



## G20 Anti-Corruption Working Group

### Accountability Report Questionnaire 2014

#### SUMMARY OF NATIONAL PROGRESS

1. Please provide a high-level summary of the most significant Anti-Corruption measures or initiatives that your country has introduced or implemented since the last progress report. (maximum 1 paragraph).

India enacted THE LOKPAL AND LOKAYUKTAS ACT, 2013 in January 2014 to deal with combat corruption in high places and this Act will provide for the establishment of a body of Lokpal for the Union and Lokayukta for States to inquire into allegations of corruption against certain public functionaries and for matters connected therewith or incidental thereto.

Parliament of India has passed the Whistleblowers' Protection Bill, 2010 and is likely to become an Act, includes specific provisions for providing protection to complainants who file a complaint under the said Act to set up a regular mechanism to encourage persons to disclose information on corruption or willful misuse of power by public servants.

#### UNITED NATIONS CONVENTION AGAINST CORRUPTION (UNCAC)

2. Has your country ratified the UNCAC?

YES ✓ NO

If no, is there a process underway to ratify the Convention?

3. Since the last progress report, has your country proposed or implemented any changes to its legislation to comply with the UNCAC?

YES ✓ NO

If yes, please provide details.

As mentioned in point no. 1

4. Has your country begun the UNCAC peer review process as a country under review?

YES ✓ NO

If yes, please indicate what stage of review your country has completed and the date.

India has prepared Self Assessment Report and furnished to UNODC Secretariat. Country review of India is likely to be made by Uganda and Kazakhstan.

5. If yes, has your country made use of any of the UNCAC peer review voluntary options, or committed to do so (if the review is not already started)?

- |                                 |       |      |                    |
|---------------------------------|-------|------|--------------------|
| a. Publication of full report   | YES   | NO ✓ | COMMITTED TO DO SO |
| b. Involvement of civil society | YES ✓ | NO   | COMMITTED TO DO SO |
| c. Involvement of business      | YES ✓ | NO   | COMMITTED TO DO SO |
| d. Allowing country visits      | YES ✓ | NO   | COMMITTED TO DO SO |

If yes, please provide details (e.g., Web link for published report, how and when civil society / business was engaged during the review process, date of country visit)

Self Assessment Report has not been published. Civil Society/business was engaged during the review process and they were consulted before finalizing the Report for which meetings were held on 29.10.2013 and 30.10.2013. Country visits have been allowed however, country visits have not been held so far to review India.

6. Has your country taken steps to respond to recommendations identified in its UNCAC peer review report?

YES      YES TO SOME      NO      NOT YET RECEIVED THE REPORT- ✓

If yes, please indicate what steps your country has taken / is taking.

7. If you have responded to all or some of the recommendations, have you made those responses publicly available?

YES      NO      NOT YET –  
Report not  
received so far

8. Has your country taken measures to promote, facilitate and support technical assistance in the prevention of and fight against corruption?

If yes, please provide a short overview indicating in which regions and topics you have provided technical assistance.

Consequent upon ratifying the UNCAC, India has taken initiatives to work in the area of anti-corruption by associating itself in the activities of International Anti-Corruption Academy (IACA). India is proposing IACA to associate itself by offering technical assistance on the training matters relating to prevention of corruption on mutual sharing basis.

## BRIBERY

Note - questions relating to implementation of the G20 *Principles on the Enforcement of the Foreign Bribery Offence* endorsed by Leaders in 2013 and the OECD *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* are included in a separate questionnaire. The questions below concern other aspects of bribery not covered by this set of principles.

9. Has your country criminalized the domestic offer or payment of bribes (active bribery)?

YES  NO

10. Has your country criminalized the domestic solicitation or acceptance of bribes (passive bribery)?

YES  NO

11. If no, is your country taking steps to criminalize active and/or passive bribery?

YES NO

If yes, please provide details.

NA
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12. Has your country instituted measures to discourage the solicitation of bribes?

YES  NO

If yes, please provide details.

Although there are adequate provisions in the Prevention of Corruption Act 1988 to deal with such cases, in order to meet UNCAC standards more specific language criminalizing the international offering, promising or giving of a bribe whether directly or indirectly, is required. Using a general offence of abetment/attempt to cover giving /offering/promising/soliciting a bribe is incompatible with international standards. The UNCAC enjoins that the promise, offering or giving , to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official Act or refrain from acting in the exercise of his or her official duties, be made a criminal offence. Accordingly, to meet the said obligation it is proposed to substitute a new Section 8 in the Prevention of Corruption (Amendment) Act, 2013. With the above proposed new definitions of bribery both as regards the solicitation and acceptance of undue advantage and as regards the promise, offering or giving to a public official, directly or indirectly, of an undue advantage are found to be comprehensive enough to cover all offences of bribery as defined in UNCAC.

