



## RESPONSES TO INFORMATION REQUESTS (RIRs)

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14 December 2005

### IND100769.EX

India: Incidence of corruption in the police service, judiciary, civil service, immigration authorities; government response to corruption in these areas (January 2003 - 2005)  
Research Directorate, Immigration and Refugee Board of Canada, Ottawa

#### General

Media articles, non-governmental organization publications and academic literature characterize corruption in India as "ever-growing" (The Hindu 31 Oct. 2005), "all-pervasive" (Country Reports 2004 28 Feb. 2005, Sec. 3; Country Reports 2003 25 Feb. 2004, Sec. 6.f), "endemic" (Country Reports 2003 24 Feb. 2004, Sec. 6.f), "widespread" (Evans Sept. 2004; Freedom House 2005, 288), "a severe ... problem" (The Times of India 18 Oct. 2005), "rampant" (AFP 27 July 2005), as well as "commonplace ... and ... routinely tolerated by the citizenry" (Cameron et al. July 2005, 21). After gauging the perceptions of business people, analysts and Indian experts on "the abuse of public office for private gain" in India, Transparency International (TI) allotted India a score of 2.9 on a 10-point scale, with zero indicating the country where corruption is perceived to be highest among those countries on the list (TI 18 Oct. 2005; TI n.d.b; The Tribune 21 Oct. 2004). India's score on this index moved from 2.8 to 2.9 during the period 2003 to 2005 (TI 18 Oct. 2005; ICCR n.d.a; *ibid.* n.d.b; The Times of India 18 Oct. 2005).

An American lawyer and associate professor of law who has published several articles on the legal system in India wrote in 2003 that "corruption and bribery of politicians [and] ... non-performance by and incompetence among bureaucrats ... are just a smattering of troubles that burden the Indian state," and then in a 20 October 2005 telephone interview with the Research Directorate stated that "petty corruption is especially rampant in the Indian civil service" (Associate Professor of Law 20 Oct. 2005; Krishnan 2003). The Director of the Human Rights Law Network based in New Delhi, India agrees that corruption is especially prominent in the civil service, but added that corruption also exists in the police, government and judiciary (27 Oct. 2005). A Supreme Court judge who heads an anti-corruption team in India commented "in India corruption is rampant among bureaucrats, politicians and businessmen .... Politicians as well as business men make use of bureaucrats to gain benefits ... without bureaucrats they ... cannot do anything" (AFP 27 July 2005). According to a survey of public perceptions of corruption in India in 2004, political parties were most prone to corruption, followed by police, judiciary and parliament respectively (TI 9 Dec. 2004). Other sources such as the senior director of Voices for Freedom-Asia, an affiliate of Voices for Freedom operating out of Chandigarh, India, as well as an American associate professor specializing in Indian affairs, wrote in correspondence to the Research Directorate that corruption is rampant in all of the police service, the judiciary, the civil service and border authorities (Senior Director 23 Oct. 2005; Associate Professor of Social and Cultural Anthropology 3 Nov. 2005). One effect of this "political bankruptcy," according to the Asian Human Rights Commission, is the development of a "vicious nexus between police, politicians and criminals" affecting the criminal justice system in India (Protection and Participation 2005).

#### Police

Federal and state police forces in India total more than two million personnel (Human Rights Solidarity 30 Sept. 2005b). According to representatives of non-governmental organizations and human rights activists in India, police corruption was "pervasive" in 2003 and 2004 (Country Reports 2004 28 Feb. 2005, Sec. 1.d.; Country Reports 2003 25 Feb. 2004, Sec. 1.d.), and an American lawyer and associate professor of law who has published several articles on the legal system in India stated that the police in India are "well-known to be riddled with petty corruption" (Associate Professor of Law 20 Oct. 2005). A 30 September 2005 report on the police in India by the Asian Human Rights Commission stated that "there is ample evidence of increasing illegal behaviour by the police in India." The report continued, "the majority of complaints received by the [National Human Rights Commission] are against police officials, and corruption is one of the four principal categories of complaint (Human Rights Solidarity 30 Sept. 2005b). The results of a study on petty corruption done by Transparency International and the Delhi Centre for Media Studies, which involved a sample of 14, 405 respondents in 20 Indian states and covered 151 cities and 306 villages, revealed that 80 per cent of respondents had paid a bribe to the police, although the study did not outline the circumstances of the bribes (TI 30 June 2005a, 8). The study concluded that of the eleven public services examined, the police was the most corrupt (*ibid.*, 9).

