published online or in print media.

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

Score: 75

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

www.rti.nic.in

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

Peer Reviewer's Comments: The government does not censor citizens creating content online, including blogs.

9: Are the media able to report on corruption?

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

Score: YES

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

Social Scientist's Comments: The provisions of equality before the law have ensured that the media enjoy unfettered rights to report, even if it damages the reputation of a public figure. This is subject to the laws of defamation. The media have been exposing cases of corruption relating to ministers, elected representatives and the bureaucracy. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories. There is also the trend that the electronic media in their desire to be the first to report 'scoops' relating to corruption and misuse of office, have used unethical means to do the same. The most recent controversy involves the effort of a media channel to frame a government school teacher on charges of illicit trafficking by using fictitious evidence.

Peer Reviewer's Comments: There is an exception to this in the form of the Contempt Law, where the judiciary is empowered to accuse, try and convict a citizen (including the media professional) for contempt.

Peer Reviewer's Comments: It is true that the government has enacted a law in support of the statement. But if a recent case involving a retired chief justice of India is any indication, it is not legal to report on public figures even if the reports are accurate. In the recent case, some journalists from Mid-Day, a newspaper published from more than one location, were arrested at the instance of a high court, which took suo motu of a report involving the chief justice as damaging to the entire judiciary. The case is now before the Supreme Court. The journalists were released by the court.

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

Score: 75

References: Press Council of India Reports: www.presscouncil.nic.in;
Norms of Journalistic Conduct by Press Council of India.

Social Scientist's Comments: It must be stressed that censorship of the press is not specifically prohibited by any provision of the constitution. Like other restrictions, reasonable limits can be prescribed. The question of the validity of censorship has been a matter that has attracted the attention of the judiciary often. The position taken by the government has been that if censorship is imposed in the interest of public order, it cannot at once held to be unconstitutional and fetter the freedom of the circulation. However, a reasonable restriction can be determined by the circumstances.

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

Score: 75

References: www.hinduonnet.com/thehindu/mp/2006/06/29/stories/2006062900960400.ht;
news.bbc.co.uk/2/hi/south_asia/6076040.stm - 50k

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

Peer Reviewer's Comments: There is no pre-publication censoring by the government of corruption-related stories. Total freedom exists for the media to publish corruption-related stories.

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10: Are the media credible sources of information?

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

Score: YES
References: Indian Companies Act
Social Scientist's Comments: The law mandates that media companies disclose and make public the nature of the trust that owns the media company. A declaration of ownership needs to be made every year. This is a requirement by the Registrar of Newspapers for India who issues the registration certificate, and all the newspapers and periodicals print the information once a year. It must be stressed that the disclosure of ownership norms does not require mandatory disclosure of financial assets and transactions relating to the company.

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

Score: YES
References: The Companies Act
Social Scientist's Comments: The law mandates that media companies disclose and make public the nature of the trust that owns the media company. This is required to be periodically (once a year) disclosed on their Web site and in broadcasts. This does not, of course, include the financial transactions, profits accrued and the like.

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

Score: 75
References: [www.hindustantimes.com/Redir.aspx?ID=6470369b-b354-4b7d-a9ec-32f961857828;](http://www.hindustantimes.com/Redir.aspx?ID=6470369b-b354-4b7d-a9ec-32f961857828;www.rediff.com/movies/2007/sep/28idol.htm)
www.rediff.com/movies/2007/sep/28idol.htm ;
[www.timesofindia.indiatimes.com/RJs_remarks_against_Indian_Idol_triggers_violence_curfew/articleshow/2412829.cms;](http://www.timesofindia.indiatimes.com/RJs_remarks_against_Indian_Idol_triggers_violence_curfew/articleshow/2412829.cms;www.zeenews.com/znews/articles.asp?aid=398103&sid=NAT&sname;www.newswatch.in/news-analyses/ethics-and-freedom/9053.html)
[www.zeenews.com/znews/articles.asp?aid=398103&sid=NAT&sname;](http://www.zeenews.com/znews/articles.asp?aid=398103&sid=NAT&sname;www.newswatch.in/news-analyses/ethics-and-freedom/9053.html)
www.newswatch.in/news-analyses/ethics-and-freedom/9053.html ;
www.mernews.com/catFull.jsp?articleID=126283-113k
Social Scientist's Comments: Any comment needs to be preceded by a statement. There has been a virtual explosion in terms of numbers, especially of the electronic media channels and the fm radio networks. The number of print media publications is also witnessing a sharp increase. The net result of all this is the desire of journalists to be able to getting 'breaking news' for their respective channels/ papers. This has sometimes allowed norms and principles to be sidelined. Recent episodes involving a FM radio channel and a news channel can be cited in this regard. The news channel correspondent 'created' a scoop by getting someone to create a make-belief situation and submit it as a piece of investigative journalism. The reporter was arrested and the channel taken off air for a brief while. In the case of an FM radio channel, the RJ made an insensitive comment about the ethnic background of the winner of the Indian Idol competition. This created an uproar and the channel was off the air for a brief while. The desire to sensationalize news has often resulted in the reporting of developments often without verifying the facts fully and before a thorough investigation of details. There has been a debate on adherence to greater professional ethics by the media. The Press Council of India has also been active in this debate. Some newspapers have appointed internal ombudsman to investigate complaints of biased reporting and coverage of news. Subtle biases - ideological, professional and personal invariably creep in while reporting and publishing news items.
Peer Reviewer's Comments: Indian media, whether print or electronic, is highly partisan. What may be termed "freedom of the press" is in fact what the proprietors and management interpret as freedom. This often makes reporting biased, in some cases with an ideological slant. This is particularly true of the English media.

10d In practice, during the most recent election, political parties or independent candidates received fair media coverage.

Score: 75
References: [www.rediff.com/news/2007/oct/16ndea15;](http://www.rediff.com/news/2007/oct/16ndea15;www.tni.org/detail_page.phtml?act_id=17212;www.mg.co.za/.../breaking_news/breaking_news__international_news/&articleid=321320&referrer)
[www.tni.org/detail_page.phtml?act_id=17212;](http://www.tni.org/detail_page.phtml?act_id=17212;www.mg.co.za/.../breaking_news/breaking_news__international_news/&articleid=321320&referrer)
www.mg.co.za/.../breaking_news/breaking_news__international_news/&articleid=321320&referrer
Social Scientist's Comments: The preliminary question we would have to deal with is how whether we define fairness in terms of time that political parties get/ are covered or in terms of fairness in coverage. Given the intense competition within both the electronic and print media, political parties do generally receive sufficient media coverage. Regional political parties have sometimes voiced apprehensions about the limited and, at times, biased coverage they receive. Often their grievances appear justified. Independent candidates receive media attention, but the spotlight of attention is clearly on the party-sponsored candidates. Ideological biases also clearly creep in. A classic example of this would be the stand that parties are taking on an issue like secularism or privatization. Different media publications/ channels have a perspective on these issues and often view the development/ party stand from that lense. A discerning reader/viewer is able to make out the difference. The most recent example is that of the nuclear standoff, which threatens to force a national election. The media reports clearly articulate accepted ideological positions on the issue.

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

Score: 100
References: Website of Doordarshan and Akashvani and Election Commission; [www.ddindia.com;](http://www.ddindia.com;www.allindiaradio.org;www.eci.gov.in)
[www.allindiaradio.org;](http://www.allindiaradio.org;www.eci.gov.in)
www.eci.gov.in
Social Scientist's Comments: A distinction must be made between access to state-owned media outlets at the time of elections and during non-election periods. Also here media refers largely to government-controlled electronic media and radio and not newspapers, as newspaper ownership is private. During non-election periods, the complaint is often that the ruling party/coalition is the one who is projected on the state-owned media outlets. During elections, there is a much more fair coverage of all political parties. They are allotted time for their election campaign on the state-owned media outlets on the basis of their classification as national or state based parties. Individual candidates have limited access to state-owned media outlets. Time sharing is on a party basis. It must also be stressed that today there is a mushroom growth of private electronic media channels and many parties purchase advertisement time on these channels. Some parties could allege that those parties which have access to fiscal resources are able to purchase advertisement time on private media channels.
Peer Reviewer's Comments: Over the years, state-owned media in India has declined, particularly with the emergence of private media. In any case, state-owned media means only the electronic media. The state does not have a print media of its own. Despite this, during the elections, the Election Commission of India, and sometimes the judiciary, ensure fairness in the distribution of time and slots among various political parties. Here, political parties get prominence. Candidates contesting as independents, far too many in an Indian context, are largely neglected.

11: Are journalists safe when investigating corruption?

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

Score: NO

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

**Social Scientist's
Comments:**

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

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

Peer Reviewer's Comments: The arrests mentioned relate to contempt-of-court and human-rights violations.

Peer Reviewer's Comments: These are but two cases. It is difficult to give a yes or no answer on this question.

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

Score: NO

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

**Social Scientist's
Comments:**

Journalists have been harmed for reporting on and investigating matters of corruption. Ratan Luwangcha, a journalist, was taken to hospital and struggled for his life after being shot three times by two unidentified gunmen. Luwangcha is the bureau chief of the mass-local language daily Poknapham in the state of Manipur and general secretary of the All Manipur Working Journalists. Soon after this attack, the Manipur-based rebel group Kangleipak Communist Party (KCP) claimed responsibility for the attack, saying it was in response to an article Luwangcha had written criticising some of the groups tactics. As a protest, newspapers in the state of Manipur decided to suspend publication for two days and stage demonstrations against the attack on Luwangcha. The kidnapping of various editors from different newspapers in April 2006 showed KPCs lack of respect towards media freedom. Representatives of KPC seized the editors after inviting them to a weekend news conference in the state of Manipur and demanded that the editors newspapers print a message from the group marking its 1980 formation. They were released once their demand was met. In January 2006, journalist Kamlesh Paikra was forced to flee his house in the state of Chhattisgarh following death threats against him. He

lost his job as a consequence. Paikra had been subjected to constant harassment by police for his news reports on alleged police excesses. There was also an attack on staff members of CNN-IBN TV channel on March 7, 2006, in the state of Uttar Pradesh, after the TV channel aired a story about the assets of a former Uttar Pradesh chief minister (she is now the chief minister of the state), which were under a Central Bureau of Investigation (CBI) probe. Four persons surrounded the CNN-IBN vehicle dragged the driver and the attendant out, and beat them up. The vehicle was also set on fire. Before the attack, the politician had served CNN-IBN a legal note stating that the TV reports on him were distorted and asking CNN-IBN to pay approximately US\$2.3 million in damages.

Peer Reviewer's Comments: The question needs clarity. Is the reference to journalists investigating corruption cases of government functionaries or private individuals? While journalists are under attack, why they are under attack and by whom, and whether they are under attack for investigating corruption-related matters, need to be explained.

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

Score: NO

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

Social Scientist's Comments:

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

Peer Reviewer's Comments: Another reference can be found at www.wan-press.org/3may/2007/article.php?id=356.

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

12a *In law, citizens have a right of access to government information and basic government records.*

Score: YES

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

Social Scientist's Comments: The Right to Information Act read with Article 19 of the constitution enables citizens to exercise their fundamental right to free speech and information. The act enables citizens to access information under the control of public authorities. A caveat needs to be added here. As the question relates to whether the provision exists in the law, the answer had been stated as yes. On a subsequent question of its working, the debate would engage with practical issues.

Peer Reviewer's Comments: Although India has a Right to Information Act, its workings are far from satisfactory. The entire document is so vague that ordinary citizens cannot even understand it. Getting information using this act is also cumbersome. Only journalists and some non-governmental organizations have been able to use the act. They have all the required facilities for doing so. What's more, the state treats the past 30 years of documents as current documents. Citizens have no access to such documents if they are "classified," even if they use the RTI Act.

