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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 organisation / 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, Bhubaneshwar, Chandigarh, Chennai, Guwahati, Hyderabad, Jaipur, Kolkata, Lucknow, Mumbai, Patna, Ranchi, Shimla, Srinagar and Thiruvanthapuram. Each Chapter is equippred 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. These may also cover topic of current interest and innovations in public sector auditing, public financial management, public sector accounting, programme evaluation. management of state and central schemes, financial management in the Panchayeti Raj Institutions and urban local bodies, fraud awareness and fraud prevention in these institutions, whistle blowing, legislative oversight on the public finances, capacity building in the areas of audit and oversight in the country and international field and any other related matter of accountability and oversight.

Institute encourages critical thinking, research and originality in interpretation and presentation of views and factual correctness of the information adduced in the articles for our Journal. The decision of the Editorial Board in the matter of selection and editorial issues will be final. 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 with a duly signed forwarding letter by post.

EDITORIAL

In the public sector, policies are the translation of the will of the people by various means of public reasoning into laws by which the people intend to govern themselves. The legislatures are tasked with policy formulation and powers are delegated by them to the executive wing of government to frame rules for implementation of the policies. In a parliamentary form of government, the executive is responsible to the legislature and there are specific provisions in the Indian Constitution providing for a collective responsibility of the executive government to the House of the people.

We feature an article by Shri Anupam Kulshreshtha who has argued that Audit is an instrument to promote accountability; it gives an opinion not a judgment. Audit opinion is not binding on the government. To make the executive government accountable, audit has a duty to scrutinize the rules and directives framed by the executive and bring irregularities/impropriety and poor performance in implementation of laws to the notice of the legislature and the citizens for whatever action the legislators or other organs of government like courts or vigilance agencies consider necessary. Even where policies are made by the legislature based on inadequate or inaccurate data, or based on an incorrect analysis of the given situation, the institution of the CAG can alert the law makers about this.

In our regular feature "Auditor's Notebook" Shri Dharam Vir discusses three topics of current interest: Tax Expenditures; Audit Mandate; and Expenditure Management.

Tax expenditures represent the amounts of revenue foregone because of special tax rates, exemptions, deductions, rebates etc. prescribed under or by tax laws. In the first topic on tax expenditures, the author makes the point that tax expenditures impact the vertical and horizontal distribution of the Union taxes since these not merely reduce the amount of divisible pool but are also not evenly spread out across the States and thereby interfere with the award of the Finance Commission. In view of the significant increase in the amount of tax expenditures over the

years, these merit serious consideration in the discourse on fiscal federalism.

The second topic on Audit Mandate considers the issues arising in the background of recent judgments of the Supreme Court which have not merely reaffirmed the powers of the CAG to conduct performance audit and examine the economy, efficiency and effectiveness of expenditure but also laid down the red lines which would suggest that the CAG is not authorized to comment on government policies. According to the author, there can nevertheless be situations in which it may not be possible for the CAG to look the other way where government policies are concerned. In this context the author also suggests that the executive government should define upfront, in the context of its programmes that affect public moneys, as to what constitutes its policy (and should ordinarily be a no-go area for the auditors) clearly indicating the underlying assumptions and rationale as well as the anticipated objectives to enable the auditors to test them.

In the third topic on expenditure management the author recommends that the structure of Government accounts must recognize distinction between expenditures and transfers or releases; otherwise Government accounts will fail to represent true and fair picture of receipts and expenditures of Government and the output and outcome budgets will remain imperfect instruments of expenditure management and accountability.

The Finance Minister's annual Budget Speech is an important address to the nation where the government's policies, plans and priorities affecting public exchequer are announced. Importance of reviewing the follow up action on specific promises and assurances held out through Budget Speeches can hardly be emphasized. Here we present abridged findings of a research study conducted by Dr. Subhash Chandra Pandey under which follow up on Budget Speeches of Budget 2004-05, 2005-06, and 2006-07 were broadly reviewed upto December 2012. The findings indicate a mix of successes and failures.

Dr. Sadu Israel in his article discusses Forensic Audit which involves examination of legalities by blending the techniques of

propriety (performance related), regularity, investigative and financial audits.GAO, USA and NAO, UK have specialized Forensic Investigation teams. SAI India had issued audit guidelines for dealing with fraud and corruption, but they do not mention Forensic Auditing. In response to ARC recommendations, while agreeing to train his officers in forensic audit, CAG emphasized that the responsibility to undertake forensic examination finally rests with the State and its anti-corruption or vigilance agencies. The scope and extent of forensic audit by the CAG as a part of his oversight functions needs more clarity. There are other challenges that include a need for a well-defined relationship with investigating agencies, defining the position of the auditor in criminal investigations, framing rules for methods of evidence gathering, besides capacity building issues.

Enterprise-wide Risk Management framework has come to be recognized as a globally accepted best practice not only for the profit-centric private firms but also for the publicly-funded service delivery functions of the governments. In this context, it was not uncommon for the governments' world-over to look towards their Supreme Audit Institutions to help establish frameworks that can identify, analyze, evaluate and treat organizational risks which hinder achievement of the objectives. The ERM framework does not require additional resources. It only calls for changes in the way in which the government conducts its business, and when the new Government focuses on "minimum government and maximum governance", ERM framework for the government departments may help in furthering this objective. In his article on this subject, Shri J. Wilson advocates application of this framework to the Indian Audit and Accounts Department as a pioneering example.

Ms. Vidhu Sood's article discusses the definition, composition and disclosure requirements of debt, implications of cash management on debt management and issues important for the audit of public debt.Financial reporting of debt must address elements of definition and disclosures in debt comprehensively. Cash management of Governments is also an area of concern. Other important issues are management of public account,

implications of guarantees and off-budget liabilities, assessment of asset-liability ratio etc. There is an opportunity for audit to look into cash and debt management of the Governments as a whole.

The INTOSAI Working Group on Environmental Auditing (WGEA) has developed many research papers and guidelines to bring uniformity in approach and methodology in conducting EA and to exchange experience. SAI India has been conducting EAs and contributing substantially towards better environmental management and sustainable development by issuing recommendations and remedial measures on various projects and programmes. Shri. K. P. Sasidharan's article in this issue extensively covers in five parts the global initiatives for environmental protection and sustainability, elements of Environmental Management Systems (EMS), Government of India's approach to Sustainable Development along with SAI India's efforts in capacity building and conducting more focused EA. The article also discusses some of SAI India's EA reports and their impact in improving the project implementation and policy formulation.

In the Document Section, we have included "The Lokpal and Lokayukats Act, 2013" for record and information.

Editor-in-Chief

CAG AND POLICY

AnupamKulshreshtha*

There has been an endless debate on the issue whether the CAG can comment on the policy made by the government. This article examines the concept of government, the process of policy formulation and role of audit in promoting good governance

CAG can't question state policies!

That is what the Supreme Court held while upholding the Gujarat High Court judgment in the case, Pathan Mohammed SulemanRehmatkhanvs State of Gujarat &Ors. The PIL, based on an audit report, was earlier dismissed by the HC holding that the CAG cannot question the merits of the state government's policy. This was challenged in the apex court, which observed that "CAG is a key figure in the system of parliamentary control of finance and is empowered to delve into the economy, efficiency and effectiveness with which the departmental authorities or other bodies had used their resources in discharging their functions…But we cannot lose sight of the fact that it is the government which administers and runs the state... State's welfare, progress, requirements and needs of the people are better answered by the state, also as to how the resources are to be utilised for achieving various objectives. If every decision taken by the state is tested by a microscopic and a suspicious eye, the decision- makers will lose all their initiative and enthusiasm." The top court further said that "criticisms are always welcome in a Parliamentary democracy, but a decision taken in good faith, with good intentions, without any extraneous considerations, cannot be littled, even if that decision was ultimately proved to be wrong."[1]

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*Shri Anupam Kulshreshtha is a former Deputy Comptroller and Auditor General

[1]Pathan Mohammed Suleman Rehmat Khan Vs State of Gujarat & Orthers. Special Leave Petition (c) No.32507 of 2013-Decided on 22-11-2013.

Earlier Supreme Court in its judgment of December 2001 in relation to various writ petitions filed in the BALCO case had held that it was, "neither within the domain of courts nor the scope of judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved...."

However, in another case dismissing a plea challenging the CAG's power to conduct performance audit of coal block allocation and other issues, the Supreme Court observed that CAG is not a "munimji" (accountant) and that scrutinising the effective use of resources is his primary duty and it was for Parliament to accept or reject his reports.[2]

The ratio of these judgments reveal no contradiction. It is nobody's case that decisions of an elected government, if taken in good faith, with good intentions and without any extraneous considerations should be questioned. The other point which emerges is that the CAG reports are not binding on the government.

What is Policy!

Policy is the expressed intent of the top management. Policy could be a governing principle like providing free electricity or water, a plan like implementing MNREGA, or a course of action like allocating resources. It is supposed to evolve from a deliberative process. Formulating a Policy could follow a top down approach like the Minimum Common Programme of a coalition Government or it could be initiated by the bureaucratic set up.

There is nothing like a 'right' or 'wrong' policy; so, how does one distinguish a good policy from a bad policy. A majority vote, in today's political context, need not necessarily make a good policy. A good policy has to be fair and equitable; it should not impose disproportional impacts on different interest groups. Policy formulation should be based upon due process that respects the constitutional rights of individuals.A good policy may not always be popular; it may be protecting the legitimate interests of minority

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[2]http://www.business-standard.com/article/economy-policy/cag-is-not-a-munim-sc -tell-petitioner-112100103012_1.html

views too. A good policy must be backed with clear goals and objectives. There must be transparency in the policy formulation process, a range of alternatives must have been evaluated based on a judiciously defined evaluation criteria. Implementing a policy at times may have unintended consequences; the point to be examined would be whether there is some evidence to show that these unintended consequences could have been perceived when the policy was being formulated.

A policy need not be judged whether it was wise or whether better public policy could have been evolved; but it certainly should be evaluated whether the decision to formulate a particular policy was taken in good faith, with good intentions and without any extraneous considerations.

Legislative bodies make policy decisions; executive implement the policies. Common usage of the term "policy" blurs the line between formulation of policy and administration of policy and causes some confusion. The executive government may also formulate policy and for this purpose it should be distinguished whether it is a policy framed by the legislature or a policy formulated by the executive government.

Separation of Power

Nature of relationship between the executive and the legislature determine the type of Government a country has - namely, the parliamentary form of government and the presidential form of government. In the parliamentary form of government, the executive is responsible to the legislature, but in the presidential type, the executive is not responsible to the legislature. In the Parliamentary system of government, the Parliament is supreme, and the executive government, comprised of some members of the Parliament, are accountable to it.

The Indian Constitution does not specifically provide for separation of powers in the sense some other constitutions do, but the functions of different organs of the Government have been sufficiently differentiated. The law-making wing is the Legislature, the governing wing is called the Executive and the wing responsible for interpreting the Law is the Judiciary.

Prof. K.T. Shah, a member of Constituent Assembly, laid emphasis to insert by amendment a new Article 40-A concerned with doctrine of separation of powers. This Article reads:"There shall be complete separation of powers as between the principal organs of the State, viz; the legislative, the executive, and the judicial."[3]

Dr. B.R. Ambedkar, one of the important architect of Indian Constitution, disagreeing with the argument of Prof. K.T. Shah, advocated thus:[4]

"There is no dispute whatsoever that the executive should be separated from the judiciary. With regard to the separation of the executive from the legislature, it is true that such a separation does exist in the Constitution of United States; but many Americans themselves were quite dissatisfied with the rigid separation embodied in the American Constitution between the executive and legislature..... There is not slightest doubt in my mind and in the minds of many students of Political Science, that the work of Parliament is so complicated, so vast that unless and until the members of the Legislature receive direct guidance and initiative from the members of the Executive, sitting in Parliament, it would be very difficult for Members of Parliament to carry on the work of the Legislature. I personally therefore, do not think that there is any very great loss that is likely to occur if we do not adopt the American method of separating the Executive from the Legislature."

However, not providing for complete separation of powers between the three principal organs of the State, viz; the legislative, the executive, and the judiciary does not mean that there is no separation of power.

In a landmark judgment (Rai Sahib Ram Jawaya v. State of Punjab)[5], Hon'ble Chief Justice B.K. Mukherjea observed:"It may not be possible to frame an exhaustive definition of what executive function means and implies. Ordinarily the executive power

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[3]Constituent Assembly Debates Book No.2, Vol. No. VII Second Print 1989, p. 959
[4]Ibid p. 962
[5]Rai Sahib Ram Jawaya Kapur v. State of Punjab (1955) 2 SCR 225

connotes the residue of governmental functions that remain after legislative and judicial functions are taken away. The Indian Constitution has not indeed recognised the doctrine of separation of powers in the absolute rigidity but the functions of the different parts or branches of the Government have been sufficiently differentiated and consequently it can very well be said that our Constitution does not contemplate assumption by one organ or part of the State of the functions that essentially belong to another."

The executive function comprises both the determination of the policy as well as carrying it into execution. This evidently includes the initiation of legislation, the maintenance of order, the promotion of social and economic welfare, the direction of foreign policy, in fact the carrying on or supervision of the general administration of the State.

The executive in a Parliamentary system is responsible to the legislature for all its actions. The ministers are answerable to the Parliament. The Council of Minister remains in office as long as they enjoy the support and confidence of the LokSabha. The legislature has the right to seek detailed information about the working of the government from the ministers, which they cannot refuse to provide.

In India, the executive acts are subject to the control of the legislature. Under Article 53(1) of our Constitution, the executive power of the Union is vested in the President. Article 73 defines that the extent of executive power of the Union shall extend to the matters with respect to which Parliament has power to make law. Under Article 75 there is to be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions. Article 75 (3) provides for collective responsibility of the Council of Ministers to the House of the People.

A disadvantage of this system is that the executive and legislative organs of the government work in close collaboration and this affects the principle of separation of powers. In view of the legislative support and the formidable power at its disposal, the cabinet virtually becomes dictatorial. It becomes whimsical in exercising its power without caring for liberty of the people. The Cabinet enjoying, as it does, a majority in the legislature

concentrates in itself the virtual control of both legislative and executive functions; and as the Ministers constituting the Cabinet are presumably agreed on fundamentals and act on the principle of collective responsibility, the most important questions of policy are all formulated by them. Politicization of administration is another demerit of the system. Political consideration in policy formulation and implementation outweigh popular interest. In other words people's interest suffers at the cost of political considerations. The leadership of the party by virtue of powers it enjoys mobilizes the administration to strengthen the party prospects in the election. Prof. Dicey points out another serious lacuna in the system. According to him the executive under a parliamentary system fails to take quick decision at the time of any crisis or war. This system is not clearly suitable in countries with more than two parties.

