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The Institute of Public Auditors of India (IPAI)

The Institute of Public Auditors of India (IPAI) was established in 1996 with the main objective of assisting the authorities in establishing sound accounting, auditing and financial management practices. The Institute has established itself as a leading Institute in the country in the areas of management consultancy, audit and investigative examination, evaluation of programmes, system appraisals and setting up systems for efficient functioning of the organisations/ departments of the central and state governments and local bodies. IPAI has a presence across the country through its eighteen Regional Chapters located at Ahmedabad, Allahabad, Bangalore, Bhopal, Bhubaneswar, Chandigarh, Chennai, Guwahati, Hyderabad, Jaipur, Kolkata, Lucknow, Mumbai, Patna, Ranchi, Shimla, Srinagar and Thiruvanthapuram. Each Chapter is equipped to undertake consultancy assignments and organize training programmes.

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INVITATION FOR ARTICLES

The Indian Journal of Public Audit and Accountability welcomes original articles of professional interest. The articles should broadly cover aspects relating to Public Accountability, Financial Management, Accounts, Audit, Public Administration with focus on Good Governance.

Ideally the article should be between 3000 and 3500 words and should not normally exceed 5000 words. Short articles on topical interest are also welcome which can be included in Commentary Section of the Journal. They should preferably be between 1000 and 2000 words.

Two printed copies of the articles should be submitted along with a soft copy in a word processing format. Articles can also be sent by e-mail followed by hard copy by post.

Articles in Hindi are also welcome, which will be published in original. They should preferably be in simple spoken Hindustani language format. An abstract of the article in about 100 words should also be sent.

Editorial

This issue features a speech by Shri Vinod Rai, CAG of India delivered for the T. Narasimhan Memorial Oration at Chennai, organised by the Tamil Nadu Chapter of IPAI, where he had shared his thoughts on "Good Governance and Public Accountability". As rightly pointed out by him, the year 2012 will go down in the history of the Indian democracy as a defining year in which the citizens occupied the centre stage to debunk the myth of silent majority. The churning in the urban educated middle class has taken the administration and political executive by surprise. With citizens calling the government to account and seeking transparency in policy formulation this was the voice of the silent majority. The CAG mentioned that the constitutional mandate places a larger responsibility of holding the government accountable to the legislature. It enjoins upon us to keep the ultimate stakeholder, viz. the man on the street, apprised of the outcomes of government spending and not merely conduct expenditure audits, and all the steps taken by us to disseminate audit findings to citizens groups, non-governmental bodies, educational institutions and the media were in keeping with responsibility to sensitise the public.

In our regular feature "Auditor's Notebook", Shri Dharam Vir discusses three topics of current relevance. In the first topic "Towards Efficient Expenditure Management.....Need for sunset clause" the author makes a strong case for incorporating a sunset clause in Government spending programmes whereby these would automatically stand terminated after the originally stipulated period and would not continue by default unless specifically renewed after fresh appraisal for their continued relevance. The second topic "International Peer Review of the Supreme Audit Institution of India" describes the salient findings of the review of the performance audit function of the CAG by a team led by the Australian National Audit Office. Referring to a suggestion made in the peer review for consultation with third parties (other than audited entities) involved in programme delivery, the author expresses the view that this should also be accompanied by vesting

in Audit the power to access the accounts, books, papers and other records of third parties for verification of their response to audit observations. The third topic, "The PAC and the COPU at work", describes the major activities of these two financial watchdog committees of the Parliament during 2010-11 and 2011-12. Noting that the PAC has not so far come out with its report on the 2G case on account of lack of unanimity despite having devoted more than fifty per cent of its sittings during 2010-11 to this subject, during the course of which it took the evidence of not merely official witnesses but also of several corporate honchos and of a lobbyist as well, the author makes a case for revisiting the existing rules to permit minutes of dissent with appropriate safeguards so that the report is not held hostage to an elusive unanimity. The author also pleads for *suo moto* placing the evidence tendered before the committees in public domain since the same provides valuable insights into the working of Government which would be of interest to serious students of public administration and accountability.

Public sector auditing standards (International Standards of Supreme Audit Institutions-ISSAIs) of INTOSAI (International Organisation of Supreme Audit Organizations) are modelled on the International Standards of Auditing (ISAs) of the International Auditing and Assurance Board (IAASB) of the IFAC (International Federation of Accountants) that were meant for public sector. The word compliance has a completely different meaning in public sector when compared to the private sector. In order to safeguard the investors, consumers and citizens, Governments regulate the market. Private sector companies had to comply with those regulations. With this background, Shri L.V. Sudhir Kumar explains that private sector auditors are required to comment on the extent of such compliance with those regulations. But the public sector entities have three responsibilities different from the private sector: first, they have to deliver the service; second, they have to keep an account of their financial transactions in the prescribed books of accounts and prepare the financial report in the prescribed format. And third, while carrying out their activities, they are expected to safeguard all the public resources.

This part of the function is required to be captured in the compliance audit in the public sector which determines the scope and dimension of the compliance audit in the public sector.

Consequent to 73rd and 74th Amendments to the Constitution of India in 1992, Panchayati Raj Institutions (PRI) and Urban Local Bodies (ULB) were established as third tier of Government in India. Successive Finance Commissions have recommended enhanced allocation of financial resources to Local Self Government Institutions (LSGI). The Planning Commissions have also been directly transferring plan funds to LSGIs for various Centrally Sponsored Schemes including flagship programmes. Shri K.P. Sasidharan's article "Emerging Accountability Framework for Local Self Government Institutions: Role of Public Auditors towards Good Governance" discusses the necessity of having a robust accountability framework for facilitating good governance and the role of the Public Auditors.

The Comptroller and Auditor General of India (CAG) has prescribed formats of accounts and accounting system, besides conducting a number of training programmes for capacity building for PRIs and ULBs. The CAG has been conducting Performance Audits as well as financial and compliance audits of Central and State Government Programmes, highlighting the systemic and procedural deficiencies, and recommending measures for improvement. The Author has emphasized the role of CAG, social audits, audits conducted by the Directorate of Local Bodies and other state government agencies and maintenance of proper books of accounts and certification of accounts by the Chartered Accountants for an integrated accountability regime. He argues that there should be purposeful and effective communication among the key players – Central Government, Urban Local Bodies, Panchayati Raj Institutions, CAG and other authorities responsible for maintaining books of accounts and audit functions of these bodies, supported by a robust Management Information System with updated online information flow to help informed decision making for development planning and good governance. Integration of findings of Social Audits on micro level with financial audit carried out by chartered accountants and audit and

inspection conducted by the Directorate of Local Bodies with CAG's established audit streams of audit at macro level should be in a position to contribute substantially towards good accountability regime for good governance.

The Special Economic Zone Act, 2005 aims at socio-economic development of the regions in which SEZs are located. To achieve this several incentives and facilities are offered to the units in SEZs for attracting investments. The Ministry of Finance estimated a revenue loss of Rs. 175,487 crore from tax holidays granted to SEZs for the period 2004-05 to 2009-10. Establishment of SEZs involves a series of action ranging from land acquisition, application for land, allocation/approval of the proposal, and creation of units within processing zone, import/export, and closure of units etc., warranting a multipronged audit approach to examine these asepects comprehensively. Dr. Sadu Israel in his article has viewed that Audit should evaluate the process of application and approval of tax exemptions (Direct/Indirect) given at the union and state level, besides the impact of human capabilities and environment.

In the next article, Ms K. Mani describes the current accounting methods and future trends in oil exploration and production industry. This field is dominated by multinational giants who have operations spanning different countries with different economic, political and regulatory conditions. Accountings for such activities are also equally intricate with different practices. Many country GAAPs have specific accounting standards for oil and gas producing activities like FAS 19 and IFRS 6. In India, we do not have specific accounting standards, but ICAI has issued 'Guidance note on oil and gas producing activities' in 2003 to standardize the accounting aspects. It provides regulations on accounting for costs incurred during the specific stages in upstream industry i.e. acquisition, exploration, development etc. and the costs associated with each stage. The practice of adoption of different accounting methods like full cost method and successful efforts methods are recognised as per this guidance note. The author brings out the relative merits and drawbacks of the available accounting standards/guidelines.

In the Document Section, we have included an informative and interesting document, for our readers namely. "The Judicial Standards and Accountability Bill, 2012.

We hope like the other issues of this journal, you will also find this issue useful and worth preserving.

Editor-in-Chief

GOOD GOVERNANCE AND PUBLIC ACCOUNTABILITY

Vinod Rai*

I consider it a privilege to be invited to inaugurate the Late T. Narasimhan Memorial Oration and deliver the first lecture. I am thankful to Shri Ramjei Narasimhan, and the Chennai Chapter of the Institute of Public Auditors of India which is supporting this annual commemorative lecture, for inviting me. We are all grateful to Shri N. Ram and the Hindu for associating with the event.

2. Mr. Narasimhan belonged to the 1946 batch of a service then called the 'Finance Officers", meant for the Union Government. One of the important jobs assigned to this new crop of Finance Officers was bifurcating the Consolidated Fund between India and Pakistan in 1947 under the stewardship of Late Shri B. K Nehru and Dr. John Mathai. Officers recruited into this service were later absorbed into Indian Audit and Accounts Service. Mr. Narasimhan later occupied several important positions. He served as the Accountant General of Tamil Nadu, Maharashtra, Andhra Pradesh and Orissa. He worked very closely with the Public Accounts Committee of Parliament, as well as the committees of various Assemblies, during his long career. Most of us in the department have not had the opportunity of working with Shri Narasimhan. However, those who knew him speak very high of his professional capability and steadfast demeanour. He is reputed to be objective and balanced in his approach, a dynamic and multifaceted personality who served as a credible edifice for the foundation of this department.

* T. Narasimhan Memorial Lecture delivered by Shri Vinod Rai, Comptroller and Auditor General of India on 12th January 2013 at Chennai

I am indeed happy that the Chennai Chapter of the IPAI has decided to institute this lecture series in the memory of this distinguished personality who very much deserves the honour.

3. I am happy to have this opportunity to be able to share my thoughts with you on 'Good Governance & Public Accountability'. This subject is very relevant today. It is also a subject to which Mr. Narasimhan was committed and wrote several articles on it in the Hindu.

4. The first decade of the present millennium in India has been very exciting and challenging one. The initial years saw unprecedented growth of the Indian economy. Whilst the country withstood initial shocks of the financial meltdown, it suffered very severely from the economic after effects of this global financial meltdown. The decade also saw civil society movements being strengthened around the globe in developed and emerging economies. The Right to Information, maintaining the green cover and related climate change aspects have come centre stage in all countries. In India the year that has just gone by, has witnessed a severe churning in society. It has exposed shortcomings of the political executive and the government. Never before has the citizenry questioned the administrative establishment as it has done in this year. The weaknesses of the system were also exposed when the administration displayed a certain insensitivity in reacting to the concerns expressed by the polity.

5. 2012 will go down in the history of the Indian democracy as a defining year: a year in which the citizen came centre stage to debunk the myth of the silent majority. This certainly portends a maturing of Indian democratic forces. How much the political class has realized this factor and is willing to come to terms with it, is too early to predict. It is clear that citizens seek a dialogue - a dialogue in which they can participate in governance and will be calling the government to account. This is indeed the old order changing, T. Narasimhan Memorial Lecture yielding place to the new. The era of a new discerning and very demanding class of citizen, has come to stay.

I say this because, as the Indian democracy ages, India grows younger viz., the median age of its population would still be 25 which is about 15 years younger than that of the United States of America.

The citizen calling the government to account and seeking transparency in policy formulation is the emergence of the voice which hitherto was considered to be that of the silent majority. This voice is now seeking to develop a new moral and ethical frame work which would be put in position to guide the citizenry and its elected representatives in future.

6. There are very distinct signs of the Urban Indian middle class mobilising themselves politically. There are also signs of a tenacious assertion in this mobilisation. This mobilisation is debunking the conventional wisdom of the white collar, urban citizenry unwilling to take to the streets to pursue its cause. This class of people had confined themselves to living room discussions, TV debates and may be, college politics. They took pride in not going to vote, looked down at caste and regional politics and hence were never sought out by political parties. But this disparate group is aggregating. It is uniting for a cause. It seems to feel its strength. What stirred them?

May be, corruption at every government office; a birth certificate, a drivers licence, a hospital bed, a gas connection. May be it is Jessica Lal, DGP Rathore or Manu Sharma.

May be, it is the realisation that they can no longer tolerate being denied basic amenities such as drinking water, power and security.

The last strain on this camel's back certainly was the unfolding of human barbarity at its worst, on the night of December 16 in New Delhi.

7. This churning in the urban educated middle class has taken the administration and political executive by surprise. They were neither prepared nor attuned to such an awakening. They cannot conceive spontaneous crowds collecting. They are only accustomed to paid crowds in political rallies. The scant regard for

this class that it always displayed, is now proving to be a incorrect appreciation of a reading of the pulse of the people. And hence the misguided response which further deteriorated the situation.

8. This urban middle class has grown up to respect the system, institutions and rule of law. The political establishment seemed to subvert these and hence the total disharmony between people and the government they voted unto themselves. The need for able governance has never been so strongly felt as in the present day world. While the developed countries have to deal with the aftermath of the economic slow-down, the developing countries have to struggle to ward off economic downturn, create employment opportunities and meet the growing aspirations of a demanding populace. Only efficient and effective governance can meet these challenges. It is increasingly becoming evident that efficiency and effectiveness in governance are not sustainable without probity, transparency and accountability. Let us deal with these issues in some detail in the Indian context.

9. Good governance is not the sole responsibility of government alone. It is a requirement in the corporate sector too. It also transcends into civil societies, non-governmental organizations and citizen's groups. However, since government collects moneys from the public and spends on behalf of the public, such spending does place an element of higher accountability on government.

Such accountability requires that the actions and decisions taken by public officials are transparent and capable of withstanding public scrutiny. Such accountability in government decisions and actions ensure that government initiatives meet their stated objective and are indeed responsive to the needs of the people that they are seeking to benefit. History speaks of such accountability, being a cornerstone of virtually all definitions of democracy and good governance, since times immemorial. Indeed modern conceptions of political accountability can be traced to the writings of Plato, Aristotle, Polybius, Cicero and Augustine each of whom described ways in which rulers are to be subordinated to systems of law and mutual checks.

10. If we look at our experience in the last two decades since the opening of the economy from 1990s, the need for greater probity, transparency and accountability in governance gains added significance. While we have performed well in almost all the sectors in the economy since liberalization and we could withstand the global economic slowdown, we did fail to achieve the true potential of the liberalization reforms.

11. There can be no denying the fact that there have been instances of lack of probity, transparency and accountability at various levels of governance, including corporate governance. As a result, the growth tapered off before fully exploiting the sizeable domestic market; the profits of individual companies dipped; and the investors' interest declined. The financial position of the Government remained under pressure with not enough funds to spend on various welfare schemes. The gains reaped earlier may also get wiped out, if the Government has to intervene financially to bail out individual companies or a sector at large.

12. Instances of lack of probity and transparency in the allocation of various natural resources, including land, encouraged 'hoarding' and 'rent-seeking' activities, slowing down the multiplier effect. Delays in granting of various governmental clearances and approvals and delays in implementation of various schemes made matters worse. Unethical profiteering and black marketing flourished. Consequently, the envisaged growth in different sectors of the economy, especially in the infrastructure sectors could not be achieved. And hence the true potential of the liberalization reforms in terms of growth, employment and welfare for the people are yet to be fully realised.

13. Further, the lack of sufficient accountability in our governance setup meant that those responsible for derailing the reform process could not be held accountable for their acts of omission and commission. Timely fixing of responsibility and commensurate action against those found guilty would have been a strong deterrent for others.

14. It would not be correct to put the blame for derailment of our reform process on just teething problems. A thin line of

demarcation exists between initial glitches and hiccups on one hand, and a fundamentally weak governance setup without adequate transparency and accountability, on the other.

It would also not be correct to put the blame on the sheer magnitude involved in various schemes, although size does make administration difficult, but it is not that the problems that size poses, cannot be surmounted.

The factors behind the derailment of our reform process are well known to all of us; it is just our failure to acknowledge them and take corrective measures that stands in the way.

15. The concept of accountability involves two distinct stages: answerability and enforcement.

Answerability refers to the obligation of the government, its agencies and public officials to provide information about their decisions and actions and to justify them to the public and those institutions of accountability tasked with providing oversight.

