



National Integrity Systems
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Questionnaire

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India

The National Integrity System Indicators

Questionnaire

Executive

Can citizens sue Government for infringement of their civil rights?

Formal Position

Yes. Civil rights are known as 'fundamental rights' and are covered in Part III of the Constitution of India (Articles 12-35). There is an exclusive Art 32 conferring the right on the individual to move the Supreme Court 'for the enforcement of the rights'. It is elaborated, 'The Supreme Court shall have the power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, *quo warranto* and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part'. Besides, the High Courts in the States also have the power to enforce the rights (Art 226).

There are two methods through which rights are sought to be enforced. First, the Court has accepted the principle of 'public interest' thus obviating the rule of the *locus standi* in cases where the person is either not aware of the violation of a right or is not in a position to approach the Court for various reasons. Any one can move the Court on behalf of the individual whose right is violated. This has resulted in a series of landmark decisions under Art 21 by interpreting 'the right to life'.

Secondly, the Courts may take direct cognisance even on the basis of a petition or intimation on a post card, news in the press, or any other method.

Reality

The National Human Rights Commission or the State Human Rights Commissions have started playing an important role in safeguarding the rights of individuals. The Commission had received an extraordinary number of 306,975 complaints in the period October 1993-March 2002, of which 295,072 were taken for consideration. Of the cases disposed of, about 64% have been dismissed in preliminary examination, 30% concluded after examining the reports received in response to notices issued by the Commission, and 6% disposed of with specific and detailed directions of the Commission like payment of interim to the victims of human rights violations or their family members, departmental proceedings, or prosecution of public servants responsible for violation of rights. (Virendra Dayal; Evolution of the National Human Rights Commission, 1993-2002: A Decennial Review; *Journal of the Human Rights Commission, India* (2002), pp. 48-9.)

The instrument of the Public Interest Litigation (PIL) has been used extensively both by the individuals and the civil society, particularly the latter. All landmark decisions of the Supreme Court with regard to the treatment of arrested persons or prisoners lodged in the jails, prohibition on the use of handcuffs, access to justice, rights of women, bonded labour, consumer issues, freedom of the media, constraints on arbitrary use of power, etc.,

have proved extremely useful in asserting the rights and ensuring a fair, reasonable, and just treatment of citizens.

Are there provisions for the monitoring of assets, including disclosure provisions, for cabinet?

Formal Position

Yes. The Ministers have to declare property returns under Rules of Business clause of the Parliament. An earlier decision by the Supreme Court in *Union of India v. Association for Democratic Reforms & Others* (2002) SCC 294 and a recent decision by the Supreme Court in *PUCL & Others V. Union of India and Another* (2003) 4 SCC 399 has made it mandatory for all candidates contesting elections to declare their assets at the time of filing nominations. By implication, the minister would thus have to henceforth disclose his assets. (For further discussion see: Jaytilak Guha Roy, "Electoral Reforms in the Context of Recent Supreme Court Judgements", Theme Paper for the Forty-seventh Members' Annual Conference of the IIPA (New Delhi, 2003).)

Reality

Whereas the declarations as per the Supreme Court decision were made in the recently held election in five States (December 2003), the same have not been made in the general manner as prescribed in the Rules of Business, except in a few cases.

Are there procedures for the monitoring of assets, including disclosure provisions, for high-level officials?

Formal Position

Yes. As per Central Civil Service Conduct Rules, every official is required to make a declaration of his assets annually. The official has also to inform about new acquisitions to his seniors. These are retained in record of the official. There is a prescribed format for this purpose.

Reality

Every officer of the government makes a disclosure with regard to property or any addition annually. This declaration is accepted by the government and kept in the personal file of the officer. However, there is no scrutiny of the same in detail. The declaration is relevant only when the conduct of the official is under examination.

Are there any differences in procedures and disclosure provisions between ministers, appointed ministers, and high-level officials?

No. The ministers also have to declare their property returns under the Rules of Business clause of the Parliament, whereas the officials have to do so under the Central Civil Service Conduct Rules.

Reality

Though the officials, even at the high level, are required to make such a declaration and do so annually, the ministers do not do so in the normal course.

Are there conflict of interest rules for ministers?

Yes. These are contained in the Constitution. Art 58 states, 'A person shall not be eligible for election as President if he holds any office of profit under the Government of any State or under any local or other authority subject to the control of the said Government'. This is also applicable to the Vice President (Art 66), and Members of Parliament (Art 102). By

implication, this applies to the Prime Minister, and other members of the cabinet since they have to be Members of Parliament. This is applicable too in the case of the Governors in the State (Art 158) and Members of Legislative Assembly in the States (Art 191).

Reality

These rules are strictly followed as the constitutional provisions are binding and any violation of the same can have disastrous consequences for the ministers.

Are there conflict of interest rules for high-level officials?

Yes. The officials cannot engage in any commercial activity. In the case of the spouse engaged in any business or a job, information has to be given to the Government.

Are there rules and registers concerning gifts and hospitality for ministers?

Yes. Whenever the ministers or parliamentarians proceed on tour to foreign countries, they are advised by the Parliament secretariat not to accept costly presents. However, small gifts in the form of emblems or mementoes are permissible. On return from the tour, they submit tour notes to the presiding officer of the respective houses. The official members who accompany them make a declaration of the gifts received and seek permission of the government for their retention.

Are there restrictions on post ministerial office employment?

Yes. A minister cannot be appointed to any executive assignment except being considered for election to the position of the President, Vice President, or Governor of a State.

Are members of the executive obliged by law to give reasons for their decisions?

Yes. There is always an emphasis on 'speaking order' that has almost become a norm because decisions are liable to be appealed against to higher executive or judicial authorities. This is insisted upon in order to prevent arbitrariness in the use of statutory power. In a recent case, the High Court reinstated an employee after ten years when it found that the disciplinary authority did not exercise 'application of mind' to the relevant facts. (See *The Hindustan Times*; 13 April 2003.)

Speaking order is an aspect of the doctrine of fairness. This ensures that the authority has applied its mind that the decision is based on the connection between material on record and the conclusion. In other words, reasons must be given when the discretion is refused. (Union of India v Mohan Lal Capoor; (1973) 2 SCC 836, and Gurdial Singh Fijji v State of Punjab; (1979) 2 SCC 368)

Reality

Since there are various channels of redressing of grievances like the courts, tribunals, and other forums, and the files are summoned by them to examine the merits, the officers while rejecting a proposal do state their reasons for the decision.

Do ministers or equivalent high-level officials have and exercise the power to make decisions in ordinary contract award and licensing cases? Is this power limited to special circumstances?

Yes. The decisions, in ordinary cases, are made by high-level officials in accordance with General Financial Rules, compiled by the Government of India. The Rules lay down the procedures to be followed for the award of contracts.

Are there administrative checks and balances on decisions of individual members of the executive?

Yes. Both with regard to a decision under law or executive order, there are provisions of filing appeal for which procedures are laid down. The checks and balances are twofold. One, the senior officers are empowered to review orders of subordinates. Two, the aggrieved person may seek redress from a court or a tribunal set for the purpose. There are thus provisions for scrutinizing the decision of officers.

Legislature

Is the legislature required to approve the budget?

Yes. Articles 112 to 117 of the Constitution deal with 'Procedure in Financial Matters'. The budget as 'annual financial statement' is presented before both the Houses of Parliament. It is a statement of estimated receipts and expenditure of the Government of India for that particular financial year.

Reality

The budget used to be regularly presented every year on 28 February. The date now varies according to the convenience of the government, but usually in the month of February every year. It is then discussed in the parliament and approved after consideration and debate.

Are there significant categories of public expenditure that do not require legislative approval?