Disposing the writ petition in the Telecom case (WP(C) NOS. 3673/2010 & 3679/2010)[6], the Delhi High Court observed, "One ill of a democratic system is partisan majoritarian politics resulting in partisan political control.Policies tend to be determined by party strife and sectional interest."

The Concept of accountability

On 22 December 2011, the 66th United Nations General Assembly adopted a resolution "Promoting the efficiency, accountability, effectiveness and transparency of public administration by strengthening supreme audit institutions", which among other things stated an important role of a Supreme Audit Institution as promoting the efficiency, accountability, effectiveness and transparency of public administration, which is conducive to the achievement of national development objectives and priorities as well as the internationally agreed development goals, including the Millennium Development Goals.

The Indian Constitution provides for a CAG, who shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States and of any other authority or body as may be prescribed by or under any law made by Parliament…. The important words to note here are 'in relation to

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[6]In the High Court of Delhi at New Delhi WP(C) NO.3673/2010 and WP(C) NO. 3679/2010

the accounts'. The Constitution makes it abundantly clear that the duty of the CAG to hold the executive accountable to the legislature is not restricted to merely looking at the accounts, but covers a much wider scope.

The last century saw a change in the concept of governance; it changed from that of a *laissez faire* to the one where the concerns of Governments were not confined to law and order alone, but went all the way to areas which impact quality of life of the people. Along with this development, there emerged another phenomenon all over the world, though in differing magnitude. The people, the average citizen to whom various government programmes were directed at, became more and more aware of their rights and even started demanding reasons for non-delivery or even for inadequate delivery. Audit, or to be more relevant here, the Public Sector Audit has evolved with this background. Role of public sector audit increased from merely looking at the regularity aspects to looking at compliance and performance aspects and at times even to the extent of questioning the policy formulation and thus it emerged as an active partner in the quest of society towards good governance.

Stating that the new regulatory State had not only to cope with the crisis of the economic policies and the crisis of the system of rule itself and that it had to reconstruct institutions on the ruins of the club government, the Hon'ble Delhi HC in its judgment in the Telecom case observed, "Thus, the expansion of audit into ambitious systems of surveillance are not therefore unexpected consequences of the development of the new regulatory State.They are central to its existence because they are the key response to the ruins of club governance."

This increased dependence on audit to seek accountability of the executive and the consequent increased recognition of the importance of the SAIs as a part of effective country institutions has put more responsibility on audit. Audit had to look inwards as well that its procedures had the required transparency and a quality control mechanism built in.

The International Auditing Standards

The International Organisation of Supreme Audit Institutions (INTOSAI), which operates as an umbrella organisation for the external government audit community, has been in the process of developing and promoting auditing standards to be followed by various SAIs. These are known as the International Standards of Supreme Audit Institutions (ISSAIs) for public sector auditors. ISSAI 12 states that the extent to which an SAI is able to make a difference to the lives of citizens depends on the SAI, which has to work towards strengthening the accountability, transparency and integrity of government and public sector entities and in carrying out audits to ensure that government and public sector entities are held accountable for their stewardship over, and use of, public resources.

The Role of Audit

All public-sector audits start from objectives, which may differ depending on the type of audit being conducted. However, all public-sector auditing contributes to good governance by providing the intended users with independent, objective and reliable information, conclusions or opinions based on sufficient and appropriate evidence relating to public entities and thus enhancing accountability and transparency, encouraging continuous improvement and sustained confidence in the appropriate use of public funds and assets and the performance of public administration; reinforcing the effectiveness of those bodies within the constitutional arrangement that exercise general monitoring and corrective functions over government, and those responsible for the management of publicly-funded activities; creating incentives for change by providing knowledge, comprehensive analysis and well- founded recommendations for improvement.

Audit by a Supreme Audit Institution is not an instrument to ensure maximization of government revenue, as is wrongly understood by many. Audit is an instrument to promote accountability of the executive towards the legislature. We may refer to the mission and vision statements of the CAG of India as mentioned on its website saiindia.gov.in.

VISION: The vision of SAI India represents what we aspire to become: We strive to be a global leader and initiator of national

and international best practices in public sector auditing and accounting and recognised for independent, credible, balanced and timely reporting on public finance and governance.

MISSION: Our mission enunciates our current role and describes what we are doing today: Mandated by the Constitution of India, we promote accountability, transparency and good governance through high quality auditing and accounting and provide independent assurance to our stakeholders, the Legislature, the Executive and the Public, that public funds are being used efficiently and for the intended purposes.

Can the CAG audit policy:

Let us examine various aspects of this question in the background of the discussion on policy formulation, the separation of power and of the role of audit in the changing political and economic environment.

The legislature has the mandate of the people and the Constitution of this country gives them the authority to legislate on policy matters. The CAG, *prima facie* would have no role to offer any comments on a policy framed by the legislature.

What about a policy framed by the executive? The executive is accountable to the legislature and the institution of CAG is one of the instruments to promote accountability of the executive to the legislature and thus it shall be the duty of the CAG to examine the entire process of policy formulation by the executive and offer comments. It is noteworthy here that the Constitution of India and also the CAG (DPC) Act puts a duty on the CAG to examine all matter in relation to accounts. The contextual interpretation under the various theories of interpretation of statutes states that although the meaning of the statutory provision has to be ascertained only from the words employed by the Legislature, the set up and context are also relevant for ascertaining what exactly was meant to be conveyed by the terminology employed. In ascertaining the true intention of the Legislature due regard should be given to the context and the setting in which they occur; the words should not be read in isolation. The liberal construction states that in construing a provision of a statute a construction which tends to make any part of the statute meaningless or ineffective should be

avoided.The words 'in relation to accounts' in Art. 149 of the Constitution of India have to be interpreted in a much wider context keeping in mind the importance what the Constitutional Assembly debates gave to this institution.

In a set up where dividing line between the executive and legislative organs of the government has been blurred and as observed by the hon'ble Delhi HC, "One ill of a democratic system is partisan majoritarian politics resulting in partisan political control.Policies tend to be determined by party strife and sectional interest", the onus falls clearly on the CAG to let the nation know whether a particular policy decision was taken by the executive in good faith, with good intentions and without any extraneous considerations. It is a duty of the CAG to report his findings, with due regard to the materiality aspect, to the legislature, if in his view there were apparent shortcomings in the process of policy formulation.

Let us re-examine the role of audit in commenting on a policy framed by the legislature. A top down approach of policy formulation, howsoever questionable it may be, cannot be commented upon by the CAG. The accountability of the elected government on such a policy can be looked into by the opposition or if the elected government has a clear majority, the voters may exercise their right when the time comes. If such a policy violates any of the Constitutional provisions, the judiciary may be able to comment either through a writ petition or through the instrument of 'judicial activism'.

A policy formulation in most cases would involve both the legislative and the executive wing of the Government. The executive wing may initiate the legislation of the policy. This may require collection of relevant data, analysing the same and presenting alternative solutions to the issue on which policy is to be framed to the legislature. The decision making, especially in policy formulation, is a complex process and may involve more than one government departments and may require data collection from various sources. Thus the onus whether a policy decision was taken in good faith, with good intentions and without any extraneous considerations would be on the process through which data was collected, analysed and the findings presented to the

legislature by the executive. Data collected in a selected manner or an analysis made on inadequate or incorrect data set or an incorrect analysis presented by the executive to the legislature may defeat the process itself. Who, in such case, can make the nation and other stake holders know whether a policy was framed with good intentions and without any extraneous consideration. It is only the Supreme Audit Institution of the country, the CAG of India in our case, who can be trusted with such task towards promoting good governance.

Consider a scenario where exemptions are granted under the Central Excise Act on various commodities. Would it not be necessary to examine the entire process and determine for the Nation that such exemptions were granted in the line of a long term industrial policy and were without any extraneous consideration. Such an examination by audit would become all the more necessary if there are apparent contradictions in a stated industrial policy and granting of any concessions under various taxation legislations. The CAG reports on revenue matters have included such comments in the past. In a Stand-Alone Audit Report (2011)[7]of the CAG on the Government of Kerala, Excise Department, it was commented that, "We consider that the government and top management of the department did not adopt transparent procedures to get an amendment of the Abkari Act enacted." In the same report audit also questioned whether the Government adopted consistent policies. This was a clear comment on a policy framed by the legislature.

On the expenditure side, many comments on policy formulation can be observed. I recall that Audit had commented on and questioned the formulation of IRDP, under which it was proposed that a subsidy of Rs.7000 (this was probably 1996 or 1997) was enough to bring a family above the poverty line, whereas the economists were of the view that a minimum of Rs.11,000 would have been required. This was a comment on the legislative policy. In an audit report on "AIDS eradication programme' audit had commented adversely on the government's

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[7]http://saiindia.gov.in/english/home/Our_Products/Audit_Report/Government_Wise/state_audit/recent_reports/Kerala/2011/Stand_Alone/Chap_3.swf

adopted policy of not revealing the name of an infected person as it would go against the preventive aspect of the decease.

Audit gives an opinion not a judgment. Audit opinion is not binding on the government. Even the PAC recommendations are not binding on the government. The PAC rules provide that if the government does not concur with a particular recommendation of PAC, it has to give reasons for the same. The courts have also observed that audit has a duty to scrutinise the effective use of resources.

AUDITOR'S NOTEBOOK

DharamVir*

Tax Expenditures: Some issues; (ii) Audit Mandate: Judiciary draws the red lines: (iii) Expenditure Management: Centrally Sponsored Schemes

(i) Tax Expenditures: Some Issues

The aggregate amount of tax revenue is primarily a function of the tax base and the rates of taxes both of which are prescribed by or under the relevant laws. These laws are subjected to intensive legislative scrutiny when initially enacted. The Central Excise Act was enacted in 1948, the Income tax in 1961, the Sea Customs Act in 1962, the Customs Tariff Act in 1975, the Central Excise Tariff Act in 1985 while the Service tax was introduced through the Finance Act 1994. The laws have been amended almost every year by the Finance Act which may alter both the rates of taxation as well as the tax basethrough a range of measures which include special tax rates, exemptions, deductions, rebates etc. These result in forgoing considerable amounts of revenue and in manner of speaking constitute tax expenditures which are spending programmes embedded in tax laws providing subsidy to specific classes of tax payers.

In the case of direct taxes the Income-tax Act *inter alia* provides for tax incentives by way of reliefs, rebates and special rates etc; to promote savings by individuals; exports, balanced regional development; creation of infrastructure facilities; employment; scientific research and development; and so on. In the case of indirect taxes, tax expenditures arise in consequence of the

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notification and application of the lower effective rates of duties vis a vis the rates prescribed in the Central Excise Tariff Act and the Customs Tariff Act.

My earlier article "Financial Supremacy of the Legislature"[1] had discussed the lack of adequate legislature oversight on such tax expenditures, particularly when contrasted with the scrutiny of Government spending programmes as embodied in the annual budget. It was pointed out that whereas the Ministries' Demands for Grants are critically examined by the Departmentally Related Standing Committees and also individually put to vote (excluding the segment relating to charged expenditure) besides the scrutiny exercised by the Estimates Committee, the Finance Bill which gives rise to tax expenditures is merely discussed on the floor of the House with all its limitations like time constraint, adherence to party lines etc.

Recently, in response to a specific inquiry by the Public Accounts Committeeas to whether any study had been conducted to calculate the impact of exemptions on the growth of the economy, Government replied in the negative[2].

Similarly, while examining the Demands for Grants of the Ministry of Finance, Department of Revenue, for 2013-14, the Standing Committee on the Ministry of Finance inquired about the revenue foregone with a quest for justification for incentives, both in respect of direct and indirect taxes. The Ministry of Finance merely furnished the year-wise details of the amounts relating to direct taxes, but there was no mention of the justification for incentives. The Committee desired that the Ministry should furnish a comprehensive review of the amounts foregone of Rs. 500 crore or more, how it has served economic or social purpose[3].

The broad-brush examination by the Standing Committee neither specifically considered the amendments proposed to the tax laws through the Finance Bill, 2013, nor looked into the individual

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[1]Financial Supremacy of the Legislature : Auditor's Notebook Indian Journal of Public Audit and Accountability January-June 2012
[2]Eighty Seventh Report of the Public Accounts Committee Fifteenth Lok Sabha
[3]Sixty Eighth Report of the Committee Fifteenth Lok Sabha

concessions already available. Be that as it may, there is another issue related to tax expenditures with their implications for fiscal federalism.

Fiscal federalism is generally characterized by asymmetrical distribution of financial powers between the national and the sub-national governments vis a vis their respective spending obligations and is based on a perception that while centralized tax revenue administration at the national level promises more efficient resource mobilization, it is decentralized spending at the sub-national level which ensures better programme delivery and outcomes. In India the asymmetry has got reinforced by the unitary bias in the Constitution.

Recognizing this asymmetry, the Constitution mandates the setting up of a Finance Commission every five years (or even earlier if warranted) to make recommendations for the sharing of the net proceeds of Union taxes with the States and their *inter se* allocation between the States. The Finance Commission is also mandated to make recommendations regarding Central Government grants-in aid to States as may be in need of assistance.

The Statement of Revenue Foregone tabled with the budget for 2013-14 projects the total amount of tax expenditures at Rs. 573630crore for 2012-13. A substantial part of this amount is intended to provide relief to the common manwhich can be interpreted to mean that it is allocated to the States broadly on per capita basis. However, a significant amount also indirectly serves to augment the resources of the State Governments for application to specified purposes and is in the nature of hidden transfers to State Governments. The latter are in the nature of targeted direct cash transfers, especially where, as in the case of excise duties in respect of manufacturing units in the North East and the State of Jammu and Kashmir, tax expenditures arise on account of the refund of duties actually paid or claimed by such units.

The Statement of Revenue Foregone explicitly identifies some of the tax expenditures with certain specified States. An amount of over Rs. 28 thousand crore represents the revenue foregone on account of concessions in direct and indirect taxes for

industrial units in the States of Himachal Pradesh, Sikkim, Uttaranchal, North Eastern States and other backward areas. Since the subject 'industries" ordinarily falls in the State List vide entry 24 List II---State List of the Seventh Schedule to the Constitution, the said amount of over Rs. twenty eight thousand crore could be said to represent the grants provided from the Union budget to these States for the specific purpose of promotion of industries.

Apart from the aforesaid explicit area-specific concessions in the tax laws, there are several other cases of tax expenditures which are not immediately identifiable with specific States from the Statement of Revenue Foregone, but may have similar effects and implications. These involve huge amounts and include tax expenditures on account of deduction of profits of undertakings engaged in generation transmission and distribution of power; profits of units located in Special Economic Zones and Export Oriented Units; profits of undertakings engaged in development of infrastructure facilities and so on The same could be said of the tax expenditures on account of some of the sub-tariff effective rates of customs and excise duties as well as the export promotion schemes of the Union Government.