Several media reports detail the alleged involvement of police officials in corrupt actions, such as land deals, "fake stamp cases," in which officials allegedly sold imitation state stamps and papers and carried out "fake embossing [and] franking," as well as demanding and accepting bribes (The Hindu 29 Oct. 2005; HindustanTimes.com 13 Sept. 2005; *ibid.* 20 Aug. 2005; Inter Press Service 17 Nov. 2003; The Times of India 26 Sept. 2005). There are also reports of alleged police incompetence, including the "highly defective" manner in which complaints are recorded, and the false implication of innocent persons in criminal cases (AHRC 7 October 2005; Human Rights Solidarity 30 Sept. 2005a; Dawn 28 May 2004). A study on petty corruption in 11 public service agencies in India, completed by Transparency International and the Delhi Centre for Media Studies, found that the police was the most corrupt agency (TI 30 June 2005a, 9).

## **Judiciary**

Although an American lawyer and associate professor of law who has written on Indian legal issues was unaware of corruption in the Indian judicial system and commented that those in the court system take pride in maintaining the law and refrain from accepting bribes, Country Reports 2004 and Country Reports 2003 state that the Indian judiciary in 2003 and 2004 was "underfunded, overburdened" and representatives of non-governmental organizations alleged that corruption influenced court decisions (Country Reports 2004 28 Feb. 2005, Introduction; Country Reports 2003 25 Feb. 2004, Introduction; Associate Professor of Law 20 Oct. 2005). Amnesty International also characterized the judiciary as "overburdened," in its study of impunity and torture in Punjab state (AI Jan. 2003, 30). Amnesty International also revealed reports of legal aid lawyers demanding bribes to conduct a proper defence or to file a bail application (*ibid.*, 34). A lawyer in India commented, "it is common knowledge that large sections of the judiciary are corrupt and not averse to bailing out politicians in trouble in return for all kinds of favours and post-retirement appointments" (Inter Press Service 31 May 2003).

According to Transparency International, the following corrupt practices exist in the judiciary in India: the exchange of bribes for court officials to lose or misplace files, the exchange of bribes to delay cases or assign them to other judges, the exchange of bribes for opposing lawyers to work against the interest of their client, a delay in execution of court orders, a lack of public access to records of court proceedings and delays in delivery of judgments (TI 30 June 2005b, 12). Of 14,405 respondents surveyed in twenty states of India who had been interacting with the judiciary, seventy-nine per cent agreed that corruption was prevalent in the judiciary and five per cent had never experienced corruption (*ibid.* 30 June 2005b, 5, 8). Eighty-six per cent of the respondents who sought "alternate avenues" in the court system admitted to having paid bribes mainly to lawyers, court officials and middlemen (*ibid.* 30 June 2005b, 6).

There are several reports of alleged corrupt practices of the judiciary involving judges, and some examples include the exchange of a bribe to issue an arrest warrant (TI 30 June 2005b, 11), the exchange of a bribe to legalize encroachments on public property (Inter Press Service 31 May 2003), offering a judicial favour in exchange for sexual favours (TI 30 June 2005b, 11) and offering to fix the decision of a case in exchange for money (Inter Press Service 31 May 2003; *ibid.* 14 May 2003) and women (*ibid.*). In 2003, judges were able to rely on the Judges Protection Act, which provides judges immunity from prosecution; however, information on whether this act was still in effect in 2005 could not be found within the time constraints of this Extended Response (*ibid.*).

## **Civil Service**

According to a study by Transparency International and the Delhi-based Centre for Media Studies on petty corruption in India, Indian citizens pay annual bribes of CDN\$5.5 billion to officials in 11 public service agencies (AFP 30 Sept. 2005; Xe.com 3 Nov. 2005). The results of this study, which involved a sample of 14, 405 respondents in 20 Indian states and covered 151 cities and 306 villages, reveal that 62 per cent of respondents have paid a bribe or used a contact mainly to influence the judgement or for administrative tasks such as issuance of a list of documents (TI 30 June 2005a, 1, 5, 9).