12b *In law, citizens have a right of appeal if access to a basic government record is denied.*

Score: YES

References: Right to Information Act and related regulations.

Social Scientist's Comments: The Right to Information Act makes a provision for appeal. However, the rules and procedures to use the right to appeal (as provided in the act) are quite cumbersome and riddled with bureaucratic procedures. Again, there could be a debate on what constitutes a 'basic document'.

12c *In law, there is an established institutional mechanism through which citizens can request government records.*

Score: YES

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

Social Scientist's Comments: The Right to Information Act and the rules and regulations made under the law provide for specific procedures by which a citizen can seek access to these records. The Act provides for the creation of a Central Information Commission and a chief information commissioner. This has been replicated in each state. Its actual working is an issue discussed subsequently.

Peer Reviewer's Comments: This mechanism is still in its evolutionary stage.

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13: Is the right of access to information effective?

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

Score: 50

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

Social Scientist's Comments: As the Right to Information Act and the rules and regulations therein have been passed/framed recently, there are still several procedural hiccups and attempts by the bureaucracy to stonewall them and deny information. There have been cases of citizens using the RTI act to gain information and expose wrongdoings in government. Several NGOs are working in the field. However, bureaucratic resistance has showed its ugly face quite often and prevented information from being made available by using a plethora of procedures. Reports of agencies are mentioned in the Web site sources.

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

Score: 75

References: www.rti.nic.in

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

Peer Reviewer's Comments: "Cost" needs to be interpreted in terms of money and time (opportunity cost). The first is reasonable. The second is not. Citizens cannot get the information through the Internet, and seldom get it through mail and correspondence. Physical presence in government offices is harassing and time-consuming.

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

Score: 50

References: www.infochangeindia.org/analysis227.jsp; www.pvchr.org/foodsecurity.htm; www.humanrightsinitiative.org/.../events/research_papers/independent_citizen_initiative_chhattisgarh.pdf

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

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

Score: 75

References: www.rti.nic.in

Social Scientist's Comments: It is often not fiscally viable for a large section of the society who lives below the poverty line and who has other priorities in terms of expenditures. Yet as of late, in a few celebrated cases the media have been highlighting the problems and helping the people get access to information and justice.

Peer Reviewer's Comments: My earlier observation about the interpretation of "cost" applies here also: "Cost" needs to be interpreted in terms of money and time (opportunity cost). The first is reasonable. The second is not. Citizens cannot get the information through the Internet, and seldom get it through mail and correspondence. Physical presence in government offices is harassing and time-consuming.

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

Score: 75

References: www.rti.ac.in

Social Scientist's Comments: The government bureaucracy has mastered the `interpretation of the rule` game and is able to voice its inability to part with information with language which is beyond the scope of comprehension of ordinary people. It is often ridden with an overdose of legal jargon and riders which do not make sense to common people.

Peer Reviewer's Comments: The "answer" needs to be understood in the context of bureaucracy's attempts at prevarication and hedging.

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

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

Score: YES

References: Article 326 of the Indian Constitution

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

Peer Reviewer's Comments: Although India has universal adult franchise as a constitutional mandate, the recent insistence on voter ID cards for exercising this franchise has resulted in the exclusion of many eligible voters in participating in the electoral process. In many cases, electoral rolls are incomplete; in many cases, voter ID cards have not been issued. The insistence on this card defeats the constitutional mandate.

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

Score: YES

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

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

15: Can all citizens exercise their right to vote?

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

Score: 100

References: Article 326 of the constitution;
Voting Pattern as delineated in the Web site of the Election Commission of India: www.eci.gov.in;
Survey based studies of elections: www.lokniti.org

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

Peer Reviewer's Comments: However, the onus of ensuring that one's name is in the voter's list always lies with the individual citizen who has to take great pains to enroll to vote.

Peer Reviewer's Comments: The difficulty of getting voter ID cards applies here. In theory citizens are eligible to vote, but not in practice.

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

Score: 100

References: The Election Commission Web site has details on the impact of election voting machines: www.eci.gov.in;
A Panel discussion at the International Political Science Association held at Fukuoka (Japan) in 2006 focussed attention on the using of electronic voting machines in India: www.ipssa.org
Surveys done in India have also pointed out to the success of Electronic Voting Machines www.lokniti.org

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

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

Score: 100

References: Election Commission Web site: www.eci.gov.in;
Articles in newspapers around the time of the Uttar Pradesh poll: www.deccanherald.com; www.expressindia.com; www.timesofindia.com

**Social Scientist's
Comments:**

The Election Commission which is entrusted with the conduct of free and fair elections has played an extremely proactive role in this regard and in recent years (especially since the mid-1990s) elections have been held as per a predetermined schedule. This schedule is not prepared at the discretion of the government of the day but by the Election Commission. There have been several instances (dates for the 1999 poll and the 2004 poll) when the government of the day differed from the Election Commission on the polling dates identified, but the decision of the Election Commission prevailed. Most recently in 2007, when the election the Lower House of the State Legislature of the most thickly- populated state in India (Uttar Pradesh) were held, the Election Commission decide to stagger it across several weeks. Many political parties strongly objected to the move, including the government in power in the state. The Commission held firm on the schedule and the elections went strictly as per the schedule. The Election Commission has, on occasion, rescheduled the dates of polls in specific constituencies if and when the need arises, with the sole objective of ensuring a free and fair poll.

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

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

Score: YES

References: Article 19 of the Indian Constitution

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

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

Score: YES

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

Social Scientist's Comments: A review of the last 14 elections to the lower house of the Indian Parliament and a more or less equal number of elections to the lower house of State Legislatures would show that a large number of party-sponsored and independent candidates have contested the election. The constitution mandates the qualification for contesting to the lower house of Parliament and State Legislature. Citizenship is a criterion. There is additionally a minimum age requirement and the person should not hold an office of profit. In 2006, a legislation on what constitutes an office of profit was passed.
 In the past, party-sponsored and independent candidates have contested elections. It must be mentioned that in 1996, legislation was brought into force to discourage non-serious, independent candidates from contesting elections. This included listing independent candidates after the names of all registered party candidates on the ballot paper. Subsequent to this change, the number of independent candidates has been drastically reduced.

16c In practice, all citizens are able to form political parties.

Score: 100

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

Social Scientist's Comments: The large number of political parties registered with the Election Commission is proof of the fact that citizens have exercised the right to form political parties. Section 29 of the Representation of People's Act of 1951 outlines the procedure to be followed by political parties to register with the Election Commission.

Peer Reviewer's Comments: The issue that seems to be missing here is the expensive nature of party formation. Only citizens who have money, social and political influence, and exposure to the rough-and-tumble of politics succeed in forming political parties.

16d In practice, all citizens can run for political office.

Score: 75

References: Newsreports around the time of the 2004 elections: www.timesofindia.com;
www.deccanherald.com;
 Election studies: www.lokniti.org

Social Scientist's Comments: The eligibility criteria mandates that the candidate must be a citizen and not occupy a private office.

Peer Reviewer's Comments: It should be "public office" in the comments.

Peer Reviewer's Comments: Running for political office is an expensive affair. Not all citizens can do so in practice.

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

Score: 100

References: www.lokniti.org;
www.epw.org

Social Scientist's Comments: In recent years, with the rise of coalition politics and governments, the numerical strength of the opposition is often significant in the legislature. To be recognized as a formal opposition party, a political party must not be part of the ruling coalition and must have at least 10 percent of the members of the House. Since 1989, in most legislatures there is a formally recognized opposition party. This was sometimes not the case prior to 1989 when India witnessed a one-party dominant system.

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

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

Score: YES

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

Social Scientist's Comments: The Election Commission of India has been given the responsibility for the superintendence and conduct of the elections. It has asserted its independence, especially since the 1990s. It was originally a single-member commission and became a multi-member commission in 1993. It now has a chief election commissioner (CEC) and two election commissioners (EC) and all decisions are arrived at by a majority. The CEC and EC's are appointed by the president on the advice of the Council of Ministers. There has been a suggestion that the process of recommending the names of the CEC and EC's to the president should be more broad-based and not left only to the ruling party/coalition. This has, however, not yet been implemented. As a result, in recent times there have been some controversies relating to an election commissioner on the Election Commission with a major opposition party demanding his resignation/removal on the ground that he is not impartial and lacks integrity. The issue is today in the courts with a battle on jurisdiction being waged.

Peer Reviewer's Comments: Agree with the score, but comments are not relevant to the question.

18: Is the election monitoring agency effective?

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

Score: YES

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

Social Scientist's Comments: The Commission is largely insulated from political interference. If there were wider consultation in the process of appointing the CEC and EC, the independence and impartiality would be more transparent and beyond controversy. This is being mentioned especially in the light of recent controversies.

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

Score: 100

References: www.eci.gov.in;
www.timesofindia.com;
www.expressindia.com

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

18c *In practice, the agency or set of agencies/entities has a professional, full-time staff.*

Score: 100

References: www.eci.gov.in

Social Scientist's Comments: The Election Commission has a full-time staff at the headquarters and draws the personnel who work with them at the time of elections from the government service. While on election duty, they are directly accountable to the Election Commission and not to the government. This system has worked reasonably well and experience has shown that officers on election duty demonstrate primary accountability to the Election Commission.

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

Score: 100

References: www.eci.gov.in;
www.parliamentofindia.nic.in

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

Peer Reviewer's Comments: The election results are also available on the Election Commission of India's Web site. This is an important development.

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

Score: 100

References: Representation of Peoples Act 1950, 1951;
www.eci.gov.in

**Social Scientist's
Comments:**

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

Peer Reviewer's Comments:

The penalties are of a restricted nature. The election commission does not have judicial powers. The penalty provision is often in the jurisdiction of the judiciary. Its work is seldom prompt.

19: Are elections systems transparent and effective?

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

Score: 75

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

**Social Scientist's
Comments:**

The government in India takes the responsibility to register eligible voters at periodic intervals. Despite the best efforts to ensure that all eligible voters are included, there have been reports of omission and addition. While there are opportunities for individuals to verify whether their names are listed on the voters list, it may often be inaccessible or prospective voters are not sufficiently motivated to check. As a result, on election day some voters realize that their names are not on the electoral roll. It could be argued that ensuring authenticity of the voters list involves multiple players. Firstly, it involves interest on the part of the citizens. To be fair to the government, efforts are made to publicize any effort/ move to register voters and correct errors. Citizens are provided an opportunity to verify the lists. These lists are today on the Web site in the regional language. Secondly, it involves the state machinery. There are those rare cases of the voters list having been manipulated to serve partisan ends. Given the fact that these lists are today in the public domain, it immediately invites reactions. Finally, NGO's are today playing a major role, especially in some urban areas, to ensure that the voters list are free of errors.

Peer Reviewer's Comments: The electoral rolls are supposed to be available to every citizen. But this does not happen for various reasons. Although the rolls in some cases are available on the Internet, the Web sites are not user-friendly.

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

Score: YES

References: Representation of Peoples Act 1951, 1952

**Social Scientist's
Comments:** The law permits recourse to the legal system if there is any contention to the fairness of the election process.

19c *In practice, election results can be effectively appealed through the judicial system.*

Score: 75

References: Representation of Peoples Act 1951; www.eci.gov.in

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

Peer Reviewer's Comments: Although provision exists, pursuing it legally is difficult. Indian judiciary is notorious for its slow and poor delivery.

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

Score: 100

References: Representation of Peoples Act 1951; www.timesofindia.com;
www.hinduonline.com

Social Scientist's Comments: The election process is known to be insulated from the military and security forces. It must be noted that the Election Commission can request the services of the paramilitary forces in order to ensure a free and fair election.

19e *In law, domestic and international election observers are allowed to monitor elections.*

Score: YES

References: www.eci.gov.in

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

Peer Reviewer's Comments: In fact, senior civil servants are also deputized by the government as election observers.