Tax expenditures are neither invariably universal nor evenly spread across the States; they not merely reduce the overall pool of the net amount of taxes available for sharing between the Union and the State Governments but also affect the *inter se* shares of the State Governments. Tax expenditures impact the vertical and horizontal distribution of resources and can cause unanticipated interferences with the awards of the Finance Commission. It is noteworthy that tax expenditures in respect of the aforesaid States during 2012-13 were almost equal to the amount of share of Union taxes of these States for the year.

Tax expenditures are generally perceived to be regressive besides favouring the more advanced States except when these are *a priori* area-specific for economically handicapped States. The amount of tax expenditures has increased more than threefold to Rs. 573630crore in 2012-13 from 158661 crore in 2004-05 when these were unveiled for the first time with the budget for 2006-07. These have important implications and merit consideration in the

discourse on financial relations between the Union and the States. Disclosure of State-wise distribution of tax expenditures and separate exhibition of tax expenditures arising on account of tax concessions granted after the awards of the Finance Commission will facilitate better appreciation of these implications and promote more informed discussion.

(ii) Audit Mandate: Judiciary draws the red lines

Questions have been raised from time to time regarding the jurisdiction of the CAG vis Government policies. The issue came prominently to the fore when the Prime Minister observed in November 2011 that it was not the CAG's business to comment on policy issues. This was in the wake of the presentation of the CAG's Audit Report[4] on the Allocation of 2G Spectrum and issue of telecom licences in the same month which had commented on the loss to the exchequer because of issue of licences at prices discovered in 2003 without testing the market afresh or without price-indexing the same despite the advice of the Ministry of Finance and the Ministry of Telecommunications. The matter again cropped up following the presentation of CAG's Audit Report[5] on allocation of coal blocks in July 2012 which had pointed out the likely windfall gains to the allottees because of allocation of coal blocks without inviting competitive bids during 2004 to 2009 despite a decision having been taken to follow the auction route in 2004. In this context the CAG's authority even do performance audit came to be questioned despite the well-settled position in this regard, particularly following the Ministry of Finance reaffirmation in June 2012 that under Section 23 of the DPC Act the CAG is empowered to determine the scope and extent of audit and that 'performance audit, which is concerned with the audit of economy, efficiency and effectiveness in the receipt and application of public funds is deemed to be within the scope of

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[4]Performance Audit Report on the Issue of Licences and Allocation of 2G Spectrum by the Department of Telecommunications: Report No.19 of 2010-11

[5]Performance Audit Report on Allocation of Coal Blocks and Augmentation of Coal Production: Ministry of Coal, Report No.7 of 2012-13

audit by the CAG'.[6] Finally, in a Public Interest Litigation, the Supreme Court stepped in and in a significant ruling observed as under:

"CAG's function to carry out examination into economy, efficiency and effectiveness with which Government has used its resources is inbuilt in the (DPC) Act. Performance Audit Reports prepared under the Regulations have to be viewed accordingly. We find no unconstitutionality in the Regulations[7]. Moreover Article 151 of the Constitution provides that the reports of the CAG relating to the accounts of the Union shall be submitted to the President who shall cause them to be laid before each House of the Parliament and the reports relating to the accounts of a State shall be submitted to Governor of the State who shall cause them to be paid before the Legislature of the State. The audit reports which are submitted by the CAG are, thus, subject to scrutiny by the Parliament or the Legislature of the State as the case may be. "[8]

The position has been reiterated in a subsequent judgment of the Supreme Court in Pathan Mohammed Suleiman Rehmatkhanvs State of Gujarat and others. In this case the petitioner had filed a Public Interest Petition before the High Court mainly based on an Audit Report which had commented inter alia on alienation of land by the State Government in favour of a joint venture between a State Government undertaking and private company on terms that were in deviation of its own policy. The petitioner had contended that the action of the State Government was illegal and void. After the petition was dismissed by the High Court the petitioner approached the Supreme Court which too dismissed the petition[9] and made inter alia the following observations:

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[6]Government of India Ministry of Finance Office Memorandum No. 6(5)-B®/99 dated 13th June 2006. In an article in the Indian Express Shri Manish Tiwari contended that the Ministry of Finance opinionwas bad in law. The Indian Express August 28 2012: "Why the CAG is wrong"

[7]The reference is to Regulations on Audit and Accounts 2007 made by the CAG under Section 23 of the DPC Act. Regulations 2(5)68 and 69 are relevant.

[8]Arvind Gupta vs. Union of India and Others : Writ petition No.393 of 2012

[9]CAG was not made a part to this case

"CAG is a key figure in the system of parliamentary control of finance and is empowered to delve into the economy, efficiency and effectiveness with which the departmental authorities or other bodies had used their resources while discharging their functions. CAG is also the final audit authority and is apart of the machinery through which the legislature enforces the regulatory and economy in the administration of public finance....But we cannot lose sight of the fact that it is the Government which runs the State and which is accountable to the people. State's welfare progress, requirements and the needs of the people are better answered by the State, also as to how the resources are to be utilized for achieving various objectives."

While this should rest the question of CAG's authority for conducting performance audit, it also appears to be drawing the red lines for audit.

Although framing of Government policy exclusive falls within the domain of the executive, the question still remains whether the constitutionally mandated scheme of separation of powers provides a complete estoppel against the review of policies by audit. Consider the following:

First, by virtue of the oath of his office the CAG is enjoined upon to uphold the Constitution and the laws. A policy that offends against the provisions of the Constitution and the laws is bound to attract audit observations.

Second, Government policies are not framed in a vacuum but based on hard facts and data. A Government policy which is constructed without due diligence and suffers from manufacturing defects being based on assumptions, data, facts etc; which are inadequate, incorrect, incomplete, or flawed as could be seen at that point of time (and not in retrospect) lays itself open to audit comments. The so-called policy of allocation of coal blocks without inviting competitive bids was basically flawed: it permitted a few chosen companies to secure one of the inputs (viz; coal) at concessional rates while the prices of outputs (Steel, power, cement) were market determined.

Third, a policy that gets bereft of its efficacy or relevance with the passage of time because of changes in the underlying assumptions, facts, data etc, which provided its original rationale, will invite audit comments.

Fourth, there might be inadequate appreciation of the long term effects of Government policy, say on environment or inter-generation equity. The question is whether audit would be transgressing its remit if Performance Audit contains comments that point to environment degradation and consequent flawed Government policy.

Fifth, a policy may result in inadequate or poor value for money as in the case of allocation of coal blocks. Incidentally, the parliament's Standing Committee (Coal and Steel) has in its April 2013 Report has observed that 'most non-transparent system' was adopted and that several coal blocks were allocated to a 'few fortunates' in 'total abuse of power by the Government' and that no much knows how much the country has suffered for that[10].

It is therefore necessary to recognize that in the examination of the three Es, Audit may sometimes come dangerously close to questioning Government policies. Incidentally, in the United Kingdom where the law specifically precludes audit from commenting on the objectives of policies, there are nevertheless instances in which audit comments come quite close to questioning the wisdom of Government policies. An example is the National Audit Office Report on "Strengthening Policies and Processes for Managing Emergency Assistance"[11]

Given the sensitiveness of the issue it may perhaps be desirable for Government to define upfront, in the context of its programmes that affect the public moneys, as to what constitutes its policy and would thus ordinarily remain a no-go area for the

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[10]Thirty-first Report of the Standing Committee on Coal and Steel (2012-13) Fifteenth Lok Sabha Ministry of Coal

[11]Referred to by Shri Vinod Rai former Comptroller and Auditor General of India, in his address on the occasion of Seminar on Public Accountability and Role of CAG of India organized by the Institute of Public Auditors of India, March 2012.

auditors. Government may also specify the objectives of the policy and the likely outcomes instead of looking for and sometimes even inventing ex post facto justification when faced with critical comments. The underlying assumptions, facts, data etc; which provide the rationale of the policy should also be clearly stated. It bears to be mentioned that under the Right to Information Act, 2005, Government is obligated to "publish all relevant facts while formulating important policies or announcing the decisions which affect public" and disclose "particulars of recipients of concessions, permits or authorizations granted by it" and "the manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes".

This will leave the auditor free to test these assumptions including their continued relevance and veracity and to comment on the implementation of the policy and the extent to which the envisaged objectives and outcomes have been achieved. There is also the need to take audit observations, including suggestions for alternative policy choices, in the proper spirit recognizing and respecting audit as a partner in the promotion of good governance and probity in public administration and not merely a Munimjee or a mere rapporteur on accounts. It may be sheer coincidence but from the examples cited it would appear that the issue of mandate has been raised only when audit comments get invested with political sensitivities, howsoever unwittingly. On the other hand, following an Audit Report on the Supply Chain Management of Rations the Indian Army has revised the ration scale of over a million soldiers to improve their satisfaction, constituted a Ration Scales Advisory Committee, and initiated modernization of the Composite Food Laboratories for ensuring better quality of rations served to the soldiers and so on[12]. Also, in line with a recommendation made in the Audit Report on Allocation of Coal Blocks, Government has issued instructions to the State Governments to incorporate an additional condition in the lease

[12]Comptroller and Auditor General of India's Performance Report 2010-2011

deeds with the allottees of coal blocks for power generation making it incumbent on the latter to sign power purchase agreements with the distribution companies through tariff-based competitive bidding so that the benefit of comparatively inexpensive coal is passed on to the consumer. There is need for more of such positive approach.

(iii) Expenditure Management: Centrally Sponsored Schemes

Presenting the interim budget for 2014-15, the Finance Minister announced the Government decision to restructure the centrally sponsored schemes collapsing the existing 126 schemes into 66 schemes including 17 flagship programmes.

The Finance Minister also announced that funds for such schemes would hereafter be transferred to the State Governments and the latter will not be disintermediated in the release of funds to the implementing agencies. For all such schemes funds will be placed with the Central administrative Ministries for transfer to the States through their respective Consolidated Funds. This will infuse greater ownership of the Plan schemes to the State Governments and greater accountability on their part to make timely and need-based releases to the implementing agencies and also to monitor their implementation more effectively[13].

Some of the challenges posed by direct release of Central funds to the implementing agencies bypassing the State Governments had been discussed in my article "Implementation of Central Schemes: Need for Reforms in the Architecture of Public Financial Management and Accountability" in an earlier issue of this Journal[14] highlighting the consequential indeterminateness of actual expenditure because of large amounts remaining unspent with the implementing agencies, the reduced efficacy of output and outcome budgets, the diminished comprehensiveness and transparency of the State Government budgets (which merely exhibited the limited State Government contribution, if any), the

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[13] Fiscal Policy Strategy Statement tabled with the interim budget for 2014-15

[14] DharamVir "Implementation of Central Schemes: Need for Reforms in the Architecture of Public Financial Management and Accountability" Indian Journal of Public Audit &Accountability January-June 2009

tendency sometimes on the part of the State Government functionaries to distance themselves from the implementation since the funds did not come from their budgets and the over-all accountability deficit. These had found resonance in the Report of Justice PunchhiCommission on Centre State Relations which had expressed concern about lack of proper accounting as well as erosion of accountability[15]. Similar concerns had been reaffirmed in comprehensive Report of High level Expert committee set up by the Planning Commission Report which had strongly recommended the phasing out and eventual discontinuance of the practice of direct release of Central funds to the implementing agencies[16].

Government decision as announced with the budget for 2014-15 follows the recommendations of the Committee on Restructuring of Centrally Sponsored Schemes which submitted its report in September 2011.

However, a key concern regarding the exhibition of actual expenditure, as distinguished from mere releases of funds, in the Union Government accounts remains unaddressed since at any time large amounts may remain unspent with the State Governments or the implementing agencies to which funds may be transferred by the State Governments, This had been prominently mentioned in my article in this Journal as well in the Reports of the High Level Committee on Efficient Expenditure Management and the Commission on Centre-State Relations. Taking note of the aforesaid issues, the High Level Committee had recommended development of a suitable accounting methodology that would distinguish between final expenditure and transfers. Although the Committee Constituted to Review the List of major and Minor Heads has recently gone into the entire structure of classification of accounts, it has merely recommended the classification of

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[15] Government of India Report of the Commission on Centre- State Relations Volume III March 2010

[16] Government of India, Planning Commission: Report of the High Level Expert Committee on Efficient Management of Public Expenditure July 2011. Also see DharamVir Auditor's Notebook Indian Journal of Public Audit and Accountability July-December 2011

grants(releases) as "Transfer Payments" without addressing the more fundamental issue of exhibition of actual expenditure in accounts[17].

As part of its continuing endeavour towards better expenditure monitoring and control Government has recently introduced an IT-based Central Plan Scheme Monitoring System (CPSMS) which seeks to track and report the expenditure incurred against releases made by the Central Government to various States/Agencies down to the last level of programme implementation along with the generation of State/District/Block/Village/Implementing Agency wise report on fund flow, expenditure and unutilized amounts under each Central plan scheme. While this may be expected to minimize the incidence of unutilized amounts because of better calibrated release of funds, it is unlikely to cure the basic deficiency in the accounts for various reasons:

- The scope of the CPSMS is by definition restricted to the Plan schemes only.
- Central Government assistance is released to the State Governments in advance and not by way of reimbursement of expenditure already incurred. In the case of some of the schemes like the Mahatma Gandhi National Rural Employment Guarantee scheme, the scheme configuration is such that funds have to be provided in advance to various tiers of the implementation agencies with the inevitable consequence of large amounts remaining in the pipeline.
- Large amounts are generally released to the State Governments and by the latter to the implementing agencies towards the end of the financial year and these are unlikely to be spent during the financial year.

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[17] Government of India Ministry of Finance Report of the Committee Constituted to Review the List of Major and Minor Heads of Accounts of Union and States

- Extra-financial considerations may sometimes dictate release of further funds despite the availability of sufficient amounts with the implementing agencies.

Unless a proper system of accounting is evolved that distinguishes between release of funds and actual expenditure, Government accounts will fail to represent true and fair picture of the receipts and expenditures of Government, and the output and outcome budgets will remain but imperfect instruments of accountability. My article ibid. had suggested a possible system whereby the releases should be classified under a suspense head within the Consolidated Fund which would be relieved by minus debit with corresponding debit to the final head on the basis of verified confirmation of incurring of expenditure. The amount outstanding under the suspense head would thus represent the amount remaining unspent.