Several media articles report alleged corrupt practices among Indian civil servants, and some examples include fraudulent use of treasury funds (AFP 27 July 2005; Indian Express 27 Sept. 2005; The Times of India 31 Oct. 2005); and natural disaster relief funds (Indian Express 26 Aug. 2005); the exchange of bribes for postings (Inter Press Service 31 May 2003), contracts (Inter Press Service 31 May 2003; *ibid.* 17 Nov. 2003), defence arms (HindustanTimes.com 22 August 2005) and university admission (AFP 27 July 2005); disproportionate wealth to known sources of income (AFP 27 July 2005; The Hindu 16 Mar. 2004; *ibid.* 27 June 2005; *ibid.* 30 June 2005; The Statesman 1 Oct. 2005); accepting bribes (Inter Press Service 31 May 2003; *ibid.* 17 Nov. 2003; The Press Trust of India Limited 21 Dec. 2003; The Times of India 16 Oct. 2005; The Tribune 26 Oct. 2005); and privileged allotment of petrol pumps and dealerships (The Hindu 6 Sept. 2005).

India was among the surveyed countries with "the most corrupt" political parties in Transparency International's 2004 Global Corruption Barometer (AFP 9 Dec. 2004). Commenting on the actions of politicians in 2004, Indian prime minister Manmohan Singh said "Horse trading of the worst type was taking place and it is the constitutional duty of the government to see that such nefarious practices don't spoil the good name of our country" (AP 24 May 2005). However, an Indian lawyer is of the opinion that "bribery and corruption [are] too deep rooted and backed by silent political approval ... There is no political will to weed out corruption simply because the political system is funded entirely by the proceeds of kickbacks and percentages on official deals" (Inter Press Services 31 May 2003). This lawyer revealed that several prime ministers have come to power vowing to "clean up"

politics but have not done so when elected to office (ibid.). In its 2005 report on India, Freedom House stated, "[p]oliticians and civil servants are regularly caught accepting bribes or engaging in other corrupt behaviour, but are rarely prosecuted" (2005, 288).

### **Border Security Forces**

Information on corruption in the Border Security Forces (BSF) was scarce among the literature consulted by the Research Directorate for this Extended Response. One news article describes "rampant" corruption in the BSF, while another news article explains that two BSF constables were dismissed from service in April 2000 after allegedly smuggling seized cumin seeds, later tried by a "summary security force court" and eventually reinstated to their positions in the BSF (The Statesman 24 June 2005; HindustanTimes.com 17 June 2005).

In addition to these cases, a 7 October 2005 Asian Human Rights Commission report detailed a case of alleged misconduct by the BSF (AHRC 7 Oct. 2005). In January 2003 while crossing the border from Bangladesh to India, a family of four was taken to a battalion office by a BSF patrol unit where the mother was allegedly gang raped and the family was "held captive" by the BSF for several days, after which the BSF tied the family to a boat and sent them off on the Ichamati river (ibid.). This boat sank and as a result of not being able to untie themselves, the father and one child drowned (ibid.). The surviving mother and child filed a report with the police; the matter went before the court and then "in an absurd change of events," the mother and child were sent to prison, for "safe custody" and as of October 2005 had served almost three years in prison (ibid.). BSF maintains that the actions of its BSF officials are subject to internal investigations only (ibid.).

### **Government Response to Corruption**

In 2004, newly installed prime minister Manmohan Singh likened government corruption in India to a "cancer from within" and commented, "the very legitimacy of the State and its various institutions is being increasingly questioned due to the excesses of those in positions of power and authority" (India 27 Aug. 2004). The Prime Minister as well as the chief minister of Jammu and Kashmir pledged their commitment to overcome corruption in 2004 and 2005 respectively (The Times of India 31 Oct. 2005; AFP 30 Sept. 2005; Global Insight Daily Analysis 3 Oct. 2005).