Peer Reviewer's Comments: There is, however, resistance to international observers in such states as Jammu and Kashmir or in the Northeast.

Peer Reviewer's Comments: Domestic and international observers are allowed, but only as observers and not to monitor the elections. Monitoring is the function of the Election Commission of India.

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

Score: 100

References: www.hinduonline.com;
www.janaagraha.com;
www.eci.gov.in

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

Peer Reviewer's Comments: My earlier reply is valid here also: Domestic and international observers are allowed, but only as observers and not to monitor the elections. Monitoring is the function of the Election Commission of India.

20: Are there regulations governing political financing?

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

Score:	YES
References:	www.eci.gov.in
Social Scientist's Comments:	There are regulations in place. The flip side is that they are hopelessly inadequate.
Peer Reviewer's Comments:	Private contributions to political parties are allowed. As of now, there are no laws regulating them.

20b *In law, there are limits on individual donations to candidates and political parties.*

Score:	YES
References:	Companies Act www.eci.gov.in
Social Scientist's Comments:	There are limits, but most donations are made without receipts being issued. This has been a major area of concern and also controversy.
Peer Reviewer's Comments:	Most of the time a donation is taken in the form of cash that comes from the parallel economy.
Peer Reviewer's Comments:	The law's ambit is only in the context of elections. Otherwise, there are no regulations governing contributions.

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

Score:	YES
References:	Companies Act
Social Scientist's Comments:	Section 293 of the Companies Act of 1956 states that donations can be made by corporations to political parties, but they cannot exceed 50,000 rupees (US\$1,272) or 5 percent of the average net profit determined under specific provisions of the Companies Act for the three immediately preceding financial years. Such contributions need to be backed by a resolution of the board of directors of the company.
Peer Reviewer's Comments:	My earlier observation applies. Context is important: The law's ambit is only in the context of elections. Otherwise, there are no regulations governing contributions.

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

Score:	NO
References:	Election Commission Web site: www.eci.gov.in
Social Scientist's Comments:	There are no limits on how much a party can spend. Limits are prescribed on how much an individual candidate can spend for his/her election campaign, but there are no limits prescribed for party expenditure.
Peer Reviewer's Comments:	This in some sense also answers the earlier two questions: The law's ambit is only in the context of elections. Otherwise, there are no regulations governing contributions.

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

Score:	NO
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References: Election commission reports: www.eci.gov.in

Social Scientist's Comments: There is no law requiring mandatory disclosure of donations made to political candidates or parties.

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

Score: NO

References: www.eci.gov.in

Social Scientist's Comments: This occurs only in the case of candidates. The Election Commission monitors the expenditure of candidates and limits are fixed as to how much a candidate can spend. Candidates are required to submit an account of expenditure once the elections are completed. There is very little verification of the authenticity of what is submitted. There is no restriction on how much a party can spend. Thus, the restriction of an individual candidate expenditure is hardly of any significance, as there is no cap on party expenses.

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

Score: YES

References: The Election Commission of India

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

21: Are the regulations governing political financing effective?

21a *In practice, the limits on individual donations to candidates and political parties are effective in regulating an individual's ability to financially support a candidate or political party.*

Score: 25

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

Social Scientist's Comments: Increasingly, donations to parties are unaccounted for. Parties maintain minimal records of their financial transactions and most transactions are done through cash with hardly any formal records maintained. This has encouraged the growth of a parallel economy. Further, a large number of investigative reports by the electronic media have highlighted the fact that serious cases of financial irregularities indulged in by elected representatives are linked to their need for funds to carry forward their campaigns. The scam involving members of Parliament selling the questions that they are allowed to ask is a case in point.

21b *In practice, the limits on corporate donations to candidates and political parties are effective in regulating a company's ability to financially support a candidate or political party.*

Score: 25

References: www.hinduonline.com; www.timesofindia.com

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

Peer Reviewer's Comments: The question lacks clarity. The notion of companies and corporations is somewhat new to India.

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

Score: 0

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

Social Scientist's Comments: There are no limits on party expenditures.

Peer Reviewer's Comments: There are no legal limits on party expenditure.

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

Score: 25

References: www.lokniti.org

Social Scientist's Comments: The only level of monitoring that is required is the monitoring of individual candidates expenses. Candidates are required to submit details of expenses. These are routinely submitted. There is limited opportunity to verify their authenticity. It is an open secret that most candidates spend well above the prescribed limits. A study done by Lokniti around the time of the 1999 Elections, which was sponsored by the Election Commission, shows that limits of expenses are very rarely adhered to. News reports too vouchsafe the fact that limits to expenditure by individual candidates are

never adhered to.

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

Score: 25

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

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

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

Score: 25

References: www.eci.gov.in

Social Scientist's Comments: There is little scope for auditing.

22: Can citizens access records related to political financing?

22a *In practice, political parties and candidates disclose data relating to financial support and expenditures within a reasonable time period.*

Score: 50

References: www.eci.gov.in

Social Scientist's Comments: It is mandatory for candidates to file their expenditures. More often than not these statements do not reflect the reality of expenditures. In the case of political parties, there is no mandatory requirement for the party to submit a statement of accounts relating to expenditures.

22b *In practice, citizens can access the financial records of political parties and candidates within a reasonable time period.*

Score: 50

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

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

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

Score: 50

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

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

Peer Reviewer's Comments: What is the definition of reasonable?

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

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

Score: YES

References: Article 32 of the constitution

Social Scientist's Comments: As part of the provisions relating to fundamental rights, citizens have a constitutionally guaranteed right to plead for the enforcement of their rights. The Supreme Court and the High Court are empowered to issue writs in case of violation of fundamental rights against the allegedly offending agency, whether it be the legislature or the executive. All fundamental rights, including the right to constitutional remedies, stand suspended only at the time of the declaration of an emergency. While these rights are guaranteed in law, the technicalities involved in court procedures and limitations of access for socially disadvantaged groups limit the capacity to use this right.

24: Can the chief executive be held accountable for his/her actions?**24a** *In practice, the chief executive gives reasons for his/her policy decisions.***Score:** 75**References:** www.parliamentofindia.nic.in;
www.timesofindia.com**Social Scientist's
Comments:**

We need to begin with a rider. In a parliamentary system the chief executive is the president who plays a largely ceremonial role. The Council of Ministers headed by the prime minister is the real executive, and the prime minister is the head of government.

The parliamentary system of governance makes it binding upon the (real) executive to give reason for every action taken. The Council of Ministers is accountable to the lower house of Parliament, which is directly elected by the people. The House has the power to question the actions of the executive thereby making it accountable and responsible for every action. Most major policy decisions are vigorously debated in Parliament with the opposition subjecting initiatives to careful scrutiny. The question hour in the Indian Parliament is a testing time for the executive. However, it must be conceded that given recent scandals surrounding the question hour, there is some public cynicism about the utility of this time. Parliamentarians have the opportunity to turn the attention to the actions of the government during other debates in the House. Today, parliamentary proceedings, especially crucial debates and the question hour, are televised and accessible to the public at large. Therefore, the public is kept informed of the reasons behind the government's policy decisions. There is a flip side to this analysis. Increasingly, the executive is attempting to marginalize the legislature. The most recent example would be the nuclear deal with the United States. The opposition and some allies of the government are up in arms in Parliament against an important policy decision made by the government. A linked development is that legislative proceedings are increasingly being stalled and deliberations disrupted. An important question on whether legislators see their role outside the House as being more important than inside the House becomes relevant.

Peer Reviewer's Comments: This rarely happens.**24b** *In law, the judiciary can review the actions of the executive.***Score:** YES**References:** Articles 286, 299, 301 and 304 of the constitution.**Social Scientist's
Comments:**

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

Peer Reviewer's Comments: Only on formal complaints through court cases.**24c** *In practice, when necessary, the judiciary reviews the actions of the executive.***Score:** 100

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

Social Scientist's Comments: India has been witness to judicial activism with the courts, striking down governmental decisions quite frequently. The public often views the judiciary as a check on the actions of the government. This development does not find uniform acclaim across the country. Firstly, many view the intervention of the judiciary as an ad hoc arrangement in view of the executive not being proactive on its responsibilities. It could be argued that the actions of the judiciary are a stop gap remedy - a legal 'fist aid', which cannot be a long term/long lasting solution to the problem. Secondly, there are alarm bells being raised on the accountability of judicial activism. How does one 'guard the guardian'? This is a common refrain of many.

Peer Reviewer's Comments: Judiciary's role in India is dismal and often whimsical. There is no system in its interventions even when called for through cases.

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

Score: 75

References: Parliamentary debates/ rules of procedure; www.mainstreamweekly.net/article355.html - 19k; www.tribuneindia.com/2007/20070722/nation.htm

Social Scientist's Comments: Under the provisions of the constitution and the laws, the Council of Ministers can recommend to the president the creation of new regulations and policies. If Parliament is in session, the practice is generally that the Council of Ministers makes the announcement on the floor of the House. There have been some criticisms by the opposition that the government has been by-passing Parliament and announcing new regulations outside the House. In recent years, there is a feeling that the executive (irrespective of the party in power) has been sidestepping and undercutting the role of the legislature. It is also argued that the response of the legislature has been very feeble, in general, in this regard.

Peer Reviewer's Comments: The notion of chief executive in India is misleading. The prime minister heads the Union Cabinet. Often, the different ministers work at cross-purposes. As a result, executive orders do not necessarily come from the chief executive and are not limited for governance purposes.

25: Is the executive leadership subject to criminal proceedings?

25a *In law, the heads of state and government can be prosecuted for crimes they commit.*

Score: YES

References: Constitutional Provisions - Articles 14 and 361 of the constitution.

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

Peer Reviewer's Comments: This is a ticklish issue. When in power they cannot be prosecuted. Prosecution is initiated, if at all, only when politicians are out of power. India's record on this is dismal.

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

Score: NO

References: Prevention of Corruption Act

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

Peer Reviewer's Comments: Prosecution can be done only with the government approval; the government seldom approves prosecution.

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

26a *In law, the heads of state and government are required to file a regular asset disclosure form.*

Score: YES

References: Representation of People's Act.1951, 1952

Social Scientist's Comments: The head of government is ordinarily required to be a member of Parliament. As a member of Parliament, he/she is required to submit a statement of his/her assets. We could also have the odd situation of someone being head of government without being a member of Parliament. The constitution permits an individual to be a minister without being a member of Parliament for a period of six months. So we could theoretically have a prime minister who is sworn in as prime minister and is not a member of Parliament. He/she is required to become a member within a period of six months. During this period he/she could resign. You would thus have had a head of government (albeit for a short period of time) who would not have been a member of Parliament and would not have been required to submit a declaration of his/her assets.
With regard to the head of state, there is no mandatory requirement to submit a statement of the assets. During the recently held presidential elections (2007) one of the campaign issues was the declaration of assets. The independent candidate backed by the opposition alliance unilaterally made a declaration of assets and challenged the rival to do the same. This assumed significance in the light of charge of fiscal irregularity being a campaign issue.

26b *In law, ministerial-level officials are required to file a regular asset disclosure form.*

Score: YES

References: Representation of People's Act 1951

Social Scientist's Comments: Any minister must be a member of Parliament. All members of Parliament are required to make a declaration of their assets to the presiding officer of the House of which they are a member. Any refusal to do so could invite action linked to breach of privilege. Since 2004, any person who wants to contest an election to the state and national legislature is required to furnish an affidavit, which provides details of assets and liabilities. We could also have the odd situation of someone being a minister without being a member of Parliament. The constitution permits an individual to be a minister without being a member of Parliament for a period of six months. So we could theoretically have a minister who is sworn in and is not a member of Parliament. He/she is required to become a member within a period of six months. During this period he/she could resign. You would thus have had a minister (albeit for a short period of time) who would not have been a member of Parliament and would not have been required to submit a declaration of his/her assets.