Yes. According to Art 113, the estimates relating to expenditure charged upon the Consolidated Fund of India are not submitted to the vote of Parliament. The expenditures include:

- Emoluments and allowances of the President, Chairman and Deputy Chairman of the Council of States, Speaker and Deputy Speaker of the House of the People;
- Salaries, allowances, and pension payable to the Judges of the Supreme Court, High Court, Comptroller and Auditor-General;
- Any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal;
- Debt charges for which Government of India is liable, including interest, sinking fund charges, and other expenditure relating to the raising of loans and services and redemption of debt;
- Any other expenditure declared by the Constitution or by the Parliament to be so charged.

Though the expenditure does not require legislative approval, yet it shall not be 'construed as preventing the discussion in either House of Parliament of any of those estimates'.

Are there conflict of interest rules for parliamentarians?

Formal Position

Yes. Art 102 prohibits Member of Parliament from holding 'any office of profit under the Government of India or the Government of any State, other than an office declared by the Parliament by law not to disqualify its holder'. If he holds any of these offices, he shall be disqualified from being chosen as, and for being, a member of either House.

Reality

The academicians who contest elections and get elected relinquish their office on being elected. The government servants seeking elections have to quit the job. Whereas the academics can join later on when not in the parliament as Members, the government servants cannot do so having relinquished the job once.

Are there restrictions on post legislature appointment?

No. They can be appointed on Commissions or as Governor of a State. But they are not eligible for any government appointment as such.

Electoral Commission

Is there an independent Electoral Commission?

Formal Position

Yes, the Election Commission of India is an independent constitutional body consisting of the Chief Election Commissioner (CEC) and two Election Commissioners, who are appointed by the President. They cannot be removed from the office except in the manner and on the like grounds as a Judge of the Supreme Court (Art 324). In other words, they can only be impeached. 'A Judge of a Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less two thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity' (Art 124).

Reality

The Election Commission enjoys total autonomy in conducting elections. The required staff for the task has to be provided by the Government for the discharge of this function. In this connection, the Commission exercises immense powers over the system and is thus immune to the pressure of the Government. The Commission takes independent views on the law and order situation and need not depend on the assessment of the State Government alone. Recently in late 2002, on the question of holding elections in the States of Gujarat and Jammu and Kashmir, the Election Commission declared its candid views and disagreed with the version of the State Governments on timing of holding of elections. It scheduled the elections only when it was sure of the law and order situation

The Election Commission enjoys the confidence of the people as it is capable of imposing its will, in accordance with the Representation of Peoples Act, upon the processes and the system. Chief Election Commissioner James Michael Lyngdoh has been chosen a 'Star of Asia' by *The Business Week* magazine (New York) in a cover page article (see *The Times of India*; 4 June 2003) and also been honoured by the prestigious Ramon Magsasay Award

(see *The Hindustan Times*, 31 July 2003). One of his predecessors, Mr. T. N. Seshan, was also honoured by the same award.

Who appoints the head of the Commission?

The President of India appoints the Chief Election Commissioner and its two Commissioners.

Political Parties

Are there rules on political party funding?

Yes and No. Sec 293 A of the Companies Act provides for donation by companies to political parties. Similarly, Section 13 A of the Income Tax Act provides tax exemption to donations received by political parties. But there is no provision for the parties to maintain proper accounts. However, in *Common Cause v Union of India* (AIR 1996, SC 3081), the Supreme Court took the view that in view of the provisions of the said Acts, the political parties were required to file income tax returns. The Court also issued instructions to the Ministry of Finance to ensure that statutory duties are performed and action taken against the defaulter parties. A recent law named Election and Other Related Laws (Amendment) Bill 2003 passed by the Parliament on 29 July 2003 has attempted to regulate the financial contributions to political parties by the business groups and establishments. It allows individuals and corporations to make political donations and offers tax concessions to corporations for doing so. According to this law which has like come into operation before Parliamentary Elections slated for April/May 2004. (a) corporate firms can make contributions from revenues with certain conditions and limitations and get 100 percent tax rebate under section 80 GB (b) but they have to get shareholders approval for such political funding, which may be a tricky question, if profits dip (see *Times of India*, 6 August 2003, p.16: 1-2).

Are substantial donations and their sources made public?

No, but with a recent new law (2003) in effect, it would be possible to know the amount of funds legally contributed by any business group to political party(ies) through their balance sheets, although it is doubtful whether the business groups will like to declare publicly the names of the recipient political party(ies).

Are there rules on political party expenditures?

Yes. Section 77 of the Representation of People Act, 1951, stipulates that every candidate shall keep a separate and correct account of all expenditure in connection with the election between the date of his nomination and the declaration of result. The total of the said expenditure shall not exceed such amount as may be prescribed as ceilings on election expenditure from time to time. Failure to maintain accounts is an electoral offence under Sec 171-1 of the Indian Penal Code.

Corrupt Practices are dealt with in Part VII of the Representation of People Act. These are contained in Sec 123 of the Act. These include:

- Giving of bribe;
- Excess and undue influence;
- Systematic appeal on the ground of religion or caste, etc.;

- Publication of false statement relating to a candidate;
- Free conveyance to voters;
- Incurring of election expenditure in excess of the prescribed limit;
- Seeking the assistance of the government servants;
- Creation of feelings of hatred or enmity between different classes or castes;
- Propagation or glorification of 'sati' (immolation of wife on the pyre of deceased husband);
- Booth capturing.

Prime Minister Indira Gandhi was unseated by the Allahabad High Court in 1975 on the ground of having used State's resources during elections, which led to the imposing of Emergency and distortion in democratic rule during the nineteen months it remained in operation between 1975-77.

Electoral Offences are spelled in Sections 125-37 of the Representation of People Act. These include:

- Prohibition of public meetings during 48 hours ending with hour fixed for conclusion of poll;
- Disturbances at election meeting;
- Violating maintenance of secrecy of voting;
- Officers not to act for candidates or to influence voting;
- Prohibition on canvassing in or near polling stations;
- Disorderly conduct in or near polling stations;
- Illegal hiring or procuring or procuring of conveyance of election;
- Breaches of official duty in connection with election;
- Prohibition of going armed to or near a polling station;
- Liquor not to be sold, given or distributed on polling day, etc.

Supreme Audit Institution

Is the national Auditor General independent?

Yes. Art 148 of the Constitution provides for the institution of the Comptroller and Auditor-General (CAG) 'who shall be appointed by the President...and shall only be removed from office in the like manner and on the like grounds as a Judge of the Supreme Court'.

His term of office shall be six years from the date he assumes office, but he shall vacate office on attaining the age of 65 years. He draws the salary equal to that of a Judge of the Supreme Court. The salaries and other official expenditure on the office of the CAG and his staff are charged upon the Consolidated Fund of India and are thus non-votable.

Is the appointment of the Auditor General required to be based on professional criteria/ merit?

Yes. The holder of the office of the CAG belongs to the civil services, either of the cadre of the Indian Administrative Service or the Indian Audit and Accounts Service. Both are

professional services. He is thus an officer of sterling qualities and merit and senior enough to hold the office.

Is the appointee protected from removal without relevant justification?

Yes. Art 148 states that he can be removed only in accordance with the procedure required to remove the Judge of the Supreme Court, the procedure of which is laid down in Art 124 of the Constitution. It prescribes for the impeachment in both Houses of the Parliament. Removal is thus not an easy process. The institution is protected for its independence by the Constitution.

Are all public expenditures audited annually?

Yes. Section 11 of the Duties, Powers and Conditions of Service (DPC) Act, 1971, prescribes that the CAG shall 'prepare in each year accounts showing under respective heads the annual receipts and disbursements for the purpose of the Union, of each State and of each Union Territory having a Legislative Assembly...on or before such dates as he may, with the concurrence of the Government concerned, determine'.