A STUDY ON THE IMPLEMENTATION OF BUDGET ANNOUNCEMENTS (2004-07)

Dr. Subhash Chandra Pandey*

Introduction

Formal reporting on the status of implementation of some specific Budget announcements was started in Budget 2000-2001. IPAI entrusted a research study to review the latest status of the progress in meeting the promises made in the Budget Speeches of Budget 2004-05, 2005-06, and 2006-07. Budget Speeches typically include general announcements, specific proposals for changes in policies, laws, rules, institutional mechanisms and some specific, monitorable promises. Many Budget promises do not break new ground but carry forward the legacy left by the predecessor government. Some promises are merely for political goal-setting, inherently lacking in details to back up time bound action to achieve it. It would be rather inappropriate to pass a summary judgment on the follow-up because the performance is so mixed across sectors and themes. There are both heartening successes and dismal failures. The Budget announcements made by the Finance Minister cannot translate into visible outputs and outcomes without the support of the States. The 'last mile connectivity and control' substantially remains with State governments. Even in cases where the Central government has been transferring funds directly to the State and District level implementing agencies, the Central government is not able to significantly influence the outcomes.Extent of coverage of each announcement varies depending upon the relative importance and available information.

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This is a concise version of a research study submitted to IPAI in December 2012

Differential coverage is also indicative of the lack of rigor in reporting mechanism and measurability of follow-up action.The following is a condensed summary of follow up on some important announcements.

Budget management

Under **Fiscal Responsibility and Budget Management Act 2003,** target was to eliminate revenue deficit and to bring down fiscal deficit to 3% of GDP by 2008-09. Pause button was pressed in 2005-06. The deficits surged, especially from 2008-09 onwards. Even after the GDP/GSDP data was revised upwards w.e.f. 2004-05, these targets were not tightened correspondingly. The figures of revenue deficit and fiscal deficit being reported in the Budget documents do not conform to the definitions of these deficits under the FRBM Act resulting in general under-reporting of deficit and over-reporting in one year.

During 2008-09, government announced a series of 'fiscal stimulus' measures within a few months after the outbreak of financial crisis, across the board major cuts in indirect taxes and substantial step up in government expenditure with relaxed debt ceiling for States as well. Given the inertia in the economic data gathering system, it is highly unlikely that the government had credible information on which sectors were actually impacted by 'global crisis' and to what extent. Exports' contribution to India's GDP (especially net of imports) is quite marginal and these had been growing faster than GDP. Instead of addressing crisis-hit export sector, stimulus measures ended up whipping up demands in all sectors. Since the problem in India is not so much lack of demand but supply constraints (except in sectors like automobiles), the fiscal stimulus measures were poorly targeted. By general demand boost in a supply-constrained economy, these measures only fuelled spiralling inflation. Uncharitable critics would even say that the measures had less co-relation with crisis in overseas markets and more with impending General Elections.

Although thecompositional profile of overall government expenditure (combined for Central and State governments) has undergone structural changes but it has not changed much at an

aggregate level. Combined expenditure of Central and State governments was 27.4% of GDP in 1990-91, 26.5% of GDP in 2000-01, 28.1% of GDP in 2009-10(RE) and 25.2% of GDP in 2010-11BE. The deterioration in Central finances has to some extent been offset by improvement in State finances. In areas of Education, Health, Social Security & Welfare, Agriculture and Rural Development there is visible substitution of State financing by Central financing in recent years.

There has been no significant reduction in the number of CS/CSS except by way of merger into a mega scheme like NRHM. Transfer/rationalization of **Centrally Sponsored Schemes** hasnot materialized. Ineducation, health, rural development and social security, CSS funding has actually increased sharply in recent years.Central Assistance for Plan schemes locally designed by States has declined. The demand-drivenCSS tend to benefit States with better track record in showing 'progress of expenditure'.

New statements have been added to the Budget showing **beneficiary orientation of budget outlays** and **tax expenditures**besides disclosures mandated under the FRBM Act. Under 'Gender budgeting' initiative, summarized abstracts of budget outlays earmarked for women is now included in a Budget Statement.**Outcome Budgets** are being presented since 2006-07 but centralized monitoring agencies like Development Evaluation Advisory Committee have been dormant. Linkage between Budget outlays and projected outcomes continues to remain tenuous and the reporting of actual progress varies widely. For many schemes, dedicated websites have come up but not all display currently updated status.

Improvements in**States' finances in general with special attention to Bihar, J&K and North Eastern States**has been a focus area and States' finances have indeed generally improved through (a) Reduction in interest burden as a result of reduction in Central lending rate and Debt Swap Scheme allowing the States to raise cheaper market loans to prepay costlier Central loans. (b) Grants-in-aid and debt relief under Finance Commission awards and (c) Improvement in States' own tax collections, particularly VAT. (d) Decision to pass on external assistance on the same terms

back-to-back to States. With effect from 2005-06, Centre is not providing any Plan loan to States (except by way of budget pass through of external loans). However, the impact of enhanced Central assistance is not so visible from the outcomes reported. Under **Rashtriya Sam Vikas Yojana/ Backward States Grant Fund**, 108 districts had claimed their total entitlement by February, 2009. An average of 97% physical and 95% financial progress had been made by the RSVY schemes in all the sampled States (January 2010). Nothing significant is reported about the physical/financial progress of other components of the programme. Since RSVY/BRGF is a GAP FUNDING arrangement backstopping all other government schemes operating in the concerned districts, it cannot move forward unless all other programmes/schemes move forward.Absence of reporting of physical outcomes is also seen for funds released under Non-Lapsable Central Pool of Resources in the North Eastern Region. The Central support for J&K has yielded mixed results. Large-scale infusion of funds in power and roads sector has given a big push to infrastructure development in the State. The State's indebtedness has reduced, both due to enhanced Central support as well as the State's own revenue mobilization efforts. However, the financial health of the power sector and increasing diversion of Plan assistance for financing non-Plan expenditure continue to be cause of concern.

For **Tsunami Relief,** Tsunami Reconstruction and Rehabilitation Programme was initially estimated to cost Rs.10,216crore for completion in three years. No centralized reporting of actual outcomes of the programme is available in public domain.

The special mechanisms to deal with the problem of large **recoverable arrears both in direct taxes and indirect taxes** do not seem to have desired effect as Tax arrears have actually increased from Rs.111,108crore at end of 2004-05 (Rs.65,347 crore Disputed and Rs.45,760 crore Undisputed Amount) to Rs.249,443 crore by 2010-11 (Rs.188,010 crore Disputed and Rs.61,433 crore Undisputed Amount). The tax recovery from the Harshad Mehta group of entities involved in the securities scam

1992 is still pending after recovery of Rs.4,000 crore.

Tax administration reforms and modernization has progressed well. As the taxpersons use technology and psychology to deter tax evasion,Direct taxes have shown positive growth. Indirect taxes have declined due to various exemptions and the gaps in value addition chain exploited for tax evasion.Implementation of VAT has been one of the most successful fiscal reforms.

In **Banking and Financial Sector,** intent to effectlegislative changes in legal framework declared in Budget announcements have materialized years later due to lack of political consensus about the exact scope of amendments. The Banking Laws (Amendment) Bill 2011 was passed in December 2012. New law would pave the way for new bank licenses by RBI resulting in opening of new banks and branches. Legislation on Pension regulatory authority was cleared after a prolonged delay and that on Insurance reforms is still deadlocked.

Banking sector reforms required the government to infuse **additional capital in public sector banks**, which was done by issue of non-tradable special securities, so that the balance sheets look better even if the banks do not get capital in cash. As recent developments show, fiscal expansion by government has been countering RBI's efforts to control inflation by mopping up excess money supply. Curbing **Non-Performing Assets of banks** is important for continued financial sector stability. Adoption of Basel III norms by all commercial banks by March 2018 is on course. The capital base of banks is being gradually increased and the institutional mechanism for recovery of bank dues has been strengthened to address the Supreme Court's concerns for a fair deal to borrowers while empowering bankers to marshal the securities to enforce recovery. By 2011-12, Scheduled Commercial Banks remain well capitalized and compliant with regulatory prescriptions but asset quality witnessed a deterioration during 2011-12.

Interest Rates on Small Savings are being calibrated to align them with market rates with special consideration for senior

citizens.The distortionary effect of SSS on financial sector has been substantially contained by rationalising the returns on SSS. The results have started to show up in declining trend in fresh collections under short/medium term schemes. The liability of Central government towards investors in Small Savings Schemes stood atRs.790,193.67crore as on 31st March 2012 and is set to grow to Rs. 8,35,262 crore by end 2013-14. Out of the accumulated liability of on account of net collections from SS depositors by end March 2012, Rs.726,99.55crore has been invested in Central and State government securities and Rs.55,327.77 crore used up in financing operational deficit of NSSF. Accumulated operational deficit of NSSF is estimated to increase to Rs.70,615.99crore by the end of 2012-13 and Rs.89,035.55 crore by the end of 2013-14. The concerns about sustainability of these treasury banking operations require careful handling.

While equity market has made progress, the **corporate bond market** still lags behind. The Securities Contracts (Regulation) Act, 1956 was amended in 2007 so as to provide a legal framework for trading of securitized debt including mortgage backed debt. Development of a deep and active single, unified exchange-traded market for corporate bonds. Corporate Bond Market continues to remain part of unfinished agenda on financial sector reforms.

Under the roadmap for Financial Inclusion, coverage has been quite impressive. Banks have, up to June 2011, opened banking outlets in 1.07 lakh villages up from just 54,258 as on March 2010. Out of these, 22,870 villages have been covered through brick & mortar branches, 84,274 through BC outlets and 460 through other modes like mobile vans, etc. Basic banking 'no-frills' account, with 'nil' or very low minimum balance requirement as well as no charges for not maintaining such minimum balance, were introduced as per RBI directive in 2005. By June 2011, 7.91 crore No-frills accounts have been opened by banks with outstanding balance of Rs.5,944.73crore. About 203 lakh **Kisan Credit Cards** have been issued byJune 30, 2011 with a total amount outstanding to the tune of Rs. 1,36,122.32 crore. By June 2011, banks had provided 9.34 lakh overdrafts amounting to

Rs.37.42 crore and credit aggregating Rs.2,356.25 crore in 10.70 lakh General Credit Card accounts.

Disbursing **Micro-credit through** Self- Help Groups coupled with Financial Inclusion is an important driver of welfare and economic growth.46commercial banks, 81 Regional Rural Banks, 318 Cooperative Banks and the SIDBI are participating in SHG – Bank Linkage Programmerun by NABARD. 80% of bank lending to SHGs goes to Andhra Pradesh, Tamil Nadu, Karnataka and Kerala.Profile of Micro Finance in India 2009-10was as follows:, 69.53 lakh SHGs savings were linked with banks with total : ₹6198.71 crore as on 31 March 2010 being the savings amount of SHGs with banks. Further, 48.51 lakh SHGs were having loans of₹28038.28 crore outstanding as on 31 March 2010. Corpus of the **Micro Finance Development Fund** operated by NABARD stand augmented to Rs.400 crore. Budget promise of a formal **statutory framework** for the promotion, development and **regulation of the micro finance sector** remains unfulfilled.

Capital market has emerged as a major vehicle for converting savings into investment. The procedures for registration and operations have been made simpler and quicker for Foreign Institutional Investors. The investment ceiling for FIIs in debt funds has been raised. Portfolio investments will not be subject to the sectorlimits for Foreign Direct Investment. Higher Capital Market Exposure is permitted to select banks based on their performance.SEBI has set up a National Institute of Securities Markets for teaching and training intermediaries in the securities markets and promoting research. Stamp Duty on Commercial Paper has been rationalized. An Investor Protection Fund has been created under the aegis of SEBI, funded by fines and penalties.While the capital market has shown remarkable growth and orderly development, certain areas of concern remain for the government and market regulators. Indian banks remain robust, notwithstanding a decline in capital to risk-weighted assets ratio and a rise in non-performing assetlevels in the recent past. The financial market infrastructure continues to function without anymajor disruption but issues like risk and liquidity management need attention.

We have been following a cautious and gradual approach to capital account liberalization. Almost all restrictions on foreign non-debt capital inflows have been lifted. Budget 2004-05 sought to liberalize FIIs under recommendations of the **Ashok Lahiri Committee on FII (2004)** to align regulatory structures for the two flows). The Committee sought to dilute the distinction between FDI and FII and set overall (FDI+FII) caps on foreign shareholding in Indian companies in particular sectors so that the companies have flexibility to choose FDI or FII route or both to invite foreign capital. It is contended that the existing rules of registration for FIIs in India and the safeguards put in place by SEBI to prevent unregistered overseas entities from tapping the markets here are reasonable defences to prevent a run on capital from domestic companies or money laundering. However, these have not been implemented so far due to sensitivities attached to FDI. Regulation and taxation of FDI/FII is a vexed issue. While the country needs foreign savings to supplement domestic resources, we would want to welcome only 'clean' money untainted by tax evasion or being proceeds of terror or other crimes.

The high-powered Expert Committee set up to advise the Government on how to make **Mumbai a regional financial centre** had submitted its report in February 2007. There is no formal mechanism or commitment to follow up on its recommendations.

Education

National Mission to implement **Sarva Siksha Abhiyan** launched in December, 2004 for **Universalization of Primary Education** aimsto ensure that all children in the age group of 6-14 years complete 8 years of schooling by 2010. Education Cess imposed in the Budget 2004 to be credited to a non-lapsable "Prarambhik Shiksha Kosh" at the rate of 2*per cent* of the aggregate duties of customs, excise and service tax, inclusive of surcharge. Despite slippage from the ambitious targets, SSAhas recorded remarkable progress in terms of provision of new schools, additional classrooms and additional teachers. By 2010-11, 99% rural population reportedly has a primary school within 1 km radius and 366559 new schools had been opened by September 2010. Gross Enrolment Ratio increased in 6-14 age group to

114.37 in 2008-09 from 96.3 in 2001-02 at the primary level and to 76.23 in 2008-09 from 60.2 in 2001-02 at the upper primary level.Budget documents do not show the amount cumulatively collected into and utilized from the Kosh and the current balance. Initially, the Cess funding was largely replacing the non-cess funding of primary education but of late budgetary allocations for education have increased substantially setting at rest concerns that the education cess has been merely a taxation measure with education as the justification.

Mid-day Meal Scheme had started in 1995 with issue of 3 Kg foodgrain per month per student in aided primary schools. Scope includes supply of cooked meal with 450 calorie content, 12 gm protein and micronutrients. In October 2007, the Scheme was extended to cover children of upper primary classes studying in 3,479 Educationally Backwards Blocks. The Central Government is now providing the cost of food grains as well as the conversion cost at the rate of Re.1 per child. Assistance for cooking cost @ Re.1 per child per school day is also being provided since September 2004. As per Ministry of HRD's Annual Report for 2012-13 MDM is the "largest school feeding programme in the world, covering 10.44 crore children in 12.12 lakh elementary schools across the country." Even though the scheme now extends to both Primary(upto Class 5) and Upper Primary (upto Class 8) and foodgrain allocation has increased, the coverageof number of children has declined from the peak of 11.94 crore in 2005-06 in Primary Classes only to10.44 crore in Classes upto 8. Hence, per capita cost of supplies and service delivery has significantly increased.