Enforcement suggests that the public or the institution responsible for accountability can sanction the offending party or remedy the contravening behaviour.

As such, different institutions of accountability might be responsible for either or both of these stages.

16. Since probity and transparency in Governance has come centre stage today, government officers will have to get accustomed to the reality that they sit in glass houses where all their actions will come under intense scrutiny. Transparency in government function will be the order rather than the exception. This was long due as we have witnessed unprecedented situations such as bags of currency notes being dumped on the table of Parliament and yet no one held responsible for it. Ministers and Chief Ministers having been forced to quit office indicted by a Lokayukta or High Court, but no accountability being established as yet. In fact when one Chief Minister of a southern State was forced to resign, his party president observed that the action of the Chief Minister may have been immoral but was not illegal! There could be no better admonition of the Indian state of affairs than a

senior Cabinet Minister observing that what we face in the country today is a deficit of ethics!!

I ask all of you present today? Would you rather not have a Minister whose actions were illegal rather than immoral? Would you rather not have Fiscal, Revenue and Current account deficits rather than deficit of ethics?

Lack of morality and ethics does not behove a nation aspiring to be an economic superpower.

17. The conventional wisdom of good governance has been premised on the edifice that governments are architecture, dedicated and determined to ensure probity and accountability. However, I place the proposition before you that time has come when the conventional architecture will have to be tempered to ensure that the structure remains secure.

Nations shape their own destinies.

Citizenry is and needs to call the political executive to account and lay the foundation of making its bureaucracy accountable wherein it performs a "service" rather than behave as "rulers".

Civil society needs to participate as equal partners with government institutions to ensure the effective delivery of government services. These services could be the safety and security of citizens, benefits of schemes in the social sector or maintaining the environment and green cover of the nation. Public oversight of such programmes would ensure effectiveness of delivery rather than hinder the process and help cleanse governance.

18. The CAG or the Supreme Audit Institution, has been mandated by the Constitution makers as an independent and objective body to ensure financial accountability of Government to the legislature. Investing the external auditor with the freedom as devised in the Constitution has indeed been a remarkable display of far sight. I am indeed privileged to be part of that Institution whose fundamentals, professional competence and objectivity have no parallels.

The Institution has an impeccable legacy and its systems are robust and foolproof with a tradition of zero tolerance of error.

The professionalism of the Indian Audit and Accounts Department has won us worldwide acclaim. Our competent and professional human resource endowment, has won us accolades as we perform oversight functions on some very complicated, specialized and large multinational institutions.

19. The Indian Audit and Accounts Department recognizes that its strength is maintaining its huge pool of accounts and audit professionals consistently trained and updated. We recognize that our capital is our human resource and hence ensure that continuous training of our professionals keeps them comparable with the best global standards.

20. We have recently undertaken certain innovations and policy reorientation to ensure that we remain abreast with present day dynamics. Our capability to audit specialized sectors such as Oil Exploration, Space and Atomic Energy is largely due to the continuous subjecting of our professionals to global training programmes. This has ensured that we withstand intense scrutiny of our procedures, methodologies and guidelines. We have recently taken some steps to undertake social audit by engaging with citizen groups and NGOs who are working at the field level in different social sector initiatives. Thus to achieve last mile outreach and get a better understanding of local issues in audit such as water pollution, rural employment guarantee programmes and rural health projects, we have taken the assistance of credible citizen groups engaged at the field level in these sectors. This has served as a force multiplier for us. It has provided us an outreach and ensured them a credible voice in their legislatures.

21. It is our firm belief that our mandate is not merely to prepare reports and place them in the legislature. The constitutional mandate places a larger responsibility: that of holding the government financially accountable to the legislature. It enjoins upon us to keep the ultimate stakeholder viz. the man on the street, apprised of the outcomes of government spending and not merely conduct expenditure audits. Thus to sensitise public

opinion, we have taken steps to disseminate audit findings to citizens groups, non-governmental bodies, educational institutions and the media. It is with this objective in mind that we have devised what are commonly referred to by us as "Noddy Books" which provide a snapshot of our salient audit findings and recommendations. These "Noddy Books" also prominently display good practices adopted by implementing agencies and provide a channel for dissemination of these practices to other institutions implementing such projects.

22. The country is poised on an inflexion point. We have the heightened outrage of a citizenry, which seeks and whose aspirations must be converted, into a positive outcome such as change in the approach to administration by government. We should not permit a further widening of the fissure between the government and the citizen. The nation can ill afford the latter path. After all what does the citizen seek?

- Transparent, objective and swift decision making.
- An administration responsible to the needs of the society and accountable to it.
- An ethical and moral code underlying all administrative decisions conscious of the dictum that Caesar should be above suspicion.
- An alert and impartial judiciary conscious of the dictum that justice delayed is justice denied.

This is possible only if elections are devoid of money power, regulatory and statutory bodies are made truly independent, administrative decision making is made participative and the rule of law is actually allowed to take its course. Not a tall order, if all of us, were to make our democracy truly of the people, by the people and for the people.

23. The India story attracts worldwide attention as it involves one sixth of the global population. The struggle for dignity and prosperity of this population, through social and economic transformation, is being closely watched by rest of the world. All decisions that we take regarding political reforms and economic liberalization, will have consequential global ramifications. The

India story thus unfolds slowly, albeit with certainty. The challenge before the nation is enormous. Too much is at stake for too many people. The responsibility to deliver economic growth, and ensure it is inclusive, is no doubt that of the government. This growth can be sustainable only if it is built on the foundation of good governance. A governance which has as its pillars: probity, transparency and accountability. Such an architecture needs an entirely new moral and ethical framework. In doing so the citizen has a reciprocal responsibility requiring a more pro active role in moulding the environment rather than reacting and responding to situations. Each one of us present here today have a role in building such a framework.

We owe it to our preceding generation who bequeathed to us, an India rich in heritage, culture, resources and ably administered.

We owe it to ourselves to enjoy and feel content from the fruits of economic development being shared by all of Bharat.

We owe it to Gen Next, to bequeath to them, an India richer in all respects than we inherited so that when the India story is written, it will be written that when the challenge arose we faced it squarely and ensured society emerged richer.

AUDITOR'S NOTEBOOK

Dharam Vir*

(i)Towards efficient expenditure management…Need for sunset clause; (ii) International peer review of the Supreme Audit Institution of India; (iii) The PAC and the COPU at work

(i) Towards Efficient Expenditure Management….Need for Sunset Clause

While presenting the annual Union Budget for 2013-14, the Finance Minister articulated Government concern at the proliferation of Central Plan schemes (numbering 173 at the end of the Eleventh Five Year Plan) and announced that not merely the existing schemes would be restructured and collapsed into 70 schemes but also that each scheme shall be reviewed once every two years.

In December 2011 the Ministry of Finance had issued elaborate instructions for detailed review of the on-going Eleventh Plan schemes for deciding on their continuance during the Twelfth Plan. According to these instructions, the following categories of schemes needed fresh appraisal, namely; schemes requiring modification as suggested by the Planning Commission; schemes which involved merger with modifications in basic parameters of the constituent schemes; schemes which were to run their course in the Eleventh Plan period but due to some reason, significant part of their mandate remains to be fulfilled; and schemes approved for the Eleventh Plan period but proposed to be continued in Twelfth Plan period as well. The Ministry had also instructed that the other schemes could be continued by the Ministries only after evaluation through independent, impartial and reputed agencies followed by

* Shri Dharam Vir is a former Deputy Comptroller & Auditor General of India

critical in-house examination of the result of such evaluation. This exercise was to be completed within the first year of the Twelfth Plan, and a more specific and definite timeline was prescribed in April 2012 in terms of which the exercise must be concluded by December 2012.

In January 2013, the deadline was extended to March 2013. This was stated to have been necessitated because of delay in finalization of Twelfth Plan outlays.

Because of the new extended timeline, even for the second year of the Twelfth Plan the annual budget for 2013-14 has been prepared apparently without taking a final view on the desirability or otherwise of continuance of the on-going Plan schemes. The question whether the review of the schemes should be linked with the finalization of Twelfth Plan outlays need not detain us, but it is also seen that contrary to the standing instructions of the Planning Commission some of the Ninth and Tenth Plan schemes had been continued during the Eleventh Plan without fresh appraisal.

Government has announced several initiatives over the years for ensuring that spending programmes are regularly reviewed for their continued effectiveness and relevance and are not carried on indefinitely. One of the earliest such initiatives was the introduction of zero-based budgeting in the eighties which envisaged fresh examination of the need for each programme every year not merely for its prioritization but also for discontinuance of the programmes which had ceased to be relevant. However, the general impression is that this remained mainly a non-starter.

More recently Government formally codified duties and the responsibilities of the Secretary to Government as the Ministry's Chief Accounting Authority in 2005.[1] Accordingly, the Secretary has been made responsible for the efficient, effective and economical use of the resources of the Ministry and he must review and monitor regularly the performance of the schemes to

[1] Rule 64 of the General Financial Rules 2005

determine whether these are achieving the anticipated objectives. In this he is assisted by the Ministry's Financial Advisor, a high ranking officer at the level of Additional Secretary/Joint Secretary, who is mandated to assist the Ministry in moving over to zero-based budgeting and set up appropriate appraisal and evaluation systems.[2]

Outcome budgeting which was introduced for the first time in 2005-06 and has since become an integral part of the annual budgetary exercise is another mechanism that was intended to serve as a performance measurement tool which inter alia helps in evaluating programme performance so that the schemes and programmes are not continued from one Plan to the next Plan without independent in-depth evaluation.[3] There are also standing instructions for incorporating the concept of periodic evaluation in all schemes as a regular feature. Government's annual budget circular routinely emphasizes the need for prioritizing all schemes for identifying schemes that can be eliminated or curtailed.

The continuance of some of the Ninth Plan schemes during the Tenth and the Eleventh Plans and the carry forward of the on-going schemes to the Twelfth Plan without fresh proper appraisal or review is indicative of a serious compliance gap between precept and practice.

Although legislature's financial supremacy over the executive is one of the defining characteristics of parliamentary democracy, the Parliament's Departmentally Related Standing Committees which examine the Ministries' Demands for Grants after the presentation of the annual budget do not ordinarily look into the question of continuation of schemes and are in fact specifically restrained from suggesting anything of the nature of cut motions. The same could be more or less said of the Estimates Committee despite its comparatively larger mandate to examine whether the money is well laid out within the policy implied in the

[2] Government of India Ministry of Finance Redefined Charter for Financial Advisors 2006

[3] Government of India Budget Manual

estimates and even to suggest alternative policies for bringing about economy and efficiency in administration.[4]

The Ministries are required to prepare a Results Framework Document every year which inter alia sets out the key activities to be undertaken during the year. This is a collaborative exercise of the Ministry and the Performance Management Division of the Cabinet Secretariat with which outside experts are also associated and the document is signed not merely by the Ministry's Secretary but also by its Minister to indicate political commitment. Apparently, this important management tool which was introduced in consequence of an initiative of the Prime Minister has not proved sufficiently effective in ensuring timely review and appraisal of schemes.

Be as that it may, the need for fresh periodic appraisal of spending programmes can hardly be over-emphasized. The schemes are formulated and appraised with reference to the available information, baseline data, the prevailing appraisal criteria etc. These do not remain static over time. Practical difficulties arise in the implementation of the schemes which may call for review of the methodology of Government intervention. Even the initial objectives may require review. With the Ministries and the State Governments often functioning in silos, the possibility of introduction of schemes with identical/overlapping objectives cannot be ruled out.

In the case of the all-India schemes, the one- hat-fits-all approach that is initially adopted frequently ends up with sub-optimal results when faced with the State-specific ground realities. The needs of individual States may undergo changes over time.

The persistent sub-optimal outcomes of some of the schemes like the Integrated Child Development Services which despite the massive outlays for over three decades has been unable to ensure respectable levels of child nutrition or infant mortality rates or of the Sarva Shiksha Abhiyan which has been unable to

[4] Rules of Procedure and Conduct of Business in Lok Sabha

improve learning outcomes are illustrative of need for review of the very strategies of Government interventions.

There can also be unintended side effects of State interventions. This is best illustrated by the on- going debate and discussion on the MNREGA scheme with even the some sections in Government expressing concern about the effect of this flagship scheme on rural wages and the availability of farm labour, the shift away from crops which are more labour intensive and less amenable to mechanization, the high rate of food inflation, the deskilling of labour, etc. Also the wisdom of what is often derisively, even if unfairly, called as a ditch-digging scheme which increases incomes but does not add to productive assets (the classical Keynesian approach of digging holes and filling them up in order to generate employment and incomes in an economy that is in the throes of depression) has been questionable in the present stage of country's economic development.

The short point is that while the need for periodic reconsideration of spending programmes cannot be disputed, the existing mechanisms for ensuring their timely appraisal and review have not proved quite effective. There can also be vested interests in continuing the programmes, which sometimes carry possibilities of political patronage, or even rent seeking.

The continuance of Plan schemes almost by default and without de novo scientific re-examination of their effectiveness and without exploring alternative policy options is not conducive to efficient expenditure management and optimum use of nation's resources. The announcement made in the budget speech of the Finance Minister for review of each scheme every two years needs to be earnestly implemented. For this the review of Plan schemes and spending programmes for their continued relevance and effectiveness should be included as one of the key areas in the Ministries' Results Framework Documents with significant weightage.

Also, a sunset clause should be included in the scheme design that will result in its automatic closure after the initially stipulated period unless a fresh conscious decision is taken for its

continuance. This will bring about better financial discipline and ensure that the on- going schemes are not continued by default or despite their diminishing value for money and only such schemes as are found to be necessary and relevant after fresh rigorous cost-benefit analysis are budgeted and funded.

(ii) International Peer Review of the Supreme Audit Institution of India

An international peer review team led by the Australian National Audit Office and including representatives from the Supreme Audit Institutions of Canada, Denmark, The Netherlands and the United States of America reviewed the performance audit function of the CAG and presented its report in October 2012. The CAG is to be complimented for placing the peer review report along with its response in the public domain.

The peer review evaluated the performance audit function of the CAG against the criteria based on the key legislative authorities and professional standards like the Constitution of India, the DPC Act, the Regulations on Audit and Accounts, Auditing Standards, Performance Auditing Guidelines, Audit Quality Management Framework (AQMF) and other relevant professional guidance benchmarked against international practices wherever relevant. The peer review report is based on a sample of 35 Performance Audit Reports out of a total of 221 reports presented to the Union and the State legislatures during April 2010 to March 2011.

The scope of the peer review focused on AQMF prescribed by the CAG as it pertains to performance audit reflecting its essential role in providing assurance to the CAG that the IAAD is meeting the applicable standards of professional performance. According to the peer review report the AQMF is conceptually sound and provides a basis for its adherence to the applicable standards of professional practice even as there is need for updating it as well as the Auditing Standards and the Performance Auditing Guidelines. The report also stresses the need for better dissemination of the AQMF and introducing an annual quality assurance programme for a sample of performance audit reports

presented during the year for identifying scope for further improvement and absorbing the lessons learnt.

Although the performance audits are conducted and the reports are presented in a structured manner stating upfront inter alia the audit objectives and the audit criteria, the peer review noted that the audit criteria were frequently expressed in terms of the source of criteria (i.e the applicable laws, orders, instructions etc) and not as normative statements of expected performance. The peer review has recommended better alignment of audit objectives, audit criteria and test programmes.[5] Incidentally, since the performance audit reports almost invariably include 'recommendations', the identification of opportunities for improvement and making recommendations could be included as one of the audit objectives. In this connection the peer review has also suggested that the audited entities should be requested to directly respond to each recommendation in the draft audit report and that the responses should be published in the final audit report.

The peer review has pointed out the need for greater balance in reporting the results of performance audit. It has also recommended that the audit evidence should be properly validated before it can be used as the basis of audit findings and conclusions.

An interesting recommendation made in the peer review report relates to consultation with third parties, that is entities other than the audited entities, involved in the delivery of Government programmes and services. According to the peer review the activities of third parties affect programme and service delivery, and the audit reports often include comments on their responsibilities and performance. Consulting with third parties during the course of audit can bring important perspective to audit, provide additional information about the programme administration and will be consistent with the principles of natural justice since the audit comments can affect their reputations. According to the peer review many SAIs send relevant extracts of the draft audit reports to the third parties for their comments.