The duties and responsibilities of the CAG are:

- To audit all moneys paid into and expended from the Consolidated Fund of the Union and that of the States/ Union territories;
- To audit all transactions of the Union and of the States relating to Contingency Funds and Public Accounts;
- To audit the accounts of bodies and authorities substantially financed by the Government;
- To audit all accounts of Government companies and statutory corporations which have provision for audit by him and other bodies and authorities even though not substantially financed by Government at the request of the President/Governor or at his own initiative after President's/Governor's approval;
- To ensure that Appropriation accounts and Finance Accounts of the Union have been correctly prepared;
- To prepare Accounts of the States and some Union Territories having Assembly of Legislature.

The main objectives are to satisfy that all expenditure has been in accordance with the law and that rules and procedures have been complied with.

CAG controls the entire financial accounting system of the country at the Union and State levels. He is guardian of the public exchequer as an impartial head of the audit and account system of the country. There is a Central Service, known as Indian Audit and Account Service, manned by the professionals whose officers discharge the functions of Accounts and Audit.

The independence of the institution is secured by the service conditions and the status accorded to the office of the CAG.

The CAG conducts two types of audit:

- Transaction audit - this consumes 40% of the time;
- Value for Money Audit (VFM Audit). This requires 60% of the time.

Sample surveys are made to ensure three Es, i.e., Economy, Efficiency (input/output ratio), and Effectiveness (whether objectives have been achieved in accordance with the desired levels, the impact thereof).

Is reporting up to date?

Yes. Accounts of the year 2001-2 have been placed on the table of the House. Those for the year 2002-3 are under preparation and are likely to be submitted to the President shortly.

Are accounts submitted to a Public Accounts Committee and/or debated by the legislature?

Art 151 lays down that the Audit Reports 'relating to accounts of the Union shall be submitted to the President, who shall cause them to be laid before each House of the Parliament'. Similarly, the reports 'relating to the accounts of the State shall be submitted to the Governor, who shall cause them to be laid before the Legislature of the State'.

There are two Parliamentary Committees, consisting of the Members of Parliament from both Houses:

- Public Accounts Committee (PAC);
- Committee on Public Undertakings (COPU).

The chairmen of both the committees are from the opposition parties.

The accounts, after being placed on the table of the House, are examined by these two Committees mentioned above. The Heads of the Departments concerned are called upon to explain the objections made in the Audit Paragraphs. They have to give evidence in justification of the expenditure and answer questions. Thereafter, the Committee makes recommendations for necessary action by the department. This is known as Action Taken Note. The concerned department then submits reply to the PAC or the COPU, through the CAG. After being vetted properly, the report is again discussed. The Committee makes further and final recommendations. The concerned department then has to send Action Taken Report. This is followed up and monitored by the PAC Secretariat for a logical conclusion.

Are all public expenditures declared in the official budget?

Yes. The annual financial statement, known as budget, in respect of every financial year is laid before the Houses of Parliament (Art 112) or houses of the Legislature of the State (Art 202). It is a statement of the annual receipts and expenditure of the State for that year.

The estimates of expenditure shall show separately the sums required to meet expenditure upon Consolidated Fund of India or the State, like emolument and allowances of the President or Governor and expenditure relating to his office, the salaries and allowances of the Speaker/Chairman and Deputy Speaker/Deputy Chairman of the Houses of Parliament or the Legislative Assembly, debt charges for which the State is liable, expenditure in respect of the salaries and allowances of Judges of the Supreme Court or High Court, the salary, allowances and pension in respect of Comptroller and Auditor-General, any sum required to satisfy any judgment, decree or award of any court or arbitration tribunal, etc , the sums required to meet other expenditure proposed to be made.

All expenditures are declared in the official budget under various heads. The budget is presented to the House in the last week of February every year. It is debated, discussed, and then submitted to vote and adopted (Art 113). The estimates are submitted in the form of demands for grants to the House of People. The House shall have the power to assent, or to refuse to any demand or assent subject to a reduction of the amount specified therein. The procedure with regard to the Appropriation Bills and other related matters is contained in Articles 114-7.

Judiciary

Have the courts the jurisdiction to review the actions of the executive?

Yes. Art 32 of the Constitution provides for 'Remedies for enforcement of rights' conferred under the Fundamental Rights in Part III. The Supreme Court and the High Courts have the power to issue directions or orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari* for the enforcement of any of the fundamental rights.

The Supreme Court is the highest court of appeal. The jurisdiction is divided under three heads:

- Cases involving interpretation of the Constitution;
- Civil cases;
- Criminal cases.

The appellate jurisdiction of the Supreme Court is contained in Articles 132-6.

Are judges independent?

Formal Position

Yes. The independence of judges is secured by the manner of appointment prescribed in the Constitution as under:

- Art 124: Judge of the Supreme Court;
- Art 218: Judge of the High Court;
- Art 233: District Judge;
- Art 235: Subordinate judges.

Art 50 provides for the separation of the judiciary from the executive in the public services of the State. Accordingly, the Code of Criminal Procedure was amended in 1973. Thus judiciary is placed beyond executive interference.

Reality

There have been a few important decisions of the Supreme Court in this connection:

- Subordinate judiciary is placed beyond executive interference (*Chandra Mohan v State of Uttar Pradesh AIR 1966 SC 1987*).
- Appointment of District Judges can be made only after consultation with High Court (*Hari Dutt v State of Himachal Pradesh AIR 1980 SC 1426*). The Government cannot make direct recruitment of a Judge without recommendation of the High Court.
- Power of appointment of Judges to the Supreme Court was assumed by the Supreme Court itself (*Supreme Court Advocates-on-Record Association v Union of India (1993) 4 SSC 441*).
- Basic structure of the Constitution cannot be amended by the Parliament (*Keshvanada Bharti v State of Kerala AIR 1973 SCV 1461*). This includes the power of judicial review.

- Special Courts to deal with specific matters cannot be established by the Government unless these are under the jurisdiction and supervision of the High Court (L. Chandra v Union of India (1997) 3 SCC 261).

Are appointments required to be based on merit ?

Yes. The qualifications for appointment of judges to the various courts are contained in the Constitution: Supreme Court Judge (Art 124); High Court Judge (Art 217); District Judge (Art 233); Subordinate Courts (Art 234).

Are appointees protected from removal without relevant justification?

Yes. Judges of the Supreme Court and the High Court cannot be removed by the Government; they can only be impeached by the Houses of Parliament. Other judges and magistrates are protected by the provision of Art 311 of the Constitution and the Rule of Higher judiciary.

Are recruitment and career development based on merit?

Yes. The recruitment of the judges of the superior courts is made by the procedure that ensures quality and qualification in consonance with the provisions of the Constitution. The judges of the subordinate courts are appointed by the Public Service Commission on the basis of a competitive examination. Hence the criterion of merit is ensured. The evaluation of the work of the judicial officers is made by the higher judiciary. Some of the District Judges are elevated to the High Court; similarly, the Judges of the High Court are elevated to the bench of the Supreme Court. All these appointments are based on scrutiny of merit.

Have there been instances of successful prosecution of senior officials in the past 3 years?

No. There has been only one case of unsuccessful impeachment of a Supreme Court Judge. Justice Ramaswami of the Supreme Court was indicted of certain irregularities in his conduct, but escaped impeachment, because one of the political parties did not participate in the discussions. In a recent case (2002), in which some Judges of the Karnataka High Court were accused to be guilty of immoral conduct, the Supreme Court on an inquiry did not find them guilty of misdemeanour of conduct, but refused to divulge contents of the enquiry into their conduct on the ground that this would tarnish the image of the judiciary in which people have the confidence, but assured that it would take appropriate action in the matter, and that it was not essential for all to know about it. But some of them are being proceeded against. Justice S. Mukherjee of Delhi High Court has been recently (2003) accused of corrupt practices and is facing trial, but is at present on bail, which has been confirmed (as reported in the Delhi Doordarshan news bulletin at 7.00 p.m. on 5 September 2003, also *The Hindustan Times*, 6 September 2003). Similarly, a judge in the State of Maharashtra has been proceeded against for demanding a bribe (see *The Hindustan Times* 23 July 2003) and is facing trial. However, such cases are few and far between, even though the higher judiciary accepts the prevalence of corruption in the department.