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

Score: YES

References: Civil Service Rules.;
Ministerial Code of Conduct Rules.

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

Peer Reviewer's Comments: Reference is made to CVC, which has no jurisdiction over the ministers and the head of state or government.

Peer Reviewer's Comments: Yes. But the law is seldom followed.

26d *In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).*

Score: YES

References: Central Vigilance Commission;
Lokayukta Acts.

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

Peer Reviewer's Comments: Reference is made to CVC, which has no jurisdiction over the ministers and the head of state or government.

26e *In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.*

Score: NO

References: Relevant laws of the Representation of People's Act

Social Scientist's Comments: There is no restriction on heads of government entering the private sector after completing their assignments.

26f *In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.*

Score: 0

References: This is not applicable.

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

Score: 50

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

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

26h *In practice, executive branch asset disclosures (defined here as ministers and above) are audited.*

Score: 75

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

Social Scientist's Comments: As they are increasingly in the public domain, the assets disclosure are subjected to discussion and public scrutiny. However, there is a valid public perception that many of the asset disclosures do not reflect the true assets of elected representatives.

27: Can citizens access the asset disclosure records of the heads of state and government?

27a *In law, citizens can access the asset disclosure records of the heads of state and government.*

Score: YES

References: www.eci.gov.in;
www.parliamentofindia.nic.in

Social Scientist's Comments: The head of state is not required to make voluntary asset declarations. The head of government (prime minister) makes an asset declaration as a member of Parliament. This is accessible to citizens. Citizen watch groups and the media have also been publicizing the asset disclosure affidavits and this often gets wide publicity.

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

Score: 75

References: Review of the new norms for candidates contesting elections

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

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

Score: 75

References: Right to Information Act

Social Scientist's Comments: The head of state is not required to make voluntary asset declarations. The head of government (prime minister) makes an asset declaration as a member of Parliament. This is accessible to citizens. It can be obtained at a reasonable cost.

Peer Reviewer's Comments: I don't know what a "reasonable cost" is.

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

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

Score: 75

References: www.lokniti.org

Social Scientist's Comments: It is beyond doubt that a clear distinction has emerged between the ruling party and the government/state. This is linked to two interdependent factors. First, the emergence of a competitive multi-party system in 1989, which replaced the one-party dominant system. Secondly, coalition governments have increasingly become the norm since the 1990s. This has resulted in a power-sharing arrangement and the inability of one party to dominate the system. Yet, it needs to be conceded that there are rare instances of the line of distinction between party and government having been obliterated.

Peer Reviewer's Comments: Often, we find government resources are diverted for the use of the ruling party.

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

29a *In law, the judiciary can review laws passed by the legislature.*

Score:	YES
References:	Articles 286, 299-301 and 304.
Social Scientist's Comments:	In India, the judiciary has the power to review the actions of the legislature to ascertain whether they are in agreement with the provisions of the constitution.

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

Score:	75
References:	Anti Defection Law; Supreme Court judgments
Social Scientist's Comments:	The review of laws passed by the legislature is undertaken by the judiciary only when a case in this regard is filed in the court. The important point is that the legislature cannot take suo motto action in this regard. There are frequent cases of tussle between the legislature and the judiciary. The two most recent are the standoff between the two on the expulsion of members of Parliament and temporary disqualification of the legislators of a state assembly on the ground of violation of the anti-defection law.
Peer Reviewer's Comments:	Judiciary does not do the review on its own. It does so only when there is an appeal.

29c *In law, are members of the national legislature subject to criminal proceedings?*

Score:	YES
References:	Rules of Procedure and Conduct of Business
Social Scientist's Comments:	The only requirement is that the presiding officer be informed of the proceedings.

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

30a In law, members of the national legislature are required to file an asset disclosure form.

Score: YES

References: Representation of People's Act

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

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

Score: NO

References: Representation of People's Act

Social Scientist's Comments: In law, there are no such restrictions.

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

Score: YES

References: Rules of Procedure and Conduct of Business

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

30d In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

Score: NO

References: Representation of People's Act 1951

Social Scientist's Comments: While members are asked to submit a statement on assets, there is no evidence of the same being subjected to the scrutiny of an independent agency created for that specific purpose.

30e In practice, the regulations restricting post-government private sector employment for national legislators are effective.

Score: 0

References: Representation of People's Act 1951

Social Scientist's Comments: There are no such norms.

30f In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

Score: 50

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

Social Scientist's Comments: It is difficult to monitor these provisions and hold elected representatives accountable. There is ambiguity in the provisions, which allows for a very liberal interpretations of the limitations placed on legislators.

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

Score: 0

References: Rules of Procedure and Conduct of Business;
Ethics Committee Report

**Social Scientist's
Comments:** There is no mandatory provision requiring that they be audited.

31: Can citizens access the asset disclosure records of members of the national legislature?

31a *In law, citizens can access the asset disclosure records of members of the national legislature.*

Score: YES

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

Social Scientist's Comments: Today the asset disclosure affidavit of candidates is placed on the Web site by the Election Commission and is accessible to people. The percentage of those who have access to the Internet, however, is limited. Further, the capacity of ordinary citizens to withstand the `tyranny of procedures` of the Right to Information Act is also limited.

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

Score: 75

References: www.eci.gov.in

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

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

Score: 75

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

Social Scientist's Comments: The only cost is often internet access cost.

32: Can citizens access legislative processes and documents?

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

Score: YES

References: www.parliamentofindia.nic.in

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

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

Score: 75

References: www.parliamentofindia.nic.in

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

32c *In practice, citizens can access records of legislative processes and documents at a reasonable cost.*

Score: 75

References: www.parliamentofindia.nic.in

Social Scientist's Comments: They can be accessed through the internet or purchased from outlets managed by the government/legislature. A caveat needs to be added at this stage. Given the fact that one-third of the nation's population is still illiterate they have limited use of these materials.

Peer Reviewer's Comments: Again this definition of "reasonable" has me confused. Internet access is a privilege for a majority, even if it is free.

33: Are judges appointed fairly?

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

Score: YES

References: Article 124 of the constitution

Social Scientist's Comments: The constitution mandates an elaborate procedure that ensures fairness.

33b *In practice, there are certain professional criteria required for the selection of national-level judges.*

Score: 100

References: Articles 124(3) and 217(2) of the constitution.

Social Scientist's Comments: The criteria for the selection of national level judges is extremely rigorous.

33c *In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).*

Score: NO

References: Article 124

Social Scientist's Comments: There is no confirmation process in India.

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

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

Score: NO

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

Social Scientist's Comments: They are not obligated to give reasons. However, often the judgment reflects the grounds on which the judge has made a particular decision.

Peer Reviewer's Comments: Any judgment by its very nature is expected to contain the reasons for the ruling. In that sense, the judges are obliged to give reasons for their decisions. It is implied in the very process of adjudication.

34b *In practice, members of the national-level judiciary give reasons for their decisions.*

Score: 75

References: All supreme Court judgments

Social Scientist's Comments: The reasons are often reflected in the judgment.

Peer Reviewer's Comments: Increasingly, many judges are departing from the established norm of setting out the reasons for the nature of their judgments. Of late, this has been causing much confusion in India's law and society.

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

Score: NO

References: Article 124 provides for the method of appointment of judges, tenure and procedure for their removal

Social Scientist's Comments: There has been a proposal to create a National Judicial Commission. The recommendation of the National Commission to review the working of the constitution on this issue is pending. There are many who believe that this step is important to ensure the accountability of the judiciary.

Peer Reviewer's Comments: There is a provision that allows the Legislature to impeach a judge of the higher judiciary.

Peer Reviewer's Comments: The judges in India are a law unto themselves. Of late, there has been mounting pressure on the state to set norms for their behavior and make them accountable.

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

Score: NO

References: This is not applicable.

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

Score: 0

References: This is not applicable.

Peer Reviewer's Comments: There is a provision, though it is frustrated, to initiate the impeachment of a judge. Impeachment happened once in the case of Justice Ramasamy. However, the judge went scot-free after a large part of the ruling political establishment decided to shield him.

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

Score: 0

References: This is not applicable.

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

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

Score: NO

References: Article 124

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

35b *In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.*

Score: YES

References: Rules of Procedure in the Supreme Court

Social Scientist's Comments: There are conduct rules which the members of the national judiciary follow.

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

Score: NO

References: www.nic.in

Social Scientist's Comments: There is no requirement for asset disclosure.

35d *In law, there are restrictions for national-level judges entering the private sector after leaving the government.*

Score: NO

References: www.supremecourtindia.com

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

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

Score: 0

References: www.supremecourtindia.com

Social Scientist's Comments: This is not applicable.

35f *In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.*

Score: 75

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

Social Scientist's Comments: There are reports of cases of judges accepting gifts and hospitality that does not strictly conform to the norms laid down by the conduct rules. However, the objectivity with which this assessment can be done is severely limited.

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

Score: 0

References: Rules and regulations relating to the Supreme Court judges

Social Scientist's Comments: There are no mandatory asset disclosure requirements.

36: Can citizens access the asset disclosure records of members of the national-level judiciary?

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

Score: NO

References: Rules of Conduct from Supreme Court judges

Social Scientist's Comments: There is no requirement for mandatory submission of records of assets.

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

Score: 0

References: Supreme Court Judges Rules and Regulations

Social Scientist's Comments: There is no requirement for mandatory submission of records of assets.

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

Score: 0

References: Supreme Court Judges Rules of Code of Conduct

Social Scientist's Comments: There is no mandatory requirement for submission of records of assets.

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

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

Score:	YES
References:	Rules of Procedure and Conduct of Business in the Lok Sabha/ Rajy Sabha
Social Scientist's Comments:	It is important to record that the budgetary process has its own distinct momentum in a parliamentary system of government. The question seems to be more set to the dynamics of a presidential form of government. In a parliamentary system of government like India's, the budget needs to be approved by Parliament before any expenditure is made or tax is collected. The Lower House of Parliament has greater powers on matters linked to the budget and has the power to amend the budgetary recommendations. It must, however, be noted that because the budget is presented to the legislature by the government, which enjoys a majority in the Lower House, they normally are able to ensure that the budgetary provisions are approved by the legislature. However, this is often preceded by intense debates. Parliament has of late attempted to strengthen the mechanisms for budgetary control by the creation of Department Related Standing Committees in the House. It also must be noted that if the government is defeated on a budgetary proposal it must resign.

37b *In practice, significant public expenditures require legislative approval.*

Score:	75
References:	Rules of Procedure and Conduct of Business in the Lok Sabha; Report of the CAG; www.nic.in
Social Scientist's Comments:	No expenditure can be made without the approval of the legislature. On occasions, post facto approval has been given. No regularization of expenditure is possible without the sanction of the legislature. Yet a caveat needs to be added. The devil they say lies in the detail! Given the complexity of budgeting procedures and technicalities involved, it becomes possible for the government to limit the quantum of information made available to the House which approves expenditure. As a result it becomes possible for the government to make minor modifications in the broad contours of expenditure and yet present it as being within the larger framework of what has been approved by Parliament. The report of the Comptroller and Auditor General often makes reference to this.
Peer Reviewer's Comments:	Public expenditures are of different type. It is not necessary that all expenses should have the approval of Legislature or Parliament. What Parliament debates and approves is the annual budget of the nation as a whole and the railway budget separately. There are any number of expenditure items by various ministries and departments that do not come before Legislature or Parliament.