[5] Perhaps there is scope for deriving the audit objectives and criteria from the Regulations on Audit and Accounts, particularly Regulations 43, 44 and 69

In relation to the third parties, the CAG's concern has mainly focused on the access to relevant audit evidence. It is in this context that Regulations on Audit and Accounts prescribe that the audit evidence includes not merely the data, information and documents of the audited entity but also those obtained by the audited entity from a third party and relied upon by it in the performance of its functions. Not merely that. If the evidence obtained by the audited entity is found to be insufficient for the purposes of audit, additional information may be requisitioned from the third party through the audited entity.[6] In other words Audit does not directly interact with the third parties.

In an understandably cautious response to the suggestion and consistent with the aforesaid approach CAG had advised the peer review team that the SAI expected the audited entity to interact with the third parties whenever there were audit comments critical to third parties. CAG has, however, agreed to examine the issue in consultation with the stakeholders given the present state of accountability of audited entities and third parties.

It is to be noted that third parties feature in audit observations not merely in programme performance audit when these are involved in programme delivery, but also in the audit of receipts like income tax when cases of short/incorrect assessment or collection of receipts are commented.

A critical factor in taking a decision on the peer review suggestion would be the need for independent verification of the response of third parties to audit comments and for that purpose the right of Audit to access their accounts, books, papers and other documents. This should be not merely in relation to the particular transactions under audit comment but the totality of their records. Unless Audit has such a right that is in no way inferior to the powers vested in the CAG under the DPC Act in relation to the audit entities, there is a serious risk of Audit being outwitted if the final audit conclusion relies upon unsubstantiated and unverified response of the third parties. There are also issues of delays as well

[6] It is not known whether this has ever been invoked

as the moral hazard in case Audit directly interacts with third parties.

The peer review is a balanced document. The review is appreciative of the complex environment in which the IAAD operates. The review describes some of the good practices of the CAG like the constitution of Audit Advisory Board 'that will be of interest to other audit offices in their pursuit of continuous improvement' The review also notes that the stakeholders like the PAC, COPU and senior Government officials with whom the peer review team interacted provided positive feedback, in particular, regarding 'the valuable information, otherwise not available, on the performance and on-the- ground impact of Government programmes and funding' contained in the performance audit reports.

The peer review should provide some satisfaction to those who raise the eternal question "Who audits Audit?" A similar review was conducted by the National Audit Office UK in 2003. That review had ranged over the entire gamut of functions of the IAAD.

(iii) The PAC and the COPU at work

The Lok Sabha Secretariat prepares an Annual Financial Committees Review every year which is a sort of report card on the work done by the three financial committees of the Parliament viz; the Committee on Public Accounts (popularly known as the PAC), the Committee on Public Undertakings (COPU) and the Committee on Estimates during the preceding committee year from May to April.

The number of audit paragraphs / subjects / undertakings selected by the PAC / COPU for detailed examination, the number of sittings, the total duration of sittings, the minimum and the maximum numbers of sittings attended by a member and the range of duration of each sitting are tabulated below:

Name of Committee	Year	Number of Audit paragraphs/ subjects/ Undertakings selected for detailed examination	Number of sittings	Total duration of sittings	Number of sittings attended by a member Min Max	Duration of each sitting
PAC	2010-11	15 subjects/paragraphs	34	73 hours and 30 minutes	9 33	From 16 minutes to 3 hours and 30 minutes
	2011-12	37 subjects/paragraphs	21	43 hours and 50 minutes	5 19	From 45 minutes to 3 hours
COPU	2010-11	16 Undertakings / subjects and 4 paragraphs from Audit Reports	17	24 hours and 40 minutes	3 16	From 15 minutes to 2 hours and 20 minutes
	2011-12	14 Undertakings /subjects and 6 paragraphs from Audit Report	14	22 hours and 45 minutes	3 13	From 30 minutes to 2 hours and 45 minutes

Notes:

(1) The PAC had constituted three sub-Committees during 2010-11 and four sub-Committees during 2011-12; these sub-Committees met for nineteen hours and thirty minutes (15 sittings) and for eight hours (six sittings) during these years respectively.

(2) The number of Audit paragraphs/subjects/undertakings selected for detailed examination during a year includes the number carried forward from the previous year(s).

(3) Both the Committees comprise 22 members each including the Chairman. The Chairmen were present in all meetings.

While the PAC did not undertake any on-the-spot study during either of the two years, the COPU undertook two study visits to (i) Srinagar and Leh, and (ii) to Imphal Aizwal, Shillong and Gauhati during 2010-11.

The PAC presented thirteen (original seven; Action Taken six) Reports and twenty five (original 15; Action Taken 10) reports during these years respectively. Nearly eighty per cent of the recommendations of the PAC were accepted by Government even as there are issues with the implementation of the accepted

recommendations.[7] Additionally, seventeen Action Taken Notes of the various Ministries on the Action Taken Reports of the PAC were also laid before the Parliament during these two years.

A total number of three (original two; Action Taken one) and four Action Taken Reports were presented by the COPU during 2010-11 and 2011-12 respectively.

The PAC devoted twenty out of the total number of thirty seven sittings during 2010-11 to the subject of 2G Spectrum. Six of these sittings were held before the Audit Report on 'the Issue of Licences and Allocation of 2G Spectrum' was presented. Apart from officials and former officials, a corporate lobbyist, representatives of several corporate houses and media persons also appeared before the PAC for evidence. The PAC had issued a press notice inviting private parties in this connection.

During 2011-12, the PAC took oral evidence of a retired officer of the CAG's organization on the latter's reported differences of opinion with the CAG on calculation of presumptive loss in the allocation of 2G Spectrum. In this connection the practice so far had been in accordance with following position stated by the first CAG of independent India Shri V Narhari Rao before the PAC in May 1951 "For all that is included in the Audit Report, including opinions, the ultimate responsibility is that of the Auditor General, who countersigns the report, but he holds the Accountant General responsible to himself".[8]

As per media reports, the PAC report on the case to the Parliament is held up because of lack of unanimity amongst the members which is a must under the rules.[9] The Audit Report raises serious issues of accountability and governance including the relationship between the Minister and the Secretary (who was rather peremptorily over- ruled by the Minister) as well as the role

[7] In a recent report the PAC had suggested that the CAG might carry out a study on the extent of actual implementation of its recommendations. (Agenda Notes for AG conference 2008)

[8] Annexure II of Appendix L to the First Report of the PAC 1951-52

[9] Rules of Procedure and Conduct of Business in Lok Sabha and the Directions issued by the Speaker

and the accountability of the regulatory authorities. Given the highly fractured nature of polity, time has perhaps come to revisit the rules to permit minutes of dissent, with appropriate safeguards, so that the PAC report is not held hostage to an elusive unanimity.

It also bears to be recalled that earlier in 2003, on the Audit Report on Procurement for Operation Vijay (Kargil war related defence purchases which included comments relating to purchase of aluminum caskets-i.e. coffins) the PAC held a number of sittings during 2001-02 and 2002-03 and also took evidence of the witnesses on a very large number of purchase cases featured in the Audit Report but eventually presented what may be called a 'non-report' to the Parliament stating that it was not in a position to give its findings since Government had not agreed to make available certain secret documents to the PAC. Government had declined to supply the documents on the ground that this would be prejudicial to the interest of the State as per the rules but also offered to show the documents to the Chairman in the chamber of the Honourable Speaker. The ultimate loss was that of public accountability.

Another question that needs serious consideration in this context is the availability of evidence tendered before the Committees in the public domain. Currently the evidence of the witnesses can be accessed only with the prior approval of the Honourable Speaker in each case. The need for such approval can be an inhibiting factor. The evidence of the witnesses along with the questions put to them provides valuable insights into the working of Government machinery including the informal structures that supplement or even supplant the formally laid down procedures and these can be of immense interest to serious students of public administration and accountability. The evidence reproduced in the Committee's report or otherwise referred to in the report is an inadequate substitute for the information.

In view of the increasing public hunger for information and accountability, and consistent with the spirit of the Right to Information Act, 2005, the existing rules need to be revisited so that the evidence tendered by the witnesses is suo moto available in the public domain after the presentation of PAC report without the need for specific approval of the Speaker on case to case basis.

The evidence should also be placed in the public domain if the Honourable Speaker is satisfied in a particular case that the Committee is not likely to present its report to the Parliament.

India is one of the select group of countries that put out an annual review of the activities of the PAC (and the COPU). The review can be enriched by including additional information on the number of cases in respect of which Government has not submitted the Action Taken Notes, the number of cases in which the Government response to the recommendations has not been received and the details of cases in which Government did not accept the recommendations.

The PAC (and the COPU) reports are not normally discussed in the Parliament. A discussion in both Houses based on the annual review amplified on the lines suggested without the matter being put to vote will bring to bear the collective weight of the Parliament on the work of these financial watch dog committees and thereby strengthen legislature's financial supremacy over the executive and public accountability.

EMERGING ACCOUNTABILITY FRAMEWORK FOR LOCAL SELF GOVERNMENT INSTITUTIONS: ROLE OF PUBLIC AUDITORS TOWARDS GOOD GOVERNANCE

K. P. Sasidharan[*]

The recommendations of the Thirteenth Finance Commission facilitated in enhancing allocation of financial resources to the Panchayati Raj Institutions (PRI) and Urban Local Bodies (ULB), the tertiary governance structure set up consequent to 73rd and 74th Amendments to the Constitution of India in 1992.The constitution envisages a key role to the local bodies in 29 functions mentioned in the Eleventh Schedule of the constitution including education, health and agriculture.

The constitutional status of the Local Self Government Institutions (LSGI) enables them inter alia to have a system of uniform structure, periodical elections for people's representatives and regular flow of funds for planned economic development. The internal control system at the level of each LSGIs has been designed by each state government through a state legislation and rules framed there under laying down applicable regulations and policies relating to finance, budget, personnel and related matters. Out of 28 states and 7 Union Territories of the Union of India, except three states Nagaland, Mizoram, Meghalaya and all the Union Territories except Delhi, the third tier of government is in operation. Almost all the states have by now enacted separate state acts and rules for implementation of LSGIs.

Need for Effective Accountability Framework for LSGIs

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The Approach Paper of the 12th Five Year Plan (2012-17) shows the extent of flow of funds for 13 flagship Development programmes in the 11th Five Year Plan period as Rs. 691,976 crore. The total allocation in the 12th Five Year Plan period will be much higher. Some of the central and state flagship programmes under implementation with multifaceted development objectives for the growing population of the country are the following: Pradhan Mantri Gram Sadak Yojana(PMGSY); Accelerated Irrigation Benefit Programme(AIBP); Rajiv Gandhi Gramin Vidyutikaran Yojana(RGGVY); Accelerated Power Development & Reforms Programme(APDRP); Indira Awaas Yojana -(IAY); National Rural Employment Guarantee Scheme (NREGS); National Horticulture Mission(NHM); Rashtriya Krishi Vikas Yojana(RKVY); Sarva Shiksha Abhiyan (SSA); Mid Day Meal Scheme (MDM); Integrated Child Development Scheme- (ICDS); National Social Assistance Programme(NSAP); National Rural Health Mission (NRHM); Jawahar Lal Nehru National Urban Renewal Mission (JNNURM); Total Sanitation Campaign (TSC); and National Rural Water Supply Programme (NRWSP).

Most of these programmes are executed by implementing agencies at the state and district levels. They are largely funded by the Central Government, with states contributing a defined percentage share. The funds flowing from the centre to the states and local bodies include plan and non-plan transfers. Non-plan grants are transferred through the treasury route. Plan funds move through treasury or direct transfer to the bank accounts of implementing agencies like the zila parishads, the NGOs, district rural development agencies and gram panchayats. Many of the local bodies also mobilize tax and non tax revenues, as well as obtain borrowings and transfers from the State or Central Government.

No doubt, as constitutional entities, urban local bodies and panchayati raj institutions should be delegated adequate financial powers and autonomy and should have their own annual budgets and development plans. It is important that the budgets of LSGIs should clearly delineate the total resources available with all the local bodies under their remit by suitable accountability structure.

As the money flows through multiple channels, with no single window, it is currently cumbersome to track down the total available resources at LSGI level and how far the funds are economically, efficiently and effectively utilized for the purpose for which they are allocated. It is pertinent to note that there have been numerous media reports and number of registered allegations about leakage and diversion of substantial volume of funds allocated to the flagship programmes, their poor implementation and sub-optimal outcomes. The key challenge in the Twelfth Plan period (2012-17) must be, therefore, to ensure proper accounting and accountability framework to help better development planning and good governance by LSGIs supported by reliable, up to date Management Information Systems for informed decision making.

CAG's Role for Improving Accountability Regime of LSGIs

Traditionally, CAG has been auditing the large LSGIs under Section 14 of CAG's DPC Act, 1971 wherein any institution substantially financed by grants or loans from Consolidated Fund of India or that of any State attracts CAG's audit. Government Audit in India has unitary characteristics in the sense that the same agency (CAG) audits the Union government as well as the State government accounts. In case of the third tier of government, the audit arrangement is different. While the statement of objects and reasons to the constitutional amendment for the Constitution 74th Amendment Act stated: "……. It is proposed to add a new part relating to the Urban Local Bodies in the Constitution to provide for … (j) audit of accounts of the Municipal Corporations by the Comptroller and Auditor General of India and laying of reports before the Legislature of the State and the Municipal Corporation concerned," but in the act itself it was left to the wisdom of state legislatures stating in article 243Z, that the Legislature of a State may, by law, make provisions with respect to the maintenance of accounts by the Municipalities and the auditing of such accounts. For most of the states the Director Local Fund Audit or similar authority is the primary auditor of these bodies.

Successive Finance Commissions have been recommending stronger role for the CAG in the audit of local bodies. The Eleventh Finance Commission recommended audit of

accounts by CAG and placement of the audit report before a committee of the State Legislature constituted on the same lines as Public Accounts Committee. The Second Administrative Reforms Commission emphasized the need to oversee and control the audit of accounts of urban local bodies by CAG and institutionalizing technical guidance and supervision by CAG over maintenance of accounts and audit of PRIs and ULBs. The National Commission for Review of the Constitution underlined the importance of prompt audit of accounts of local bodies and recommended that CAG be empowered to conduct the audit or lay down accounting standards. The Twelfth Finance Commission recommended that the State Government should put in place an audit system for all local bodies and CAG be entrusted with Technical Guidance and Supervision (TGS) over audit of all local bodies and that his Annual Technical Inspection Report as well as the Annual Report of the Director of Local Fund Audit be placed before the state legislature. The Thirteenth Finance Commission added that entrustment of TGS must be one of the mandatory conditions for release of grants to LSGIs.

Accordingly out of the 24 states where 73rd and 74th constitutional amendments are applicable, almost all states have entrusted TGS to CAG. Consequently audit of LSGIs is carried out under section 20(1) of the C&AG (DPC) Act, 1971 under the request of the state government. Some of the State Accounts for urban local bodies have supporting provisions for C&AG's audit. The parameters of Technical Guidance and Supervision (TGS) to the Directorate of Local Fund Audit include assistance by CAG in formulation of applicable auditing standards, audit planning, guidelines for certification of accounts, training modules, National Municipal Accounting Manual, preparation of list of codes, functions, programmes and activities for classification of accounts of LSGIs, simplified accounting system, improved audit methodologies and professional training. CAG also supplement the audit done by the Local Fund Audit Department to ensure proper certification of accounts. CAG has prescribed accounts and budget formats and accrual accounting system. Besides, a number of training programmes have been conducted for the Local Fund

Audit Department officials as a capacity building measure in most of the states.

The CAG of India has mandate for conducting audit under the three well established streams of audit viz. Certification Audit, Compliance audit and Performance Audit. The certification of accounts requires attestation of financial statements, giving an assurance that the books of accounts are correct and free from any material misstatements and is normally done by the primary auditor to the entity. Compliance or Regularity Audit is done to verify whether provisions of relevant Acts, rules and regulations are complied with. Performance Audit evaluates efficiency, effectiveness and economy of carrying out the assigned activities by the entity with reference to its targets, expected outputs and outcome tracking down the fund flow and its effective utilization. In most of the states, AG offices have a separate wing for audit of local bodies. The frequency of audit of LSGIs varies depending on the size of the municipal body. While audit of municipal corporations are normally done annually, smaller municipalities and bodies like Nagar Panchayats are audited in every three to five years.