Following the National Commission of the Review the Working of the Constitution (NCRWC) Report in 2002, there is now a likelihood of the appointment of a National Judicial Commission to look into the cases of misconduct and deviant behaviour of Judges.

Civil Service

Are there laws establishing criminal and administrative sanctions for bribery?

Formal Position

Yes. The criminal sanctions are contained in the Prevention of Corruption Act (1988). The administrative sanctions are available in the Central Civil Service Conduct Rules, the Police Rules and those of the various departments. Departmental proceedings can be drawn up and penalties ranging from dismissal to reduction in rank can be awarded. In case of doubt when the clinching proof of the misconduct is not available, the officers are also put on non-sensitive assignments that do not have public dealings in order to prevent them from misuse of power.

Art 311 of the Constitution provides for protection of government officers from arbitrary actions against dismissal. It lays down that no person can be dismissed or removed from service by an authority subordinate to that by which he was appointed. Secondly, the person has to be informed of the charges against him and, thirdly, he is given a reasonable opportunity of being heard in respect of those charges.

The above procedure may not apply where the authority is satisfied that for some reasons, to be recorded in writing, it is not reasonably practicable to hold such an enquiry. However, this procedure is sparsely followed so that the person is not denied the opportunity of being heard.

Are there rules requiring political independence of the civil service?

Yes. The civil services have been insulated from political control by the provisions of the Constitution. The All India Services are constituted under Art 312. The officers are recruited through Union Public Service Commission and the State Public Service Commissions. These are institutions of the Constitution (Art 315). Functions of the Public service Commissions are contained in Art 320. It is the duty of the Commissions to conduct examinations for appointment to the services of the Union and the States. The Central Civil Service Conduct Rules contain provisions insulating civil services from political influence and also prohibiting them to take part in active politics.

Reality

By and large, the civil servants remain immune to the political influence in their functioning. The projects of the government in power are implemented in accordance with the rules, regulations, and procedures.

Are recruitment/career development rules based on merit?

Yes. In view of the recruitment by the Public Service Commissions, the initial induction and career development are based on merit. The promotions rules are well defined. Any one aggrieved by the decisions of the authority can approach Central Administrative Tribunal (CAT) that has judicial powers of review. Such tribunals are available in all the States in order to prevent injustice and arbitrariness.

Are there rules to prevent nepotism?

Yes. Since all the recruitment is done by the Public Service Commissions, there is no scope for any favours being extended. Most of the examinations have an objective content

wherein marks are assigned by the computer thus eliminating scope for favouritism. To grant favours is a criminal offence under the Prevention of Corruption Act.

Are there rules concerning acceptance of gifts and hospitality?

Formal Position

Yes. The rules are contained in the Civil Service Conduct Rules. Officers cannot accept beyond a sum prescribed by the Government. If the gift exceeds the limit, it has to be deposited with the Government's treasury. This implies the powers to enforce disclosure.

Reality

As a social ritual, the officers do accept gifts during the festival of Diwali (festival of lights) when gifts are exchanged. But these normally consist of sweets, fruit, or small presents.

Are there restrictions on post public service employment?

Yes and no.

A public servant cannot join a private company for a period of two years without seeking the permission of the Government. This stipulation is designed to prevent him from deriving a financial benefit in the form of employment after retirement for any favour done during the official tenure.

However, talents of the retired officers are used in various ways, e.g. to head commissions like the National Human Rights Commission, State Human Rights Commissions, and other such commissions wherein judicial minds are required. Similarly, senior bureaucrats, having sound record, are considered as members of other commissions and bodies wherein their experience is utilized. Some of the civil servants and army generals are elevated to the position of Governors of the States. But these appointments are made only in the case of outstanding officers who had contributed in their respective areas. Their performance is considered in no way less than the political appointees to these positions.

Are procedures and criteria for administrative decisions published?

Formal Position

The procedures and criteria are generally laid down in the rules and regulations framed for the execution of the main Act designed to regulate affairs. Whereas the same are laid out, these are not within the easy reach of people. However, the criteria are implicit in the forms to be filled by the applicant that requires documents, relevant certificates, declarations, or testimonials.

Recently, there has been a move to declare and publish Citizen's Charters so that people are made aware of the procedures. Various departments of the Government have undertaken such an exercise. It is a big task that would be accomplished over a period of time.

Reality

Since the rules are cumbersome, there has been a move to declare and publish Citizens' Charters so that people are made aware of the procedures. Various departments of the Government have undertaken such an exercise. It is a big task that would be accomplished over a period of time.

Are there complaint mechanisms for public servants and whistleblower protection measures?

Yes. Public servants can lodge complaint to the higher authorities in case of harassment or intimidation by the senior for doing wrong acts or for misuse of law. In exceptional cases, public servants are known to move the High Court or the Supreme Court. Recently, one officer of the Indian Administrative service in the State of Haryana has approached the Supreme Court through a writ petition against the Chief Minister of the State alleging that he was being harassed for refusing to replace an original list for appointment of 4,000 primary school teachers with a fake one prepared at the behest of the Chief Minister. The Supreme Court has issued a show cause notice to the Chief Minister. (*The Tribune*, Chandigarh. 13 June 2003.)

The whistleblowers like Mr. Khairnar, Anna Hazare, Arundhati Roy, Medha Patkar and others have shown the audacity to move the courts or organize demonstrations for getting rectification of illegal orders of the government. They are bold, unstoppable, and articulate wherever the executive seems to err. They are unsparing in their petitions and make loud noises through strikes and *dharnas* (sit ins), when they come to know of violations of law.

Are there means for complaints by members of the public?

Formal Position

Yes. Since the executive is accountable to the legislature, people approach their elected representatives who ask questions in the Houses of Legislature. The executive is bound to reply truthfully, failing which it is considered a matter of contempt of the House. This keeps the executive on the track. During question hour, the Member can ask questions which the Minister in charge of the department has to answer.

Similarly, the House Committees of the Parliament work on behalf of the people.

Reality

All departments have vigilance bodies where public can lodge complaints. There are also Grievance Cells to listen to the problems of people. Besides, the public makes use of the media by giving a clue of information that is then developed by the investigative journalists. Many a scam has come to the notice of the media for action. Public also makes use of the courts in such matters as involve their rights. Letters of grievances are often sent to the President, and the Prime Minister of India, as well as to the Central Vigilance Commission, Grievance Commissions of the States, etc.

Are there administrative checks and balances on decisions of individual public officials?

Formal Position

Yes. In order to establish accountability, the officers are required to make notes on the files giving background and reasons for their decisions. The file passes through various channels of the hierarchy thus implying that the seniors have applied their mind on the issue. The notes on the file serve both as a matter of record and a basis of decision. The officers have to make speaking orders. In case of denial or rejection, speaking orders have to be given so that the decision can be reviewed at the stage of appeal. The orders, of course, have to conform to the rules and cannot be made in an arbitrary manner.

Reality

The executive in the State of Gujarat has come under scrutiny regarding riots in the State in 2001. Similarly, recently the Chief Minister in Uttar Pradesh had to accept that she had given verbal approval on the file clearing the Taj Corridor project that has come to public notice, which is alleged to be tainted with vested interest. If the matter had not come to the notice of the people, the project would have done immense harm to the ambience of

the eighth wonder in the world. The matter is within the cognisance of the Supreme Court. The Central Bureau of Investigation has been directed by the Court to investigate. Other scams also get to the notice of people for which either the Government takes direct action or appoints an Enquiry Commission.

Police and Prosecutors

Is the commissioner of Police independent?

Formal Position

Yes. Legally, the Commissioner of Police is independent as all his authority is derived from law. The Code of Criminal Procedure 1973 and the Police Act 1861 refer to powers and duties of police officers. There is no scope to interfere with the authority of the chief of police in legal matters.