Similarly, the Foreign Public Officials and Officials of Public International Organisations Bill, 2011 adequately covers both passive and active bribery and places them on equal footing through Section 3 (Accepting) and Section 4(Giving) respectively.

13. Does your country provide support for/work with business in resisting solicitation?

YES      NO ✓

If yes, please provide details.

14. Has your country instituted measures to discourage facilitation payments?

YES      NO ✓

If yes, please provide details.

## **ANTI-MONEY LAUNDERING**

15. Since the 2013 progress report, has your country taken any measures to implement the revised FATF standards on anti-money laundering?

YES ✓ NO

If yes, please provide details.

India has taken several legislative, administrative and regulatory measures to implement the revised FATF standards including the following:

- (i) The definition of 'reporting entity' under the Prevention of Money Laundering Act, 2002 (PMLA) has been expanded by including more types of financial institution including Commodity Exchanges, Commodity Brokers, Pension Funds and India Post.
- (ii) Designated non-financial businesses and profession (DNFBPs) like real estate agents, dealers in precious stones and metals, Registrar or Sub-Registrar for property and persons engaged in safekeeping of valuables (lockers operators) have been included in the definition of 'reporting entity.'
- (iii) Administrative measure have been taken to implement recommendation 1 and 2 of the revised standard by notifying an AML Steering Committee to co-ordinate national efforts towards assessment of money-laundering risk and to formulate and co-ordinate the action of different law enforcement agencies. The process of National Risk Assessment (NRA) has also been initiated.
- (iv) Changes in the PML Act and Rules have been made to bring the legal provisions in sync with the revised FATF standards relating to beneficial ownership, customer due diligence, third party reliance, seeking of additional information, wide range of auctions (including personal penalty on Directors and employees), reporting of cross border wire transfer, risk based approach, etc.

16. Since the last progress report, have changes to your country's anti-money laundering legislation been proposed or implemented?

YES ✓ NO

If yes, please provide details.

The changes the PML Act and PML Rules as mentioned at point 15 above have been made in 2013.

DENIAL OF ENTRY

17. Have any changes to your country's legislation, regulations or powers to deny entry to foreign officials charged with or convicted of corruption offences been proposed/implemented since the last progress report?

If yes, please provide details.

The Bureau of Immigration in India provides the updated information of persons/foreign officials charged with or convicted of corruption/offences and they are blacklisted for dealing with any official in India.

**If no, is such legislation under consideration?**

YES      NO ✓

If yes, please provide details.

## **INTERNATIONAL COOPERATION**

18. Is your country's administration of mutual legal assistance consistent with the G20 High Level Principles?

YES ✓      NO

If your country's approach is not yet consistent, are you taking steps to implement the Principles?

YES      NO

If yes, please provide details.

NA

19. Are you aware of your country having used one or more of the G20 country Guides to Mutual Legal Assistance?

If yes, please provide details.

Yes, the G20 country Guides to Mutual Legal Assistance is used in case of Australia, France, Mexico, Russian, Federation, Kingdom of Saudi Arabia, Spain, South Africa, Turkey, United Kingdom, United States. With rest of the countries, the assistance is sought and given on the basis of assurance of reciprocity. In India Section 166A and 166B read with Section 105 of Cr.P.C. provide for such assistance.

20. Are you aware of non-G20 members having used the G20 Guide to Mutual Legal Assistance to request mutual assistance from your country?

If yes, please provide details.

Yes (Refer list of countries in Question 19)

21. Have any changes to your country's legislation related to international cooperation been proposed since the last progress report?

YES ✓

NO

If yes, please provide details.

The changes in mutual legal assistance in criminal matters have been proposed on the basis of UNCAC, UNTOC and OECD Anti-Bribery Conventions

22. Has your country either used UNCAC, or stated that it will allow the use of UNCAC, as the treaty basis for mutual legal assistance (MLA) and/or extradition?

a. Has used as the treaty basis for MLA

YES ✓

NO

b. Will allow use as the treaty basis for MLA

YES ✓

NO



c. Has used as the treaty basis for extradition YES ✓ NO

d. Will allow use as the treaty basis for extradition YES ✓ NO

23. Do domestic authorities in your country cooperate and share information with the integrity offices of international organizations?

a. Cooperate and share information ✓

b. Could cooperate, but has not been asked

c. Cannot cooperate

If you cannot cooperate, please provide details.