Kasturba Gandhi Balika Vidyalaya Scheme waslaunched in 2004 to promote girls education by opening residential schools for girls from SC, ST, OBC and minority communities. 3569 KGBVs have been sanctioned- of these 492 KGBVs are with 20% Muslim Population – and 2567 KGBVs are operational with total enrolment (27% SC, 28% ST, 26% OBC, 9% Muslim and 10% BPL). By Feb 2012, sanctions covering 8,43,026 girls from 26 States/UTs had been issued since launch of the "**Scheme of Incentive to Girls for Secondary Education**" in May

2008 involving an expenditure of Rs.252.90 crore. About 105000 beneficiary girls have become eligible to receive the maturity amount and are being paid the incentive amount. The target of Rs.1500 crore by March 2012 was not met.

Thescheme for **Bank Loans for Higher Education** is in operation since April 2001 under which loans up to Rs.7.50 lakh and Rs.15 lakh are available for professional courses within the country and abroad, respectively. The total outstanding education loans of PSBs as on March 31, 2011, stood at Rs 43,074 crore in 2,235,532 accounts. (Rs 4,550 crore in 319,337 accounts as on March 31, 2004).The total outstanding educational loan extended cumulatively by banks was Rs.50,200crore out of total bank credit of Rs. 43,71,400 crore.

In January 2007, there were 1896 Government-run ITIs and a programme for **up gradation of 500 ITIs during 2005-10** was launched. Up gradation of 100 ITIs was taken up from domestic resources and 400 ITIs through World Bank assistance. Revised courses in the first lot of 100 upgraded ITIs started in August 2005 and in the second lot of 100 upgraded ITIs in August 2006. The up gradation of the remaining 1396 Government-run ITIs started in 2007-08 in PPP mode with an outlay of Rs.3,550crore for a period of 5 years and 300 ITIs are being covered annually. Rs.2.5 crore is being released to each ITI as interest free loan repayable in 20 equal annual installment in 30 year after a moratorium of 10 years. By December, 2009, the fund utilization had improved to Rs.103.5 crore against Rs.1500 crore cumulatively released.The exact number of ITIs declared 'upgraded' is also not forthcoming from public records.

Health

National Rural Health Mission was launched on April 12, 2005 with convergence of disease based budgetary interventions and strengthening primary health care.AccreditedSocial Health Activists (ASHA), trained female voluntary health workers (one for every 1000 population), are a key aspect of NRHM. By Jan 2010,7.49 lakh ASHAs had been selected,7.05 lakh ASHAs trained up to first module, 5.65 lakh ASHAs trained up to fourth module,

5.20 lakh ASHAs provided with drug kits in villages. Also, 46,690 ANMs, 26,793 Staff Nurses, 8,624 doctors, 2,460 Specialists, 7,692 AYUSH doctors and 14,490 Paramedic Staff had been appointed on contract.1031 Mobile Medical Units are operational under NRHM in States. Emergency Transport System is operational in 12 States with the assistance of 2919 Ambulances. Another 1674 Ambulances provided to States for working at PHC, CHC, Sub District and District Hospital. 451,473 Village Health and Sanitation Committees and 29,223 Rogi Kalyan Samitis set up. 146,036 Sub Centres, 4,276 Community Health Centres and 23,458 Primary Health Centres (of which 8,324 have been made 24x7) were functional in the country. 15,196 health facilities in rural areas (not counting District Hospital) had been made 24x7. Also, 2,463 First Referral Units had been set up.Impressive as they are, the results are nevertheless below the target outcomes because sanitation, safe drinking water, education and awareness also plays an important role in influencing public health indicators in addition to the huge infrastructure created/strengthened under NRHM.

The overall goal of **National AIDS Control Programme Phase-III** (2007-2012) is to halt and reverse the epidemic in India over the five year period. Government has created an extensive AIDS control service delivery network. 292Anti-Retroviral Therapy Centres and 255 Community Care Centres had been set up by February 2011. Tackling AIDS requires high level of public education and awareness and the government's efforts need to be supplemented by cooperation of all stakeholders.

The goal of **polio-free India** was achieved in 2012. India's last case was reported in West Bengal on 13 January 2011.

Under **Universal Health Insurance Scheme**, only 11,408 BPL families had been covered till May, 2004 even though the premiums were low. The scheme was redesigned and made exclusive for BPL beneficiaries with subsidized premium. As on 31st October, 2009, 5,28,790 families / 17,85,679 persons had been covered. The premium collected was Rs.2235.22 lakhs and claims of Rs.631.42 lakhs were paid. **Swasthya Bima Yojana** was launched in November, 2004. The scheme has done very well and as on 23rd October 2012, there were 32,863,822 Active Smart

Cards and 4,212,300 total Hospitalisation cases as reported through an impressive monitoring/reporting mechanism.

Under **Pradhan Mantri Swasthya Suraksha Yojana,** six AIIMS-like institutions have been set up in Bhubaneshwar, Patna, Raipur, Bhopal, Jodhpur and Rishikesh and admissions would start from 2013-14.

Universalization of the Integrated Child Development Services scheme is yet to be achieved as targeted. As on 31st March 2012, there were 7075 sanctioned ICDS Projects of which 6908 are operational. Out of 1370718 sanctioned Anganwadi Centres, 1304611 were operational. Supplementary Nutrition was being provided to 97248812 beneficiaries (of which 43937984 children in 6 months - 3 years age group, 35067344 children in 3 - 6 years group and 18243484 pregnant & lactating mothers).35821706 Pre-school Education was being provided to 3-6 years age group beneficiaries.

Social Security and Welfare

Under **'Sampooran Gramin Rozgar Yojana' Programme**, 42.69 lakh SHGs have been formed. During 2010-11, atotal of 21.09 lakh Swarojgaries were assisted out of which 14.24 lakh were women Swarojgaries. In 2011-12, till December, 10.47 lakh Swarojgaries were assisted out of which 7.23 lakhwere women.

Mahatma Gandhi National Rural Employment Guarantee Act replaced Sampoorna Gramin Rozgar Yojana and National Food for Work programmes with a legal right to job guarantee for 100 mandays in a year. By 2010-11,9.88crore bank and post office accounts have been opened to disburse wages directly to the workers' accounts. During 2010-11, a total of 5.49 crore household were provided wage employment and 257.15 crore person days were generated.

National Social Assistance Programme was launched in August 1995 comprising National Old Age Pension Scheme, National Family Benefit Scheme and National Maternity Benefit Scheme, as an umbrella social security of providing cash assistance to the neediest. After restructuring of NSAP in February

2009, NSAP now comprises of 5 schemes applicable to BPL persons.**Indira Gandhi National Old Age Pension Scheme** under which financial assistance is provided to the States @Rs.200 pm as old age pensionto the estimated number of 278 lakh 60 years+ BPL persons (Rs.500 for 80 years+ beneficiaries), with States topping it up with additional amount from their own resources. **Indira Gandhi National Widow Pension Scheme,** added to NSAP in Feb 2009, coversBPL widows of age group of 40-64 years (34.25 lakh beneficiaries in 2010-11), estimated to be29 lakh beneficiaries in 2011-12. **Indira Gandhi National Disability Pension Scheme** assists by way of disability pension tomultiple or severely disabled BPL persons of age group of 18-64 years (7.29 lakh beneficiaries in 2010-11), estimated to be 14 lakh beneficiaries in 2011-12. **National Family Benefit Scheme** provides for a distress grant ofRs.10,000 in case of natural or accidental death of the "primary breadwinner" to the bereaved BPL household.3.43 lakh BPL families received assistance in 2010-11 with4.36 lakh beneficiaries estimated to be covered in 2011-12. **Annapurna Scheme, added to NSAP in April 2000,** provides for 10 kgs of food grains per month, free of cost, to such destitute seniorcitizens who, though eligible, remain uncovered under Old Age Pension Scheme NOAPS. W.e.f. 1st April, 2001, **National Maternity Benefit Scheme** component of NSAP has been merged in the Population Stabilization Programme of Department of Family Welfare and has ceased to exist independently.

National SC Finance and Development Corporation has assisted 233506 beneficiaries during 2007-08 to 2012-13(1st quarter) with disbursement of credit totalling to Rs.816.88 crore. Upto 31st December 2010, **National Safai Karamchari Finance and Development Corporation** has cumulatively provided assistance of Rs.616.6 crore for coverage of 217127 beneficiaries including loans totalling to Rs.611.4 crore to 210159 beneficiaries since inception in January, 1997.Since inception in June, 2007, **Rajiv Gandhi National Fellowship Scheme for Scheduled Caste and Scheduled Tribes**has benefited 2150 students with an expenditure of Rs.29.55 crore upto 2010-11. (There are 2000 slots for Scheduled Caste and 667 slots for Scheduled Tribe candidates

every year for all the subjects.)

National Minority Development & Finance Corporation has disbursed total credit of Rs.1573.69 crore for 3,75,891 beneficiaries till 30th September 2012.The corpus fund of the **Maulana Azad Educational Foundation** was doubled to Rs.200 crore in Budget 2006-07. Since its inception in 1989, the Foundation has assisted1167 NGOs with grants-in-aid of Rs.153.24 crore throughout the country for construction / expansion of schools / colleges / girls hostels / polytechnics / ITIs and for the purchase of equipment / machinery / furniture etc and has distributed scholarships to 77003 girl students amounting to Rs. 90.24 crore by end of 2011-12.During 2006-12, financial assistance of Rs.47 crore was provided to 28516beneficiaries under scheme of **coaching and allied assistanceto students belonging to the minority communities**. Since inception of themerit-cum-means based scholarship scheme for such students in 2007-08, total 35982 scholarships aggregating to Rs.97.51 crore were sanctioned of which 11684 scholarships were to female students.The scheme of **Appointment of Language Teachers** meant for promotion of Urdu language has not taken off. Even after the scheme was liberalized in 2008-09 especially for educationally backward minorities blocks, only 42 applications were received and sanctioned (from Punjab) during 2009-10. Further status is not reported.

Food security

ReformingTargeted Public Distribution System, which also covers the Antyodaya Anna Yojana providing free food benefit to over 2 crore BPL families, to eliminate leakages and reduce subsidy burden has been an enduring concern. As per the reports received from the State & UT Governments by end of December, 2010, implementation of the action plan has resulted in - (a) Elimination of 208.57 lakh bogus/ ineligible ration cards in 26 States, (b) Door-step delivery of food grains to FPS, presently being done in 17 States / UTs, (c) Involvement of PRIs in vigilance committees to monitor FPS in 27 States / UTs, (d) Displaying of

BPL lists at FPS in 30 States / UTs, (e) Initiation of TPDS Computerization in 10 States, (f) Review of BPL / AAY lists in 33 States, (g) Display of district and FPS-wise allocations of food grains on website for public scrutiny in 20 States, and (h) training programmes for FPS level vigilance committees in 27 States/UTs.

Concurrent evaluation of TPDS has been done by NCAER and IIPA in 26 States. The report of NCAER for 12 States has revealed improvement in functioning of TPDS in some States. Out of 5.05 lakh fair price shops in the country, about 1,25,743 fair price shops have been allotted to Cooperatives, women's Self Help Groups, Village Panchayats, Urban Local Bodies and other Self Help Groups. Computerization of TPDS operations has been taken up.A pilot scheme on smart card based delivery of essential commodities under TPDS was launched in July, 2010, in the State of Haryana & Chandigarh.So far, 15 States have started distribution of wheat flour/fortified wheat flour under TPDS partially.Transfer of food subsidy in cash (instead of food grains and sugar) to BPL/AAY beneficiaries under TPDS is contemplated to minimize the incidence of leakages. A pilot has been launched in Delhi.

The above efforts are welcome but clearly sporadic and glacial in their impact. During 2011-12, the total foodgrain production is estimated to cross 250 MMT. Assuming 15% provision for seed, feed and wastages, the net per capita availability of unprocessed foodgrain for 1.22 billion people would be just about 175 Kg per annum or 14.6 Kg per month. The normative number of BPL families covered under TPDS is 652 lakhs. Since each family is entitled to 35 kg per month, the government requires only 27.4MMT food grain and even if it is assumed that the PDS enables a BPL family to buy foodgrain at Rs.10 below the market price, the subsidy to the BPL consumers will be only Rs.27400 crore per annum. Hence, a Rs.75,000crore provision for Food Subsidy in Budget 2012-13 raises the question: Subsidy to whom when the PDS is ostensibly being run for food security to the BPL families?The inefficiencies inherent in the monopoly operations by the FCI and State agencies and local levies/taxes lead to overall increase in the actual cost ex-retail PDS

outlet.Detailed break-up of Food Subsidy in terms of its constituent cost components and State-wise allocation vs offtake for TPDS and individual welfare schemes are not in public domain. Mandi charges, purchase/ sales tax, cess, etc constitute a major chunk of local 'taxation'. Interest burden and rising personnel costs of FCI are other major components of cost. Storage and transit losses due to corruption, inefficiencies and lack of proper storage is another big draft on the food subsidy budget.

The passage of the National Food Security Act 2013 marks an important milestone but given its scope, its implementation would be a big challenge.

Agriculture

National Horticulture Mission was launched in April 2005 to promote **diversification of agriculture** and double horticulture production to 300 million tonnes by 2011-12 by following the ANAND/AMUL model to establish a State Level Cooperative Society. The horticulture production actually increased from 174.3 MMT in 2004-05 to 231.1 MMT in 2010-11. This includes Fruits, Vegetables, Flowers, Spices Medicinal & Aromatic Plants and Plantations which are supported under other government funded programmes as well.Only 46243 tea growershad been enrolled till 31St March 2011 against a target of 342000under **Special Purpose Tea Fund.** Replantation /rejuvenation of old tea bushes was only 12,342 Ha / 4,045 Ha from 2007-10 against target of 68,154 Ha/16,890 Ha during 2007-12. Rs.150 crore were earmarked in 2006-07for developing modern Terminal Market Complexes for fruits, vegetables, and other perishables in important urban centresbut so far no Complex has come up.

Oilseeds production needs significant step-up to cut down import dependence. **Technology Mission on Oilseeds, Pulses and Maize** launched in 1986 covers five centrally funded programmes. Production of oilseeds increased from 108.30 lakh tones in 1985-86 to 281.57 lakh tonnes in 2008-09. The pulses production increased from 128.60 lakh tonnesin 1989-90 to 146.62 lakh tonnes in 2008-09. The area under Oil palm increased from 8,585 ha. by 1992-93

to 26,178 ha. by 2008-09. Production of Crude Palm Oil in 2008-09 was 59,007 MT. The production of maize increased from 88.94 lakh tonnes in 1994-95 to 19287 lakh tonnes in 2008-09. In 2011-12, area under oilseed crops was ~ 27 million hectare and production ~30.53 MMT. An important issue in the context of agricultural diversification is whether and to what extent it should be at the expense of existing agricultural production. Bringing hitherto uncropped areas under diversification should be a higher priority as it may bring new farmers andsupplemental source of income to existing farmers. Area under Rice had reduced (2006-07) by 2.60 million hectares and is diversified largely into oilseeds and pulses.