Reality

The Chief of Police in a State is selected by the Chief Minister on the basis of eligibility with regard to the seniority and competence. In case the most senior officer is not acceptable, then he is given the equivalent rank and posted as such in a department of police that is not under the direct control of the Commissioner. Another officer next in position is appointed as such. However, every Commissioner has to work within the confines of law. He can be held accountable for his acts of omission or commission by a judicial authority.

The Chief of Police of a federal force like the Central Reserve Police Force, Border Security Force, Industrial Security Force, and all other such forces is appointed by the Central Government out of a panel of officers on all India level. They are selected for their competence, and seniority for which a panel of officers on the verge of top positions is prepared every year. The selection is fair as all the heads of forces are officers known for their competence and expertise.

Are appointments required to be based on merit?

Yes. Appointments are generally made on the basis of seniority and merit. But sometimes, the senior officer is overlooked for the Chief's post. He is adjusted in another job of an equivalent rank by virtue of which he cannot exercise the powers of the chief of police. Since appointment is the prerogative of the Government, there are instances when the chiefs are changed with the change in political power in the State.

Is the appointee protected from removal without relevant justification?

Yes, the official cannot be removed or downgraded from his position without following the procedure prescribed under Art. 311 of the Constitution and adequate justification. However, he can be transferred or relocated from one position to another equivalent position by the government concerned. The appointee is thus legally protected from arbitrary dismissal, but not from transfer. The Government is not required to justify the change. All it has to do is to adjust the officer in an equivalent rank and assignment.

A public interest litigation is pending with the Supreme Court seeking directions regarding the fixing of tenure of the Chief of Police (CP) so that he is not arbitrarily shifted from one position to another. The National Police Commission has also recommended in its report in 1978 that the tenure of the CP be fixed and that he should only be transferred from his position with due justification and not as per whims of the Government. The Commission has also proposed a Model Police Act that incorporates this provision. Security of tenure is

sought in order to ensure autonomy of the CP. Though he is protected by law and there is nothing that can influence his legal functioning, yet in practical reality his independence suffers as he is in position of power at the pleasure of the Government, which compromises his autonomy of operation.

Are prosecutors independent?

Yes. Since the amendment of the Code of Criminal Procedure in 1973, prosecutors are independent of police. This was in tune with the Directive Principle of State Policy that stipulated separation of the judiciary from the executive (Art. 50). The Directorate of Prosecution is now under the Government as a separate entity.

Are there special units for investigating and prosecuting corruption crimes?

Yes. There are separate investigating agencies both at the Central and State levels against cases of corruption. At the centre is the Central Bureau of Investigation (CBI) with its headquarters in New Delhi and regional offices in the State capitals that cover the States in the region.

Whereas the CBI has its own prosecuting agency under its direct control, the prosecuting agencies in the States are under the control of the Government.

The State Governments have a provision for the Anti-Corruption Branch or the Vigilance Bureau that is independent of the State police.

Is there an independent mechanism to handle complaints of corruption against the police?

Yes. There are various forums available for lodging complaints against police officers. At the level of the police department, the Vigilance Branch, directly accountable to the Chief of Police, handles complaints so that the CP can have an objective view.

The Anti-Corruption Branch operates directly under the State Government through the Vigilance Commissioner or Home Secretary, officer of the Indian Administrative Service, and hence independent of police.

The jurisdiction of the CBI is not barred. It can conduct a raid upon police officer both in case of a trap or an enquiry into disproportionate assets with the official.

Central Vigilance Commission also receives complaints. It has choice of referring these to the CBI or the Anti-Corruption Branch of the State.

Enquiries are also conducted by the Lok Ayukta, a sort an ombudsman in those States, wherever they have been established.

Does civil society have a role in such a mechanism?

The role of civil society is limited only to lodging a complaint and applying pressures for investigations through demonstrations or garnering public support. . Other than this, no role is conceived in law as enquiries are to be conducted under a set frame of rules under the Central Civil Service Conduct Rules, the Police Rules, or an investigation under the substantive law.

In the last five years, have police officers suspected of corruption been prosecuted (or seriously disciplined or dismissed)?

Yes. A number of police officers, implicated in corruption, are being prosecuted. Since such figures are not maintained centrally, it is difficult to indicate these. However, information for the State of Delhi is available, which is given later at an appropriate place in the Report, which is indicative of the trends.

Are there any cases of corruption within the prosecuting agencies?

No. Such cases have not come to notice though their prevalence at a small scale cannot be ruled out. Their scope to indulge in corrupt practices is limited to the extent of not prosecuting the case vigorously. But since there is evaluation of their work in terms of the number of convictions or acquittals, there are only marginal options for this practice. However, there may be some exceptional cases in times of Income Tax raids. (See Prem Shankar Jha, "That Knock on the door" in *The Hindustan Times*, 1 September, 2003, p.10: 3-8.) Moreover, it is difficult for them to risk the interest of the complainant on whose behalf they represents the State. When the interests of the petitioner suffers, he can move a higher authority in the prosecution branch for redress.

Which legislative instruments can be used by police and public prosecutors for investigation and prosecution of corruption/bribery?

The Prevention of Corruption Act 1988 is a comprehensive legislation. The Code of Criminal Procedure prescribes the manner in which cases are to be investigated. However, investigation of a case under the POC Act cannot be done by an officer below the rank of an Inspector of Police.

Other legislative measures that deal with this aspect are the COFEPOSA (Conservation of Foreign Exchange and Prevention of Smuggling Act), The Representation of the People Act, the Customs Act, and other enactments that deal with official malfeasance, especially the Indian Penal Code that contains one Chapter on 'Of False Evidence and Offences Against Public Justice'.

Is private-to-private corruption punishable by law?

There is no special legislation, except the Indian Penal Code wherein cheating, forgery, falsification of accounts, using a false property mark, counterfeiting, breach of contract, etc., are punishable.

Is the law applied?

Yes.

How many cases of prosecution have been undertaken in the past years? How many have been successful? If the number is low, are there other effective measures or other good reasons why the number is low?

The Central Vigilance Commission and the CBI investigated 13,265 cases of corruption between 1996 and 2000. During a span of three years, between 1998 and 2001, the CBI registered 2,265 cases under the POC Act. Of these 41 are from the Indian Administrative Service, 23 from the Indian Revenue Service, and 4 from the Indian Police Service (see *India Today*; New Delhi; 7 July 2003 and I. D. Swami; *The Hindustan Times*; 23 July 2003).

Cases have also been registered against the judicial officers, medical officers of public hospitals (see "Sick Hospital: Rs. 2 Crore Scam in LNJP" in *The Hindustan Times*; 24 July 2003).

CVC has granted 100 sanctions for prosecution since 1998. (See *India Today*; 7 July 2003.)

Public Procurement

Do rules for public procurement require competitive bidding for all major procurements with limited exceptions?

Formal Position

Yes. Procurements are made for public works pertaining to development of infrastructure like railways, roads, construction of public buildings, defence equipment, and for food grains. Detailed procedures have been worked out for every item.

- **Defence Procurements.** The Institute of Systems studies and Analysis (ISSA), a wing of the Defence Research and development Organization, Ministry of defence, maintains data of competing weapon systems of rival manufacturers and studies on weapons effectiveness in order to assess effectiveness for induction into the forces. However for reasons of security of state, sensitivity of information, and interest of the country, the procedures are kept secret, although checks and balances are maintained within the Department.
- **General procurements.** The procurements are made by the Directorate of Supply and Disposal on behalf of the Government. The General Financial Rules are followed in doing so. The accounts are auditable by the office of the Accountant General which is under the control and supervision of the Comptroller and Auditor-General of India.
- **Construction and Roads.** The Government buildings and roads are constructed by the Public Works Departments, both of the State and Centre. For example, the buildings of the Central Government and the national highways are constructed by the Central Public Works Department, whereas the construction of local buildings and roads is undertaken by the State Public Works Department. In order to maintain standard, the Public Works Department Code is strictly followed in awarding contracts, and ensuring quality control.