24. Has your country designated an appropriate authority responsible for mutual legal assistance and law enforcement requests relating to asset recovery (a point of contact)?

YES ✓ NO

If yes, to which organizations:

a. UNODC ✓

b. StAR/Interpol Focal Point Initiative ✓

c. Camden Asset Recovery Network

d. Other(s) ✓

If yes to 'Other(s)', please provide details.

Ministry of Home Affairs(Central Authority on mutual legal assistance in criminal matters)

## ASSET RECOVERY

25. Does your country have legislation allowing for asset recovery by foreign authorities or is such legislation proposed?

YES ✓ NO

If yes, please provide details.

In the matters related to trans-border investigations, Section 105-A-H of the Criminal Procedure Code make general provisions for the seizure, attachment and forfeiture of proceeds of crime on the request of Contracting State. Section 105-I of the CrPC allows a fine of an equivalent amount to be imposed if the forfeiture is not possible. The proposed amendment in Prevention of Corruption Act provides a new chapter (Chapter IVA) for the forfeiture of illegally acquired property which also provides for a fine of equivalent amount if forfeiture is not possible. Besides, there are provisions in the Foreign Public Officials and Officials of Public International Organisations Bill, 2011 for reciprocal arrangements for processes and rendering assistance for transfer of persons. Section 14 of the Bill expressly conveys that provisions of PC Act and rules made there-under shall apply in relation to offences under the Bill.

26. Has your country established a specialist/dedicated unit for the recovery of the proceeds of corruption?

YES      NO ✓

0.  
(see note below)

If yes, please provide the name of the specialist unit and contact details.

Central Bureau of Investigation is federal anti-corruption agency which specializes in the recovery of proceeds of corruption and crime. However, it is an investigating and prosecuting agency as well. Directorate of Enforcement specializes in recovery of laundered proceeds of crime and corruption. SEBI and SFIO also have asset recovery function with regard to corporate frauds and violations of various regulatory laws. At the provincial level, the State Vigilance Bureaux/Lokayuktas and the State Anti-Corruption bureau also specializes in asset recovery. **However, there is no dedicated asset recovery until either at the provincial level or the national level.**

27. Does your country publish or otherwise make publicly available details of amounts frozen, seized, recovered or returned?

YES ✓      NO

If yes, please provide details.

Details available at the website of Enforcement Directorate  
([www.enforcementdirectorate.gov.in](http://www.enforcementdirectorate.gov.in))

28. Is your country providing technical assistance to developing countries aimed at helping the recovery and return of proceeds of corruption?

YES ✓      NO

If yes, please provide details.

## TRANSPARENCY OF LEGAL ENTITIES

29. Does your country have transparency requirements for legal persons, including companies, bodies corporate, foundations and partnerships?

YES  NO

If yes, please provide details.

Yes, the Companies Act, 2013 has included specific provisions with regard to better transparency and accountability on the part of companies and their management. The term "fraud" has been defined and several punishment has been provided for the same (Section 447). Further provisions have been provided for disgorgement of illegal gains made by any person during the public offers ( section 38(3)) and also disgorgement of undue benefit or advantage taken by director of key Managerial Personnel or other officer of the company or any other person during inspection and investigation of the company ( Section 224(5))

30. Does your country require that the beneficial ownership and company formation of all legal persons organized for profit be reported by the legal person?

YES  NO

If yes, to whom is it reported?

Yes, Section 89 & 90 of the Companies Act, 2013 (notified on 26.03.2014) applicable w.e.f 01.04.2014 ) seeks to regulate the issue relating to beneficial ownership and beneficial interest in companies . (Section 89(4)) of the act empowers the Central Government to make rule to provide for the manner of holding and disclosing beneficial interest and beneficial ownership. Section 90 of the Act provides that where it appears to the Central Government that there are reasons to do, it may appoint one or more competent persons to investigate and report as to beneficial ownership with regard to any share or class of shares. Further class 9 of chapter VII – The Companies (Management and Administration) Rule 2014 ( notified on 27.3.2014 applicable w.e.f 1.4.2014 ) provides that a person whose name is entered in the register of member of a company as the holder of share shall file with the company a declaration to that effect in Form No MGT. 4 in duplicate , within a period of 30 days from the date on which his name is entered in the register of members of such company and also any change occurs there off.

31. If yes, is this information available to the public?

YES ✓ NO

As the above referred section has been notified by this Ministry and available on its website  
i.e [www.mca.gov.in](http://www.mca.gov.in)

32. If this information is not available to the public, is it available to law enforcement?

YES ✓ NO

O N

## **WHISTLE BLOWER PROTECTION**

33. Does your country have legislation to protect whistleblowers:

a. In the public sector YES ✓ NO

b. In the private sector YES ✓ NO

34. Have changes to whistle blower protection legislation been proposed or implemented since the last monitoring report?

YES ✓ NO

If yes, please provide details.