### **Legislative Efforts**

The Right to Information Act, which gives citizens the right to access information under the control of government authorities, came into force on 12 October 2005 in all states of India, except for Jammu and Kashmir (The Statesman 29 Oct. 2005; Indian Express 11 July 2005; ibid. 26 Sept. 2005; India 12 Oct. 2005). As of July 2005, the following agencies had been granted immunity under the Act: Intelligence Bureau, Research and Analysis Wing, Enforcement Directorate, Narcotics Control Bureau, Border Security Forces, Central Reserve Police Force, Assam Rifles, Central Industrial Security Force and the National Security Guards (Indian Express 11 July 2005).

The murder of an engineer who complained to the Prime Minister of corruption in a [CDN\$14.2 billion (XE.com 7 Nov. 2005)] road project in 2003 sparked renewed demands among state officials for a law to protect those disclosing allegations of corruption in India (BBC 15 Dec. 2005; India 21 Apr. 2004; Anti-Corruption Initiative for Asia-Pacific 18 Oct. 2004; Xe.com 7 Nov. 2005). As a result, the Indian government issued Resolution 89 on 21 April 2004 that provides protection to those who direct their complaints, allegations of corruption or misuse of office by civil servants to the Central Vigilance Commission (ibid.; TI 16 Mar. 2005; India 27 Aug. 2004; Anti-Corruption Initiative for Asia-Pacific n.d.).

Another legislative effort to combat corruption was the Central Vigilance Commission (CVC) Act, which came into force on 11 September 2003 (ibid. 11 Sept. 2003). This act governs the CVC, an independent office within the Government of India designated to receive complaints disclosing allegations of corruption or misuse of office by civil servants, and recommend investigations if appropriate (ibid.; ibid. n.d.d; ibid. 27 Aug. 2004; Directory of Indian Government Websites n.d). The CVC lacks the power to investigate cases of alleged corruption and exercises jurisdiction only over those employed in the Central Government, Central Government public sector undertakings, nationalized banks, centrally administered territories, corporations established by or under any Central Act, as well as Government companies, societies and local authorities owned or controlled by the Central Government (India 11 Sept. 2003; ibid. n.d.e; ibid. n.d.f; TI 16 Mar. 2005). According to the CVC Website, the CVC is "free of control from any executive authority, monitoring all vigilance activity under the Central Government," but the 2003 CVC Act states that the Commission consists of a central vigilance commissioner and up to two vigilance commissioners who are former civil servants appointed by the President (India 11 Sept. 2003; ibid. n.d.d).

The 1988 Prevention of Corruption Act is aimed primarily at the activities of civil servants, applies to all states of India except for Jammu and Kashmir and includes citizens of India located abroad (Global Law Review n.d.; General Secretary 30 Oct. 2005). Some of the offences under this act include accepting "gratification" other than legal remuneration for official acts, influencing a public servant and exercising personal influence with a public servant (India 9 Sept. 1988, Ch. 3). These offences are punishable with imprisonment of six months to five years (ibid.). Depending on the circumstances of the case, a public servant may be considered to have committed criminal misconduct under the 1988 Prevention of Corruption Act, and in such cases may incur a fine and be imprisoned for one to seven years (ibid. Ch. 13).

Other legislative efforts include September 2003 amendments to several laws on election finance which, according to Transparency International, provide for "increased transparency and accountability of party financing ... and mobilise more campaign funds," as well as an anti-defection law, which "received presidential assent" in 2004 and limits the number of ministers in central and state government and bars defectors from becoming ministers until the following election (TI 16 Mar. 2005). However, the parliamentary speaker determines disqualification for defection and according to Transparency International, this "leaves the door open for political manipulation" (ibid.). The Election Commission also endorsed the recommendation of the Supreme Court that those running for office must first disclose their assets and criminal records (Inter Press Service 31 May 2003). In terms of the judiciary, in June 2005 persons accusing judges of corruption can be "charged and punished for contempt of court" (TI 30 June 2005b, 11).

### **Investigative Efforts**

The Central Bureau of Investigation (CBI) is "premier [independent] investigating police agency in India ... which investigates major crimes in the country having interstate and international ramifications" (Directory of Indian Government Websites n.d.; India n.d.c). It has several divisions, one of which is the Anti-Corruption division, which is responsible for collecting information on corruption, conducting inquiries and investigations into complaints about bribery and corruption, and taking measures to prevent corruption (ibid.; India n.d.a).