37c *In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.*

Score:	75
References:	Reports of DRSC's: www.parliamentofindia.nic.in ; Reports of CAG: www.nic.in

**Social Scientist's
Comments:**

Prior to the 1990s, it was found that a large chunk of the budgetary provisions were passed by the House without any debate, simply because of a lack of time. In the 1990s, Parliament adopted the procedure of Department Related Standing Committees (DRSCs), which make a detailed assessment of the budgetary provisions relating to different departments. Their report becomes the basis of parliamentary approval. Reports have appeared in the media on the need to strengthen these mechanisms. It is important to add that often members of the legislature neither have the time nor the inclination to seriously monitor the budgetary process. As a result, the government (and often the bureaucracy) is able to define and determine the nature, direction and focus of expenditure.

38: Can citizens access the national budgetary process?

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

Score: 75

References: www.parliamentofindia.nic.in

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

Peer Reviewer's Comments: The process is transparent.

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

Score: 50

References: www.parliamentofindia.com;
[Times of India www.timesofindia.com](http://www.timesofindia.com);
[Indian Express www.expressindia.com](http://www.expressindia.com);
[Deccan Herald www.deccanherald.com](http://www.deccanherald.com);
[The Hindu www.hinduonline.com](http://www.hinduonline.com);
[The Financial Express www.expressindia.com](http://www.expressindia.com)
newspapers around the last working day of February (the day the budget is presented) and the reporting in the first week of March.

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

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

Score: 75

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

Social Scientist's Comments: Citizens can access the entire budgetary proposals as they are printed at the time of their presentation. There is a general feeling that given the technicalities involved in budget documents, the bureaucracy is often able to hide more than it reveals through budget statistics. The media too highlights the proposals, and this is accessible to citizens. The entire budget proposals are placed on the Web site of the Lok Sabha soon after its presentation.

Peer Reviewer's Comments: Access is provided.

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

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

Score: YES

References: www.parliamentofindia.nic.in

Social Scientist's The Public Accounts Committee

Comments:

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

40a *In practice, department heads regularly submit reports to this committee.*

Score: 75

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

Social Scientist's Comments: The Public Accounts Committee requires officers to submit information and, at times, to provide oral testimony at the hearings of the Committee.

Peer Reviewer's Comments: Reports are required.

40b *In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.*

Score: 75

References: Reports of the Public Accounts Committee;
www.parliamentofindia.com
Books on the PAC: Dynamics of Legislative Control over Administration (Uppal) Sandeep Shastri; Parliamentary Control over Public Expenditure, Sheshadri.

Social Scientist's Comments: By and large the Committee has been known to operate in a non-partisan manner. This is largely because the Committee meetings are held 'in camera'.

Peer Reviewer's Comments: I think the non-partisan nature of the committee merits a score of 100.

40c *In practice, this committee is protected from political interference.*

Score: 75

References: www.parliamentofindia.nic.in (for public accounts committee reports);
Shastri, Sandeep (1994) Legislative Control over Administration, New Delhi Uppal Publishers; Seshadri (1981) Parliamentary Control over Public Expenditure New Delhi Sterling

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

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

Score: 100

References: www.parliamentofindia.nic.in (for public accounts committee reports);
Shastri, Sandeep (1994) Legislative Control over Administration, New Delhi Uppal Publishers; Seshadri (1981) Parliamentary Control over Public Expenditure New Delhi Sterling

**Social Scientist's
Comments:**

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

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

41a *In law, there are regulations requiring an impartial, independent and fairly managed civil service.*

Score: YES

References: Article 312 of the constitution

Social Scientist's Comments: The constitution attempts to provide for an independent, impartial and non-political civil service. Special protection has been guaranteed to the higher civil service under the constitution to ensure that they act in a fair and impartial manner.

41b *In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.*

Score: YES

References: Civil Service Conduct Rules; Prevention of Corruption Act.

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

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

Score: YES

References: Department of Personnel and Administrative Reforms: www.persmin.nic.in/

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

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

Score: YES

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

Social Scientist's Comments: A civil service officer against whom formal court proceedings are launched is often placed under suspension. On the basis of the final judgment, a decision is made whether to dismiss the officer from service. If dismissed, he/she is not eligible for reappointment in government.

42: Is the law governing the administration and civil service effective?

42a *In practice, civil servants are protected from political interference.*

Score: 50

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

Social Scientist's Comments:

In recent years, there has been increasing evidence to show that the civil service is getting increasingly politicized and straying away from the path of political neutrality. An unholy nexus between the political leadership and the bureaucracy is developing, which is resulting in the bureaucracy becoming sensitive to political cues. While the higher civil service has been guaranteed protection from political interference by the constitution, they have often been swayed by political considerations. This is not to say that all civil servants should be painted with the same brush. There are those rare cases of officers who stand up to the political leadership. The media today often highlight such instances.

42b *In practice, civil servants are appointed and evaluated according to professional criteria.*

Score: 75

References: Article 312 of the constitution;
Civil Service Rules of Conduct Memoirs of Retired Civil Servants in India; WHY I AM NOT A CIVIL SERVANT: Ajay Singh Yadav; Bluejay Books, New Delhi; Srishti Publishers and Distributors;
A Cabinet Secretary Looks Back By BG Deshmukh, HarperCollins India, 392pp, Rs 500; Tale Told by an Idiot R K Noronha;
Memoirs of a Civil Servant, Dharam Vira

Social Scientist's Comments:

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

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

Score: 75

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

Social Scientist's Comments: Hiring and firing would receive high scores in terms of objectivity. Promotions and transfers would score lower. Let's take each separately. A distinction must be made with regard to those appointed on the basis of examinations conducted by the Union Public Service Commission (UPSC) and those appointed on the basis of examinations conducted by State Public Service Commissions. The UPSC conducts the examination for the elite All India Services and the Central Services, while the State Public Service Commissions conduct the examinations for the State Services. The UPSC examinations and later recruitment by the Union is generally considered to be fair and on the basis of professional criteria. With regard to the State Public Service Commissions, there have been several complaints of nepotism, favoritism and other non-professional factors. With regard to evaluation of civil servants during their service, the procedures laid down are fair but have often been mired in controversies because of subjective and partisan assessments. Increasingly, nepotism, favouritism based on caste and political loyalties determine postings and promotions.

42d In practice, civil servants have clear job descriptions.

Score: 75

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

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

Peer Reviewer's Comments: The descriptions are clear, but perhaps the execution is not.

42e In practice, civil servant bonuses constitute only a small fraction of total pay.

Score: 75

References: Civil Service Rules of Conduct
Memoirs of Retired Civil Servants in India WHY I AM NOT A CIVIL SERVANT: Ajay Singh Yadav; Bluejay Books, New Delhi; Srishti Publishers and Distributors;
A Cabinet Secretary Looks Back By BG Deshmukh, HarperCollins India, 392pp, Rs 500
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Social Scientist's Comments: There needs to be some clarity on bonuses. Does this mean extra legal remuneration for completion of special work or for doing a task with a higher level of efficiency? If this were the definition of bonus, then the civil servants in India are not given any significant bonuses. If bonuses are taken to mean extra sources of wealth, then it has become a major bone of contention today. Many believe that the reason why the civil service attracts a lot of people is because of the opportunity to earn such bonuses.

Peer Reviewer's Comments: The prestige and power associated with these jobs is also a main draw to the civil services.

42f *In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.*

Score: 75

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

Social Scientist's Comments: With regard to the federal government, the Web site of the Ministry of Personnel lists the details. With regard to the state governments, these details are often not available.

42g *In practice, the independent redress mechanism for the civil service is effective.*

Score: 75

References: www.nic.in/; Ministry of Personnel Web site [\[LINK\]](#)

WHY I AM NOT A CIVIL SERVANT: Ajay Singh Yadav; Bluejay Books, New Delhi; Srishti Publishers and Distributors;

A Cabinet Secretary Looks Back By BG Deshmukh, HarperCollins India, 392pp, Rs 500; Tale Told by an Idiot R K Noronha ;

Memoirs of a Civil Servant, Dharam Vira

Social Scientist's Comments: There is both a Central Administrative Tribunal (CAT) and each state has an Administrative Tribunal (SAT). The civil servant has the opportunity to approach the tribunal for redress of grievances. There have been occasions when these tribunals have directed the government to take remedial measures to offset the hardship or injustice caused to an officer. There are also instances when officers have moved the Tribunal on decisions of the government relating to appointments made to selection posts. These are posts where both seniority and merit are taken into account when making appointments and the government makes a decision on the matter. Officers who feel injustice has been done to them often feel that the Tribunals are able to do precious little to secure what is rightfully theirs. However, it must be stressed that `selection posts` leave a lot of room for the discretion of the government of the day and thus can often become an issue of subjective controversy.

42h *In practice, in the past year, the government has paid civil servants on time.*

Score: 100

References: www.nic.in

**Social Scientist's
Comments:**

Civil servants are normally paid on time. In those rare cases when states face a fiscal crunch, it may just be that the payment of salaries is delayed by a few days. It may be a one-time occurrence. The flip side of the story is that civil servants ensure that they are paid on time, irrespective of whether others who depend on government grants are paid or not, because they control the levers of power!

42i *In practice, civil servants convicted of corruption are prohibited from future government employment.*

Score:

75

References:

[\[LINK\]](#)

**Social Scientist's
Comments:**

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

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

43a *In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.*

Score: YES

References: Civil Service Conduct Rules

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

43b *In law, there are restrictions for civil servants entering the private sector after leaving the government.*

Score: NO

References: Civil Service Conduct Rules

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

Peer Reviewer's Comments: The general norm mentioned in the comments is for two years.

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

Score: YES

References: All India Service Conduct Rules;
Civil Service Rules

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

Peer Reviewer's Comments: The Central Vigilance Commission also has brought out a gift policy.

43d *In practice, the regulations restricting post-government private sector employment for civil servants are effective.*

Score: 25

References: www.cvc.gov.in/

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

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

Score: 50

References: [\[LINK\]](#)

Social Scientist's Comments: There have been cases reported of officers accepting gifts and hospitality disproportionate to their status and position. The laws are too lax to be able to ensure that officers adhere to norms.

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

Score: 50

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

Social Scientist's Comments: There are several controversies in this regard. The most recent involves an election commissioner (EC) who was in the civil service and also had an interest in several charitable trusts in which his family members were trustees. He is believed to have influenced contributions to these trusts using his position and influence in the civil service. Many political groups have demanded that he vacate the EC's position as many politicians and elected representatives has made contributions to the trusts. This matter has snowballed into a major controversy. Several raids by the state ombudsman on the properties of officials have shown that the assets possessed are disproportionate to wealth and involve the stake of officers in private trusts and funds which are indirectly linked to official responsibilities that they may have discharged in the past.

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

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

Score: NO

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

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

Peer Reviewer's Comments: I do not agree. As per the All India Service Rules, the senior civil servants have to file their Annual Property Returns. With the RTI in place, they are accessible. The same applies to all Group B and Group A civil servants.

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

Score: 50

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

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

Peer Reviewer's Comments: I do not agree. As per the All India Service Rules, the senior civil servants have to file their Annual Property Returns. With the RTI in place, they are accessible. The same applies to all Group B and Group A civil servants.

Peer Reviewer's Comments: In practice, citizens have no access to the disclosure records.

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

Score: 50

References: State Lok Ayukta: www.kar.nic.in

Social Scientist's Comments: Those disclosures made on the Web site of state level ombudsman authorities can be accessed. Citizens would need to use the RTI (Right to Information) route to gain access to information which is not on the net. This often involves procedures and delays.

Peer Reviewer's Comments: I do not agree. As per the All India Service Rules, the senior civil servants have to file their Annual Property Returns. With the RTI in place, they are accessible. The same applies to all Group B and Group A civil servants.

Peer Reviewer's Comments: Since there is no provision to access the records, the question of cost does not arise.

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

45a *In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.*

Score: YES

References: Prevention of Corruption Act

Social Scientist's Comments: The Prevention of Corruption Act offers special protection to those who wish to report on corruption.