Whistleblowers Bill has been passed by both Houses of the Parliament and is likely to become a Law very soon.

**35.** Since the last progress report, has your country implemented any measures to protect journalists reporting incidents of corruption?

If yes, please provide details

Whistleblowers Bill has been passed by both Houses of the Parliament and is likely to become a Law very soon.

## **PROCUREMENT**

**36.** Does your country publish online any of the following?

- |   |       |    |
|---|-------|----|
| a. Procurement laws and policies including any legislation defining the use of exceptions | YES ✓ | NO |
| b. Selection and evaluation criteria  | YES ✓ | NO |
| c. Awards of contracts and modifications of contracts                                     | YES ✓ | NO |

Please provide details.

(a) At present procurement made by the Central Government are regulated by the General Financial Rules (GFR), 2005 [Chapters 5, 6 & 8]. In addition, Department of Expenditure has also issued Manuals on Policies and Procedures on engagement of consultants, works contracts and purchase of goods. All these documents are available on the website of Ministry of Finance. ([http://finmin.nic.in/the\\_ministry/dept\\_expenditure/acts\\_codes/index.asp](http://finmin.nic.in/the_ministry/dept_expenditure/acts_codes/index.asp)).

As far as exceptions are concerned, Rule 144 of GFRs and para 2.4 to 2.6 of the Manuals on Policies and Procedures for Purchase of Goods provide for reservation of certain items for procurement from certain categories of bidder and for preferential procurement from Small Scale Industries.

All these documents are available on the website of Ministry of Finance, as stated above.

(b) Selection and evaluation criteria cannot be the same for all categories of procurement. However, in general, Rules 160 and 171 of GFRs, 2005, inter-alia, contain the following provisions:-

- (i) Criteria for determining responsiveness of bids, criteria as well as factors to be taken into account for evaluating the bids on a common platform and the criteria for awarding the contract to the responsive lowest bidder should be clearly indicated in the bidding documents. *(It is mandatory to publish online on the CPP portal all the RFP documents/Bidding documents containing selection/evaluation criteria above a certain value)*
- (ii) Bids received should be evaluated in terms of the conditions already incorporated in the bidding documents; no new condition which was not incorporated in the bidding documents should be brought in for evaluation of the bids.
- (iii) In regard to procurement of services, it has also been provided that Request for Proposal (RFP) document should contain bid evaluation criteria and selection procedure.

Generally applicable evaluation and selection criteria in respect of goods, works and services has been elaborated in Chapter 11 of the Manual on Policies and Procedures for Purchase of Goods, paras 4.7 & 4.8 of Chapter 4 of the Manual on Policies and Procedures for Procurement of Works and Chapter 3 and 4 of the Manual on Policies and Procedures of Employment of Consultant.

All these documents are available on the website of Ministry of Finance, as stated above.

(c). A portal called the "Central Public Procurement Portal"(<http://eprocure.gov.in/cppp/>) has been set up by DoE where all Ministries/ Departments of the Central Government, their attached and subordinate offices and CPSEs are required to public their tender enquires, corrigenda thereto and details of contracts awarded.

37. Since the last progress report, have any new initiatives to promote public procurement transparency and integrity been proposed or implemented?

If yes, please provide details.

Currently all tenders of more than Rs.10 lakhs are procured through e-procurement. It has been decided to reduce this limit to Rs.2 lakhs over next two years in order to promote public procurement transparency and integrity.

38. Are there regulations and procedures for public procurement officials to govern conflicts of interest?

YES  NO

If yes, please provide details.

The GFR do not make explicit provision in this regard. However, Rule 137 of the GFRs, 2005 relating to fundamental principles of public buying prescribes that at each stage of procurement the concerned procuring authority must place on record, in precise terms, the considerations which weighed with it while taking the procurement decision.

Para 6.4 of the Manual on Policies and Procedures of Employment of Consultant govern the issues relating to 'Conflict of Interest'.

39. Are companies that have been found to be involved in corrupt contracting practices excluded from future participation in public tenders?

YES  NO

If yes, please provide details.

Para 5.9, 5.10, & 5.11 of the Manual of Policies and Procedures for Purchase of Goods, para 4.1 of Chapter 4 of the Manual on Policies and Procedures for Procurement of works and para 6.10 of the Manual on Policies and Procedures of Employment of Consultant provide for suspension and banning of Business dealings with the firms, inter-alia on grounds of corruption.