Fishing, poultry, piggery are other measures of diversification from crop-centric agriculture. The **National Fisheries Development Board** and **Central Institute of Horticulture in Nagaland** have been set up.There are 7246 regulated **agricultural markets** in the country. Over 3000 markets linked to the Central Agmarknet portal for dissemination of wholesale prices and arrival information. 25,978 storage projects having a capacity of 299.61 lakh tonnes with subsidy release of Rs.812.64 crore, have been sanctioned under Rural Godown Scheme since inception of the scheme w.e.f. 1st April 2001 and upto 31st December 2011.

National Agricultural Innovation Project costing Rs.1189.99 crore launched in July 2006 has made little progress inherent in a programme of this type.

The pilot scheme **"National Project on Repair, Renovation and Restoration of Water Bodies directly linked to Agriculture"** was approved by the Government on 27th January, 2005. Up-to-date Progress Reports are not available in public domain.Degraded lands cover an area of about 120.72 million hectares. **Rainfed Area Development Programme**(Rs. 250 crore)has been launched on pilot basis under **Rashtriya Krishi Vikas Yojana** in 2011-12. 3510 clusters have been selected and about 1.70 lakh farmers gotbenefited till December 2011.

Debt relief of two percentage points of the borrower's

interest liability on the principal amount up to Rs.100,000was provided **to distressed farmers**.By 30th June 2011, Rs.19910.70 crorehave been released. Packages for Kuttanad Wetland Eco-system and Idukki, Kerala costing Rs.1840.75 crore and Rs.764.45 crore, respectively were also approved.

By 31st December 2011, 176198059 farmers were insured, 268530045.8 ha area insured, Rs.22130747 lakh sum insured with premium of Rs.659332.23 lakh collected and Rs.2187331.22 lakh paid claims to 48680163 farmers under **National Agricultural Insurance Scheme** launched in 1999-2000.By 31/12/2011, 819032 farmers were insured, 1042996.18 ha area insured, Rs.407565.96lakh sum insured withpremium of Rs.15128.51 lakh collected and Rs. 1345.50 lakh paid claims to 43324 farmers under **Modified National Agricultural Insurance Scheme**. Under**Weather Based Crop Insurance Scheme**,19561496 farmers were insured, area insured was 27867544.65 ha, sum insured totalled to Rs. 3107225.96lakh, premium collected totalled to Rs. 288401.2 lakh, claims paid totalled to Rs. 97220.81 lakh to6159739farmers by31/12/2011.For **Coconut Palm Insurance Scheme**launched in 2009-10,physical/financial progress has not been reported.

Bharat Nirman

The targets vs achievements under **'Bharat Nirman'** package of on-going/restructured government programmes planned for 2005-09 was as follows:

a) **Rural Electrification** - Target of coverage of 1,25,000 villages and 2.3 crore households during 2005-09 was set under Rajiv Gandhi Grameen Vidyutikaran Yojana. This is a programme for rural household electrification in expansion of ongoing scheme of development of Rural Electrification Infrastructure being run by the Rural Electrification Corporation. By 31.12.2008, 54,317 un-electrified villages were covered.

b) **Rural Roads** –Target under ongoing Prime Minister's Grameen Sadak Yojna was construction of 1.46 lakh kilometers of rural roads connecting 66,802 habitations and upgrade 1.94 lakh kilometers of existing rural roads during 2005-09. Till November,

2008, new connectivity measuring 0.71 lakh km have been completed, covering 23,633 habitations and 1.23 lakh kilometers of roads upgraded.

c) **Rural Water Supply**has been the focus of Central intervention since 1972-73 with differently named schemes with overlapping scopeand relapse of covered villages back into deprivation is quite common.Target was set to cover 6.03 lakh habitations during 2005-09 under ongoing Accelerated Rural Water Supply Progamme /Rajiv Gandhi Drinking Water Mission. About 4.8 lakh habitations covered by 15 Jan 2009, remaining expected to be covered by 31st March 2009.During 2005-09, 55,067 un-covered and about 3.31 lakh slipped-back habitations were to be covered and problems of 2.17 lakh quality-affected habitations were to be addressed. By 31st March2009, 54,447 uncovered habitations, 3,58,362 slipped back habitations and 50,168 quality affected habitations had been covered. There were 627 un-covered and 1,79,999 quality-affected habitations yet to be covered.

d) **Rural Telephony** – Rural telephony projects are undertaken by Telecom companies, financed from the Universal Service Obligations Fund created out of pooled revenue shares from the telecom companies. Target was to cover 66,822 villages during April 2005- November 2007. 46,969 villages were covered by March 31, 2007 and 56,030 villages by 31st December 2008. By January 2012, Village Public Telephones were provided in 62,046 villages and broadband coverage provided to 1,43,714Panchayats. (Tele-density increased from 18.22% in March 2007 to 70.89% in March 2011 and 76.86% in December 2011. Rural tele-density increased from 5.89% in March 2007 to 33.83*per cent* in March 2011and 37.52% in December 2011. Urban tele-density increased from 48.10% in March 2007 to 156.94*per cent* in March, 2011 and stands at 167.46% at the end of December'2011).

e) **Rural Housing** – Target was set under Indira Awas Yojna to construct 60 lakh houses during 2005-09. 61.37 lakhs houses were reported complete by December 2008.

f) **Irrigation –Accelerated Irrigation Benefit Programme**

was launched in October 1996 with the intention of fast-tracking the completion of irrigation projects stuck in terminal phase for want of funding. It started as a loan scheme and gradually diluted to a grants scheme. There is substantial under-performance in this programme Central Assistance of Rs.43,539.92 crore was cumulatively provided till December, 2010 for 283 major/medium irrigation and 11704 surface minor irrigation projects. 129 out of 283major/minor projects and 7987 out of 11704 surface micro-irrigation schemes have been completed. Crucial details of projects like the year of commencement of projects and the cumulative physical/financial progress at the point of inclusion of the project under AIBP,completion date/cost and the AIBP share in the cumulative project expenditure have not been reported. Since new projects are being constantly included, the AIBP target in terms of additional irrigation potential is a shifting goalpost. Presently the targeted potential of all major/medium/minor irrigation projects under AIBP is about 134 lakh hectare, of which irrigation potential of 59.40 lakh hectares was created up to March 2009 since inception in 1996. The potential created during 2009-10 is estimated to be 9.82 lakh hectares.

The goal of fully involving the Panchayati Raj Institutions in the planning and implementation of Bharat Nirmaan still remains to be achieved.

Kisan Call Centers were launched in January2004 to help the farming community through toll free telephone line country wide common number **'1800-800-1551'**.

For **water harvesting** schemes to help SC/ST farmers, soft loans from NABARD were targeted to cover one lakh irrigation units at an average cost of Rs.20,000 per unit with 50% capital subsidy from budget. The physical/financial progress is not forthcoming.The physical/financial progress is not being reported in respect of centrally sponsored scheme on **micro irrigation**launched in2005-06 with Rs.200 crore. Two schemes on **repair, renovation and restoration of water bodies,** Rs.1500 crore with external assistance and Rs.1250 crore with domestic budget during 2007-12 in 23 districts in 13 States. Phase-I target coverage is 20,000 water bodies with a command area of 1.47

million hectares. Actual progress of water bodies' restoration an consequent augmentation of water supply has not been reported.

The target of doubling of the flow of **agricultural credit** three years with base year as 2003- 04 was actually achieved two years.A **Revival Package for Short Term Cooperative Credit Structure** was approved as per Vaidyanathan Committe Task Force (2005) with an outlay of Rs.13,596crore. An amount Rs.9002.98 crore has been released by NABARD as GoI's sha for recapitalization of 53,205 PACS as on 30th November, 2011.

The **National e-Governance Plan** now consists of 31 Mission Mode Projects, sector encompassing 10 Central MMPs, 1 State MMPs and 7 integrated MMPs. 'India Post 2011' has bee added as aCentral MMP while MMPs on Education, Healt andPDS have been added as State MMPs. Of the 31 MMPs, 2 have been approved by the Government of India. 19 MMPs hav gone live and are delivering services electronically, though ma not be in the entire country or the entire set of envisaged service Over 97871 Common Services Centers have been established b December 2011.

Total Sanitation Campaign covers 540 districts.Again an objective of 12.57 crore Individual Household Latrines, th sanitation facilities for individual households reported to b achieved is about 8.38 crore as of December 2011. About 22,92 Community Sanitary Complexes have been constructed. The state-wise% achievement is given below:- In addition to individua household toilets, TSC lays emphasis on school sanitation. Sinc inception, a total of 11.88 lakh school toilet units have bee constructed against target of 13.14 lakh. Similarly provision o Sanitary Facilities in Anganwadi is also an important component o TSC. 3,97,323Anganwadi toilets have been reported to b constructed as against the project objectives of 5,06,968 as o December 2011. Total financial outlay of TSC is Rs.22022.6 crore. Central, State and beneficiary shares of the projects ar Rs.14425.83 crore, Rs. 5394.43 crore and Rs.2202.35 crore respectively. An amount of Rs.7892.34 crore has already bee released out of which Rs.6260.36 crore has been reported to b utilized.

A desalination plant in Chennai with a capacity of 300 million liters per day costing Rs.1000 crore was announced in the Budget 2004-05. A 100 MLD capacity desalination plant was commissioned on August 01, 2010 at Minjur, Chennai. Another plant of 100 MLD capacity is under commissioning at Nemelli, Chennai. projects have been non-starters. Gopalpurdesalination project in Orissa has been abandoned.

By 31st March 2012, **India Infrastructure Finance Company Limited** IIFCL had sanctioned loans of Rs.230 crore to 37 projects involving a project cost of ` 7,729 crore under the facility and had disbursed Rs.109 crore under PMDO for setting up of 26 urban infrastructure projects. By March 2012, out of 222 net sanction projects under direct lending, 192 projects had achieved financial closure.

For setting up JVs for **five ultra-mega thermal power projects of 4,000 MW each,** approval was accorded in January, 2006 to Power Finance Corporation. First unit of Mundra project was commissioned on Jan 8, 2012 by Tata Power, the first UMPP.Coal supply guarantee for power generation projects from Coal India Limited and Coal Block allotments for UMPP have run into problems and controversy affecting the progress of these ambitious projects. The "comprehensive review of the coal policy" as announced in Budget 2006-07 is still not complete and the CAG's report on discretionary coal block allocations has raised questions of governance. Coal is an important input for power generation and hence coal sector reforms should have ideally preceded power sector reforms.

The **Sethusamudram ship canal project** is stalled and sub-judiceraising ecological concerns and religious sentiments. Sethusamudram Corporation Ltd. was incorporated to execute the Project and on 30th August-2010, dredging operations were flagged off.

International Container Transshipment Terminal at Cochin Port Trustbuilt under PPP model, costingabout Rs.3,000crore for which foundation stone was laid in February, 2005 was successfully commissioned in February 2011.

Kolkata is a river port and does not have the facility t receive large vessels with full loads due to poor navigability of th Hooghly river. For a **new deep sea port in West Bengal,** Saga Island was identified in 2002. After a series of setbacks, a proje proposal prepared on the basis of a feasibility study (July 201 conducted by M/s. RITES Ltd. is awaiting approval from th Central government. The project contemplates creation of facilitie for handling 13.5m drafted vessel at a cost of Rs. 7851 crore fo handling 54 MMTPA traffic in 2019-20.

The existing National Institute of Port Managemen Chennai, was renamed as the National Maritime Academy an later upgraded as **Indian Maritime University** under the Indian Maritime University Act 2008.

The target of 1000 Km **Expressways** is yet to be achieved short by about 400 Kms.15 Expressway projects (2,676.93 km) ar under execution.

NABARD has been operating the **Rural Infrastructur Development Fund** since 1994-95 out of pooled funds provided by various banks falling short of meeting their priority sector lending targets. From Rs.2,000crore under RIDF I to Rs.20,00 crore under RIDF XVIII, the cumulative allocation has reache Rs.1,72,500 crore. There are 4,62,229 projects involving RIDF financing of Rs.1,42,471 crore as on 31st March 2012. A study by IIM, Bengaluru (2007), observed that RIDF led to increased irrigation potential of 117.84 lakh ha and recurring employmen increased by nearly 64,16,010mandays. Non-recurring employment in irrigation also increased by 1,736 millio mandays.Value of incremental production in irrigation increased by about Rs.13,539crore. RIDF financing includes Rs.18,500cror for rural roads under PMGSY, Rs.7,000 crore for warehousing and Rs.1000 crore for food processing projects.

Regional Rural Banks have shown improved performance in many areas. In July 2010, there were 82 RRBs (46 amalgamated and 36 stand alone) with a branch network of 15,475 branches spanning 619 districts. By March 2010, total loan outstanding was Rs.83,562 crore and deposit base was Rs.1,42,814crore.

Industries

Since inception in 1991, **disinvestment** yielded Rs.1,13,139 crore by December 2011 of which the bulk Rs.95,074 crore came through sale of minority shareholdings. The corpus of the National Investment Fund in which some of the disinvestment proceeds were transferred is only Rs.1814.45 crore. The pay out on NIF was Rs.163 crore in 2011-12.

Out of the 43 **sick CPSUs** examined by the Board for Reconstruction of Public Sector Enterprises established in 2004, 24 have posted profits and 13 have been in profits continuously for at least three years (December 2011). Hindustan Antibiotics Limited and Indian Telephone Industries Ltd for whose revival Budget announcements were made in Budget 2004-05 could not be revived so far.

Investment Commissionset up in December 2004 hadsubmitted its report in February 2006 recommended, inter alia, an Independent Central Regulatory Commission with independent sector regulators and mechanisms to resolve Centre-State issues. Follow up action on the report is not being reported.

FDI inflows of Rs.6,30,336 crore came during August 1991 to January 2011.Of the total FDI inflow during April 2000-2009 of US$94.27 billion, 42% originated from Mauritius, a small developing country with whom India has a special tax treaty, leading to accusations of 'investments' from Mauritius being used as a money laundering operation. FDI flows registered a dramatic increase in 2007-08, from $23 billion to $35 billion and hovered around $38 billion even during 2008-10 – supposedly the crisis period – before falling to $27 billion in 2010-11. Portfolio flows (FIIs) have been even more volatile.