45b *In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.*

Score: 50

References: www.fightcorruption.wikidot.com

Social Scientist's Comments: In recent times, there have been reports of officers who have attempted to expose corruption charges being victimized in subtle and not so subtle ways. Frequent transfers to apparently insignificant positions are some of the ways in which officers who have tried to expose corruption have been penalized. The increasing nexus between the political leadership and the bureaucracy appears to have further suffocated those who seek to work with integrity.
An officer belonging to the elite Indian Administrative Service (IAS) has alleged that he has been victimized because he attempted to expose corruption and has been transferred six times in six months. He has taken his case to the Tribunal and also used the Right to Information Act to seek further information on his frequent transfers (Web site appended).

45c *In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.*

Score: YES

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

Social Scientist's Comments: The government position has been that names of those who reports acts of corruption or misuse of office will be kept secret and not publicly disclosed.

Peer Reviewer's Comments: The reference could also include the Government Resolution on Public Interest Disclosure (Protection of Informers).

Peer Reviewer's Comments: The statement is not clear.

45d *In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.*

Score: 50

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

Social Scientist's Comments: In reality, the attempt to report corruption often boomerangs because of the network of contacts of those taking part in corrupt practices. Informal leaks and the wide network of those involved in corrupt practices often exposes the whistleblowers.

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

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

Score: YES

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

Social Scientist's Comments: Yes the Central Vigilance Commission, Central Bureau of Investigation, Human Rights Commission and Women's Commission have a dedicated number for filing of complaints as well as an email address and fax number.

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

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

Score: 50

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

Social Scientist's Comments: The Central Vigilance Commission (CVC) has been monitoring corruption complaints and corrupt practices. At the state-level, the Lok Ayukta has been charged in some states to investigate citizens' complaints of maladministration and corruption. The action taking authority is in most cases the competent authority, invariably the government. This severely hampers the good work that is done by these agencies. A caveat needs to be added. The effectiveness of the system varies across states significantly.

Peer Reviewer's Comments: The low score is not a staffing issue, but a state issue!

47b *In practice, the internal reporting mechanism for public sector corruption receives regular funding.*

Score: 50

References: www.cvc.nic.in

Social Scientist's Comments: Their funding is part of what is included in the budgetary provisions. There is a general comment that the quantum of funds at their disposal is not commensurate to the responsibilities of these agencies.

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

Score: 25

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

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

47d *In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.*

Score: 25

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

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

48: Is the public procurement process effective?

48a In law, there are regulations addressing conflicts of interest for public procurement officials.

Score: YES

References: www.persmin.nic.in

Social Scientist's Comments: The rules are very elaborate and well laid out.

48b In law, there is mandatory professional training for public procurement officials.

Score: YES

References: www.persmin.nic.in

Social Scientist's Comments: Officers in charge of procurement undergo rigorous training in procedures and methods.

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

Score: 50

References: www.india-defence.com/reports-3213; timesofindia.indiatimes.com/articleshow/35652327; www.iupindia.org/Books/Anti-CorruptionStrategies_ovw

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

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

Score: YES

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

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

Peer Reviewer's Comments: The Central Vigilance Commission monitors officials through the Chief Vigilance Officers in every organization.

48e In law, major procurements require competitive bidding.

Score: YES

References: www.cvc.nic.in

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

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

Score: YES

References: Rules of Procedure for Tendering and Contracting

Social Scientist's Comments: The rules of procedures clearly mention that sole sourcing would be discouraged.

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

Score: YES

References: Rules of Internal Procedure

Social Scientist's Comments: They have resorted to appeals to tribunals within the framework of law. They can also approach the judicial process.

48h In law, unsuccessful bidders can challenge procurement decisions in a court of law.

Score: YES

References: Rules of Internal Procedure

Social Scientist's Comments: Yes, they can approach the court of law after exhausting internal mechanisms provided.

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

Score: YES

References: Web sites of concerned ministries: www.nic.in

Social Scientist's Comments: Companies guilty of procurement violations are blacklisted and forbidden from bidding.

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

Global Integrity Report: India

Score: 75

References: www.hindu.com/2007/05/28/stories/2007052807300500.htm;
www.hindu.com/2005/04/03/stories/2005040301200300;
www.thehindubusinessline.com/businessline/2001/08/07/14hdline.htm

Social Scientist's Comments: There have been a few cases of officials circumventing procedures. A few cases are listed above.

Peer Reviewer's Comments: Once guilt is established then they are prohibited from participating in future bids.

Peer Reviewer's Comments: The politician-official nexus leads to this circumventing of the procedures.

49: Can citizens access the public procurement process?

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

Score: YES

References: www.nic.in

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

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

Score: YES

References: www.nic.in

Social Scientist's Comments: These are announced on the Web site or through press releases.

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

Score: 75

References: Web sites of ministries: www.nic.in; [\[LINK\]](#)

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

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

Score: 75

References: Web sites of concerned ministries: www.nic.in; [\[LINK\]](#)

Social Scientist's Comments: The procedure would vary from department to department. I have listed the Web site of the Department of Disinvestment as an example.

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

Score: 75

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

Peer Reviewer's Comments: I do not agree. There is no comment available. However, this is closely monitored by CVC also and major public procurements are effectively advertised.

49f *In practice, citizens can access the results of major public procurement bids.*

Score: 75

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

Social Scientist's Comments: A full score has not been assigned because of the limited accessibility of the internet.

50: Is the privatization process effective?

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

Score: YES

References: [\[LINK\]](#)

50b *In law, there are regulations addressing conflicts of interest for government officials involved in privatization.*

Score: YES

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

Social Scientist's Comments: Civil Service Rules do not allow a government official to have a personal stake in any transaction involving privatization of government assets.

50c *In practice, conflicts of interest regulations for government officials involved in privatization are enforced.*

Score: 75

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

Social Scientist's Comments: There are cases in which officers are known to have indirectly influenced the sale of government assets in favor of those parties in which they have a vested interest. These include the privatization of government-owned hotels (Web site mentioned) or the privatization of NALCO (second largest primary aluminium producer in India) and the like.

51: Can citizens access the terms and conditions of privatization bids?

51a *In law, citizens can access privatization regulations.*

Score: YES

References: [\[LINK\]](#)

Social Scientist's Comments: There procedures announcing bids are on the Web site and can be accessed by citizens who have access to the internet.

51b *In practice, privitizations are effectively advertised.*

Score: 100

References: [\[LINK\]](#)

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

Peer Reviewer's Comments: If it is advertised, then a score of 100 is correct.

51c *In law, the government is required to publicly announce the results of privatization decisions.*

Score: YES

References: [\[LINK\]](#)

Social Scientist's Comments: The procedures of disinvestment/ privatization require such disclosures.

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

Score: 75

References: www.divest.nic.in/;
[\[LINK\]](#);
www.divest.nic.in/guidelines/muladv.htm;
www.divest.nic.in/maruti.htm

Social Scientist's Comments: Yes, they are accessible on the Department Web site.

Peer Reviewer's Comments: They are accessible, but not everyone has Internet access.

51e *In practice, citizens can access privatization regulations at a reasonable cost.*

Score: 100

References: [\[LINK\]](#)

Social Scientist's Comments: It is available on the internet and can also be purchased at a reasonable price.

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

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

Score: NO

References: www.lawmin.nic.in

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

53: Is the national ombudsman effective?

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

Score: NO
References: www.lawmin.nic.in
Social Scientist's Comments: This is not applicable, as the discussion is on a national level ombudsman.

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

Score: 0
References: www.lawmin.nic.in
Social Scientist's Comments: This is not applicable, as there is no national level ombudsman.

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

Score: 0
References: www.lawmin.nic.in
Social Scientist's Comments: This is not applicable, as there is no national level ombudsman.

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

Score: 0
References: www.lawmin.nic.in
Social Scientist's Comments: This is not applicable, as there is no national level ombudsman.

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

Score: 0
References: www.lawmin.nic.in
Social Scientist's Comments: This is not applicable, as there is no national level ombudsman.

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

Score: 0
References: www.lawmin.nic.in
Social Scientist's Comments: This is not applicable, as there is no national level ombudsman.

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

Score: 0
References: www.lawmin.nic.in
Social Scientist's Comments: This is not applicable, as there is no national level ombudsman.

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

Score: 0
References: www.lawmin.nic.in

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

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

Score: 0

References: www.lawmin.nic.in

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

53j *In practice, the government acts on the findings of the ombudsman agency (or agencies).*

Score: 0

References: www.lawmin.nic.in

Social Scientist's Comments: This is not applicable, as there is no national level ombudsman.

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

Score: 0

References: www.lawmin.nic.in

Social Scientist's Comments: This is not applicable, as there is no national level ombudsman.

54: Can citizens access the reports of the ombudsman?

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

Score: NO

References: www.lawmin.nic.in

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

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

Score: 0

References: www.lawmin.nic.in

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

54c *In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.*

Score: 0

References: www.lawmin.nic.in

Social Scientist's Comments: This is not applicable, as there is no national level ombudsman. The reports of the state level ombudsman can be accessed on the internet.

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

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

Score: YES

References: Articles 148 to 151 of the constitution

Social Scientist's Comments: These are the Comptroller and Auditor General of India.

56: Is the supreme audit institution effective?

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

Score: YES

References: Articles 148 to 151 of the constitution

Social Scientist's Comments: The constitution guarantees the independence of the Comptroller and Auditor General of India.

56b In practice, the head of the audit agency is protected from removal without relevant justification.

Score: 100

References: Articles 148 to 151 of the constitution

Social Scientist's Comments: Under the constitution, the Comptroller and Auditor General can be removed from office before the expiration of the term only through a process of impeachment.

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

Score: 100

References: www.cag.nic.in

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

56d In practice, audit agency appointments support the independence of the agency.

Score: 100

References: www.cag.nic.in

Social Scientist's Comments: The Indian Audit and Accounts Service is an independent central service. They have demonstrated this independence on several occasions and this is reflected in the nature of the audit reports they have prepared.

56e In practice, the audit agency receives regular funding.

Score: 100

References: Article 148 of the constitution

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

56f In practice, the audit agency makes regular public reports.

Score: 100

References: www.cag.nic.in

Social Scientist's Comments: The CAG submits an annual report to the president who then passes it onto the legislature. The reports are also available to the public to scrutinize.

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

Score: 75

References: www.internationalmonetaryfund.com/external/pubs/ft/scr/2004/cr0496.pdf;
www.southasianmedia.net/index_opinion.cfm?category=Civil%20Society&country

Social Scientist's Comments: The audit reports are further examined by the Public Accounts Committee, which then submits a report on the action that needs to be taken. It must be emphasized that the final decision to take action rests with the competent authority - the government. Studies have found that the government is not as responsive to the PAC/CAG recommendations when it involves disciplinary and other corrective action.

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

Score: 75

References: www.cag.nic.in

Social Scientist's Comments: The agency is able to initiate its investigations and make recommendations, but the action must be taken by the competent authority - the government.

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

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

Score: YES

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

Social Scientist's Comments: Citizens can easily access the reports in print and electronic form.

57b *In practice, citizens can access audit reports within a reasonable time period.*

Score: 100

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

Social Scientist's Comments: Soon after the reports are released (handed over to the president and passed onto the Parliament) they are made available for public scrutiny.

57c *In practice, citizens can access the audit reports at a reasonable cost.*

Score: 100

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

Social Scientist's Comments: The reports are available at reasonable rates and can be purchased or read in public libraries and also accessed on the internet.

58: In law, is there a national tax collection agency?

58 *In law, is there a national tax collection agency?*

Score: YES

References: www.finmin.nic.in/

Social Scientist's Comments: There are different agencies within the Department of Revenue linked to revenue collection. The main agencies are the Central Board of Excise and Customs (CBEC) and the Central Board of Income Tax.

59: Is the tax collection agency effective?

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

Score: 100

References: [\[LINK\]](#)

Social Scientist's Comments: Yes, they have a full-time, professional staff.