40. If yes, is the debarment list of International Financial Institutions taken into account?



YES      NO ✓

41. Are the names of companies excluded from future participation in public tenders made publicly available?

YES      NO ✓

If yes, please provide details.

No such provision exists under the GFRs, 2005 and the Manuals issued there under.

#### **DISCLOSURE BY PUBLIC OFFICIALS**

42. Does your country require disclosure by public officials of:

a. Income	YES ✓	NO
b. Assets	YES ✓	NO
c. Conflicts of interest	YES ✓	NO
d. Gifts	YES ✓	NO
e. Other	YES	NO

If yes, please provide details.

There are provisions for disclosure of Income, Assets, Conflicts of Interests, acceptance of gifts etc. by the Public Officials under the Central Civil Services (Conduct) Rule.

## **PUBLIC OFFICIALS' IMMUNITIES**

43. Does your country provide immunities from prosecution to individuals holding public offices for corruption related offences?

- |   |       |    |
|---|-------|----|
| a. All public office holders                        | YES   | NO |
| b. Certain public office holders                    | YES   | NO |
| c. No immunities available to public office holders | YES ✓ | NO |
| d. While in office                                  | YES   | NO |
| e. Permanently                                      | YES   | NO |

If yes, which public office holders are immune and if immunity is limited, please explain.

## **EDUCATIONAL INITIATIVES**

44. Is your country involved in any of the following international anti-corruption educational initiatives?

- |   |       |      |
|---|-------|------|
| International Anti-Corruption Academy     | YES ✓ | NO   |
| UNODC Anti-Corruption Academic Initiative | YES   | NO ✓ |

Other international anti-corruption educational initiative(s)

YES  NO

If yes, please provide details.

India became a Party to IACA by submitting Instrument of Accession on 30.5.2013, which entered into force on 28<sup>th</sup> July, 2013. Currently, one DIG, CBI is pursuing IACA's flagship two-year Masters in Anti-Corruption Studies (MACS).

45. Does your country provide anti-corruption educational/training programs for officials, including public office holders?

YES  NO

If yes, please provide details.

46. Does your country or business associations in your country promote anti-corruption training for the private sector?

YES NO

If yes, please provide details.

47. Has your country disseminated G20 products and documents developed by the group with relevant domestic authorities?

YES NO

If yes, please provide details.

## **JUDICIARY**

**48.** Has your country taken any measures to promote and disseminate the Bangalore Principles for Judicial Integrity? **YES**

If yes, please provide details

The values which the Bangalore Draft upholds are Propriety, Independence, Integrity, Impartiality, Equality, Competence and diligence, Accountability. These principles have been enshrined in our constitution and the Supreme Court of India has time and again evolved new principles while interpreting those constitutional provisions.

### **Appointment of Judges:**

The appointment of Judges of the Supreme Court and their removal are governed by Article 124 of the Constitution of India. Articles 125 to 129 provide for certain incidental matters. The appointment and removal of the Judges of the High Courts are governed by Article 217. Articles 218 to 221 and 223 to 224A provide for certain matters incidental thereto. Article 222 provides for transfer of Judges from one High Court to another.

So far as the subordinate judiciary is concerned, the constitutional provisions relating thereto are contained in Articles 233 to 237. These provisions are, of course, supplemented by the rules made by the respective Governors of the States under the proviso to Article 309 of the Constitution.

### **Practice followed till 1981:**

A practice had developed over the last several decades according to which the Chief Justice of India initiated the proposal, very often in consultation with his senior colleagues and his recommendation was considered by the President (in the sense explained hereinabove) and, if agreed to, the appointment was made. By and large, this was the position till 1981.

### **Collegium of judges:**

In a decision rendered by a seven-judge Constitution Bench in **S.P. Gupta vs. Union of India (AIR 1982 SC 149)**, the majority held that 'consultation' does not mean 'concurrence' and ruled further that the concept of primacy of the Chief Justice of India is not really to be found in the Constitution. It was held that proposal for appointment to High Court can emanate from any of the four constitutional functionaries mentioned in Article 217 – and not necessarily from the Chief Justice of the High Court.