CAG has been regularly conducting Performance Audits of important central and state government programmes based on risk based audit selection methodology. Performance Audit highlights systemic and procedural deficiencies and recommends measures for improvement. Financial and compliance audits done by the CAG have been raising accounting and budgeting concerns, inadequate budgetary controls, unapproved budgets, absence of planning; issues on cashbook such as differences in opening and closing balances, non-accountal of receipts, non-reconciliation of cash book with bank pass book. There are issues on accounts such as delay in preparation of accounts, incomplete accounts, non maintenance of accounts in the proper formats, rendering comprehensive analysis of receipts and expenditure difficult, lack of a consolidated accounts and issues on utilization of funds on account of incomplete works, release of excess grants, non-adjustment of Abstract Contingent Bills, non-maintenance of property records along with encroachments and diversion of funds.

The findings include issues relating to weak material management, absence of periodical stocktaking, not reconciling shortages, purchases without tenders as well as issues on internal controls such as lack of internal controls in the areas of budgeting, procurement of stores and execution of works leading to fraud, misappropriation and embezzlement of funds.

In six states separate CAG's reports on LSGIs are being placed in the respective Legislative Assemblies viz. Andhra Pradesh, Karnataka, Kerala, Maharashtra, Tamil Nadu and Rajasthan. In other states, important audit issues are consolidated and submitted to the State governments in the form of Annual Technical Inspection Report (ATIR) and the states like Bihar, UP, West Begal, Uttarakhand, Haryana, Jharkhand, Punjab and Tripura have decided to place ATIR before the respective State Legislatures.

Need for Outcome Based Audit Approach

How does our parliamentary democracy ensure that funding under the plan and non plan schemes for the nation building at the disposal of LSGIs is used for the purpose? Are the programmes and projects undertaken by LSGIs being completed as per the scheduled outlay within the timeframe, achieving the expected output and outcome? Is there proper accounting supported by requisite books of account, financial reporting and proper accountability regime for LSGIs now and if not how can it be improved?

Considering the need to measure outcome in order to assess the impact of such schemes, the focus shifted from outlays to outcome budgeting from 2005-06, with an emphasis on targets, quantifiable deliverables, physical outputs and institutional reforms in the delivery systems of these programmes. A medium-term expenditure framework statement has also been introduced in the Fiscal Responsibility and Budget Management Act, 2003, to facilitate the optimum allocation of resources for prioritized schemes and weed out those that have outlived their utility.

Realizing that good governance is essential for sustainable and inclusive development, the Central Government has adopted

"citizen's charter" initiatives to bring greater transparency, accountability and responsiveness to administration. The concept is based on trust and cooperation between the service provider and its users, adapted from the United Kingdom, which introduced it in 1991 and re-launched it in 1998, emphasizing "services first" to continuously improve the quality of public services by empowering citizens. Public money should be spent while ensuring the accountability of individuals and organizations, and in compliance with applicable acts and regulations to enhance service delivery. The nine essential components of service delivery are: settled standards of service; the right to full information, consultation and involvement; encouraging access; the promotion of choice; fair treatment; putting things right when they go wrong; the effective use of resources; innovation; collaboration with other providers.

One of the rational approaches before the government for the purpose of reducing the common man's alienation from the state, and restoring his faith in the state's capacity to design citizen-centric development programmes, is to ensure effective implementation with timely monitoring and mid-course corrections and, if needed, policy interventions. The office of the Comptroller and Auditor General of India (CAG) is constitutionally mandated to ensure that the people's representatives oversee public expenditure, promoting accountability and good governance. High-quality auditing can provide valuable, quantitative and qualitative inputs for formulating effective policy interventions. Learning from the root cause analytics of an effective audit may help promote accountability.

The responsibility of certification of accounts of the three tier grass root level institutions of democracy and audit of LSGIs assumes greater significance in the light of the much quoted statement of our former Prime Minister Shri Rajiv Gandhi about the possibility of even 85% pilferage of funds in these development schemes when it reaches from the central government to states to local bodies and finally to the beneficiary in the Gram Panchayat (GP) level. Even if the leakage of development funds is

not as high as 85 per cent of the total allocation, as estimated by the former Prime Minister, it does exist.

An outcome-oriented, competent audit appreciates that the commitment of the executive is a prerequisite. Intensified communication between the CAG and the government machinery could help the executive find valuable inputs from objective and authenticated audits of the performance of different projects. This could, in turn, enhance the CAG audit and its capability to provide an independent assurance to stakeholders. India's post-liberalization growth story was relatively unscathed by the global recession because of impressive policy initiatives, the benefits of which must reach all Indians.

Books of Accounts and Certification of Accounts for Accountability

An important prerequisite for accountability is that the financial statements should be prepared on time and audited professionally to provide assurance to the stakeholders that the public funds have been spent judiciously. There should be an obligation on local bodies to devise a means of providing the electorate with financial information about services in a reasonably simple and straightforward manner. Historically the accounts of the Urban Local Bodies were prepared on single entry cash basis which limited their ability to prepare meaningful financial statements. Manual accounts with multiplicity of registers along with limited capacity of the staff resulted in accounts remaining in arrears. Efforts by various agencies have had an impact on the improvements in the accounts of the ULBs, but the position is still not satisfactory. While there has been reasonable progress in states like Karnataka, Kerala and Sikkim and Municipal Corporations have adapted to the accrual based double entry system faster than the smaller municipalities, the accounts for a large number of ULBs are still on cash basis, incomplete and in arrears.

Based on Eleventh Finance Commission recommendations and the guidelines issued by Ministry of Finance, a task force was constituted to formulate budget and accounting formats for the ULBs. Consequently National Municipal Accounts Manual 2004

was prepared, detailing the applicable accounting policies, procedures and guidelines to ensure correct complete and timely recording of transactions and preparation of reliable financial reports. The manual provides for a codification structure for capturing all types of financial information of an LSGI including the budget based on various functions and the accounting of individual transactions. States are expected to adopt the national manual or update their manual in line with the same and prepare accounts accordingly. While states like Andhra, Karnataka, Kerala, Rajasthan and Uttarakhand have prepared their state manuals on the basis of the national manual and implemented the same, others have either not followed or are in the process of doing it.

The respective state legislation prescribes the Panchayats and Municipalities to maintain such books of accounts and other books in relation to its accounts and prepare an annual financial statement of accounts. There are specific provisions to maintain asset registers, works manual, reporting loss due to fraud, theft or negligence, budget, internal audit, inspection, external audit, ombudsmen, citizen charter, right to information. Preparation of accounts as per the applicable accounting rules, standards and principles supported by proper books of accounts are inevitable for ensuring accountability of these bodies and proper financial reporting. Cost of services being provided with comparable service level benchmarks will provide some indices to evaluate quality of outputs and outcomes, focusing on a few critical aspects of performance.

Preparation of Accounts, Financial Reports and Certification of Accounts of LSGIs by Chartered Accountants

The Ministry of Rural Development issued a circular in July 2012, making mandatory for the Gram Panchayat accounts of MGNREGS to be certified by CA firms in accordance with the scheme guidelines. The certification job will commence from financial year 2013-14 onwards; but pilots have already been launched in 10% of GPs of highest spending districts in all States, based on accounts of 2011-12. In accordance with the provisions of Section 24(2) of Mahatma Gandhi National Rural Employment Guarantee Act, 2005, the accounts of the scheme shall be

maintained in such form and in such manner as may be prescribed by the state government. GPs are required to maintain accounts in the prescribed formats by the respective state regulations. The books of accounts to be maintained are prescribed in the Operational Guidelines: Cash Book, Receipt and Payment Statement, Muster Roll Receipt Register, Job Card Issue Register, Employment Register, Works Register, Asset Register, Monthly Allotment and Utilization Watch Register. The Utilisation Watch Register should contain date-wise details of allotment of fund, expenditure, availability of balance etc. It should be supported by maintenance of other subsidiary records like monthly reconciliation statements with banks, post offices and Implementing Agencies (IP). The GPS should maintain proper books of accounts, supporting books, schedules, corresponding muster rolls issued by the programme Office (PO) relating to payments.

The Ministry has provided detailed check lists for MGNREGA for Social Audit in addition to the existing arrangements for Social Audit and National Level Monitors at central level, state level for planning, registration, execution of works, payment of wages and Unemployment Allowance, Finance and Accounts, monitoring, grievance redressal. There are detailed checklists for other flagship programmes too. In accordance with extant guidelines, MGNREGA funds at the district level are to be audited by CA firms, who are expected to do a check of the receipts and payment statements of the GPs. The GP accounts are normally internally audited by officials at the Block level and later by the Local Fund Auditors (nomenclature varies from State to State). In some cases, there is considerable time lag between closure of accounts and audit by Local Fund Auditors. Not every GP may be audited by the Local Fund Auditor every year. The status of the MGNREGA accounts being maintained by GPs may vary in quality across the states. In order to improve the accounting of MGNREGA funds and to ensure transparency and accountability of GPs the ministry of rural development lays out, pursuant to the provisions of Section 24(1) of MGNREGA,

definite scheme for certification of MGNREGA accounts at GP level and financial audit thereof.

The CAs are asked to examine and certify whether the books of accounts/documents maintained by the GP viz. Cash book, Receipt and Payment Statement, bank and post office reconciliation statements, utilization certificates issued are in the form and in the manner specified by the state government and in accordance with the provisions of Section 24(2) of MGNREG Act. It is to be seen whether GPs are maintaining the required books of accounts and supporting documents like Muster Rolls, vouchers and bills and not swindling development funds by creating ghost workers as reported earlier in some states.

Besides, the CA must check all registers prescribed for MGNREGA and comment on the quality of accounts, in the light of the laid down policy guidelines and the legal entitlements of right to work and livelihood security of the people. In the financial statement attestation process, the CA is mandated to identify and list out deficiencies and gaps after subjecting the system to a sort of SWOT analysis and identify systemic and procedural deficiencies and suggest how to improve the systems, procedures, and controls. He is asked to verify the material-wage ratio and comment on works taken up by the GP and certify whether MGNREGA funds have been deployed only on admissible activities and works. Of course, being an expert chartered in the financial discipline for certification of accounts, his valuable comments on funds management and other matters having significant impact on implementation of MGNREGA will be helping the government to fine tune the system.

There can be empanelment of competent CAs and CA firms for selection for audit of LSGIs by CAG like that of empanelled auditors for audit of public sector enterprises. The auditors of LSGI can be guided, trained and their performance can be overseen at random by Public Auditors to ensure adherence to applicable regulations and procedures as well as the benchmarked norms of public audit while conducting financial attestation audit of LSGIs

Emerging Accountability Regime for LSGIs

Enormous flow of funds to the direct democracy institutions with devolution of powers, responsibilities, and delegation of authority warrants effective and efficient public auditing. The fundamental objective of government is providing good governance to the citizens. Ideally, there should be goal congruence on the objective of the executive and legislature on this objective. However, due to inherent conflict of interests arising out of allocation and utilization of scarce resources, the role and responsibilities of constitutional institutions like CAG and similar bodies created for checks and balance in the parliamentary democracy are of vital significance to help checking against centralization of power, abuse, misuse, non-use and pilferage of tax payers money available and ensuring compliance with applicable regulations and effective, efficient and economic delivery of services and providing good governance.

In order to improve the accountability framework, there needs to be proper coordination, purposeful communication and interaction among the key players of accounting, auditing and accountability framework of institutions of direct democracy working at the grassroots. In most of the GPs, Social Audit Mechanism is expected to be institutionalized. Trained village community personnel examine the accounts and, if necessary, conduct investigations and public hearings as per the laid down procedures for evaluating the physical progress, assets created and outcome expected with reference to the prescribed guidelines. CAs' Certification of GPs accounts will surely form an essential link and help revamping the mechanism of Social Audit further.

The interlinking and cross flow of inputs for the certification of accounts of local bodies by CA professionals with the findings of Social Audits and Directorate of Local Bodies audit at micro-level with CAG's macro level financial audit, compliance audit and performance audit frameworks will provide a holistic accountability regime to control and improve quality of financial management and governance. To make the system fool proof, it is imperative that there should be purposeful communication flow and effective coordination with the government and non-

government functionaries at all levels from top to bottom and vice versa central, state and local bodies and implementing agencies who receive funds from different sources. A robust management information system should be in place as backbone to provide an enabling environment with updated, reliable online data flow on fund management, informed decision making for development planning, effective implementation, monitoring and taking corrective and preventive action.

Effective audit of receipts and expenditure accounts, balance sheets, cash flow statements and supporting books of accounts, reconciliation statements, schedules and vouchers of Urban Local Bodies, Panchayati Raj Institutions and Implementing Agencies for all the programmes of the Government of India and State Governments and the third tier government will surely pave the way for establishing proper accountability framework for good governance in the country. The audit opinion based on sound audit assertions about the true and fair state of accounting of the plan cum non-plan funds flow from central to state to parastatal authorities to Implementing Agencies and beneficiaries under different flagship programmes of varied ministries will improve financial discipline and transparency. To ensure proper accountability, proper accounting in the proper format in compliance with applicable rules and regulations, generally accepted accounting principles, standards and procedures become inevitable. Maintenance of essential books of accounts becomes an unavoidable prerequisite.

Accounts of PRIs and ULBs should be properly prepared showing true and fair state of finance and utilization of resources. These accounts should be certified on time. Social Audits should be not only mandated, but properly conducted in the areas of jurisdiction of these bodies to guard against leakage of funds and creation of non-existing projects on the paper and creating ghost employees, creation of fictitious assets and liabilities, unrecorded receipts and expenditures, manipulation of receivable and payables and other creative accounting imbroglio. The central, state and district, ULB and PRI administration should be in a position to have consolidated information of fund flow for effective planning,

implementation of projects, and timely monitoring. Communication Information Technology should be effectively used creating an online integrated Information Systems with updated, accurate, and reliable database for e-governance.

The overarching integrated accounting, certification of accounts of local bodies by CAs, Social Audit, audit conducted by Directorate of Local Bodies or state government agencies and CAG audit should help evolving proper accountability framework with valuable inputs for strengthening the planning process and policy formulation for effective implementation, monitoring and follow up action. Overall accountability regime should facilitate the executive in outreaching the targeted beneficiaries and thereby achievement of the desired outputs and outcomes of the development programmes as envisaged in the policy guidelines,

The government should be genuinely interested in reducing the gap between what should be done for good governance and what is exactly available in the field and in operation. Public Auditors are professionals, specialized in analyzing the gap in project administration and execution, analyzing strengths and weaknesses of the systems and procedures, control lapses, non-compliance of rules and regulations and deficiencies in governance infrastructure and delivery mechanism. Public audit is undoubtedly an inevitable instrument available for helping the parliamentary democracy to ensure supremacy of Parliament by enforcing proper public accountability of the executive and thereby providing citizen centric good governance.

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AUDIT OF SPECIAL ECONOMIC ZONES (SEZS)-NEED FOR AN INTEGRATED APPROACH

Dr. Sadu Israel*

Introduction

Conceptually, Special Economic Zone (SEZ) is an area of land that has been demarcated and is treated as a foreign territory for various purposes such as tariffs, trade and duties, with the underlying objective being an increase in economic growth and activity. The History of SEZs in India suggests that the basic model of the present day Special Economic Zone was structured with the establishment of the first Export Processing Zone (EPZ) at Kandla in the year 1965. This was, perhaps, the first EPZ to be set up in Asia. Since then, several other Export Processing Zones were set up at various parts of India.

The Special Economic Zones Act, 2005 was passed by the Parliament in May 2005 and the SEZ Act, 2005 and SEZ Rules became effective on and from 10th February 2006. The main objectives of the SEZ Act/policy render around achieving, (i) generation of additional economic activity, (ii) promotion of exports of goods and services, (iii) promotion of investment from domestic and foreign sources, (iv) creation of employment opportunities and (v) development of infrastructure facilities.

Incentives and Facilities

To achieve the above cited objectives, certain incentives and facilities listed below are offered to the units in SEZs for attracting investments into the SEZs;

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- Duty free import/domestic procurement of goods for development, operation and maintenance of SEZ units established within the SEZ areas.
- 100% Income Tax exemption on export income for SEZ units under Section 10AA of the Income Tax Act for first 5 years, 50% for next 5 years thereafter and 50% of the ploughed back export profit for next 5 years.
- External commercial borrowing by SEZ units.
- Exemption from Central Sales Tax.
- Exemption from Service Tax.
- Single window clearance for Central and State level approvals.
- Exemption from State sales tax and other levies as extended by the respective State Governments.