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

Score: 100

References: www.finmin.nic.in/

Social Scientist's Comments: It is laid out in the budget of the Finance Ministry.

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

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

Score: 75

References: www.tribuneindia.com/2001/20010404/main3.htm;
itat.nic.in/Accolades.htm;
parliamentofindia.nic.in/lsdeb/ls12/ses1/3026039801.htm

Social Scientist's Comments: There have been several cases of discrimination caused by favoritism, nepotism, political pressures and subjective interpretation of the law, which have been reported in the media and audit reports. The government maintains that given the manner in which the Appellate Tribunals are created there is no room for nepotism, corruption and favoritism.

Peer Reviewer's Comments: Indian tax laws are highly discriminatory. Broadly, the political class, legal class, film stars, those in the medical profession and the so-called "spiritual leaders" evade taxes as they enjoy a lot of freedom and are close to the power centers.

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

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

Score: YES

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

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

62: Is the customs and excise agency effective?

62a *In practice, the customs and excise agency has a professional, full-time staff.*

Score: 100

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

Social Scientist's Comments: They have a full-time, professional staff drawn from the Indian Revenue Service.

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

Score: 100

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

Social Scientist's Comments: It is included as part of the budgetary provisions for the Ministry of Finance.

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

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

Score: 75

References: www.finmin.nic.in/the_ministry/dept_revenue/cbec/index.html;
www.irb-cisr.gc.ca/en/research/publications/index_e.htm?cid=0&docid=292 -;
www.indianexpress.com/res/web/ple/ie/daily/19990702/ige02045.html;
www.tribuneindia.com/2005/20051001/main1.htm -

Social Scientist's Comments: There have been some reports of favoritism, misapplication of law and procedures, nepotism and corruption with regard to the collection of customs and excise revenues involving large businesses, which have been reported both in the media and by the audit department.

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

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

Score: YES

References: www.dpe.nic.in/

Social Scientist's Comments: If we survey the state-owned companies, they would be those under the direct control of the federal government, those under the state government, those managed and controlled by both. The state-owned companies function under the overall direction of the ministry that they come under. There is also a federal ministry for Public Enterprises. Its is given the responsibility of a) coordination of matters of general policy of non-financial nature affecting all public sector industrial and commercial undertakings; b) matters relating to Memorandum Of Understanding mechanism of improving the performance of Public Sector Undertakings; c) matters relating to Permanent Machinery of Arbitration for the Public Sector Enterprises; d) counselling, training and rehabilitation of employees in Central Public Sector Undertakings under Voluntary Retirement Scheme.

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

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

Score: YES

References: www.did.nic.in

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

Peer Reviewer's Comments: The BPE is now known as the Department of Public Enterprise and is part of the Ministry of Industrial Development, headed by a political executive.

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

Score: 50

References: www.did.nic.in

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

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

Score: 75

References: www.did.nic.in

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

Peer Reviewer's Comments: They receive funding, so the score should be 100.

65d *In practice, when necessary, the agency or equivalent mechanism overseeing state-owned companies independently initiates investigations.*

Score: 50

References: www.blackwell-synergy.com/doi/abs/10.1111/j.1467-8292.1979.tb00850.x - ;
www.unpan1.un.org/intradoc/groups/public/documents/un/unpan022073.pdf;
www.blonnet.com/2005/06/03/stories/2005060300250800.htm - 29k -

Social Scientist's Comments: This happens very rarely because of the excessive control exercised by the government.

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

Score: 25

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

Social Scientist's Comments: This happens very rarely, as imposing punishments/penalties is done by the government.

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

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

Score: YES

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

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

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

Score: 100

References: www.cag.nic.in

Social Scientist's Comments: It is mandatorily prepared for every fiscal year.

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

Score: 75

References: www.cag.nic.in

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

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

Score: 100

References: www.cag.nic.in

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

Peer Reviewer's Comments: If reports are accessible then a score of 100 is justified. The question of "reasonable" access may justify a lower score, but not 75.

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

Score: 100

References: www.cag.nic.in

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

Peer Reviewer's Comments: The cost for seeking information under RTI is Rs.10 (around \$US0.25), plus the cost of photocopying.

Peer Reviewer's Comments: Refer to comments to previous question, which were: If reports are accessible then a score of 100 is justified. The question of "reasonable" access may justify a lower score, but not 75.

67: Are business licenses available to all citizens?

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

Score: YES

References: Companies Act

Peer Reviewer's Comments: This provision is subject to the service rules if a person is employed.

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

Score: YES

References: Companies Act

Peer Reviewer's Comments: A complaint mechanism exists within the Ministry of Company Affairs and, of course, the legal option for appeal can also be made there.

67c *In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.*

Score: 75

References: Company Act; www.mca.gov.in;
www.tribuneindia.com/2002/20020902/himachal.htm -www.bis.org.in/other/seminarpgd223.htm;
www.thehindubusinessline.com/2007/02/22/stories/2007022203600100.htm

Social Scientist's Comments: There are procedures involved. Some feel that they are too cumbersome.

Peer Reviewer's Comments: In practice, it is not easy for citizens to get business licenses, particularly for import businesses.

67d *In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.*

Score: 50

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

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

Peer Reviewer's Comments: The "control raj" is also called the "permit license raj." The present situation is much better when compared to the pre-liberalization era.

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

68a *In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.*

Score: YES

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

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

Peer Reviewer's Comments: This has been a highly controversial issue in India. In many cases, Indian law is archaic and seldom updated. Though there are some laws relating to the issue, they are too narrow in scope and sweep.

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

Score: YES

References: www.envfor.nic.in/

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

Peer Reviewer's Comments: My earlier observation is valid here also: This has been a highly controversial issue in India. In many cases, Indian law is archaic and seldom updated. Though there are some laws relating to the issue, they are too narrow in scope and sweep. Jurisprudence on this topic in India is still nascent.

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

Score: YES

References: www.labour.nic.in;
www.mohfw.nic.in

Social Scientist's Comments: Yes, they are, but they are not often fully implemented. The Health and Labor Ministries Web sites outline those standards.

Peer Reviewer's Comments: My observations on the two earlier statements apply here also: This has been a highly controversial issue in India. In many cases, Indian law is archaic and seldom updated. Though there are some laws relating to the issue, they are too narrow in scope and sweep. Jurisprudence on this topic in India is still nascent.

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

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

Score: 50

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

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

Peer Reviewer's Comments: There is a lot of corruption and cover-up in this regard.

Peer Reviewer's Comments: The answer is an emphatic "no." Only when civil society organizations and media make noise is attention paid to the issue. Business inspection by government officials is a den of corruption and callousness. It seldom works in the public interest.

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

Score: 25

References: www.cpcb.nic.in/oldwebsite/Inspection/ch60503.htm;
www.indiaresource.org/news/2005/2001.html

Social Scientist's Comments: In practice, many would argue that there is a creative subjectivity in interpreting these norms and this leaves a lot of space for corruption and misuse.

Peer Reviewer's Comments: The norms are violated with impunity, and the concerned officers see this an opportunity to enrich themselves through illegal gratification.

Peer Reviewer's Comments: My earlier observations apply: The answer is an emphatic "no." Only when civil society organizations and media make noise is attention paid to the issue. Business inspection by government officials is a den of corruption and callousness. It seldom works in the public interest.

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

Score: 25

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

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

Peer Reviewer's Comments: Inspections are more of a cover-up than attempts to ensure that the standards are enforced.

Peer Reviewer's Comments: My earlier observations apply: The answer is an emphatic "no." Only when civil society organizations and media make noise is attention paid to the issue. Business inspection by government officials is a den of corruption and callousness. It seldom works in the public interest.

70: Is there legislation criminalizing corruption?

70a *In law, attempted corruption is illegal.*

Score: YES

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

Social Scientist's Comments: Section 15 of the Prevention of Corruption Act provides for punishment of an attempt to commit an offence under Section 13.

70b *In law, extortion is illegal.*

Score: YES

References: Indian Penal Code

Social Scientist's Comments: The Indian Penal Code defines extortion and all forms of extortion are illegal.

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

Score: YES

References: Indian Penal Code;
Prevention of Corruption Act

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

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

Score: YES

References: Prevention of Corruption Act;
Indian Penal Code;
www.cvc.nic.in

Social Scientist's Comments: Yes, it is considered corruption.

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

Score: YES

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

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

Peer Reviewer's Comments: The Bofors issue involved a foreign company that bribed Indians who were influential in the Government. One of the alleged recipients, Ottavio Quattrocchi, happened to be a foreigner.

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

Score: YES

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

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

70g *In law, using confidential state information for private gain is illegal.*

Score: YES
References: www.cvc.nic.in
Social Scientist's Comments: The Official Secrets Act and Prevention of Corruption Act state that using confidential state information for private gain is illegal.

70h *In law, money laundering is illegal.*

Score: YES
References: Prevention of Money Laundering Act, 2002
Social Scientist's Comments: The Prevention of Money Laundering Act, 2002 clearly defines using confidential information for private gain as illegal.

70i *In law, conspiracy to commit a crime (i.e. organized crime) is illegal.*

Score: YES
References: Indian Penal Code
Social Scientist's Comments: The Indian Penal Code clearly states that conspiracy to commit a crime is illegal and punishable under the law.

71: In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

71 *In law, is there an agency (or group of agencies) with a legal mandate to address corruption?*

Score: YES

References: www.cvc.nic.in

Social Scientist's Comments: This is the Central Vigilance Commission.

Peer Reviewer's Comments: In addition, there is the Central Bureau of Investigation and Enforcement Directorate, plus Vigilance Departments in every organization.

Peer Reviewer's Comments: The Central Vigilance Commission is concerned only with corruption issues concerning the government of India and its public sector undertakings. It does not cover the private sector or states (India's federating units).

72: Is the anti-corruption agency effective?

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

Score: YES

References: www.cvc.nic.in

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

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

Score: 75

References: www.cvc.nic.in

Social Scientist's Comments: The CVC as a body has more or less evoked a high degree of public trust in its impartiality and apolitical nature. There have been rare cases of complaints that the institution is not able to do much to withstand political pressures under agencies it oversees. Also, the capacity of the institution to resist those pressures is associated with the individual who heads the institution.

Peer Reviewer's Comments: Political interference is indeed a major hurdle in the path of the investigating agencies, and that has led to several cases of corruption falling flat during the judicial trial; the fact is that the investigating agency is forced to open cases by the ruling establishment against those in the opposition and vice versa. The Bofors and the Taj Corridor cases are just two examples of this.

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

Score: 100

References: www.cvc.nic.in; Interview with CVC

Social Scientist's Comments: Central Vigilance Commission Act 2003, Section 6: Subject to the provisions of sub-section (3), the Central Vigilance commissioner or any Vigilance commissioner shall be removed from his office only by order of the president on the ground of proved misbehavior or incapacity after the Supreme Court, on a reference made to it by the president, has, on inquiry, reported that the Central Vigilance commissioner or any Vigilance commissioner, as the case may be, ought on such ground be removed.

72d *In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.*

Score: 75

References: www.cvc.nic.in

Social Scientist's Comments: Central Vigilance Commission Act 2003, Section 3: The Central Vigilance commissioner and the Vigilance commissioners shall be appointed from amongst persons: (a) who have been or are in an All-India Service or in any civil service of the Union or in a civil post under the Union having knowledge and experience in the matters relating to vigilance, policy making and administration including police administration; or (b) who have held office or are holding office in a corporation established by or under any Central Act or a government company owned or controlled by the central government and persons who have expertise and experience in finance including insurance and banking, law, vigilance and investigations: Provided that, from amongst the Central Vigilance commissioner and the Vigilance commissioners, not more than two persons shall belong to the category of

persons referred to either in clause (a) or clause (b): Would have given a score of `100` if there was not so much of an emphasis on a bureaucratic background.