Reality

Transparency International (India Chapter) has proposed the Integrity Pact to be adopted in making procurements for the defence. Though the PWD Code is followed, yet some of the unscrupulous officials succeed in their nefarious activities by falsifying records and favouring contractors. In a recent incident involving the construction of national highways, one engineer, Satyendra Dubey, working in the organization, had tried to expose the underhand dealings of the officials and in favouring the contractors, and is alleged to have been murdered under suspicious circumstances. There is now a demand for the enactment of a Whistle Blowers Act to protect the interest of such persons as take the risk of exposing the nexus.

In order to assist the farmers, the Government stipulates a Minimum support Price (MSP) for procurement of grains through the Food Corporation of India (FCI). Whereas the rates in the market may be low, the State procures at a higher price. The object is twofold:

- To ensure fair and remunerative price to farmers with a view to preventing the exploitation of the marginal farmer by market forces;

- To ensure a fair price to consumers, for example, grains may be purchased for Rupees 900 per quintal and sold at Rupees 600 per quintal, at half the rate to people below poverty line, and a nominal price of Rupees 3 a kg to those who are even below the subsistence level.

There is no ceiling on procurement. The FCI makes arrangement for the storage. In 1999 when its storage capacity was 33 m. tons, it procured 65 m. tons.

Are the rules laid down in documents publicly accessible?

Yes. Quality, rates, and procedure for procurement, and the sites of transaction are laid down and made known to all through advertisements.

Are there strict formal requirements that limit the extent of sole sourcing?

Yes. Procurement is made from farmers on the basis of MSP at grain markets where the cultivators bring their produce. Similarly, the defence deals being of a sensitive nature and in view of the requirements for specific purposes, the decisions are taken with a lot of circumspection. The Institute of System studies and Analysis analyses competing systems for induction into the armed forces.

There are restrictions on sole sourcing unless there is only one manufacturer of a product. However, in all procurements, quotations are invited from manufacturers, dealers, contractors, as the case may be. Sometimes, the Government owned agencies also participate in the bid as competitors. The requirements are advertised in the national and local newspapers and strict procedure for opening the tenders is followed in the presence of the competitors.

Are all major procurements widely advertised to the private sector?

Yes. In almost all cases though the newspapers/bulletin board and other methods etc. Also dates of procurement are published in the newspapers well in time.

Are procurement decisions made public?

Decisions are made public to the parties concerned as it is in their interest to know and ensure that there has been no foul play or an occasion to favour a particular party. Hence by implication the decision has to be made public.

Is there a procedure to request review of procurement decisions?

Yes. In a few cases, dealt with in the main text, the Supreme Court had reviewed procurement decisions, when approached by the aggrieved parties. The Court has also laid down clear directions against discrimination.

However, in the case of procurement of food grains in abnormal conditions, when the wheat was below specifications, the Government still procured the products at MSP, the object being to save farmers from conditions of penury and destitution.

Can an unfavourable decision be reviewed in a court of law?

Yes. The Supreme Court ruled that in awarding a contract, the Government cannot exercise its discretion arbitrarily. Contract cannot be awarded to someone not fulfilling condition of eligibility (Ramana Dayaram Shetty v International Airport Authority of India AIR 1979 SC 1625). In another case, Mahavir Auto Store v Indian Oil Corporation AIR

1990 SC 1031, the Court said, ' the manner, the method, and motive of a decision of entering or not entering into a contract, are subject to judicial review on the touchstone of relevance and reasonableness, fair play, natural justice, equality and no-discrimination in the type of transaction and nature of dealings'. (Verma and Kusum, pp. 41-2.)

Are there provisions for blacklisting of companies proved to have bribed in a procurement process?

Yes.

Are there rules and procedures to prevent nepotism/conflict of interest in public procurement?

Yes. The detailed procedures are laid in General Financial Rules, 1963.

Are assets, incomes and life styles of procurement officers monitored?

Yes. As per the Central Civil Service (Conduct) Rules, the assets and incomes of all public officials are subject to scrutiny.

All the purchases on behalf of the Government of India are made by the Directorate General of Supplies and Disposal (DGS&D) in accordance with set procedures for inviting tenders, competitive bids, scrutinizing and awarding contracts. The procurements for Defense and Railway Ministries are done by designated offices of their own ministries in accordance with relevant prescribed rules and procedures. Recently, however, there was a great deal of criticism against the procurements by the Ministry of Defense by the opposition, which culminated in a vote of no-confidence against the present Government (August 2003), which, however, fell through.

Ombudsman

Is there an ombudsman or its equivalent?

No, the equivalent institution of an Ombudsman hasn't yet been constituted at the central Government level. However, the Central Vigilance Commission performs the role akin to an ombudsman at the central level and deals with complaints against government officers, public sector undertakings, banks, and institutions financed by the Government.

The institution of the Lok Ayukta analogous to an ombudsman has been established in about 14 of the States in India. It is a watchdog institution. It is a state-level ombudsman that is designed to look into accusations of corruption against people in high places. In the State of Karnataka, it has even the authority to scrutinize the acts of malfeasance of the Chief Minister. There are also specialized ombudsmen appointed by some Banks and Newspapers to look in to complaints from the public against their organization.

Is the ombudsman independent?

Yes. The tenure of the Central Vigilance Commissioner is for a fixed period of three years. Similarly, the tenure of a Lok Ayukta in the State is also fixed. In practice, however, the institution of Lok Ayukta in many States have fallen prey to politics.

Are appointments required to be based on merit?

Yes. The Lok Ayuktas are retired Judges of the High Court or the Supreme Court, who have a proven record of judicial acumen.

Is the appointee protected from removal without relevant justification?

Yes, since the tenure is for a fixed period, the incumbents cannot be removed from office. But in two States in Bihar and Orissa, the State Governments got rid of the inconvenient incumbents by abolishing the office itself, although the offices were later revived.

Has an ombudsman been removed without justification in the last five years?

No. In view of the above, he cannot be removed, but as mentioned above, in two States, the office of the ombudsman itself was abolished, although they were revived later.

Can petitioners complain anonymously if they fear possible reprisals?

Yes, but the complaint would be looked into only if the allegations are specific and verifiable, since there cannot be an enquiry into random and vague charges.

However, some of the whistleblowers are persons of integrity and are not scared of the repercussions. One such case is that of Mr. Khairnar, a former Deputy Municipal Commissioner in Mumbai, who had been a constant whistleblower openly. He has been a person of exemplary courage and quality, who has been a role model to many young volunteers of the civil society.

Are reports of the ombudsman published?

The report of the CVC is published annually. The Lok Ayuktas in the States also publish their annual reports or periodical reports as they deem it necessary.

Does the Government act on the ombudsman's recommendations?

Formal Position

The Government acts on the CVC's recommendations. Sanction for prosecution against IAS officers has been granted by the Government on the recommendations of the CVC in about 100 cases since 1997.

Reality

The experience with regard to the Lok Ayukta is varied from State to State. There is no uniformity. One of the reasons is the non-availability of adequate staff for investigation of complaints to the Lok Ayuktas in most of the States. Similarly, the response of the State government has also been varied. Some of them have accepted the recommendations, while others have been reluctant to do so. There have been cases when the investigations and/or recommendations by the Lok Ayuktas have not been to the liking of the Chief Ministers of the states concerned, and as a result of the conflict, the Chief Minister preferred to abolish the office of Lok Ayukta itself rather than accept or implement the recommendation.

Investigative/Watchdog Agencies

Are there special investigative or watchdog agencies?

Yes. These are:

- Central Vigilance Commission.
- Central Bureau of Investigation.
- The Comptroller and Auditor-General of India.
- Lok Ayukta.
- Vigilance Branch/Anti-Corruption Branch under the Home Department of each of the 28 State Governments. To that extent, these are independent of police - they report to the Home Department of the State Government.
- Vigilance Branches in various departments of the Government.