Concessions vis-à-vis benefits

Over a period of time, the Government had given a substantial sum in the form of tax concessions. According to the Parliamentary Standing Committee's 83rd report, presented in the Rajya Sabha in June 2007, the Ministry of Finance estimated a revenue loss of ` 175,487 crore from tax holidays granted to SEZs, for the period 2004-05 to 2009-10. Annually, this amount is equivalent to about 6-7% of the central government's receipts during 2005-06. Therefore the wisdom in extending concessions extended to SEZs is intensely debated by some quarters. This stems from a feeling that SEZs have not been serving their intended purpose of increase in economic growth and activity to the extent they should be.

The Finance Ministry too expressed its apprehensions over tax sops to SEZs when the Central SEZ Act was passed in 2005. The concerns on account of tax sops were corroborated by the Comptroller & Auditor General's Performance Audit report tabled in Parliament in 2008. This report had brought out systemic as well as compliance weaknesses in relation to SEZs that caused revenue losses to the tune of ` 246.72 crore. This report also commented on the absence of enabling provisions, resulting in ` 1,724.67 crore of revenue foregone, or irrecoverable. In January

2010, the Central Board of Excise and Customs (CBEC) recommended an overhaul of the Special Economic Zone (SEZ) Act 2005, saying it had detected gross violations of duty and tax concessions causing it to suffer a revenue loss of ` 175,000 crore to date.

The Government had already withdrawn location-specific exemptions from the dividend distribution tax or minimum alternative tax for SEZs in the country. According to the much awaited DTC, SEZ developers will be allowed profit-linked deductions (now it is investment linked) for all SEZs notified on or before 31 March 2012. Therefore, it remains to be seen whether the Parliament debates the Direct Tax Code Bill 2010, and if so, confronts the SEZ issue head-on. Given the fact that seven years ago the socio-political ramifications of SEZs are already being questioned; there is dire need to know the real cost of such development. Notwithstanding the outcome of the proposed Bill, Audit should continue to focus on the entire spectrum of approvals, operation and monitoring of SEZs to assess whether their intended socio-economic objectives were achieved.

Integrated audit approach-some key issues

Few attempts were made in the past by various functional wings of audit to examine the functioning of SEZs, but in isolation. Most of these audits were conducted with a limited objective to verify if they had complied with existing Customs Act, Rules, notifications etc. As a matter of fact, establishment of SEZ involves a series of actions ranging from land acquisition, application for land, allocation/approval of the proposal, creation of Units within the processing zone, export/import, closure of units etc., Therefore a multipronged approach is needed to examine comprehensively, at least, the top SEZ Units, on regional basis, to assess as to what extent they have been able to meet the objectives set in the SEZ policy. This, however, requires an integrated approach involving different functional wings of audit. The following chart depicts various key stages of establishment of SEZ units, jurisdictional issues of various functional wings of audit and audit focus areas of each stage.

Schematic representation of stages of SEZ and key issues to be examined by the concerned Field Audit Offices

Stages	Key Issues to be examined	Functional wing of Audit
Application	➢ Land acquisition issues ➢ Compensation to PAPs, if any ➢ Minimum area requirement norms ➢ Land allotment at concessional Rates (Stamp duty, Lease Charges) – 'formal approval' cases	AG/PAG,GSSA AG/PAG,ESRA
Approval	➢ Compliance with conditions attached to "In-principle" and "formal "approvals. ➢ Validity of approvals awarded by BOA ➢ Status of land i.e., freehold/ lease/ developmental rights and State Government Recommendation. ➢ Demarcation of processing and non-processing areas ➢ Financial capabilities of Developer/Co-developer	PDESM/ DGACR/PDAC
Construction/ Development of Units	➢ Compliance with labour norms ➢ Fixation of Land Rate ➢ Land allotments by developer to individual units ➢ Compliance issues related to captive power generation and consumption ➢ Land allotment at concessional Rates (Stamp duty, Lease Charges) – 'principle approval' cases	DGACR/PDAC PAG,ESRA
Operation of Unit	➢ Adherence to conditions attached to Letter of Permission (LOP) and Bond-cum-Legal Undertaking (BLUT) ➢ Commencement of commercial production within the validity period ➢ Cost Recovery Charges ➢ Duty free Imports and NFE ➢ Direct Tax Exemptions (Income Tax, prior to 2010-11 cases - MAT & Dividend distribution Tax) ➢ Service Tax Refunds ➢ CST reimbursement ➢ Frequency of unit approval committee	DGACR/PDAC
Monitoring & Control		
Closure of SEZ units	➢ Adherence to the norms stipulated for exit	

Source: Author's contribution based on the existing audit jurisdiction of concerned Field Audit Offices.

Key issues that need to be examined by audit at different levels are discussed below.

1. Application and Approval of SEZs/SEZ units

A single window SEZ approval mechanism has been provided through a 19 member inter-ministerial 'Board of Approval (BOA)'. The BOA considers the applications duly recommended by the respective State Governments/UT Administration.

The functioning of the SEZs is governed by a three tier administrative set up. The BOA is the apex body and is headed by the Secretary, Department of Commerce. The 'Approval Committee' at the zone level deals with approval of units in the SEZs and other related issues. Each zone is headed by a 'Development Commissioner (DC)', who is the ex-officio chairperson of the 'Approval Committee'.

Once an SEZ has been approved by the BOA and the Central Government has notified the area of the SEZ, units are allowed to be set up in the SEZ. All the proposals for setting up of the units in the SEZ are approved at the zonal level by the 'Approval Committee' consisting of DC, customs/central excise authorities and representatives of the State Government. All post approval clearances including grant of importer-exporter code number, change in the name of the company or implementing agency; broad banding diversification, etc. are given at the zone level by the DC. The performance of the SEZ units is to be periodically monitored by the 'Approval Committee' and the units are liable for penal action under the provisions of the Foreign Trade (Development and Regulation) Act, 1992, in case of violation of the conditions of the approval.

Audit of SEZ approvals is the starting point. The application made by the developer and the recommendations of the concerned State need to be examined in detail to check if there were cases of approvals accorded without the developer fulfilling the conditions stipulated. Audit should focus on the area limits prescribed for various categories of goods to be manufactured and the limits prescribed for 'processing' and 'non-processing' areas.

Similarly, the process followed in approval of SEZ units by the Approval Committee also requires a thorough examination to check whether the obligations expected from the Unit developer were fulfilled. Monitoring of the functioning of the Units based on the periodical reports submitted by the Units is another key responsibility of the AC which must be examined in detail as to the Units were fulfilling their envisaged obligations such as maintenance of a positive NFE, generation of employment, stimulation of FDI etc.,

2. Exemptions and concessions – State Taxes

The SEZ Act 2005 provide for various incentives involving the State Governments under State fiscal laws too which, inter alia, include exemption from State and local taxes, levies and duties, including stamp duty, and taxes levied by the local bodies on goods required for authorized operations by a Unit or Developer and the goods sold by a Unit in the Domestic Tariff Area, except the goods procured from the DTA and sold as it is. Section 50 of the SEZ Act vests powers with the State Governments to issue notifications granting exemption from the State taxes, levies and duties to developer or entrepreneur. Some of them are discussed below;

a) Land allotment at concessional rates

Acquisition of land, particularly private farm land for establishing SEZs has, of late, become a debatable subject all over the country in the recent past. Though many States of the country are yet to form their respective laws governing SEZs, preferential treatment for land allotment by the concerned State in which the unit is to function is given which is a starting point. The State governments may also permit setting up of IT software units/IT parks in urban areas and change of existing industry to IT/IT parks. Rebate on registration and transfer of property charges, exemptions from stamp duty on a tapering scale (in some cases) are given to these units. Three key issues that need to be seen in this case are whether the unit is eligible for allotment of land as per the local regulations, whether concessions given on stamp duty at the time of registration of land are in order and whether there were

any changes in the land usage. In some States like Andhra Pradesh, State PSU (APIIC) may act as a land developer who would be entitled for all exemptions/taxes/concessions. In such cases Audit should focus on the MOU entered between the Units and the State Government which stipulates minimum number of employment to be created for which land cost rebate was allowed. Sometimes, the MOU also envisage refund of land cost on pro-rata basis if the stipulated number of employment is not created. These aspects need to be monitored by the PSU or the State Government which should be the focus of Audit. Further, failure to commence the projects within the stipulated period from the taking over of the land is also an area of concern.

An Expert Group Report released by the Planning Commission appears to call into question the benefits of SEZs:

> Land acquisition for Special Economic Zones (SEZ) has given rise to widespread protest in various parts of the country. Large tracts of land are being acquired across the country for this purpose. Already, questions have been raised on two counts. One is the loss of revenue in the form of taxes and the other is the effect on agricultural production (p. 13).

Therefore, issues on account of land acquisition, payments made due to displacement, compensation, and rehabilitation, if any, to the project affected people merit separate examination in detail.

b) Concession in Floor Area Regulation

In some cases, relaxation in Floor Area/Maximum Height of the building permitted for units and this aspect need to be examined with reference to the provisions of the Act and the notification/s issued, if any, at the State level.

c) Power Supply/Generation

If it is an IT related unit, the State Govt. shall endeavor to provide continuous and uninterrupted power supply and shall

exempt them from the scheduled power cuts. Captive generation of power is also encouraged in these cases. Captive power generation sets installed by the units of IT industries will be eligible for total exemption from payment of electricity duty. Audit should examine in such cases whether the unit being audited was eligible for such exemption and the surplus power produced, if any, was being used in the manner stipulated in the provisions.

d) Sales Tax Concession

a) In some States like Haryana, the Sales tax concession is allowed up to 300% of the fixed capital investment in case of Information Technology/Software units. If the dealer had availed incentive under local sales tax/value added tax, audit should check the status of registration of the dealer and the nature of investment made. Second, if the dealer had availed incentive under Central Sales Tax Act, 1956, verify if the registered dealer was authorized to establish such unit or to develop, and maintain such SEZ by the authority specified by the Central Government in this behalf. Third, it should be checked that the reimbursement of CST is limited to the payment of CST against Form C only, except in case of IT enabled services (ITES)/Business Premises Outsourcing (BPO) units. Fourth, prior to August 2009, STP/EHTP units can claim reimbursement of CST on purchases made from DTA for production of goods provided that these supplies were utilized for production of goods meant for export and /or utilized for the export products. All such claims should be validated against this requirement.

3. Exemptions and concessions – Central Taxes

a) Direct Taxes

With the introduction of Minimum Alternate Tax and Dividend Tax, SEZs have become less attractive to a certain extent. Nevertheless, they enjoy a number of other concessions under various sections of the IT Act. One of the important concessions is deduction equal to 100% of the profits derived from the business of developing a SEZ under Section 80IAB. Audit should check whether the income derived is actually from the development of SEZ and should also check whether expenditure

attributed to SEZ is correctly claimed. In both these cases, there is a risk of claiming excess claim of deduction and reducing income from taxable source. The following table gives a summary of some major income tax concessions and key areas of concern from audit point of view.

Person	**Section**	**Income**	**Area of risk**
Developer & co-developer	80 IAB, 115 O	Developer income	• Developer already claiming deduction under Section 80 IA (13). (should get deduction under this section only for the unexpired period). • -do- plus the manner in which 10 consecutive years out of 15 years beginning with the year in which SEZ has been notified by the Central Govt. has been calculated.
Infrastructure Cap Fund/Company or Co-op society	10 (23G)	Dividend, Interest and Long-term capital gains	
Entrepreneur (i)Manufacturing and domestic sales (ii)Export sales	10 AA/54 GA	Business Income	• Formula used in calculating quantum of deduction allowed. • Transfer of assets in case of shifting of industrial undertaking from Urban area to any SEZ. • Assesses already claiming deduction under Section 10A is entitled to deduction under Section 10AA for the unexpired period of ten consecutive assessment years and thereafter eligible for deduction under Section 10AA(i)(ii).
Off-shore banking unit	80 LA, 197 A (1D)	Interest	• Existence and functioning of the banking unit in SEZ. • No deduction of tax at source for any payment of interest on

			deposits.
Non-resident/Not ordinary resident	10 (15) (viii)	Interest on deposit	Period and time (should be on 1.4.2005 or after) of deposit. Residential status of the depositor.
Non-resident	26(1) (f) of SEZ Act	Security Transaction	Residential status of the assessee.

b) Indirect Taxes

i) Central Excise: Exemption from any duty of excise, under the Central Excise Act, 1944 or the Central Excise Tariff Act, 1985 or any other law on the goods brought from Domestic Tariff Area to a SEZ or Unit, to carry on the authorized operations by the Developer or the Entrepreneur. Audit should focus on the slew of exemptions given to goods manufactured in SEZs under General Exemption Notifications No.2 to 7 (Tariff 2012-13), besides exemption notifications issue under Rule 18 and Rule 19 of Central excise Rules, 2002.

ii) Service Tax: SEZ Units can avail exemptions under Section 66B of Finance Act if the services received are used for the authorized operations, but this exemption is provided in the form of refund of tax paid on the specified services either fully (if the specified services are *fully* consumed within the SEZ) or *proportionately* (if the specified services are not wholly consumed within SEZ). Audit should check in the above cases that the exemptions availed and refunds acclaimed are in accordance with the provisions stipulated for availing them.

iii) Customs: Broadly the concessions given are on account of drawback or such other benefits as may be admissible from time to time on goods brought or services provided, from the Domestic Tariff Area (DTA) into a SEZ or Unit or services provided in a SEZ or Unit by the service providers located outside India to carry on the authorized operations by the Developer or Entrepreneur. Considering that one of the main objectives of SEZs being augmentation of exports and boost foreign exchange earnings, audit should verify whether the units in SEZs were positive NFE compliant. In case of DTA units audit must ascertain

whether the duty forgone on inputs used in production was recovered to the extent of duty foregone on inputs used in production. SEZ scheme relies mainly on self certification and the details given in their QPRs/APRs do not necessarily be supported by relevant statutory documents such as IT returns, bank reconciliation statements etc., This makes audit job difficult. Therefore, audit should cross verify the information given in annual accounts of the unit, IT returns, RBI data on foreign exchange earned etc., in order to satisfy about the correctness of particulars furnished by the units. Another area of concern is irregular/excess payment of drawback/interest to DTA suppliers who supply goods to SEZ units as it is treated as 'deemed export'. Audit should ascertain the veracity of such claims by checking that the goods were covered under the Letter of Permission issued by the Development Commissioner, disclaimer certificates of DTA units, existence of BLUT and the rates at which the interest was paid, if any.

Finally, as already cited above, monitoring of functioning of the units is a key responsibility of the 'Approval Committee' consisting of Development Commissioner (ex-officio chairperson of the committee), Customs/Central Excise authorities and representatives of the State Government. Audit must verify as to the frequency of these meetings and their effectiveness in dealing with the functioning of units on various parameters stipulated for the functioning of SEZ.

4. Impact on Human capabilities

The three channels through which SEZs may affect human capabilities are, (i) employment affects both direct and indirect (ii) human capital formation effects (iii) technology upgrading effects.

(i) Employment

It is often argued that employment creation in SEZs relative to the rest of the economy is marginal in India. The Committee on State Agrarian Relations and Unfinished Task in Land Reforms in its 2009 Report noted that

> In comparison to the claims of a 'new avenue of employment generation' of the Minister of Commerce, the information available about proposed direct employment is available for 110 SEZs, projecting a total of 2.14 million employees. Of this, 61 per cent is in IT/ITES and another 15 per cent is in existing strengths with a further 21 per cent in multi-product SEZ, amounting to 97 per cent. It is interesting to note that the 1.25 million direct employment proposed to be created by the IT/ITES SEZs alone exceeds the current employment in that sector. Further, 85 per cent of this proposed employment is in the five states, with 40 per cent in Andhra Pradesh alone, of which two-thirds is from IT/ITES SEZs (p. 134).

Audit of SEZs cannot afford to ignore this vital aspect. Cross verifying the employment particulars given by the SEZ Units in their QPR/APRs submitted to DC with the records of the Provident Fund Commissioner during the period of review will indicate the actual impact on employment generation. This data would also indicate the position of female employment.

(ii) Human Capital Formation

One of the important by-products of SEZs is human capital formation or skill upgradation. This goal is truly realized only if zone units provide additional training on and off the job which will add to the human capital. The records of zone units should be able to indicate the progress made in this area over a period of time which should be cross verified with the QPRs/APRs sent to the DC.