In 1993, a nine-Judge Constitution Bench of the Supreme Court in *Supreme Court Advocates-on-Record Association Vs. Union of India* (1993 (4) SCC. 441) over-ruled the decision in S.P.Gupta. The nine-Judge Bench (with majority of seven) not only overruled S.P. Gupta's case but also devised a specific procedure for appointment of Judges of the Supreme Court in the interest of "protecting the integrity and guarding the independence of the judiciary." For the same reason, the primacy of the Chief Justice of India was held to be essential. It held that the recommendation in that behalf should be made by the Chief Justice of India in consultation with his two senior-most colleagues and that such recommendation should normally be given effect to by the executive. Elaborate reasons were recorded in support of the proposition that selection of judges must be in the hands of the judiciary in this country and how the systems prevailing in other countries are alien to our constitutional system.

The 1993 decision was reaffirmed in 1998 [1998 (7) SCC 739] in a unanimous opinion rendered by a nine-Judge Bench of the Supreme Court on a reference being made by the President under Article 143 of the Constitution. All the basic conclusions of the majority in the 1993 decision were reaffirmed. There was, however, some variation. It was held that the recommendation should be made by the Chief Justice of India and his four

senior-most colleagues (instead of the Chief Justice of India and his two senior-most colleagues) and further that Judges of the Supreme Court hailing from the High Court to which the proposed name comes from must also be consulted. In fact, the Chief Justice of India and his four senior-most colleagues are now generally referred to as the 'Collegium' for the purpose of appointment of Judges to the Supreme Court.

**Seniority to be followed in appointment of Chief Justice of India:**

So far as the appointment of the Chief Justice of the Supreme Court of India is concerned, both the 1993 decision and the 1998 opinion lay down that the senior-most judge should always be appointed as the Chief Justice of India.

**Procedure for appointment of Judges of High Courts:**

The procedure for appointment of Judges of the High Courts is slightly different from the one concerning the appointment of Judges of the Supreme Court. Clause (1) of Article 217 says that "every judge of a High Court shall be appointed by the President by warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of the State, and, in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court and shall hold office, in the case of an additional or acting judge, as provided in Article 224, and in any other case, until he attains the age of sixty-two years". A reading of this clause shows that while the appointment is made by the President, it has to be made after consultation with three authorities, namely, the Chief Justice of India, the Governor of the State and the Chief Justice of the High Court. (Of course, in the matter of appointment of Chief Justice, the consultation with the Chief Justice is not required). Just as the President is the constitutional head, so are the Governors. However, according to the practice, which had developed over the last several decades and which was in vogue till the aforementioned 1981 decision of the Supreme Court (S.P.Gupta), the Chief Justice of the High Court used to make the recommendation which was considered by the Governor of the State (Council of Ministers headed by the Chief Minister) who offered his comments for or against the recommendation. The matter then went to the Central Government. At that stage, the opinion of the Chief Justice was sought and based upon such advice, the appointment was either made or declined, as the case may be. It may be noted that even clause (1) of Article 217 uses the expression 'consultation' and not 'concurrence'. The decision of the Supreme Court in S.P. Gupta on the meaning of 'consultation' applied equally to this Article. After the decision in S.P. Gupta, the executive made quite a few appointments to the High Court's which gave rise to a good amount of dissatisfaction among the relevant sections including the Bar leading to the nine-Judge Constitution Bench decision of the Supreme Court in 1993 aforementioned. The decision laid down that the recommendation for appointment to the High Court shall be made by the Chief Justice of the concerned High Court in consultation with his two senior-most colleagues. The opinion of the Chief Justice of India was given primacy in the matter and was to prevail over that of the Governor of the State or even that of the High Court, if inconsistent with his view. The President was of course to make the formal appointment just as in the case of a Judge of the Supreme Court. This position was affirmed in the Third Judges case (1998 (7) SCC 139).

**Appointment to the Subordinate Judiciary:**

The appointment to subordinate judiciary is governed by Articles 233 to 237 of the Constitution and the rules made under the proviso to Article 309. The district judges, who are at the highest rung of the subordinate judiciary, are appointed both by direct recruitment and by promotion. The selection of direct recruit district judges is made by the High Court. On the basis of the recommendation of the High Court, the Governor appoints them. So far as promotion to the post of district judge is concerned, it is also made by the High Court

alone, formal orders being issued by the Governor. So far as the appointment of munsiffs and magistrates (the lowest rung in the subordinate judiciary) is concerned, their selection is made by the Public Service Commission and the High Court. The practice in many States is that a Judge of the High Court nominated by the Chief Justice of that Court sits with the Public Service Commission for the purpose of selection. In some States, the power of selection is vested exclusively in the High Court. Here again the appointment is made by the Governor on the basis of the recommendation made by the designated judge and the Public Service Commission or by the High Court, as the case may be. So far as promotion from munsiff/magistrate to the intermediate higher level of subordinate judge /assistant sessions judge is concerned, it is made by the High Court itself. In short, in the matter of selection for appointment, promotion and postings of subordinate judiciary, the High Court is the real authority and the role of the State Government is formal in character. Indeed, with respect to subordinate judiciary, the disciplinary jurisdiction also vests in the High Court, on whose recommendation, formal orders are issued by the Governor. In all other service conditions, High Court is the competent authority, subject, of course, to the rules, if any, made under the proviso to article 309 of the Constitution.