In 2005, CBI conducted raids on government officials, politicians and police officers suspected of corruption in 198 locations in 54 cities (India 30 Sept. 2005; HindustanTimes.com 30 Sept. 2005; The Hindu 1 Oct. 2005; Global Insight Daily Analysis 3 Oct. 2005), including 34 homes of civil servants in New Delhi alone (The Hindu 1 Oct. 2005; AFP 30 Sept. 2005). The aim of these raids was "to target public servants of doubtful integrity in corruption prone departments" (ibid.) and after the raid, cases were made against officers of the Department of Customs and Central Excise, Income Tax, Oil and Natural Gas commission, the Municipal Corporation of India, the National Council of Homeotherapy, nationalized banks, railways (The Hindu 1 Oct. 2005), insurance companies, Bombay Port Trust, the Cotton Corporation of India, Indian Airlines, the National Crime Bureau and the Delhi police (HindustanTimes.com 30 Sept. 2005). This crackdown was the fourth and largest of 2005 (Global Insight Daily Analysis 3 Oct. 2005; AFP 30 Sept. 2005). In the previous crackdown in June 2005, the CBI raided 183 sites (ibid.).

Two reports on this raid state that the CBI detained seventy public servants under the Prevention of Corruption Act on grounds of cheating, fraud, criminal conspiracy and breach of trust, while another report states that forty-one public servants were "indicted" and yet another says that as of 3 October 2005 no arrests had been made, but fifty-eight cases have been registered against public officials (ibid.; The Hindu 1 Oct. 2005; Global Insight Daily Analysis 3 Oct. 2005). In 2003 and 2004 the CBI registered eighty-two and eighty-four cases respectively, while as a result of CBI raids carried out by 1 October 2005, the CBI had registered 219 cases under the Prevention of Corruption Act as well as the Indian Penal Code for such practices including demanding and accepting bribes, possession of assets disproportionate to income, abuse of official position, causing wrongful loss to the government and wrongful gain to private persons, cheating, forgery and criminal conspiracy (India 30 Sept. 2005; ibid. 6 Apr. 2005; ibid. 2 Feb. 2005; ibid. 30 June 2005).

For the period 1 January 2005 to 30 June 2005, the CBI had registered more than 540 cases for demanding or accepting bribes, while for the period 2002 to 2004 inclusive, the agency had registered 684 cases against federal government employees for the same act (ibid.; HindustanTimes.com 24 Aug. 2005). CBI reported on 6 April 2005 that conviction was secured in 58 cases (India 6 Apr. 2005).

Several media articles report on cases registered by CBI, some examples of which include a case in 2003 against two government officials for allegedly taking and accepting bribes, for giving a bribe to prevent a political party from taking power and for selling fake state stamps (The Press Trust of India Limited 21 Dec. 2003; Hindustan Times.com 13 Sept. 2005).

At the level of the state, the the Directorate of Vigilance and Anti-Corruption (DVAC) conducts investigations into cases of corruption and misconduct of state-level civil servants and sends reports of the investigation findings to the State Vigilance Commission (SVC), which may then "tender such advice as is necessary" (India n.d.f, Sec. 13, Sec. 14). The DVAC collects intelligence on corruption as well as receives complaints about government corruption from citizens and is empowered to conduct raids on government agencies (ibid.). The southern state of Karnataka was the first state to set up such an anti-corruption squad in 1984, and since then 15 additional states have established anti-corruption teams, but while some teams have jurisdiction to investigate all elected officials, others do not have the power to investigate the legislature or bureaucracy (AFP 27 July 2005). A representative of People's Union for Civil Liberties reported that the DVAC has detained senior bureaucrats (General Secretary 30 Oct. 2005). This information was corroborated by several news reports, some examples of which concern the detainment of medical officers (The Hindu 2 Sept. 2005; ibid. 10 Nov. 2004), judicial representatives (ibid. 2 Sept. 2005; ibid. 10 Nov. 2004), police officers (ibid. 2 Sept. 2005), revenue officials (ibid.), as well as an assistant director of drugs and a senior drug control inspector (ibid. 30 Oct. 2005) for various corrupt practices including medical insurance claim scams (ibid. 2 Sept. 2005; ibid. 10 Nov. 2004), possessing unaccounted money (ibid. 8 Apr. 2005; ibid. 20 Feb. 2005; ibid. 30 July 2005) and taking money from the treasury for bogus projects (AFP 27 July 2005).