National Institute of Food Technology, Entrepreneurship & Management has started functioning as a 'deemed university' at Kundli, Haryana. There is no specific reporting about Rs.1000 crore refinance window created by NABARD for **food processing** industry.

Under **Scheme of Fund for Regeneration of Traditional**

Industries, 105 clusters (29 – khadi, 50 –village industries and 2 – coir) are being developed (February 2012) and over Rs.8 crorereleased to KVIC and Coir Board. 9 out of 10 scheme planned under Rs.682 crore **National Manufacturing Competitiveness Programme** of **National Manufacturing Competitiveness Council** are ongoing and 477 clusters are being developed under **Micro & Small Enterprises Cluster Development Programme**.77 new infrastructuredevelopment Centres out of 99 sanctioned have been completed by Novembe 2011 and 11708 plots allotted to small/tiny units and 3956 unit established. Infrastructure Upgradation in 33 industrialstates wa undertaken of which 25 have been completed.

Under **Jawaharlal Nehru National Urban Renewal Mission**, 546 projects costing Rs. 61157 crore have been sanctioned with GoI assistance of Rs.28299 crore of whichRs.16043 crore released by 31st January 2012. Additional assistance for procurement of 15260 buses costing Rs.4723.94 crore. 126 projects have been reported physically complete. Evaluation report (March 2011)fromGrant Thornton indicated design faults in the programme. Arun Maira Committee (March 2012) hasrecommended a series of remedial measures for JNNURM-II. A CAG Report highlighted that only 22 of the 1,517 housing projects under JNNURM were completed by the due date of March 2011.

Provision of Urban Amenities in Rural Areas, a cluster-based approach to rural industrialization was restructured after seven unsuccessful pilot with an offer of up to 35 per cent viability gap funding to corporate sector under the PPP model. Major projects are yet to commence.

Asia's **Export Processing Zone** was set upin Kandla in 1965. Seven more EPZs were later set up. After enactment of the **Special Economic Zones** Act, 2005 from 10th February 2006, approvals were given for 583 SEZs of which 380 are in various stages of operation and 154 SEZs are exporting. As on 30th September 2011, SEZs in India provide direct employment to over 8,15,308 persons. The incremental employment generated by the SEZs in the short span of time since the SEZ Act came into force

in February 2006, is of the order of 6,80,604 persons. SEZs have already made an investment of Rs. 2,31,159 crore. Exports from the functioning SEZs have grown exponentially from Rs.34,615 crore in 2006-2007 to Rs.3,15,867 crore in 2010-11. During April-December 2011, the figure was Rs.2,60,972 crore. The Ministry of Commerce has not reported the value of incremental investment in and output from all the SEZs. Sharp decline in Central Excise collections coupled with nearly stagnant/declining share of manufacturing in the GDP point to the possibility that SEZs may have contributed to shifting of manufacturing from taxable to tax-free zones.

Micro, small and medium enterprises sector contributes 45% of manufacturing output, 40% of exports of the country and employs about 595 lakh persons in over 261 lakh enterprises with a wide product range of 6000. Outstanding bank credit to MSME units registered very high increase from Rs.83,498 crore at end of 2004-05 to Rs.485,943 crore at end 2010-11 mainly due to change of definition. (Under MSMED Act, 2006, investment limit was raised from Rs.1 crore to Rs.5 crore and services sector enterprises with investment limit between Rs.10 lakh to Rs.2 crore, professional services and self-employed units were added.) Government has pruned down the list of items reserved for exclusive manufacture in the small scale sector.

Public policy burden of levy sugar and minimum sugarcane prices to help farmers or consumers in an off-budget arrangement keeps the sugar industry dependent on government for ad hoc and discretionary rescue operations. Recently, Dr. Rangarajan led panel has come out with another report (October 2012) recommending **de-regulation of sugar industry.** Government has partially decontrolled sugar sector by unshackling sugar mills from the obligation of supplying the sweetener at subsidised rates for TPDS. In levy sugar system, millers are required to contribute 10 per cent of their output to the Centre for running ration shops at cheaper rate, costing industry Rs 3,000 crore a year. The requirement of sugar for ration shops would henceforth be procured by States through open market through transparent system with explicit budgetary subsidy. The Government

of India will bear the difference between the ex-mill price of Rs 32 per kg and retail sugar price of PDS at Rs 13.50 per kg. The government will continue to fix fair and remunerative price of sugarcane. The minimum distance criteria between two mills will also continue, among other controls.

Five **Petroleum, Chemicals and Petro-chemicals Investment Regions** have been approved for which pre-project activities are going on.The initiative to attract investments for **setting up semiconductor fabrication and other micro and nano technology manufacture industries** through special incentive package is still on the anvil.The recommendation of the Sivaraman Committee report (2006) to resort to presumptive taxation for **gems and Jewellery industry** has not been found acceptable. During 2004-05 to 2010-11, 61 loans totaling to Rs.168 crore were given to Indian **Pharma Industry for R&D projects on development of drugs.**

To prepare **textile sector**, having huge potential for employment and exports, for the post-quota regime, Technology Upgradation Fund Scheme was launched in April 1999, for five years but extended till 2012 with modifications. The Scheme provides for interestreimbursement/capital subsidy/margin money subsidy. It picked up after 2004-05 and by 30th June 2010, as many as 28302 projects costing Rs.207747 crore involving subsidy outgo of Rs.85091 crore had been sanctioned and subsidy of Rs.11760 crore had been released. Under a 20% **Credit Linked Capital Subsidy Scheme** launched in November 2003 for powerloom units under which Rs. 223.27 crore had been disbursed to 3033 beneficiaries by November 2011. 40 **Integrated Textile Parks** were sanctioned, with subsidy of Rs.1420 crore of which 7 parks have been completed, 14 parks have drawn 90% of grants and 15 parks were in progress (December 2011). Ministry sanctioned 21 new Integrated Textile Parks costing Rs.2,100crore in October 2011. Under **Integrated Handlooms Development Scheme,** 585 Handloom weavers' clusters have been takenup during 11thPlan (By February 2012) andfinancial assistance of Rs.176.11 crore has been provided.788 yarn depots, covering all thehandloom clusters, have been set up.Actual incremental

investment made and the manufacturing output of the government aided entities is not being reported. By 2011-12, ~ 71 lakh handloom workers had been covered under **Health Insurance Scheme** and ~ 6 lakh under **Mahatma Gandhi Bunkar Bima Yojana.**

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FORENSIC AUDITING – ISSUES AND CHALLENGES FOR AUDITORS

Dr. Sadu Israel*

Introduction

The word 'Forensic' comes from the Latin word meaning "public" or "forum", the later being where ancient Romans gathered to do business and settle disputes. In modern usage 'Forensic' relates to courts of law and legal concerns. More specifically Forensics is the application of science to legal matters, especially criminal matters.

Forensic auditing may, therefore, be defined as *application of accounting methods to the tracking and collection of forensic evidence usually for investigation and prosecution of criminal acts such as embezzlement or fraud.*

Forensic audit involves examination of legalities by blending the techniques of propriety (performance related), regularity, investigative and financial audits. The objective is to find out whether or not true business value has been reflected in the financial statements and in the course of examination to find whether any fraud has taken place and if so naming persons involved in order to take legal action.

This paper brings out a review of the concept of Forensic audit and lists out various key issues on the subject. The introduction is followed by an outline of the knowledge and skill levels expected of Forensic Auditors. The third section looks at

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some differences between Forensic Audit and Statutory on certain key parameters. The fourth section is about the audit mandate while the fifth section brings out the various key phases in Digital Forensics. In the sixth and the seventh sections a review of various detection methods and techniques has been brought out. The penultimate section lists out some key issues for consideration in the time to come for conducting a full-fledged Forensic audit by the External auditors. The conclusion sums the discussion.

Characteristics of Forensic Auditors

Many Forensic auditors have an accounting background. In some cases, Forensic auditors are employed primarily in the audit function of their organizations. Forensic auditors are viewed as a combination of an auditor and private investigator. It is the ability to ascertain the facts and report them accurately are of equal importance. Knowledge and skills include the following:

- investigation skills,
- research,
- law,
- quantitative methods,
- finance,
- auditing,
- accounting and
- law enforcement officer insights.

Detection methods and techniques will be covered later in the paper. Organizational behavior and applied psychology knowledge and skills are essential.

In the Indian context, Forensic auditors have been working with the States Police Departments, Central Bureau of Investigation (CBI), Government Examiners of Questioned Documents (GEQD), Serious Fraud Investigation Office (SFIO) and other government agencies. Outside of Government employment, big employers of forensic auditors include financial intermediaries such as banks and insurance organizations etc., Forensic auditors often testify in civil and criminal Courts of Law. In this capacity, they function as expert witnesses, presenting evidence as necessary.

Traditional/Statutory Audit vs. Forensic Audit

Though Forensic auditors and Traditional auditors (both internal and external) often share same goals, their roles, knowledge and skills may differ. Traditional audit is recurring in nature which includes general examination of financial data, whereas Forensic audit is need based which is conducted to resolve a specific allegation. While Traditional audit aim at expressing opinion on the true and fairness of financial statements and/ or commenting on the issues of economy, efficiency and effectiveness, Forensic audit probes whether any fraud has actually taken place and determines who was responsible for it. The methods and techniques of evidence collection also differ to a great extent. To assist in the process of identifying suspects and criminals, forensic auditors use physical evidence, testimonial evidence, documentary evidence and demonstrative evidence. They may search the premises of crime and seize the evidence for further analysis. This may not be the case with the Traditional auditors.

Mandate Issues

a) International scenario

Auditors General from commonwealth countries in a meeting (October 10-13, 1999) at Sun city, South Africa agreed that the existing mandates of the SAIs and the auditing standards applied by them were in most cases adequate to conduct forensic audits, audit methodologies need to be developed to encourage the establishment of pro-active and reactive controls by management to prevent and detect fraud. Expectedly, excepting for a very few SAIs, it is the case in almost all other countries that there are other agencies responsible for investigating fraud and corruption. Among the INTOSAI member countries, GAO, USA and NAO, UK have specialized Forensic Investigation teams.

GAO monitor and manage fraud, waste, and abuse through tips received through the Fraud Net hotline maintained by them for this purpose. The GAO's Forensic Audits and Special Investigation teams comprise.

- auditors with forensic audit experience,

- analysts with experience in health care, law, and criminal justice issues
- data mining and systems integration experts,
- criminal investigators (federal agents) with substantial prior federal law enforcement experience,
- investigative analysts, and
- quality control staff including communications analysts.

On the other hand, NAO, UK contract external forensic audit firms on need basis. As a part of their audit strategy 2011-12 -2013-14, NAO UK indicates, among others, to build forensic audit capability and to develop their work with the National Fraud Authority in order to support Parliament in assessing the increased risk of fraud as mergers and closures of public bodies take place.

In SAI, South Africa, Forensic Auditing was established in 1997 which is seen as "an independent cost effective reviewing and reporting process carried out to facilitate the prevention, detection and investigation of economic crime (which includes fraud and corruption) in the public sector". Audit findings are reported on through the normal audit process or, when applicable, are handed over to institutions with investigating and prosecuting powers. The Public Audit Act, 2008 of National Audit Office, Tanzania indicates Forensic Audit as one of the types of audit the SAI conducts.

As pointed out at section 3 of this paper, Forensic audit may involve search and seizure of documents/hardware/software for further analysis and defending the evidence in the court of law, if required. Often, unless the evidence collection procedures include obtaining third party evidence, either oral or documentary, it is not possible to prove criminal mala fide. The audit mandate of the SAI should have an explicit proviso in support of such audit procedures, which is not the case with most of the SAIs.

It is pertinent to mention here that according to para 1.13 of ASOSAI guidelines on Fraud and Corruption, if an SAI feels constrained in its investigation of suspected fraud or corruption cases in the performance of its normal audit work, it should seek reinforcement of its audit mandate. It further sates that this

reinforcement could be in the shape of a regularity provision specifying that the SAI would be notified in all cases where fraud or corruption are suspected or reported.

b) Indian context

Traditionally, the focus has been more upon risk based planning and executing our audits with much greater emphasis on fraud vulnerabilities that may include forensic aspects, and reporting such findings in a manner that places the onus for further investigation very clearly on the executive. This practice is something similar to SAI, South Africa where the SAI facilitate the investigation of economic crime in general by providing support to the relevant investigating and/or prosecuting institutions (by handing over cases and providing accounting and auditing skills). In September 2006, in line with ASOSAI guidelines on fraud and corruption, SAI India had issued audit guidelines for dealing with cases of fraud and corruption, but either these guidelines or Audit Regulations, 2007 do not make a mention about Forensic Auditing.

As a paradigm shift, in the XXIV conference of the Accountants General held in December 2008, it was decided among others, to propose appropriate amendments to the CAG's DPC Act to seek additional mandate for taking up full-fledged Forensic audit. Interestingly, the second Administrative Reforms Commission (ARC) in their fourth report on Ethics in Governance has made significant recommendations relating to audit. This report indicates that major stakeholders want Comptroller and Auditor General of India to play a more active and effective role in ensuring accountability by taking up forensic audits and training audit teams in such specialized examinations. In response to the ARC's recommendations, Government has been informed that in most cases while audit can identify and report suspected cases of frauds, establishment of fact that fraud has actually occurred will require a criminal investigation which may result in establishment of a case in the court of law. While agreeing to train his officers in forensic audit, CAG emphasized that the responsibility to undertake forensic examination finally rests with the State and its anti-corruption or vigilance agencies.

The strength of the IA&AD lies in the skepticism of audit teams which is considered a necessary quality for forensic auditors. In many cases audit teams are able to identify cases of mala fide but are unable to gather/seize evidence due to the limitations of audit mandate i.e., the auditors can not access records outside Government and in some cases due to inadequate understanding of nature of evidence, particularly if it is maintained in digital environment. Seizure of evidence as it is done by Tax enforcement authorities, is necessary to prevent tampering of evidence by the audited entity and maintaining the custody of evidence by the Auditors.

In view of the above, the scope and extent of forensic audit that can be undertaken by Audit as a part of its oversight functions need clarity. A clear framework for guiding the IA&AD relationship with the criminal investigations like CVC, CBI, etc., also needs to be well defined in the DPC Act, besides the issues with regard to custody, sharing, analysis and presentation of evidence.

Digital Forensics

As computer technology advances, governments are becoming increasingly dependent on computerised information systems to carry out their operations and to process, maintain, and report essential information. Fraud investigation in such environment has become a challenge for the auditor. To conduct a forensic computer investigation, the forensic auditor should size up situation, log every detail, conduct an initial survey and assess the possibility of ongoing undesirable activity.

There are several definitions and different schools of thought for this field of investigation, but such investigations typically involve four phases: the seizure phase, the image acquisition phase, the analysis phase, and the reporting and testifying phase. They are discussed below in brief.