(iii) Technology up gradation

Technology up gradation or transfer in SEZs can take place in three different ways: Foreign direct investment, arm's length

consultancy that includes technical consultancy and acquisition of capital goods. The data maintained by the Ministry of Commerce will be able to give us the share of FDI in total SEZ investment over a period of time. Concerning the technical consultancy, a survey based on a sample of SEZs to determine the extent of R&D operations being carried out by MNES in India and the extent of training provided to local employees may serve the purpose. Audit should verify whether the SEZ units were using licensed technologies or using imported technologies.

5. Impact on Environment

The natural resources like land, water and air are likely to be exploited for setting SEZs. Their misuse, if any, is bound to have an adverse impact on the environment. The change of land use pattern of an area, from double crop irrigated agriculture to industrial purpose is bound to change the ecosystem and ecological health of any area besides jeopardizing food security. These issues require intensive assessment by environment auditors.

6. Conclusion

India has the distinction of setting up the first EPZ in Asia. It is felt that even after embracing the EPZ/SEZ approach for over 40 years, India has to probably reckon with the fact that its policy on the subject has not yet delivered on the promised benefits so far. Though the SEZ Act, 2005 gave the real boost, many States are yet to come up with their respective Acts and there is no unanimity on many issues. Consequently, the journey travelled has been full of ups and downs and in the meanwhile several tax sops were showered on the developers and co-developers of SEZs and the Units owners which necessitate an independent and comprehensive examination. Audit efforts made so far were very focused and limited in their objective. In the midst of the ongoing hue and cry about the role of SEZs, it is natural that the tax payers feel a need to know about the overall usefulness and impact of the SEZs cutting across all the aspects of their creation and working. Possibly, the solution lies in an integrated audit approach as the same is overdue.

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OIL EXPLORATION AND PRODUCTION INDUSTRY: CURRENT ACCOUNTING METHODS AND FUTURE TRENDS

Ms. K. Mani*

Introduction

Controlling oil resources is the key to power. It is one of the single largest items traded in the world market apart form software. Wars were fought over oil and it had caused the rise of dictators and fall of civilizations.

We have been using petroleum products for a long time. Asphalt was used in ancient Babylon as mortar for buildings and for waterproofing ships. *Today, paint, mobile phones, cushions, paper, carpets, steering wheels are all made with ingredients that chemical companies refine from oil and natural gas.*

National oil companies [owned by or affiliated with governments] own as much as 90 percent of the proven oil reserves in the world, while investor-owned oil companies hold the remaining. Saudi Aramco, the state-owned national oil company of Saudi Arabia is the world's largest oil producer.

The objective of oil upstream industry is to find and extract, refine and sell oil & gas. It requires substantial capital investment and long lead-time. Finding and extracting hydrocarbon in challenging environmental conditions with uncertain outcomes is the uniqueness of this industry. Exploration,

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development and production often take place in joint ventures to share the substantial capital costs and risks. The assessment of commercial viability and technical feasibility to extract hydrocarbons is a complex one.

Accounting framework in oil industry: World scope

Since oil companies work in different countries, there can be varied accounting methods, tax regimes which make financial statements look different. It creates problem for investors to make inter-firm or intra-firm comparison in different countries. Currently, IOCs (International Oil Companies) follow either GAAP of their country of origin or IFRS.

Oil & Gas Companies by Accounting Practices

Company	Accounting practice
Exxon Mobil	U.S. GAAP
Royal Dutch Shell	IFRS
BP	IFRS
Chevron	U.S. GAAP
Total	IFRS
ConocoPhillips	U.S. GAAP
CNOOC	Chinese GAAP
ENI	IFRS
Gazprom	Russian GAAP

Most oil and gas E&P (Exploration and Production) companies have significant international operations. The industry is exposed to macroeconomic factors such as commodity prices, currency fluctuations, interest rate risk and political developments. Taxation of extractive activity and the resultant profit is a major source of revenue for many governments. These companies face multiple regulatory and capital market considerations, complex organizational structures (often including multiple subsidiaries and joint venture relationships), and global competitors. Companies in these circumstances may find compelling reasons to adopt uniformity in their operations and accounting patterns in different countries.

Many GAAP/IFRS provide specific accounting standards for E&P companies and/or extractive industries (e.g. IFRS 6 and FAS 19). Within this, there is further diversification. Following IFRS/GAAP, E&P companies can adopt two fundamentally different procedures in accounting. They are Full cost Method or Successful Efforts Method. In full costing, all costs related to acquisition, exploration, development are capitalized. Only successful attempts are capitalized in Successful Efforts Method, writing off failed attempts to find oil. Companies are free to choose whatever method they want to adopt. World's top E&P companies (Exon Mobil, Chevron, BP) prepare financial statement using successful efforts method. In India, accounting practices in this sector are still evolving. Companies are free to choose either of this method. Public sector oil giant ONGC use successful efforts method and Reliance industries use Full cost method.

Accounting practices in India.

In India, accounting practices in this sector are still evolving as in the case of many Guidance Notes' to cater to their specific needs. Guidance note for Dot-Com companies, Guidance note for real estate transactions, Accounting for securitization are a few examples. Similarly, because of the peculiarity of upstream activities, ICAI has come up with a 'Guidance Note on Accounting for Oil and Gas Producing Activities' in 2003. These guidelines provide regulation on accounting for costs incurred on four types of activities,

- Acquisition
- Exploration
- Development
- Production

The guidance note does not relate to downstream activities (oil refining and marketing) or to any other natural resource other than oil and gas. Provisions in the guidance note relating to different types of costs are discussed below.

Activities and related Costs in E&P industry

Acquisition costs

Activities carried out by an E&P enterprise towards the acquisition of right to explore, develop and produce oil constitute acquisition activities. This includes the price paid for rights to explore oil and gas. As soon as it is decided to undertake petroleum activities, expenditure on logistic arrangements, buying rights for access, clearances from different ministries, transporting material and equipment etc. are incurred. Price for petroleum exploration License (PEL) are paid to state government in case of on-land and to union government in case of off-shore operations. Other charges include brokers fee, legal costs, crop compensation paid to farmers and all other incidental costs.

Exploration costs

Different kinds of surveys are conducted to predict presence of oil in a potential area. These highly technical procedures include seismic,areial surveys and geological, geochemical ,palentological, palynological studies. Data from survey is then interpreted to find possible locatlion of petroleum. They are followed by structural test drilling, stratigraphic-test drilling, and drilling of exploraion and appraisal wells.

Exploration costs cover all direct and indirect costs associated with survey and drilling. Survey costs are usually referred as ‘’G&G costs’ i.e., the cost of geologists, crew and people conducting studies. Drilling costs are incurred for exploratory drilling, appraisal wells, exploratory-type stratigraphic test wells etc.

Development costs

Once a prospective area is found oil bearing, evaluation of the extend of reservoir and economic feasibility studies are done. The next step is to start development of the field. Development activities include purchases, shipment of equipment and materials used in developing accumulations. Gathering lines are laid, offshore platforms and installations are constructed. Installation of separators, tankers, artificial lift are done. In effect, this includes the entire gamut of preparatory work for lifting, gathering, processing and transporting oil either onshore or offshore into main oil storage tank/ship or gas processing facilities.

Development costs cover all the direct and allocated indirect expenditure incurred in respect of the development activities including costs incurred to gain access to and prepare well locations for drilling. Subsidiary activities like ground clearing, draining, road building, gas lines and power lines to the extent necessary are also accounted here. As mentioned, costs to acquire, construct and install production facilities such as lease flow lines, separators, treaters, heaters, manifolds, measuring devices and production storage tanks, natural gas cycling and processing plants are added in development cost.

Production costs

Production activities consist of pre-wellhead (e.g., lifting the oil and gas to the surface, operation and maintenance of wells, extraction rights, etc.,) and post-wellhead (e.g., gathering, treating, field transportation, field processing, etc., upto the outlet valve on the storage tank, etc.,) activities. Production costs consist of direct and indirect costs incurred to operate and maintain an enterprise's wells and related equipment and facilities, including depreciation and applicable operating costs of support equipment and facilities.

Methods of accounting for acquisition, exploration and development costs

Successful Efforts Method

Under the successful efforts method, only those costs that lead directly to the discovery, acquisition, or development of specific oil and gas reserves are capitalised and become part of the capitalised costs of the cost center. Costs that are known at the time of incurrence to fail to meet this criterion are generally charged to expense. When the outcome of such costs is unknown at the time they are incurred, they are recorded as capital work-in-progress and written off when the costs are determined to be non-productive.

Advantages

Successful efforts costing reflects the normal concept of an asset. It does not include false assets which do not provide future economic benefits. Volatility that is inherent in exploring for oil

and gas reserves are reflected here. Capitalization of unsuccessful efforts and their subsequent depreciation results in 'income smoothing' and hides volatility. Income smoothing results in reporting of artificial income both when costs are deferred and throughout the period of depreciation. Successful efforts accounting comes closer than other cost-based accounting methods to reflecting management's successes or failures in its efforts to find new oil and gas reserves. Moreover, it is consistent with the concept of Matching which is fundamental concept in double entry book keeping.

Disadvantages

The argument against this method is that by charging-off of unsuccessful pre-production costs, successful efforts accounting often results in an understatement of assets and net income of a growing enterprise that has an increasing exploration programme. Success or otherwise of projects can not be measured until exploratory activities are completed which take many years. This method assesses success or failure too early in a project.

Full Cost Method

Under the full cost method, all costs incurred in prospecting, acquiring mineral interests, exploration, and development, are accumulated in large cost centers that may not be related to geological factors. The cost centre, under this method, is not normally smaller than a country except where warranted by major difference in economic, fiscal or other factors in the country. The capitalised costs of each cost centre are depreciated as the reserves in each cost centre are produced.

Advantages and disadvantages

Full cost method reflects the way in which enterprises search for, acquire, and develop mineral resources. It is argued that full cost method provides better matching of income and Expenses. This method is like absorption costing for manufactured Inventories.

Under the full cost method, many costs that are capitalised fail to meet the definition of 'asset' for the Preparation and

Presentation of Financial Statements. Full cost method delays loss recognition. It creates a false impression about the efficiency and effectiveness of the enterprise's exploration and development activities.

Difference between the methods

The essential difference between these methods is that in FC method, all costs relating to exploration, acquisition, drilling, developments are capitalized. In SEM, Exploratory dry hole drilling are expensed. Advantages of successful methods dwarf full costs method , because of the comprehensiveness and conceptual advantage. All over the world, companies stick to either of the two methods while following IFRS or GAAP.

Genesis and inadequacies of different accounting frameworks.

1. **IFRS**

The International Accounting Standards Board (IASB) issued International Financial Reporting Standard (IFRS) 6 'Exploration for and Evaluation of Mineral Resources' in December 2004. IFRS 6 applies to exploration and evaluation expenditures, i.e. expenditures incurred by an entity in connection with the exploration for and evaluation of mineral resources (including minerals, oil, natural gas and similar non-regenerative resources). Affected activities include the search for mineral resources, as well as the determination of the technical feasibility and commercial viability of extracting those resources. The following are specifically excluded from the scope of IFRS 6:

- Expenditures incurred before the entity has obtained legal rights to explore in a specific area
- Expenditures incurred after the technical feasibility and commercial viability of extracting a mineral resource are demonstrable.

According to this standard, the excluded activities are to be accounted as per other IFRS provisions. This standard does not disallow any specific accounting policies for the recognition and measurement of exploration and evaluation assets. It permits firms to continue using their existing accounting policies provided that

they comply with the disclosure requirements that is relevant to economic decision-making needs of users. IFRS 6 also provides guidance on how to identify cash-generating units. Under this, companies are to treat exploration and evaluation assets as a separate class of assets and make the disclosures required by the appropriate provisions of IAS.

It is felt that IFRS can function as an international platform if it is comprehensive. In the current form, it has the following omissions

- It identifies only two activities, ie, exploration & evaluation.
- It is silent about the expenditure incurred before the entity has obtained legal rights to explore the area.
- No provisions are given as to how to account expenditure incurred after the technical feasibility and commercial viability of extracting a mineral resource are demonstrable.

Presently, IASB is revamping the current provisions and preparing a comprehensive standard. A discussion paper had been issued on the proposed accounting standard in 2010 and comments received. It is expected that a detailed accounting standard will be in place soon.

2. US GAAP

Financial Accounting Standards Board (FSAB) is the organization responsible for setting Generally Accepted Accounting Principles (GAAP) in USA. US GAAP has FAS 19 'Financial Accounting and Reporting by Oil and Gas producing companies'. USA is one of the pioneers in oil industry and thus has a well-established accounting system.

In USA, to begin with, there was only one method, ie, successful efforts method followed by oil firms. Since 1950, full cost method evolved as another method. Two more methods found its way in to the books of accounts later and thus companies had the following options by 1960's

1. Full cost method

2. Successful efforts method
3. Discovery value accounting
4. Current value accounting

In 1973, Financial Accounting Standards Board (FSAB) was formed. It studied the existing options and rejected the Discovery value and Current value method. Since then, a debate surrounds as to which method is the best. Full cost method gained prominence since smaller companies wanted to look big and capitalizing all unsuccessful attempts helped them in this. This helped them get funding and grow. Bigger firms chose successful efforts because they wanted to reduce tax burden by reducing profit.

FAS 19 is more comprehensive in terms of identification of stages, i.e. it identifies four clear stages of E&P industry viz, acquisition, exploration, development and production. IFRS recognize only two activities, ie, exploration & evaluation and development. IFRS does not cover pre acquisition activities and as well as production which can create accounting concerns. US GAAP Identifies a field or reservoir as the unit of account whereas IFRS is silent about this.

3. INDAS

Ministry of Corporate Affairs notified INDAS 106 (Indian Accounting Standards) 'Exploration for and Evaluation of Mineral Resources' as the standard for extractive industries. They are aligned with IFRS. In its current form, it not all-inclusive. It adopts the same methodology as IFRS by not recognizing pre-acquisition activities. The current view is that the standard is open-ended offering freedom to companies to follow virtually any policy they like. The standard does not prescribe any standardization. Hence, the standard does not provide any useful purpose and may create an erroneous impression in the mind of the reader that the entity concerned has complied with a strict standard. This may even be counterproductive from a regulatory point of view. Hence, INDAS 106 are not being adopted immediately as it is under consideration of the Government.

4. Guidance note by ICAI

Indian oil companies follow the guidance note of ICAI in accounting, the provisions of which were discussed earlier. They came in to existence in 2003. ICAI is now revising the guidelines to make them more exhaustive. At present, intricate operations are not dealt with in the guidance note. At times it is difficult for accountants and auditor to decide the treatment to be given to Certain complex operations like long draft side tracking (LDST-a drilling method) which result in new drainage area accessed from an existing and capitalized well. It is hoped that the new note will incorporate new provisions, delete the redundant ones, and also provide for accounting treatment under the PSC (production Sharing Contract) regime.

Conclusion

Extractive industry accounting practices differ significantly from other industries since Costs related to four stages of industry can be accounted in two fundamentally different ways. Certain standards specifically exclude this industry as in AS 10 (Accounting for fixed assets), which exclude from its scope wasting assets. There are differences in method of depreciating capital costs too. AS 26, (Intangible assets) exclude from its scope mineral rights ,expenditure on the exploration for, or development and extraction of non-regenerative resources. None of the current practices seem to be complete. Of the options, it appears that the present FAS 19 is the most comprehensive. It gives a detailed guidance for accounting by covering many areas. Another development in this field is that there is an initiative to draft new accounting standards for extractive industries as many country specific GAAPs and IFRS already have them. ICAI is in the process of revising many guidance notes, including those on Dot-Com companies and Oil and Gas producing activities. Upstream activities are important in today's scenario with more diversification and private participation. What we require is one Accounting standards, which will incorporate the best practices followed worldwide.

DOCUMENT :

THE JUDICIAL STANDARDS AND ACCOUNTABILITY BILL, 2012

Bill

To lay down judicial standards and provide for accountability of Judges, and, establish credible and expedient mechanism for investigating into individual complaints for misbehaviour or incapacity of a Judge of the Supreme Court or of a High Court and to regulate the procedure for such investigation; and for the presentation of an address by Parliament to the President in relation to proceedings for removal of a Judge and for matters connected therewith or incidental thereto. BE it enacted by Parliament in the Sixty-third Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title and commencement

1. (1) This Act may be called the Judicial Standards and Accountability Act, 2012.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint: Short title and commencement.