Although the DVAC has the power to recommend that the government take action against implicated officials, most of those accused of corruption in the state of Karnataka have managed to stay in office (ibid.; The Hindu 4 Dec. 2003).

### **The Courts**

The court system for corruption cases is "slow," conviction rates are "very low" and the government rarely grants permission to prosecute senior civil servants or politicians (AFP 27 July 2005). In its February 2004 report, the Law Commission of India acknowledged that more than two million cases are pending in approximately 13,000 district courts, and a study carried out by the Ministry of Finance showed that it would take 324 years to dispose of the current backlog of cases in India's courts (Human Rights Solidarity 30 Sept. 2005a). Amnesty International also reported on the constraints facing the judiciary as they reportedly try approximately 100 cases per day, with each case lasting approximately 10 minutes (AI Jan. 2003, 30). Country Reports 2003 and 2004 also acknowledged the existence of this backlog (25 Feb. 2004, Introduction; 28 Feb. 2005, Introduction).

Discussing the implications of this backlog, the Asian Human Rights Commission explained that "when the backlog of cases increases, the judges connive with the police officers, forcing people to plead guilty on charges so that cases can be summarily tried (ibid.). A 26 October 2005 Hindustan Times.com news article reveals that criminal cases against state officials for acquiring disproportionate assets were pending for approximately ten years and were still not settled.

While some state officials managed to remain in office while under investigation for corrupt practices (AFP 27 July 2005), the court found an inspector with Delhi police guilty under several sections of the Prevention of Corruption Act and sent him to judicial custody (HindustanTimes.com 5 Oct. 2005). In another case after the Directorate of Vigilance and Anti-Corruption filed charge sheets, the court issued arrest warrants against civil servants for possessing disproportionate assets (The Hindu 16 Mar. 2004; ibid. 27 June 2005).

### **Other Government Anti-Corruption Efforts**

To combat corruption, the Indian government has also involved ministries and departments in formulating the Annual Action Plan on Vigilance, strengthened the capacity of the CBI to carry out anti-corruption work, issued comprehensive instructions on transparency in tendering and contracting processes by the CVC, increased the use of information and communication technology (Hindustan Times.com 24 Aug. 2005), including computerized management systems (The Hindu 25 July 2005), as well as introduced Citizens' Charters and simplified procedures (Hindustan Times.com 24 Aug. 2005).

### **Effectiveness of Government Response to Corruption**

According to Transparency International, positive steps have been made towards electoral transparency in India, but the Indian government has "failed to combat" corruption (Country Reports 2004 28 Feb. 2005, Sec. 3; TI 16 Mar. 2005). In 27 October 2005 correspondence to the Research Directorate, the director of the Human Rights Law Network in New Delhi, India commented that attempts to combat corruption in India are "quite bad."

Regarding specific government agencies, an article in HindustanTimes.com states that "no serious and sustained effort has been made in any state of [India] to make the police department corruption free or at least to reduce it" (HindustanTimes.com 6 Aug. 2005). Transparency International considers that the 2003 CVC Act "fails to give the CVC a strong mandate" since it restricts the CVC's supervision of the CBI and the CVC may only issue advice (TI 16 Mar. 2005). A World Bank Report states that "the performance of the DVAC has been mixed, with ... one per cent of petitions filed with the DVAC resulting in prosecution in any given year" (The Hindu 1 July 2005).

Other concerns about the effectiveness of anti-corruption measures in Indian governmental agencies include information leaks about imminent anti-corruption raids, corruption within the CBI, the backlog of cases in India's judicial system (Global Insight Daily Analysis 3 Oct. 2005), the failure of political parties to commit to fighting corruption, the election of politicians with criminal records despite their criminal record declaration before election, patron-client relations between politicians and voters, where votes are bought through offering improved access to public services (TI 16 Mar. 2005).

This Extended Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Extended Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of additional sources consulted in researching this Information Request.

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