#### **Integrity of Judges:**

Integrity is the hallmark of judicial discipline apart from others as reminded by the Apex Court in **Tarak Singh vs. Jyoti Basu, (2005)1 SCC 201**. To quote:

“Integrity is the hallmark of judicial discipline, apart from others. It is high time the judiciary took utmost care to see that the temple of justice does not crack from inside, which will lead to a catastrophe in the judicial-delivery system resulting in the failure of public confidence in the system. It must be remembered that woodpeckers inside pose a larger threat than the storm outside.”

Under the Bar Council of India Rules, an advocate shall, at all times, comport himself in a manner befitting his status as an officer of the court, a privileged member of the community; and a gentleman, bearing in mind that what may be lawful and a moral for a person who is not a member of the Bar, or for a member of the Bar in his nonprofessional capacity may still be improper for an advocate. These attributes apply with equal force, nay, with stronger vigor to Judicial Officers.

In **High Court of Judicature at Bombay vs. Uday Singh, (1997) 5 SCC 129**, in the matter of maintenance of discipline, the Apex Court stated as follows:

.....“Maintenance of discipline in the judicial service is a paramount matter. Acceptability of the judgment depends upon the credibility of the conduct, honesty, integrity and character of the officer. The confidence of the litigating public gets affected or shaken by lack of integrity and character of Judicial Officer.”.....

In **High Court of Judicature at Bombay vs. Shashikant S. Patil, (2000) 1 SCC 416**, highlighting a marked and significant difference between a judicial service and other services, speaking for a bench of three Judges, K.T. Thomas, J. observed as follows:

“23. The Judges, at whatever level they may be, represent the State and its authority, unlike the bureaucracy or the members of the other service. Judicial service is not merely an employment nor the Judges merely employees. They exercise sovereign judicial power. They are holders of public offices of great trust and responsibility. **If a judicial officer tips the scales of justice its rippling effect**

would be disastrous and deleterious". A dishonest judicial personage is an oxymoron."

In **Rajendra Singh Verma (Dead) Through LRs. vs. Lieutenant Governor (NCT of Delhi), (2011) 10 SCC 1**, reiterating the principle laid down in *Shashikant S. Patil & Anr. (supra)*, this Court observed as follows:

"In case where the Full Court of the High Court recommends compulsory retirement of an officer, the High Court on the judicial side has to exercise great caution and circumspection in setting aside that order because it is a complement of all the Judges of the High Court who go into the question and it is possible that **in all cases evidence would not be forthcoming about integrity doubtful of a judicial officer.**"

Guarantee of tenure and its protection by the Constitution would not, however, accord sanctuary for corruption or grave misbehaviour. Yet every action or omission by a judicial officer in the performance of his duties which is not a good conduct necessarily may not be misbehaviour indictable by impeachment, but its insidious effect may be pervasive and may produce deleterious effect on the integrity and impartiality of the Judge. Every misbehaviour in juxtaposition to good behaviour, as a constitutional tautology, will not support impeachment but a misbehaviour which is not a good behaviour may be improper conduct not befitting to the standard expected of a Judge. Threat of impeachment process itself may swerve a Judge to fall prey to misconduct but it serves disgrace to use impeachment process for minor offences or abrasive conduct on the part of a Judge. The bad behaviour of one Judge has a rippling effect on the reputation of the judiciary as a whole. When the edifice of judiciary is built heavily on public confidence and respect, the damage by an obstinate Judge would rip apart the entire judicial structure built in the Constitution.

In case the allegations are against Chief Justice of a High Court, the Bar should bring them directly to the notice of the Chief Justice of India. On receipt of such complaint, the Chief Justice of India would in the same way act as stated above qua complaint against a Judge of the High Court, and the Bar would await for a reasonable period the response of the Chief Justice of India.

### **The Judicial Standards and Accountability Bill, 2010**

However, to lay down judicial standards and to provide accountability of judges, and establish credible and expedient mechanism for investigating into individual complaint for mis-behaviour in capacity of a judge of the SC or HC and to regulate the procedure for such investigation and for the presentation of an address by Parliament to the President in relation to proceeding for removal of a judge and for matters connected therewith or incidental thereto the above said Bill has been proposed and the same is pending for consideration.