The first three are agencies of Government of India, and the remaining are those of the State Governments. However, the central government also has Vigilance Officers in various departments.

What are their main responsibilities?

Formal Position

The main responsibilities are to:

- Conduct enquiries into official malfeasance;
- Lay traps and conduct raids;
- Enquire into cases of officers possessing assets disproportionate to their income;
- Investigate crimes under the Prevention of Corruption Act;
- Observe vigilance week in order to create awareness and need for integrity;
- Collect intelligence on the activities of allegedly corrupt officials;
- Make studies of procedures for plugging loopholes;
- Prosecute cases in courts and conduct departmental enquiries, as the case may be; and
- Devise measures for prevention of corruption, etc.

Reality

All the above tasks are being performed by the various agencies. These are inter-related. The outcome of the enquiry or investigation may be either a departmental action or a prosecution, depending on the evidence. However, the cases are also disposed of without any action, thus clearing the officer of the stigma.

Are they independent?

Formal Position

The statutory agencies like the CVC, CBI, and the Lok Ayukta are independent. The Anti-Corruption Branch acts in accordance with the provisions of the Prevention of Corruption Act and is thus independent to that extent. The Vigilance Officer is an officer of the department concerned and thus he is independent to the extent expected by the Head of the Department.

Reality

Whereas the investigative agencies have an independent framework, the vigilance officers of the department may come under the influence of the head of the department, or the latter may take a view contrary to the one held by the vigilance officer.

Are appointments generally based on merit?

Yes. The CVC is appointed by the President of India. The Director of CBI is appointed on the recommendation of the CVC. All appointments are based on merit. Officers of proven integrity, after proper scrutiny of their professional record, are posted on these assignments. Such officers have not been found involved in cases of malfeasance.

Are appointees protected from removal without relevant justification?

Yes. The CVC, the Director of CBI, and the Lok Ayukta cannot be removed as they are for fixed tenures. For officers of the Anti-Corruption Branch and the Vigilance Bureau, though there are no statutory rules, yet they are generally not transferred on grounds of inconvenience to the authorities. They ordinarily complete their tenures unless posted to more responsible assignments or promoted to a higher rank. On the other hand, some governments are enthusiastic in using their talents for taking anti-corruption measures. For example recently, a former CVC Mr. N. Vittal, after his retirement, has been appointed an advisor by the Government of Andhra Pradesh for advising the Chief Minister in devising anti-corruption strategies.

Are their reports published?

Yes, the Annual reports of the CVC and the CBI are published.

Do they report publicly to the legislature on the general scope of their work?

In a sense yes, as the annual reports are public documents, open to scrutiny by all — the media, the general public and members of legislature.

Can people complain to the agency without fear of recrimination?

Yes. It is mostly on the basis of complaints and reports of the people that traps are laid, enquiries are undertaken, and evidence is gathered.

Media

Is there a law guaranteeing freedom of speech and the press?

Yes. Article 19 of the Constitution guarantees freedom of 'expression' that also includes freedom of press. It means 'freedom to express not only one's own views, but also views of others, and by any means, including printing'. (Durga Das Basu: *Introduction to Constitution of India*; Prentice-Hall of India; New Delhi; 1999, p.100.)

Is there censorship of the media?

No. The only restrictions are contained in Art 19 and include reasonable restrictions in exercise of the right in the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement of an offence. However, the State cannot impose a tax upon the newspaper or excessive or prohibitive burdens to abridge the freedom of expression in order deliberately to limit its circulation. This has been decided in a landmark decision of the Supreme Court (*Express Newspapers v Union of India*; AIR 1958 SC 578; *Bennett Coleman v Union of India*; AIR 1973, SC 106).

Is there a spread of media ownership?

All the leading newspapers are owned by different privately owned publishing houses. In the year 2000, there were a total of 49,145 newspapers and periodicals published in the country in 101 languages, including English and in almost all dialects and local languages. The ownership of the press is very well spread out. State monopoly of the press is ruled out. (*Tata Press v Mahanagar Telephone Ltd*; AIR 1995 SC 2438.)

Similarly, there are a number of State-owned and private television channels operating in the country; including two prominent national channels relating to news only.

State monopoly is also prohibited in the case of TV channels. The Supreme Court has directed in another case (*Secretary, Ministry of Information and Broadcasting, Government of India v Cricket Association of Bengal*; AIR 1995 SC 1236) that the regulatory authority to distribute airwaves between public corporation and private channels could not be a government authority but a public one.

Does any publicly-owned media regularly cover the views of government critics?

Yes. The Door Darshan (the national TV channel) and the All India Radio do mention the views of the critics of the Government in an objective manner.

Have journalists investigating cases of corruption been physically harmed in the last five years?

Only in one case, known as Tehelka expositions, when a TV channel tried to expose the goings on in defence deals in a sting operation were the journalists put to harassment. The enquiry is now under the purview of a Commission. In no other case has there been any effort on the part of the government to harass the media that has been copiously informing people about such cases in the press.

Does the media carry articles on corruption?

Yes. There is investigative journalism and exposures are reported in the press. The Indian Express has been leading in this campaign. All newspapers carry information about the raids conducted by the CBI and the Anti-Corruption Branch, including the traps and the amounts recovered. Recently a leading weekly magazine, India Today, in its issue of 7 July 2003 in its cover page story dealt with bureaucratic corruption in a bold manner by giving the photographs and details regarding the cases of senior officers and action taken or the stage at which the case is pending.

Does the media licensing authorities use transparent, independent and competitive criteria and procedures?

Yes. Registration of newspapers is an easy process. That is why such a large number of papers and magazines are published all over the country.

Are libel laws or other sanctions (e.g. withdrawing of state advertising) used to restrict reporting of corruption?

No. This cannot be done in view of the decision of the Supreme Court in the Indian Express case, mentioned above. So there cannot be any discrimination in the grant of advertisements to press.

Civil Society**Does the public have access to information and documents from public authorities?**

No, not always, but things are now changing. Some of the civil society organizations, which are working with the support of the government, do have an access to official information and documents from the authorities. Other NGOs, not supported by the government, are not normally denied any relevant official information by the government, although there may be slight delay in the dissemination of such information to each and every NGO.

Also some of the States like Goa, Tamil Nadu, Madhya Pradesh, and Delhi have enacted their laws called the Right to Information Act, by virtue of which the civil society organizations could obtain information. The draft for a national level legislation has been proposed by a Working Group of experts and is under the consideration of Central Government. It provides for access to information by following a procedure. Some of the items to police and security of the State have been excluded from the purview of the Act. The draft for a national level legislation has been proposed by a Working Group of Experts and is under the consideration of the Central Government.

Do the public authorities generally cooperate with civil society groups?

Partly, yes. Since funding of some of the civil society organizations is done by the government sponsored institutions like the Khadi and Village Industries Corporation (KVIC), Central Social Welfare Board, National Wasteland Development Board, People's Action Development India (PADI), and the Council for Advancement of Peoples' Action and Rural Technology (CAPART), the public authorities do extend cooperation to the civil society. But for many other NGOs who are not funded by the government, there is always

a conflict between government and civil society organization, mostly in areas where the NGO tries to scrutinize any aspect of functioning of the public body. There are always many areas of conflicts and a reluctance to share information especially one relating to a denial of a service or a privilege

Are there citizen's groups or business groups campaigning against corruption?

Yes. There are citizen groups, not funded by the government, like Lok Satta and Lok Sevak Sangh that run on the contributions of the public, Commonwealth Human Rights Initiative (CHRI), and other such groups raise voices against corruption in a loud manner. Similarly, the trade lobbies like the Federation of Indian Chamber of Commerce and Industry (FICCI), and the Confederation of Indian Industries, two most powerful national trade organizations, and local Chambers of Commerce are important lobby groups that raise issues of corruption as foreign direct investments are adversely influenced by it.