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Definitions

2. In this Act, unless the context otherwise

requires,—

(a) "assets" includes immovable and movable property;

Explanation.—For the purposes of this clause,—

(i) "immovable property" includes the land and any building or other structure attached to the land or permanently fastened to anything which is attached to the land, and tenancies, lease holds or any other interest in immovable property;

(ii) "movable property" includes any other property which is not immovable property as also corporeal and incorporeal property of every description and household goods and personal effects of the value of each item of more than fifty thousand rupees;

(b) "Chairman" means the Chairman of the Council of States;

(c) "competent authority" means in relation to,—

(i) the Judge of the High Court, the Chief Justice of that High Court;

(ii) the Chief Justice of the High Court, the Chief Justice of India;

(iii) the Judge of the Supreme Court, the Chief Justice of India;

(iv) the Chief Justice of India, the President of India;

(d) "incapacity" means physical or mental incapacity which is, or is likely to be, of a permanent character;

(e) "investigation committee" means the investigation committee constituted under section 22;

(f) "inquiry" means an inquiry for proof of

misbehaviour or incapacity;

(g) "Judge" means a Judge of the Supreme Court or of a High Court and includes the Chief Justice of India and the Chief Justice of a High Court;

(h) "judicial standards" means the values of judicial life specified in section 3, and the Schedule;

(i) "liabilities" includes financial guarantees given and all loans raised from any bank, financial institution or any other source;

(j) "misbehaviour" means,—

(i) conduct which brings dishonour or disrepute to the judiciary; or

(ii) wilful or persistent failure to perform the duties of a Judge; or

(iii) wilful abuse of judicial office; or

(iv) corruption or lack of integrity which includes delivering judgments for collateral or extraneous reasons, making demands for consideration in cash or kind for giving judgments or any other action on the part of the Judge which has the effect of subverting the administration of justice; or

(v) committing an offence involving moral turpitude; or

(vi) failure to furnish the declaration of assets and liabilities in accordance with the provisions of this Act; or

(vii) wilfully giving false information in the declaration of assets and liabilities under this Act; or

(viii) wilful suppression of any material fact, whether such fact relates to a period before assumption of office, which would have bearing on his integrity; or

(ix) wilful breach of judicial standards;

(k) "notification" means a notification

published in the Official Gazette;

(l) "Oversight Committee" means the National Judicial Oversight Committee established under section 17;

(m) "prescribed" means prescribed by rules made under this Act;

(n) "Scrutiny Panel" means a panel constituted under sub-section (1) or subsection (2) of section 11 for the scrutiny of complaints;

(o) "Speaker" means the Speaker of the House of the People.

CHAPTER II

JUDICIAL STANDARDS TO BE FOLLOWED BY JUDGES

Judicial Standards

3. (1) Every Judge shall continue to practice universally accepted values of judicial life as specified in the Schedule to this Act.

(2) In particular, and without prejudice to the generality of the foregoing provision, no Judge shall—

(a) contest the election to any office of a club, society or other association or hold such elective office except in a society or association connected with the law or any court;

(b) have close association or close social interaction with individual members of the Bar, particularly with those who practice in the same court in which he is a Judge;

(c) permit any member of his immediate family (including spouse, son, daughter, son-in law or daughter-in-law or any other close relative), who is a member of the Bar, to appear before him or associated in any manner with a cause to be dealt with by him;

(d) permit any member of his family, who is a member of the Bar, to use the residence in which the Judge actually resides or use other facilities provided to the Judge, for professional work of such member;

(e) hear and decide a matter in which a member of his family, or his close relative or a friend is concerned;

(f) enter into public debate or express his views in public on political matters or on matters which are pending or are likely to arise for judicial determination by him: Provided that nothing contained in this clause shall apply to,—

(i) the views expressed by a Judge in his individual capacity on issues of public interest (other than as a Judge) during discussion in private forum or academic forum so as not to affect his functioning as a Judge;

(ii) the views expressed by a Judge relating to administration of court or its efficient functioning;

(g) make unwarranted comments against conduct of any Constitutional or statutory authority or statutory bodies or statutory institutions or any chairperson or member or officer thereof, in general, or at the time of hearing matters pending or likely to arise for judicial determinations.

(h) give interview, to the media in relation to any of his judgment delivered, or order made, or direction issued, by him, in any case adjudicated by him;

(i) accept gifts or hospitality except from his relatives;

(j) hear and decide a matter in which a company or society or trust in which he holds or any member of his family holds shares or interest, unless he has disclosed his such holding or interest, and no objection to his hearing and deciding the matter is raised;

(k) speculate in securities or indulge in insider trading in securities;

(l) engage, directly or indirectly, in trade or business, either by himself or in association with any other person: Provided that the publication of a legal treatise or any activity in the nature of a hobby shall not be construed as trade or business for the purpose of this clause;

(m) seek any financial benefit in the form of a perquisite or privilege attached to his office unless it is clearly available or admissible;

(n) hold membership in any organisation that practices invidious discrimination on the basis of religion or race or caste or sex or place of birth;

(o) have bias in his judicial work or judgments on the basis of religion or race or caste or sex or place of birth.

Explanation.—For the purposes of this sub-section, "relative" means—

(i) spouse of the Judge;

(ii) brother or sister of the Judge;

(iii) brother or sister of the spouse of the Judge;

(iv) brother or sister of either of the parents of the Judge;

(v) any lineal ascendant or descendant of the Judge;

(vi) any lineal ascendant or descendant of the spouse of the Judge;

(vii) spouse of the person referred to in clauses (ii) to (vi).

CHAPTER III

DECLARATION OF ASSETS AND LIABILITIES BY JUDGES

Declaration of assets and liabilities

4. (1) Every Judge shall make a declaration of his assets and liabilities in the manner as provided by or under this Act.

(2) A Judge shall, within thirty days from the date on which he makes and subscribes an oath or affirmation to enter upon his office, furnish to the competent authority the information relating to—

(a) the assets of which he, his spouse and his dependent children are, jointly or severally, owners or beneficiaries;

(b) his liabilities and that of his spouse and his dependent children.

(3) A Judge holding his office as such, at the time of the commencement of this Act, shall furnish information relating to such assets and liabilities, as referred to in sub-section (2) to the competent authority within thirty days of the coming into force of this Act.

(4) Every Judge shall file with the competent authority, on or before the 31st July of every year, an annual return of such assets and liabilities, as referred to in sub-section (2), as on the 31st March of that year.

(5) The information under sub-section (2) or sub-section (3) and annual return under sub-section (4) shall be furnished in such form and in such manner, as may be prescribed.

Explanation.—For the purposes of this section, "dependent children" means sons and daughters who have no separate means of earning and are

wholly dependent on the Judge for their livelihood.

Making available documents or information in relation to a declaration of assets and liabilities of Judges on website

5. The competent authority shall exhibit the document or information in relation to a declaration of assets and liabilities of Judges,—

(a) in the case of Judges and Chief Justices of the High Courts, on the website of the High Court in which such Judges and Chief Justice are serving;

(b) in the case of Judges of the Supreme Court and Chief Justice of India, on the website of the Supreme Court.

Maintenance of records

6. The competent authority shall keep the documents or information forms containing the details of the assets and liabilities and other particulars in relation thereto filed by the Judges in its safe custody for such period as may be decided by the Oversight Committee.

CHAPTER IV

MAKING OF COMPLAINT

Complaints

7. Any person making an allegation of misbehaviour or incapacity in respect of a Judge may file a complaint in this regard to the Oversight Committee.

Manner of Making of complaint

8. The complaint under section 7 shall—

(a) be in such form and filed in such manner as may be prescribed;

(b) set forth particulars of the misbehaviour or incapacity which is the subject matter of allegation;

(c) be verified at the foot of the complaint by the complainant and shall specify, by reference to the numbered paragraphs of the complaint, what he verifies of his own knowledge and what he verifies upon

information and shall refer to the source of the information.

Reference to Scrutiny Panel

9. Save as otherwise provided under this Act, the Oversight Committee shall refer all such complaints to the appropriate Scrutiny Panel constituted under Chapter V for scrutiny.

CHAPTER V

SCRUTINY PANEL

Constitution of Scrutiny Panel

10. There shall be constituted a panel to be called "Complaints Scrutiny Panel" in the Supreme Court and in every High Court to scrutinise the complaints against a Judge received under this Act.

Composition of Scrutiny Panel

11. (1) The Scrutiny Panel in the Supreme Court shall consist of a former Chief Justice of India and two Judges of the Supreme Court to be nominated by the Chief Justice of India.

(2) The Scrutiny Panel in every High Court shall consist of a former Chief Justice of that High Court and two Judges of that High Court to be nominated by the Chief Justice of that High Court.

Functions of Scrutiny Panel

12. (1) If the Scrutiny Panel, after scrutiny of the complaint referred to it for scrutiny under section 9, and after making scrutiny of the complaint, as it deems appropriate, is satisfied that—

(a) there are sufficient grounds for proceeding against the Judge, it shall, after recording reasons there for, submit a report on its findings to the Oversight Committee for making inquiry against the Judge in accordance with the provisions of this Act;

(b) the complaint is frivolous or vexatious, or, is not made in good faith, or there are not sufficient grounds for inquiring into the

complaint, or the complaint relates only to the merits of the judgment or a procedural order, and, then, it shall after recording reasons there for submit a report on its findings to the Oversight Committee for not proceeding with the complaint and treating the matter as closed.

(2) The scrutiny of complaints under this section by the Scrutiny Panel shall be held in camera.

(3) The Scrutiny Panel shall submit its report under clause (a) or clause (b) of subsection (1), to the Oversight Committee in this behalf within a maximum period of three months from the date of receipt of the complaint from the Oversight Committee.

Procedure of Scrutiny Panel

13. Save as otherwise provided in this Act, the Scrutiny Panel shall have power to regulate its own procedure in scrutinising the complaints referred to it for scrutiny under section 9.

Power relating to scrutiny of complaints

14. The Scrutiny Panel shall, while scrutinising the complaints forwarded to it for scrutiny under section 9, have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908 and in particular, in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court or office;

(e) issuing commissions for the examination of witnesses or other documents; and

(f) any other matter which may be prescribed.

Provision for officers and other employees for Scrutiny Panel

15. (1) The Chief Justice of India shall, determine the nature and categories of the officers and other employees required to assist the Scrutiny Panel referred to in sub-section (1) of section 11 in the discharge of its functions and provide the Scrutiny Panel with such officers and other employees as he may think fit.

(2) The Chief Justice of the High Court shall, determine the nature and categories of the officers and other employees required to assist the Scrutiny Panel referred to in sub-section (2) of section 11 in the discharge of its functions and provide the Scrutiny Panel with such officers and other employees as he may think fit.

Provision regarding frivolous and vexatious complaints

16. If the Scrutiny Panel is of the opinion that a complaint was filed frivolously or vexatiously or only with a view to scandalise or intimidate a Judge, it may refer the case to the Oversight Committee for further action.

CHAPTER VI

A. NATIONAL JUDICIAL OVERSIGHT COMMITTEE, ITS POWERS AND FUNCTIONS AND PROCEDURE FOR INQUIRY OF COMPLAINTS

Establishment of Oversight Committee

17. With effect from such date as the Central Government may, by notification, appoint, there shall be established a National Judicial Oversight Committee.

Composition of Oversight Committee

18. (1) The National Judicial Oversight Committee shall consist of the following, namely:—

(a) a retired Chief Justice of India appointed by the President after ascertaining the views of the Chief Justice of India —

Chairperson;

(b) a Judge of the Supreme Court nominated by the Chief Justice of India— Member;

(c) the Chief Justice of a High Court nominated by the Chief Justice of India— Member;

(d) the Attorney-General for India— ex officio Member;

(e) an eminent person nominted by the President—Member: Provided that—

(a) where the allegations are against a Judge of the Supreme Court, who is a member of the Oversight Committee, then, the Chief Justice of India shall nominate another Judge of the Supreme Court in his place as a member of that committee; or

(b) where the allegations are against the Chief Justice of a High Court, who is a member of the Oversight Committee, then, the Chief Justice of India shall nominate a Chief Justice of another High Court in his place as a member of that committee.

(2) After the commencement of the proceedings relating to a complaint against a Judge,—

(a) if any change in the composition of the Oversight Committee arises due to elevation of a member of the Oversight Committee, as the Chief Justice of India or a Judge of the Supreme Court, as the case may be; or

(b) if any change arises in the composition of the Oversight Committee due to refusal or retirement or resignation or any other reason, the proceedings of the Oversight Committee shall continue from the stage from which it was pending before such change and the Chairperson of the Oversight Committee shall make such incidental changes, as he deems necessary, to continue

the proceedings.

Forwarding of complaint relating to misbehaviour to Scrutiny Panel

19. The Oversight Committee shall, within three months of the receipt of a complaint relating to misbehaviour of—

(a) an individual Judge of the Supreme Court or Chief Justice of a High Court, refer the complaint, to the Scrutiny Panel of the Supreme Court to scrutinise and report thereon;

(b) an individual Judge of a High Court, refer the complaint, to the Scrutiny Panel of the High Court in which such Judge is acting as such, to scrutinise and report thereon.

Records of complaints forwarded to Scrutiny Panel.

20. The Oversight Committee shall maintain a record of the complaints referred to the Scrutiny Panel.

Certain complaint not to be forwarded to Scrutiny Panel

21. A complaint against the Chief Justice of India shall not be referred to the Scrutiny Panel for scrutiny but shall be scrutinised by the Oversight Committee.

B. CONSTITUTION OF INVESTIGATION COMMITTEE, ITS POWERS AND FUNCTIONS AND PROCEDURE FOR INVESTIGATION

Investigation by investigation committee

22. (1) The Oversight Committee, shall for the purpose of inquiry for misbehaviour by a Judge, constitute an investigation committee (by whatever name called) to investigate into the complaint in respect of which the Scrutiny Panel has recommended in its report under clause (a) of sub-section (1) of section 12 for making inquiry against the Judge in accordance with the provisions of this Act.

(2)The composition and tenure of the investigation committee shall be such as may be decided by the Oversight

Committee:

Provided that the number of the investigation committees, in no case, at a time, shall exceed three:

Provided further that the Oversight Committee may, having regard to the nature of misbehaviour of a Judge, may constitute different investigation committees for inquiry into different complaints.

Powers of Oversight committee and investigation committee

23. The Oversight Committee, shall, for the purpose of proceedings under this Act and the investigation committee, while conducting any investigation under this Chapter, have all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908 and in particular, in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court or office;

(e) issuing commissions for the examination of witnesses or other documents; and

(f) any other matter which may be prescribed.

Search and seizure by investigation committee

24. (1) If the investigation committee has reason to believe that any documents which, in its opinion, will be useful for, or relevant to, any preliminary investigation or inquiry, are secreted in any place, it may authorise any officer subordinate to it, or any officer of an agency referred to in section 25, to search for and to seize such documents.

(2) If the investigation committee is satisfied that any document seized under sub-section

(1) would be evidence for the purpose of any investigation and that it would be necessary to retain the original document in its custody, it may so retain the said document till the completion of such investigation or retain a copy of such document, as it may deem fit.

(3) The provisions of the Code of Criminal Procedure, 1973, relating to searches shall, so far as may be, apply to searches under this section subject to the modification that subsection (5) of section 165 of the said Code shall have effect as if, for the word "Magistrate", wherever it occurs, the words "investigation committee or any officer authorised by it" were substituted.

Assistance to investigation committee by Government agencies.

25. The investigation committee shall be entitled to make a request to the Oversight Committee for assistance to it and the Oversight Committee may invoke its powers in this behalf under section 38 of this Act.

Ex parte investigation.

26. If a Judge, to whom notice is issued by the investigation committee referred to in section 22, refuses to appear before it or does not co-operate with it in conducting investigation, then, the investigation committee may proceed ex parte.

Investigation into act or conduct or certain other persons in certain cases.

27. The investigation committee may cause investigation into any act or conduct of any person, other than the Judge concerned, in so far as it considers necessary so to do for the purpose of its investigation into any allegations made against a Judge and shall give such person a reasonable opportunity of being heard and to produce evidence in his defence.

Submission of report by investigation committee

28. The investigation committee, after

completion of the inquiry in respect of a complaint, shall submit its findings to the Oversight Committee.

C. INQUIRY PROCEDURE OF INVESTIGATION COMMITTEE

Procedure in inquiries by investigation committee

29. (1) The investigation committee shall frame definite charges against the Judge on the basis of which the inquiry is proposed to be held.