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

Score: 100

References: www.cvc.nic.in

Social Scientist's Comments: The agencies have professional, full-time staff.

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

Score: 100

References: www.cvc.nic.in

Social Scientist's Comments: The Central Vigilance Commission Act 2003, Section 13 states that the expenses of the Commission, including any salaries, allowances and pensions payable to or in respect of the Central Vigilance commissioner, the Vigilance commissioners, secretary and the staff of the Commission, shall be charged on the Consolidated Fund of India. When the expenditure is charged on the Consolidated Fund of India, it is not subject to debate in Parliament and cannot be reduced by the executive.

Peer Reviewer's Comments: I agree, but the same is not the case with the Vigilance Departments of every organization, which are supposed to be the extended wings of the CVC.

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

Score: 100

References: www.cvc.nic.in

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

Peer Reviewer's Comments: The CVC regularly publishes its annual report on its Web site, but only after its presentation in the parliament for debate.

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

Score: 75

References: www.cvc.nic.in

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

Peer Reviewer's Comments: The CVC has to depend on other agencies like CBI and the Vigilance Departments to carry out investigations.

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

Score: 75

References: www.cvc.nic.in

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

Peer Reviewer's Comments: It is true that the CVC can initiate action, but it can only direct the CBI, the Income Tax department or any other Vigilance Department to investigate.

73: Can citizens access the anti-corruption agency?

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

Score: 50

References: www.cvc.nic.in;
www.hindu.com/2005/06/16/stories/2005061612270400.htm;
www.unhcr.org/home/RSDCOI/456569764.

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

Peer Reviewer's Comments: However, the report leaves an impression that CVC is the only anti-corruption agency, which is not the case.

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

Score: 75

References: www.cvc.nic.in

Social Scientist's Comments: The identity of the complainant can be protected by the Central Vigilance Commission (CVC) if the complainant fears danger to his/her life. Section 128 of the IPC states that anyone who knowingly makes a false complaint can be prosecuted.

Peer Reviewer's Comments: I agree, however, the section referred is not relevant. The protection that is available under the Whistle-blower's Act would be a more appropriate reference.

74: Is there an appeals mechanism for challenging criminal judgments?

74a *In law, there is a general right of appeal.*

Score: YES

References: Section 374 of the Criminal Procedure Code; Article 134 of the constitution

Social Scientist's Comments: Article 134 of the constitution read in consonance with Section 374 of the Criminal Procedure Code

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

Score: 25

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

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

Peer Reviewer's Comments: Adjudication of court cases, let alone appeals, in India is frustratingly slow. Appeals in general are not resolved within a reasonable time period. There may be exceptions.

74c *In practice, citizens can use the appeals mechanism at a reasonable cost.*

Score: 50

References: www.legalservicesindia.com/articles/bar;
www.supremecourtfindia.nic.in/new_links/ILI-17.3.07.doc

Social Scientist's Comments: The costs can be quite high given the need for professional support and the long delays in the judicial procedures/ processes. Many celebrated cases in recent times have taken over a decade to reach the state of final conviction - The case involving the Mumbai blasts, the Uphaar Tragedy case, the Jessica Lal Murder case are a few that can be cited in this regard. A recent speech made by the chief justice of India draws attention to this point :
"Various factors contribute to large pendency of criminal cases in the subordinate courts. Speedy trial of criminal cases should be recognized as an urgent need of the present judicial system in order to decide the fate of lakh of litigants. It will help enhance the faith of general public in the present judicial system. In order to have a strong socio-economic system, it is important that each and every state of trial of an accused should move at a reasonably fast pace. In many cases, the accused is the head of a family and is the only bread winner, his responsibility is also towards the large family left behind him. It is not only the accused but also other members of his family who suffer because of delays in trial. Speedy trial ensures that a society is free of such vices. In many cases, large number of persons are arrested and kept in custody. It is said that large percentage of jail population is under-trial prisoners. Arrest of an accused originally was a mechanism for bringing the suspects before the magistrate so that their cases could be decided. This was the only coercive power possessed by the police. In reality, of course, warrants were issued on the basis of information provided by the police, but at least some information was required. But gradually it was replaced by summary arrest, that is, arrest without warrant on reasonable suspicion for arrest. Unless the pending cases are disposed of as quickly as possible in the present scenario, we would not be able to free our jails from large number of under-trial prisoners. The new system of plea bargaining incorporated in the Criminal Procedure

Code shall be available to the under-trial prisoners and the court and the prosecuting agency and the lawyers should make them aware of the benefits of the benevolent provision incorporated in our statute." (Entire text www.supremecourtfindia.nic.in/new_links/LLI-17.3.07.doc)

Peer Reviewer's Comments: The legal system in India does not address the needs of ordinary citizens. Litigation is highly expensive in terms of attorney fees, court fees and opportunity cost.

75: In practice, do judgments in the criminal system follow written law?

75 *In practice, do judgments in the criminal system follow written law?*

Score: 75

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

Social Scientist's Comments: It normally does follow written laws, procedures and precedents.

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

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

Score: 75

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

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

77: Is the judiciary able to act independently?

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

Score:	YES
References:	Articles 121, 124,125 and 146 of the constitution
Social Scientist's Comments:	The independence of the judiciary is guaranteed in terms of the manner of the appointment of judges, the protection of the service conditions and a removal by a process of impeachment (High Court and Supreme Court judges). Many would still argue that the judiciary is not fully insulated from the political process and judges at times appear to be sensitive to political cues. But overall, the independence of the judiciary is generally accepted as a positive element of the system.

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

Score:	75
References:	Articles 121, 124,125 and 146 of the constitution.
Social Scientist's Comments:	On the face of it, there is not much evidence that goes to show that judges are susceptible to political pressures. There have been a few complaints that judges are being subjected to undue and intense political pressures. There are also apprehensions that they are falling prey to such pressures. This is not spoken about in the open often because of fears of violation of `privilege` and contempt of the court. It is in this context that there is a demand for the establishment of a National Judicial Commission to oversee the functioning of the judiciary and to `guard the guardian`.

77c *In law, there is a transparent and objective system for distributing cases to national-level judges.*

Score:	YES
References:	www.supremecourtfindia.nic.in
Social Scientist's Comments:	This is determined by court procedures laid down by the chief justice.

77d *In law, national-level judges are protected from removal without relevant justification.*

Score:	YES
References:	Article 124 of the constitution
Social Scientist's Comments:	There are detailed provisions for impeaching a judge. The method also ensures that the provisions are not misused. A judge can be impeached on grounds of proved misbehavior or professional incompetence. The procedure ensure that the concerned judge is given a fair hearing. In the last six decades, there was an attempt to impeach only one judge (for his actions as the chief justice of a High Court) and this fell through at quite an advanced stage of the proceedings.

78: Are judges safe when adjudicating corruption cases?

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

Score: YES

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

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

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

Score: YES

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

Social Scientist's Comments: No judge has been reportedly killed for having investigated a corruption case.

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

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

Score: 50

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

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

Peer Reviewer's Comments: While the higher judiciary may be held as free from such sectarian biases by and large (though there are instances, even here, of caste prejudices arising such as the observations by judges against the government's initiative to implement reservations to the OBCs in institutions of higher learning), the lower judiciary, particularly the sessions courts, are ridden with caste and other sectarian prejudices.

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

Score: 75

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

Social Scientist's Comments: Generally, women have less frequently than men approached the courts. It may be linked to the social system and the continued male-dominated nature of power relationships within the family and society. Women's organizations have often argued that women are at a disadvantage in judicial proceedings especially when it involves cases of dowry harassment/ dowry death/ rape. The National Women's Commission has been taking up such cases.

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

Score: YES

References: www.supremecourtfindia.nic.in

Social Scientist's Comments: It is mandatory on the part of the state to provide legal support.

79d In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

Score: 75

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

Social Scientist's Comments: While the state does provide legal aid to those who cannot afford to defend themselves, two points need to be made. Firstly, the quality of the help provided may not be of the high standards. Secondly, if the prosecution team is able to afford it, they may require the services of the best lawyers which places the defendant at an unfair disadvantage.

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

Score: 50

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

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

79f *In practice, a typical small retail business can afford to bring a legal suit.*

Score: 50

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

Social Scientist's Comments: The judicial process is costly and painstakingly slow. It is often not the preferred means of seeking justice. As a result, it is often those with substantial financial means who approach the court system. The costs of a legal suit are quite high and the delays in decision-making discourage people from filing a suit.

79g *In practice, all citizens have access to a court of law, regardless of geographic location.*

Score: 50

References: www.nhrc.nic.in

Social Scientist's Comments: There seems to be more limited access to the judicial system to those living in rural areas as compared to those living in the cities. Further, the informal local justice system (which takes into account local traditions, customs and practices) appears more popular and prevalent in many parts.

80: Is the law enforcement agency (i.e. the police) effective?

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

Score: 75

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

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

Peer Reviewer's Comments: The caste prejudices that prevail in the society also overshadows the choice of personnel at the time of their selection and appointment. The implementation of the reservation scheme in the recruitment process for the higher levels, from 1994 to 1995, may have addressed this issue to an extent.

80b *In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.*

Score: 50

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

Social Scientist's Comments: A major complaint of the law enforcement agency is the insufficient budgetary allocation both for recruitment of personnel and for purchase of necessary equipment. The report of the National Police Commission has also highlighted this point.

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

Score: 25

References: www.humanrightsinitiative.org/programs/aj/police/india/initiatives/analysis_padmanabhaiah;
www.hindu.com/2007/02/27/stories/2007022710450300;
www.humanrightsinitiative.org/programs/aj/police/india/initiatives/writ_petition_1.htm

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

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

81a In law, there is an independent mechanism for citizens to complain about police action.

Score: YES

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

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

Peer Reviewer's Comments: Most states do not have any independent mechanism.

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

Score: 50

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

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

Peer Reviewer's Comments: My earlier observation applies. Most states do not have any independent mechanism.

81c In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

Score: YES

References: www.indiaenews.com/india/20071006/73891.htm; www.milligazette.com/Archives/01082001/29.htm;
www.deccanherald.com/Content/Oct162007/national2007101630917.asp?section=updatenews

Social Scientist's Comments: These are the Lok Ayukta, the Central Vigilance Commission, Human Rights Commission, Women's Commission, Minority Commission. A case in point is the alleged excesses committed by the law enforcement agencies during sectarian violence in different parts of the country, which are facing investigations by the above mentioned agencies. In a most recent judgment, the courts have held senior police officials guilty of killing two businessmen in Delhi on the grounds of mistaken identity. Another case in the media is the one alleging involvement of senior police officials in the death of an artist in Kolkata. Some would argue such cases of prosecution are few and far between.

81d In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

Score: 75

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

Social Scientist's Comments: It is now becoming increasingly frequent. The National Human Rights Commission and National Women's Commission have been taking up investigations. However, final actions on the recommendations of these commissions need to be initiated by the government.

Peer Reviewer's Comments: This rarely happens.

81e In law, law enforcement officials are not immune from criminal proceedings.

Score: YES

References: Article 311, read with provisions of the Human Rights Act

81f In practice, law enforcement officials are not immune from criminal proceedings.

Score: 75

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

Social Scientist's Comments: Article 311 of the constitution provides for safeguards of officers to permit them to independently do their duty. Agencies like the National Human Rights Commission, National Women's Commission, Central Vigilance Commission and the Lok Ayukta are holding law enforcement officers accountable for their actions. The challenge always lays in taking the proceedings to their logical conclusion - conviction and punishment.

Peer Reviewer's Comments: I agree. However, the law enforcement officials are not directly employed in the various commissions mentioned in the report.

Peer Reviewer's Comments: The officials often get away with their misdeeds. Only in very few cases are they caught and brought to book.