Are there citizen's groups monitoring the government's performance in areas of service delivery?

Yes. Organizations like the Center for Media Studies (CMS) have undertaken studies on Social Audit in India (1990-98) and Corruption Perception Index in Public Services And Departments, July 2002, and Transparency International India & ORG-MARG Research, December 2002, have been monitoring the integrity profile of public services.

Do citizen's groups regularly make submissions to the legislature on proposed legislation?

Yes. There are a few groups who keep making studies of legislation and point out loopholes and make suggestions. One such study pertains to outmoded laws that are no longer relevant. It is by Deb Roy who in his study 'In the Dock: Absurdities of Indian Law' (Konarak; 2000). Similarly, the CHRI and South Asian Human Rights Documentation Center (SAHRDC) have been proposing changes in the Police Act. Transparency International (India) and Lok Satta have been making proposals for the procedures to be followed for procurement. So groups of the civil society are quite active in this regard. The women and environment groups in India have been very active and alert in proposing and advocating welfare legislation on important issues related to their areas.

Does the education system pay attention to integrity issues and corruption/bribery? Is it expected to?

Not directly as such, but indirectly. The Constitution prescribes 10 Fundamental duties in Art 51A. These contain a value system. These are prescribed in all the textbooks of school children at various levels as a part of social studies curriculum. These indirectly focus on the need for integrity and a value system that is expected of a good citizen.

Regional and Local Government

Are there, at regional and local level, rules and disclosure provisions similar to those operating at national level on nepotism, conflict of interest, gifts and hospitality, and post public office employment?

Yes. In all respects, the governments at the regional and local levels are the prototypes of the government at the centre. All the laws, rules, procedures, rules of business, Central Civil Service (Conduct) Code, the General Financial Rules apply in all matters pertaining to conflict of interest, gifts and hospitality, and post public office employment.

What offices at the regional and local level are appointed by the national government?

The Governor of the State is appointed by the President of India. Similarly, Judges of the High Court are appointed by the President, in consultation with the Supreme Court. The jurisdiction of the Comptroller and Auditor-General and the Election Commission extends to the regional and local level. The Government of India has its offices dealing with the central subjects of the Union List at the State headquarters, and other places where their presence is required, like the Income Tax, the Central Customs and Excise, Post and Telegraph, Telecommunications, Central police forces, etc.

Is there a requirement that meetings of city/town councils be open to the press and public?

Yes. These are open houses of people and hence accessible to the press. For reasons of security, discipline, and management, the press is accredited. These institutions are also open to the public, subject to accreditation by a Member of such body or other rules.

Are there clear criteria restricting the circumstances in that city/town councils can exclude the press and the public?

The only circumstance for excluding the press and public is the consideration of security during a threat to the persons or premises of the councils. Even then the access is permitted after security clearance by the authorities.

Do national agencies with a remit to deal with corruption (anti-corruption agencies, ombudsmen, supreme audit institutions, and so on) work at regional or local levels and are there specific agencies with regional and local responsibilities?

Yes. The Central Bureau of Investigation and the offices of the Comptroller and Auditor-General are located at the regional level too. Besides, a few States have the institution of the Lok Ayukta, the ombudsman. There are also the Vigilance and Anti-Corruption Bureaus at the regional and local level of the State Governments.

Recently, the Government of Maharashtra has taken a few measures in connection with administrative reforms. Firstly, the Maharashtra Right to Information Act was enacted. Secondly, Maharashtra Ordinance No. 1 of 2004 was promulgated to fix the tenure of three years for officers in all departments, except judiciary. Thirdly, for dealing with delays, the

government has stipulated time periods regarding movement of files and the taking of decision. Fourthly, the village council has been given the power to recall the elected representative in case the panchayat spends money without approval of the council by a two-third majority.

In a recent development (as reported in *The Hindustan Times*, 5 September 2003, p.11: 3), the State of Maharashtra has taken a decision to allow the villagers to dissolve Gram Panchayats (Village Councils), embedded in financial irregularities in accordance with appropriate procedures. This was in response to a demand by Anna Hazare, a social worker who staged a hunger strike in August 2003 demanding action against four NCP ministers allegedly involved in corrupt practices.

Progress with Government Strategy

Has the government announced an anti-corruption strategy and a timetable for implementation?

Yes. The tenth Five Year Plan document has Chapter 6 on Governance and Implementation. It has indicated the following strategies dealing with corruption and governance:

- People's participation;
- Decentralization;
- Right to Information;
- Reform in Revenue System;
- Role of civil society;
- Civil service reforms:
 - Greater transparency in procedures,
 - Minimizing discretion,
 - Accountability,
 - Stability of tenure;
- Procedural reforms;
- Monitoring;
- Judicial reforms;
- Using IT for good governance.

How much of the strategy been implemented?

Since it has been enunciated in the Plan Document, it would be implemented gradually and its progress is subject to monitoring.

Is the strategy at national or regional/local level?

It is at the national level. It is likely to percolate to the local level when the Plan is implemented.

Is the government meeting its own timetable?

This would be known during the implementation of the Plan. But it is likely to be followed up in view of the allocation of funds for the Five Year Plan.

Donor Anti-Corruption Initiatives**Which bilateral and multilateral agencies are based in the country?**

All agencies of the United Nations are based in the country. Besides, the international agencies like the World Bank, IMF, Asian Development Bank, Ford Foundation, OECD, CIDA, WWF have their significant presence.

What types of anti-corruption measures have they supported?

They have indirectly exerted influence, as the Foreign Direct Investments are not likely to be attracted in a corrupt atmosphere. Moreover, they are concerned with their own investments and try to ensure that the same are being utilized for the required purposes.

Are there any examples of donors cooperating or coordinating their programs?

Yes. There are efforts to criminalize international bribery and an offer of support for detecting and promoting international cooperation in preventing and detecting international offences like money laundering. Donors have never directly funded any anti-corruption work, but they do undertake training courses and studies in this regard. They also evolve conditions for tightening the grip of the government. Most of their activities pertain to empowerment of the community, bringing about transparency, and informing people of their rights in a subtle manner so that they are not exploited. Detailed reference is in the main text.

Future Research and Donor Support

Can key areas or issues be identified in terms of corrupt activity that the research for the report has demonstrated as required immediate attention, and which are they?

The following areas require attention:

- Civil supplies or public distribution system, ration supplies;
- Customs and Excise;
- Driving license, issue thereof and other matters;
- Electricity department;
- Health;
- Judiciary in connection with adjournments, issue of copies of documents, delays;

- Land acquisition and management of land records;
- Municipal Corporation regarding the civic services, building plans, completion certificates, employment of daily wage staff, construction activities, house tax assessment, issue of permission to conduct activities on the public spaces, etc;
- Police regarding arrest, bail matters, traffic violations;
- Taxation;
- Telecommunications;
- Defence procurements, etc.

Is there a particular aspect of corrupt activity either particular to the country, or significant in terms of effect or impact, that would require more in-depth research?

Yes. Allotment of land, motor licensing, fiscal administration, construction activities, traffic police, administration of courts, collection of tax at the octroi posts, land records, permission for use of public spaces, ration supply, etc.

Is there a particular approach or initiative to combating corruption that may be considered for further research or study as an example of best practice?

Yes. Routinization of procedures with the help of computers, i.e., e-governance for land records, allotment of houses or land, payment of taxes, monitoring of activities, plans implementation, quality control, attendance of municipal staff dealing with civic services, and any other area that can be computerized.

Can key areas or issues relating to possible anti-corruption initiatives be identified as requiring donor support?

Yes. Some of these are:

- Use of computers for conducting work;
- Training;
- E-governance;
- Systems development;
- International cooperation in combating corruption;
- Making corruption an extraditable offence.

Can key areas or issues relating to anti-corruption initiatives be identified in terms of forming the basis for potential donor prioritisation, sequencing, cooperation and coordination?

Yes, in terms of the above-mentioned items.