(2) Every such inquiry shall be conducted in camera by the investigation committee.

(3) Charges framed under sub-section (1) together with the statement of grounds on which each such charge is based shall be communicated to the Judge and he shall be given a reasonable opportunity of presenting a written statement of defence within such time as may be specified by the investigation committee.

(4) The investigation committee shall hold every such inquiry as expeditiously as possible and in any case complete the inquiry within a period of six months from the date of receipt of the complaint: Provided that the Oversight Committee, for reasons to be recorded in writing, may extend the period for completion of the inquiry by a further period of six months.

Investigation committee to have power to regulate its own procedure

30. Save as otherwise provided, the investigation committee shall have power to regulate its own procedure in making the inquiry and shall give reasonable opportunity to the Judge of cross examining witnesses, adducing evidence and of being heard in his defence.

Central Government to appoint an advocate to conduct cases against Judge.

31. The Central Government may, if requested by the investigation committee, appoint an

advocate to conduct the cases against the Judge.

Staff of oversight Committee

D. STAFF OF OVERSIGHT COMMITTEE

32. (1) The Oversight Committee shall, for the purpose of performing its functions under this Act, appoint a Secretary and such other officers and employees possessing such qualifications, as the President may determine, from time to time, in consultation with the Oversight Committee.

(2) The terms and conditions of service of the Secretary, officers and employees referred to in sub-section (1) shall be such as the President may determine, from time to time, in consultation with the Oversight Committee.

(3) In the discharge of their functions under this Act, the Secretary, the officers and employees referred to in sub-section (1) shall be subject to the administrative control and direction of the Oversight Committee.

(4)The Oversight Committee shall provide such number of its officers and other employees to assist the investigation committee as the Oversight Committee considers appropriate having regard to the nature of investigation in a case.

E. PENALTIES ON CONCLUSION OF INQUIRY

Stoppage of assigning judicial work in certain cases.

33. During the pendency of the inquiry by the investigation committee, the Oversight Committee may recommend stoppage of assigning judicial work including cases assigned to the Judge concerned if it appears to the Oversight Committee that it is necessary in the interest of fair and impartial

scrutiny of complaints or investigation or inquiry.

Procedure on receipt of report of investigation committee

34. (1) If the Oversight Committee on receipt of the report from the investigation committee is satisfied that—

(a)no charges have been proved, it shall dismiss the complaint and matter be closed and no further action shall be taken against the Judge and the complainant shall be informed accordingly;

(b) all or any of the charges have been proved but the Oversight Committee is of the opinion that the charges proved do not warrant removal of the Judge, it may, by order, issue advisories or warnings.

(2) Without prejudice to the provisions contained in sub-section (1), if the Oversight Committee, on receipt of the report from the investigation committee is satisfied that there has been a prima facie commission of any offence under any law for the time being in force by a Judge, it may recommend to the Central Government for prosecution of the Judge in accordance with the law for the time being in force.

(3) In a case where an inquiry or investigation against the Judge has been initiated and such Judge has demitted office during such inquiry or investigation, such inquiry or investigation may be continued if the Oversight Committee is of the opinion that the misbehaviour is serious in nature and requires to be inquired into or investigated and the Oversight Committee may after conclusion of inquiry forward its findings to the Central Government to take further action in the matter under relevant law for the time being in force.

Advice to President for removal of Judge.

35. If the Oversight Committee is satisfied that all or any of the charges of misbehaviour or incapacity of a Judge have been proved and that they are of serious nature warranting his removal, it shall request the judge to voluntarily resign and if he fails to do so, then, advise the President to proceed for the removal of the Judge and the President shall refer the matter to Parliament.

Filing of complaint against complainant in certain cases.

36. If the Scrutiny Panel refers a case to the Oversight Committee under section 16, the Oversight Committee shall consider the matter further and if it concurs with the conclusion of the Scrutiny Panel, it may authorise the filing of a criminal complaint against the original complainant before a competent court.

F. OTHER PROVISIONS RELATING TO INQUIRY

Proceedings before Oversight committee to be judicial proceedings.

37. All proceedings under this Act shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code, and the Oversight Committee shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

Power to call for assistance.

38. The Oversight Committee shall be entitled to take assistance of such officers of the Central Government or State Government or any agency thereof or authority as it deems fit.

Confidentiality in complaint procedure

39. Notwithstanding anything contained in any other law for the time being in force, the complainant and every person who participates in the scrutiny or investigation or inquiry as a witness or as a legal

practitioner or in any other capacity, whether or not he seeks confidentiality about his name, shall undertake to the Oversight Committee or Scrutiny Panel or investigation committee that he shall not reveal his own name, the name of the Judge complained against, the contents of the complaint or any of the documents or proceedings to anybody else including the media without the prior written approval of the Oversight Committee: Provided that the Oversight Committee may, if it considers appropriate, authorise any person to apprise the media or press in respect of matters relating to complaint, scrutiny or investigation or inquiry, as the case may be.

Keeping identity of complainant confidential

40. The Oversight Committee or the Scrutiny Panel or investigation committee may, at the request of a complainant, direct that the complainant be accorded such protection, as it deems appropriate, including keeping his identity confidential, from everybody and also the Judge against whom the complaint is made.

No action for contempt to lie in certain cases.

41. After the commencement of scrutiny of complaints under this Act, no action for contempt of court shall lie or shall be proceeded with in respect of the allegations, which are the subject matter of the investigation or inquiry.

Investigation and Inquiry by Oversight Committee not to affect criminal liability.

42. Any scrutiny, investigation or inquiry pending before the Scrutiny Panel or investigation committee or Oversight Committee shall not affect the criminal liability in respect of such allegations which are the subject matter of the investigation or inquiry.

All records

43. Notwithstanding anything contained in the

document etc. related to complaint scrutiny. Investigation and inquiry to be confidential

Right to Information Act, 2005 or any other law for the time being in force, all papers, documents and records of proceedings related to a complaint, preliminary investigation and inquiry shall be confidential and shall not be disclosed by any person in any proceeding except as directed by the Oversight Committee:

Provided that the findings of the investigation committee and the orders passed by the Oversight Committee under clause (b) of sub-section (1) of section 34 shall be made public.

Protection of action taken in good faith

44. No suit, prosecution or other legal proceeding shall lie against the Chairperson or any member of the Oversight Committee, Scrutiny Panel, investigation committee or against any officer or employee, agency or person engaged by such committees or panel for the purpose of conducting scrutiny or investigation or inquiry in respect of anything which is in good faith done or intended to be done under this Act or the rules made there under.

CHAPTER VII

PROCEDURE FOR PRESENTATION OF AN ADDRESS FOR REMOVAL OF A JUDGE

Laying of advice of oversight Committee before Parliament.

45. The President, on receipt of advice under section 35, shall cause the findings of the Oversight Committee along with the accompanying materials to be laid before both Houses of Parliament.

Motion for removal of a Judge

46. On laying of the advice of the Oversight Committee along with the accompanying material, the Central Government may move a motion in either House of Parliament for taking up the said advice for consideration

by the House.

Investigation into misbehaviour or incapacity of Judge by investigation committee for removal of Judges.

47. (1) Notwithstanding anything contained in section 45 or section 46, if notice is given of a motion for presenting an address to the President praying for the removal of a Judge signed,—

(a)in the case of a notice given in the House of the People, by not less than one hundred members of that House;

(b)in the case of a notice given in the Council of States, by not less than fifty members of that Council, then, the Speaker or, as the case may be, the Chairman may, after consulting such persons, if any, as he thinks fit and after considering such materials, if any, as may be available to him, either admit the motion or refuse to admit the same.

(2) If the motion referred to in sub-section (1) is admitted, the Speaker or, as the case may be, the Chairman shall keep the motion pending and the matter shall be referred to the Oversight Committee for constitution of an investigation committee under section 22.

(3) The Oversight Committee, after receipt of reference under sub-section (2), constitute an investigation committee under section 22 and the investigation committee shall conduct an inquiry in accordance with the provisions contained under Chapter VI and submit its report to the Oversight Committee for being submitted to the Speaker or Chairman, as the case may be, for consideration.

(4) Where it is alleged that a Judge is unable to discharge the duties of his office efficiently due to any physical or mental incapacity and

the allegation is denied, the investigation committee may arrange for the medical examination of the Judge by such Medical Board as may be appointed for the purpose by the Speaker or, as the case may be, the Chairman.

(5) The Medical Board shall undertake such medical examination of the Judge as may be considered necessary and submit a report to the investigation committee stating therein whether the incapacity is such as to render the Judge unfit to continue in office.

(6) If the Judge refuses to undergo medical examination considered necessary by the Medical Board, the Board shall submit a report to the investigation committee stating therein the examination which the Judge has refused to undergo, and the investigation committee may, on receipt of such report, presume that the Judge suffers from such physical or mental incapacity as is alleged in the motion referred to in sub-section (1).

Consideration of report and procedure for presentation of an address for removal of Judge

48. (1) If the report of the investigation committee contains a finding that the Judge is not guilty of any misbehaviour or does not suffer from any incapacity, then, no further steps shall be taken in either House of Parliament in relation to the report and the motion pending in the House or the Houses of Parliament shall not be proceeded with.

(2) If the report of the investigation committee contains a finding that the Judge is guilty of any misbehaviour or suffers from any incapacity, then, the motion referred to in section 46 shall together with the report of the investigation committee, be taken up for consideration by the House or the Houses of

Parliament in which it is pending.

(3) If the motion is adopted by each House of Parliament in accordance with the provisions of clause (4) of article 124 or, as the case may be, in accordance with that clause read with article 218 of the Constitution, then, the misbehaviour or incapacity of the Judge shall be deemed to have been proved and an address praying for the removal of the Judge shall be presented in the prescribed manner to the President by each House of Parliament in the same session in which the motion has been adopted.

Power of Joint Committee to make rules

49.(1) There shall be constituted a Joint Committee of both Houses of Parliament in accordance with the provisions hereinafter contained for the purpose of making rules to carry out the purposes of this Chapter.

(2) The Joint Committee shall consist of fifteen members of whom ten shall be nominated by the Speaker and five shall be nominated by the Chairman.

(3) The Joint Committee shall elect its own Chairman and shall have power to regulate its own procedure.

(4) Without prejudice to the generality of the provisions of sub-section (1), the Joint Committee may make rules to provide for the following, among other matters, namely:—

(a) the manner of transmission of a motion adopted in one House to the other House of Parliament;

(b) the manner of presentation of an address to the President for the removal of a Judge;

(c) the travelling and other allowances payable to the members of the Committee and the

witnesses who may be required to attend such Committee;

(d) the facilities which may be accorded to the Judge for defending himself;

(e) any other matter which has to be, or may be, provided for by rules or in respect of which provision is, in the opinion of the Joint Committee, necessary.

(5) Any rules made under this section shall not take effect until they are approved and confirmed both by the Speaker and the Chairman and are published in the Official Gazette, and such publication of the rules shall be conclusive proof that they have been duly made.

CHAPTER VIII

OFFENCES AND PENALTIES

Intentional insult or interruption to Oversight Committee

50. (1) Whoever intentionally insults, or causes any interruption, to the Scrutiny Panel or investigation committee or Oversight Committee while the Oversight Committee or Scrutiny Panel or investigation committee or any of their members is doing scrutiny or conducting any investigation or inquiry under this Act, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.

(2) The provisions of sub-section (2) of section 199 of the Code of Criminal Procedure, 1973 shall apply in relation to an offence referred to in sub-section (1) as they apply in relation to an offence referred to in sub-section (2) of the said section 199, subject to the modification that no complaint in respect of such offence shall be made by the Public Prosecutor except with the previous

sanction of the Oversight Committee.

Penalty for violation of confidentiality in complaint procedure

51. If any complainant or other person, who participates in the scrutiny or investigation or inquiry as a witness or as a lawyer or in any other capacity, contravenes the provisions of section 39 or section 40 or section 43, shall be liable for punishment with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Power of Oversight Committee to try certain cases.

52. When any such offence as is described in sub-section (1) of section 50 is committed, in the view, or, in the presence, of the Oversight Committee, then the said Oversight Committee, may cause the offender to be detained in custody and may at any time on the same day take cognizance of the offence and after giving the offender a reasonable opportunity of showing cause as to why he should not be punished under this section, try such offender summarily so far as may be in accordance with the procedure specified for summary trials under the Code of Criminal Procedure, 1973, and sentence him to simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Punishment for frivolous and vexatious complaints

53. (1) Any person who makes a complaint which is found, after following the procedure under this Act to be frivolous or vexatious or made with an intent to scandalise or intimidate the Judge against whom such complaint is filed, shall be punishable with simple imprisonment which may extend to one year and also with fine which may extend to fifty thousand rupees.

(2) The provisions of this section shall have effect notwithstanding anything contained in the Code of Criminal Procedure, 1973.

(3) No suit, prosecution or other legal proceeding shall lie against the complaint under this section in respect of anything which is in good faith done or intended to be done under this Act.

Offences by Companies

54. (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that where a company has different establishments or branches or different units in any establishment or branch, the concerned Head or the person in-charge of such establishment, branch or unit nominated by the company as responsible shall be liable for contravention in respect of such establishment, branch or unit: Provided further that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of,

any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purpose of this section,—

(a) " company" means anybody corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

Offences by societies or trusts

55. (1) Where an offence under this Act has been committed by a society or trust, every person who at the time the offence was committed was in charge of, and was responsible to, the society or trust for the conduct of the business of the society or the trust, as well as the society or trust, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a society or trust and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary,

trustee or other officer of the society or trust, such director, manager, secretary, trustee or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purpose of this section,—

(a) "society" means any body corporate registered under the Societies Registration Act, 1860 and, "trust" means any body registered under the Indian Trusts Act, 1882;

(b) "director", in relation to a society or trust, means a member of its governing board other than an ex officio member representing the interests of the Central or State Government or the appropriate statutory authority.

Appeal to Supreme Court

56. Any person convicted on a trial held under sub-section (1) of section 53 may, notwithstanding anything contained in any other law for the time being in force, appeal, within sixty days of order of such conviction, to the Supreme Court.

Power of Central Government to make rules.

57. (1) The Central Government may make rules, in consultation with the Chief Justice of India, to carry out the provisions of this Act (other than the provisions contained under Chapter VII).

(2) In particular, and without prejudice to the generality of the foregoing power, rules made under this section may provide for all or any of the following matters, namely:—

(a) the form and manner in which, information is to be furnished or, annual return to be filed, under section 4;

(b) the form and manner in which complaint shall be filed under section 8;

(c) other matters in respect of which the Scrutiny Panel shall, for the purpose of scrutiny of complaint, have powers of a civil court under section 14;

(d) other matters in respect of which the Oversight Committee shall, for the purpose of inquiry or investigation of complaint have powers of a civil court under clause (f) of section 23;

(e) any other matter which is required to be, or may be, specified by rules or in respect of which provision is to be made by rules.

(3) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Power to remove difficulties

58. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, after consultation with the Chief Justice of India, by an order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as appear to it to be

necessary or expedient for removing the difficulty:

Provided that no such order shall be made after the expiry of a period of three years from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

Repeal and saving

59. (1) The Judges (Inquiry) Act, 1968 is hereby repealed.

(2) Notwithstanding the repeal of the Judges (Inquiry) Act, 1968 (hereinafter referred to as the repealed Act) the rules made by the Joint Committee under section 7 of the repealed Act shall continue to be in force until rules are framed under section 49 of this Act.

(3) Notwithstanding such repeal, anything done or any action taken or purported to have been done or taken including any order or notice made or issued or any inquiry initiated under the repealed Act shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken or initiated under the corresponding provisions of this Act.

(4) The mention of particular matters in sub-sections (2) and (3) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal.

THE SCHEDULE
[See section 3(1)]

JUDICIAL STANDARDS

1. Norms, including punctuality and commitment to work, guidelines and conventions essential for the conduct and

behaviour of Judges, being pre-requisite for an independent, strong and respected judiciary, having integrity and detachment and impartial administration of justice as reflected in the Restatement of Values already adopted by the Conference of Chief Justices held in 1999 shall be practised by every Judge.

2. All times be conscious that he is under the public gaze and not do any act or omission which is unbecoming of the high office he occupies and the public esteem in which that office is held.
3. A degree of aloofness consistent with the dignity of his office shall be practised by every Judge.
4. Judgments should speak for themselves.

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