**49.** Has your country taken other measures to promote the accountability and independence of the Judiciary? **YES**

If yes, please provide details

Independence of judiciary has been repeatedly held by the Supreme Court to be a basic feature of the Constitution (Shri Kumar Padma Prasad V. Union of India 1992 (2) SCC 428 at 456 and High Court of Bombay V. Sri Kumar 1997 (b) SCC 339 Para 13 at page 355).

**Fixed Tenure- Removal of a judge only by impeachment:**

The founding fathers of the Constitution advisedly adopted cumbersome process of impeachment as a mode to remove a Judge from office for only proved misbehaviour or incapacity which implies that impeachment process is not available for minor abrasive behaviour of a Judge. It reinforces that independence to the Judge is of paramount importance to sustain, strengthen and elongate rule of law. Parliament sparingly resorts to the mechanism of impeachment designed under the Constitution by political process as the extreme measure only upon a finding of proved misbehaviour or incapacity recorded by a committee constituted under Section 3 of the Act by way of address to the President in the manner laid down in Article 124 (4) and (5) of the Constitution, the Act and the Rules made thereunder. In all common law jurisdictions, removal by way of impeachment is the accepted norm for serious acts of judicial misconduct committed by a Judge. Removal of a Judge by impeachment was designed to produce as little damage as possible to judicial independence, public confidence in the efficacy of judicial process and to maintain authority of courts for its effective operation (C. RAVICHANDRAN IYER Vs. JUSTICE A.M. BHATTACHARJEE & ORS. 1995 SCC (5) 457).

Our Constitution permits removal of the Judge only when the motion was carried out with requisite majority of both the Houses of the Parliament recommending to the President for removal. In other words, the Constitution does not permit any action by any agency other than the initiation of the action under Article 124(4) by the Parliament.

In Sub- Committee on Judicial Accountability etc. etc. v. Union of India & Ors. etc. [(1991) Supp. 2 SCR, 1], this Court at page 54 held that the removal of a Judge culminating in the presentation of an address by different Houses of Parliament to the President, is committed to the Parliament alone and no initiation of any investigation is possible without the initiative being taken by the Houses themselves.

The constitutional scheme envisages removal of a Judge on proved misbehaviour or incapacity and the conduct of the Judge was prohibited to be discussed in the Parliament by Article 121. Resultantly, discussion of the conduct of a judge or any evaluation or inferences as to its merit is not permissible elsewhere except during investigation before the Inquiry Committee constituted under the Act for this purpose.

**Prior Sanction of Chief Justice to Investigate Corruption cases:**

In K. Veeraswami v. Union of India [(1991) 3 SCC 655], majority of the Constitution Bench upheld the power of the police to investigate into the disproportionate assets alleged to be possessed by a Judge, an offence under Section 5 of the Prevention of Corruption Act, 1947 subject to prior sanction of the Chief Justice of India to maintain independence of the judiciary.

**Judge is above the conduct of ordinary mortals in the society:**

In Krishna Swami v. Union of India & Ors. [(1992) 4 SCC 605 at 650-51], one of us (K. Ramaswamy, J). held that the holder of office of the Judge of the Supreme Court or the High Court should, therefore, be above the conduct of ordinary mortals in the society. The standards of judicial behaviour, both on and off the Bench, are normally high. There cannot, however, be any fixed or set principles, but an unwritten code of conduct of well-established traditions is the guidelines for judicial conduct. The conduct that tends to undermine the public

confidence in the character, integrity or impartiality of the Judge must be eschewed. It is expected of him to voluntarily set forth wholesome standards of conduct reaffirming fitness to higher responsibilities.

## SECTOR-SPECIFIC TRANSPARENCY INITIATIVES

50. Is your country supporting or implementing any sector-specific initiatives?

Extractive Industries Transparency Initiative (EITI)

Implementing	YES	NO
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Support	YES	NO
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Construction Sector Transparency Initiative (CoST)

Implementing	YES	NO
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Support	YES	NO
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Other (specify below)

Implementing	YES	NO
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Support	YES	NO
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Please provide details on other sectoral initiatives supported by your country, or domestic measures taken in relation to specific sectors.

51. Does your government have integrity pacts with the business sector?

YES      NO

If yes, please provide details.

## **FISCAL AND BUDGET TRANSPARENCY**

52. Has your country taken steps to implement the IMF Good Practices in Fiscal Transparency?

YES      NO

If yes, please provide details.

53. Has your country taken steps to implement the OECD Best Practices on Budget Transparency?

YES      NO

If yes, please provide details.