Seizure Phase

In the seizure phase, it is important to understand whether the auditor has the authority to seize the digital equipment as well as

knowledge of the proper methodology to use so that evidence is not destroyed or tainted.

Image Acquisition Phase

The image acquisition phase involves the use of decision-making processes to determine the best method for acquiring an image of the suspect system and the proper use of software and hardware tools to facilitate the image capture. The examiner has to be sure that the image is created and preserved in a manner that will withstand legal challenges.

Analysis Phase

The analysis phase is the most time consuming phase, especially for a financial crime or fraud investigation. This phase involves the use of specialized tools designed to give the examiner the means to locate and extract artifacts that will be used as evidence in the investigation. The evidence can serve to incriminate the subject of investigation or it can be exculpatory by disproving the subject's involvement.

Reporting and Testifying Phase

The reporting and testifying phase is where the hours of analysis are reported fairly and objectively. In this phase, a qualified computer forensic expert may be asked to render an opinion about the use or misuse of the system. This is where the experience and training are tested and where the examiner must know with certainty that their opinion is based on their research, knowledge, and experience and that an opposing expert will not find fault with their conclusions.

Each phase requires a degree of mastery before moving on to the next as one develops into a computer forensic examiner. The analysis phase generally takes the longest amount of time to master. The seizure phase is one of the most critical of the processes.

Detection Methods

Fraud symptoms (red flags) are investigated by analyzing documents and document-related items for financial record symptoms. Forensic auditing should, therefore, focus on significant transactions – both as reflected in financial statements and off balance sheet items. They may include analysis of financial statements, books, records, etc. mainly to find out:

- Trend-analysis by tabulating significant financial transactions.
- Unusual debits/credits in accounts normally closing to credit/debit balances respectively.
- Discrepancies in receivable or payable balances/inventory as evidenced from the non-reconciliation between financial records and corresponding subsidiary records (like physical verification statement, priced stores ledgers, personal ledgers, etc.).
- Accumulation of debit balances in loosely controlled accounts (like deferred revenue expenditure accounts, mandatory spares account – capitalized as addition to respective machinery item, etc.).
- False credits to boost sales with corresponding debits to non-existent (dummy) personal accounts.
- Cross debits and credits and inter-account transfers.
- Weaknesses/inadequacies in internal control/ check systems, like delayed/non-preparation of bank reconciliation statements, etc.

Detection Techniques

Traditionally auditors pursue the above tests through Computer Assisted Audit Techniques (CAATs) by manipulating volumes of data for such purposes. These tests perform mathematical computations for reconciliation purposes - and are based on simple analytical techniques, where known parameters, variables and amounts are tested on limited volumes of data.

CAATs have traditionally been limited to performing data interrogation using simple tools and techniques. Some advanced techniques used in Forensic investigation are discussed below

Data Mining

Data mining, which practitioners are already using to discover previously hidden patterns and attributes in data, pointing not only to fraudulent transactions but to new markets and products, is the new challenge for IS auditors. Data mining should be considered as part of the battery of techniques available in the CAAT approach to audit of client data stores.

Case Based Reasoning Tools

The technique essentially involves the diagnostic benchmarking of an organization or transactions against collated knowledge of other comparable sectors using "near neighbor" matches and inductive" analysis. Details of organizational characteristics, for example, can be collected by questionnaire and maintained in a database. Strengths, weaknesses and best practices can be identified from past experiences of fraud, control frameworks and financial performance, to rate and compare organizations. This is a powerful counter-fraud technique, which can answer questions such as: what made an organization vulnerable to fraud? What good practice tools from a particular organization can be put in place to mitigate the consequences of fraud?

Data Matching

Data matching is the cross checking of data, either concurrently or retrospectively, looking for duplication and/or inconsistencies between data streams. It can be used to detect transactions that match all or part of existing transactions. It is used widely in the private sector to detect, for instance, duplicate insurance claims, multiple share applications and mortgage fraud.

Challenges ahead

While the paper traverses some distance in providing clarification on various issues on the subject, there are many areas

that are still unclear. Furthermore, much more work needs to be done before a clear picture emerges about this green-filed area of auditing. Some of the areas that need to be addressed before embarking on the subject are discussed below.

(i) Audit mandate

It is clear from the paper that the most important requirement for conducting Forensic audit by a SAI is clear audit mandate.

While the respective SAIs legislative framework and mandate determine the policies and audit practices adopted, each SAI should actively consider adopting a formal policy or strategy for reinforcing the mandate, wherever found inadequate, for adoption and practicing Forensic Auditing.

(ii) Entities' profiling

Traditionally our audits are planned to cover only a selected sample of offices based on an analytical review of accounts and results of past audits. Entity profiles developed using data mining and data matching techniques greatly facilitate us to studying the patterns of their revenue receipts or expenditure and draw conclusions based on the transactions that deviate from predefined norms and predict the likely outcome.

For this, developing entity wise profiles based on pre-determined criteria is pre-requisite.

(iii) Need for well-defined relationship with investigating agencies:

The rules for requisitioning records by the investigative agencies should be clearly understood by our staff and management as well as in those of the investigative agencies. These issues could be addressed mutually through discussions.

The need for a set of orders laying down the prescribed procedures in an easily comprehensible manner, and circulating these widely could be considered.

(iv) Position of the Auditor in criminal investigations

As there is a possibility of auditors being questioned in a manner akin to that employed for suspects, there is a need to provide clear and binding instructions about the manner in which audit staff are required to provide information to the investigative agencies.

Appropriate guidelines in clear and unambiguous manner with regard to the modalities of such relationships are to be brought out.

(v) Rules for methods of evidence gathering

Forensic auditors need to gather evidence through various procedures that include obtaining third party evidence, either oral or documentary.

Detailed procedures for gathering, analysis and presentation of such evidence in line with SAIs evidence gathering standards are essential.

(vi) Structured Training Modules

Structured Training Modules that aim to train the staff and officers of the SAI on the broad framework of Forensic audit with emphasis on the art and science of evidence collection, marinating the chain of custody (evidence handling) and analysis need to be prepared and executed.

(vii) Separate cadre of manpower

Forensic auditors, besides auditing techniques, need to be well conversant with investigative techniques, use of IT, Law etc., Considering the specialized knowledge and skills required, a separate cadre of officers recruited through a separate examination merit consideration. Appropriate job designing for various categories of forensic audit staff and officers and their role vis-à-vis other auditors also require elucidation.

(viii) Infrastructure for evidence preservation and analysis

Digital evidence is very volatile. Forensic auditor should handle it with extreme care and should not result in inadvertent manipulation of original evidence. Today such evidence collected

by the auditors is analyzed with the help of various government agencies such as Police Forensic wings, GEQD etc.

Considering the probable delays and the degree of assurance required a Central Forensic Laboratory exclusive to the department could be considered.

Conclusions

Forensic auditing is a specialized field of auditing that requires a combination of audit and investigative knowledge and skills. Considering the scope and methodology of job involved, SAIs with adequate mandate can plan and execute such audits with the help of various advance techniques such as data mining; data matching and case based reasoning tools, besides CAATs. Nevertheless, various capacities building issues and detailed norms that clarify the role of auditor vis-à-vis other investigative agencies would continue to dominate the arena till they are addressed appropriately.

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ENTERPRISE RISK MANAGEMENT FRAMEWORK FOR GOVERNMENT DEPARTMENTS- ESTABLISHING CONTEXT FOR INDIAN AUDIT AND ACCOUNTS DEPARTMENT

J. Wilson*

Introduction

ERMrefers to designing and implementing capabilities for managing risks

Globally, modern organizations have increasingly started placing reliance on Enterprise-Wide Risk Management Framework (ERM)as the best means to realize their mission objectives. Celebrated corporate scandals such as Enron abroad and Satyam at home amply proved that the risks remaining untreated for prolonged periods can threaten the very basic foundations of the businesses. Even though the ERM gained its acceptability amongst the 'profit-centric' private businesses initially, governance experts caution that no entity in the private business or in the business of public service delivery is free from risks.

Risk is defined as the effect of uncertainty on objectives

Risk is defined as the effect of uncertainty on objectives. It is characterised by **events** and **consequences.**Risks can be of financial or non-financial nature. Experience world-wide indicates that the risks manifest in non-financial form aretoo costly to be ignored. In order to increase the likelihood of achieving the organizational objectives, managements play a proactive role in identifying, analysing, evaluating and treating the riskswith an appropriate control and monitoring mechanism. The need to recognise risks and to seizeopportunities becomes more compelling as organisations have had to operate in the face of abounding uncertainties.

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Risk exposure in IAAD is same as any other Governmentdepartment.

This paper attempts to present the relevance of ERM framework for the Government departments facing non-financial risks with particular reference to the Indian Audit and Accounts Department (IAAD). From the risk exposure view point, IAAD stands at par with any other Government department enjoying significant budgetary support and large scale deployment of human resources to carry out its mandate. Besides setting the context for an ERM,this paper goes further on to suggest athree-phase implementation programme for IAAD's field offices engaged in the five core audit functions of Civil, Commercial, Railways, Defence, P&Tas well as Accounts and Entitlementfunction and training institutions.

Establishing the context for ERM in IAAD

New Vision, Mission and Values

CAG adopts new vision statement

In November 2010, Comptroller and Auditor General of India (CAG)adopted a new vision statement for IAAD. According to it, the department***"strives to be a global leader and initiator of national and international best practices in public sector auditing and accounting and recognized for independent, credible, balanced and timely reporting on public finance and governance".*** The IAAD's mission is renewed to ***promote accountability, transparency and good governance*** through ***independence, objectivity, integrity and transparency*** as its guiding force.

Global leadership as a vision and transparency as a core value lets IAAD to external scrutiny

The IAAD's strategic objectives declared through this vision, particularly itsaspiration to assume *global leadership,* combined with *transparency* as a one of its core values may challenge a vast majority of public sector governance structures in India as well as its peer Supreme Audit Institutions (SAI) abroad. It raises a curiosity in the mind of an outsider to look for benchmarking practices that make this 150 year old institution so distinctly different from the rest. **ERM framework can be an effective tool in addressing these concerns and help realise the IAAD's long-term objectives.**

Key stakeholder expectations

Prime Minister seeks CAG's guidance on efficient

As institutions of eminence driven by independence and professionalism, national governments the world over look

delivery of public services

towards their SAIs for direction in the efficient delivery of public services. Prime Minister Manmohan Singh at his November 2010 address of the CAG's 150 years celebration observed that *"our systems of governance and service delivery must need to change quickly to meet the new requirements of the situation. Traditional, time tested ways of doing things which lend credibility to an institution in the public eye may prove inadequate in the face of rising aspirations and mounting pressure for quick and efficient delivery of public services. While those in government grapple with different and better ways of doing things,* ***audit, with its vast experience and deep insight, can contribute significantly to revamping systems and procedures in government to meet the challenges of this 21st*** *century. We look forward to the institution of the Comptroller and Auditor General for such advice and guidance in the years that lie ahead."* **ERM addresses both the Government's intention to reform its service delivery system as well as meet the CAG's mandate to report upon the executive accountability.**

ERM is a reform initiative. It helps executive accountability

GoI positively responds to CAG's proposal,

In February 2007, former CAG V.N. Kaul in a letter addressed to the Prime Minister underlined the "need to develop specialised skills for risk management in the Ministries/ Departments themselves and their subordinate offices" and said that "the Government should consider developing a comprehensive framework for risk assessment, analysis, mitigation, monitoring and review at all levels- strategic, programme and operational."

But ERM needs a pioneer. CAG can lead by example.

The Govt. of India's department of administrative reformshad responded to it by commissioning a pilot study to cover programme-level risks. While this may be a good starting point, it does not address the strategic risksfaced by the Government at its Ministry/Department level.In a typical Government parlance, the hesitation appeared to lie in the lack of 'precedent'. Since the IAAD has the 'know-how', gained over time through the audit of numerous Govt. programmes, CAG will be at an advantageous position to lead the other Government departments by setting an example of having an ERM framework for his own department first and then showcase it to the others.

Resources

CAG is one ofthe largest

Going by the size and mandate, CAG is one of the largest Supreme Audit Institutions (SAI) in the world. Currently, the

SAIs in the world

organisation has 690-strong professional civil service cadre (IA&AS), about 26000 audit staff and over 18000 accounting personnel working on the rolls of its 129 field offices across the country. With an annual budget of over Rs. 2300 crore to run the establishment, IAAD also holds a large unvalued fixed asset base in the form of land and buildings situated in the prime locations of national capital Delhi and the state capitals, equal to several thousand crore rupees at current market value.

Output

ERM can streamline our audit resources and helps effective delivery of audit output

These resources put together generate 31 Union audit reports, 90 State audit reports and 27 State accounts and a number of other standalone reports annually. But, unlike its counterparts in the UK or the USA, IAAD is yet to develop an objective measurement criterion to determine the extent of savings these resources should have returned to the tax-paying citizens. **An appropriate ERM design, if integrated into IAAD's planning process has the capacity to streamline the audit resources, minimise operational surprises and help in efficient delivery of audit output.**

Role of Inspection Wing

SAIs advocate ERM for their government bodies, InternalAudits help set up ERM in their organisations.

Just as SAIs the world overadvocated ERM for their government departments, **internal audits help organisations accomplish their objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes**. As the internal oversight arm of CAG, the Inspection Wing services 129 Principal Accountants General / Accountants General-led offices (PAG/AG) and 80 other subordinate offices. Inspection reports on these offices broadly covercomplianceissues with regard to general financial rules and other policy advice on office procedure but there is no system of tracking individual risk mitigation initiatives undertaken by the PasG/As G. **A robust ERM framework not only offers to report upon such initiatives but also maintains an inventory of opportunity esseized to be broadcast as benchmarking best practices.**

Although the IAAD's field offices are well-versed in dealing

with the internal controls through performance audits etc., their evaluation criteria isoften criticised to be based on subjective judgements. This is because controls are mistakenly construed to exist in isolation but not as risk mitigating tools. The ultimate purpose of anyreview of internal controls should be to assess their (controls) capacity to mitigate risks in meeting the targets/objectives.

Risk-Control Relationship

Controls are to be seen as risk mitigating tools.

It is, therefore necessary to establish one-to-one relationship between risks and controlsfirst (see Box 1). This may involve a separate research project to put together all the controls scattered in GFRs, CCS (CCA), Conduct Rules or FR/SRs etc.and associate them to the entity-level risks. Once such a compilation is prepared, it can serve as a reference manual for risk managers/ practitioners within IAAD as well as thoseprocess owners that are engaged in the decision making processes within the Govt. of India.

AQMF establishes risk-control relationships

Audit Quality Management Framework as a tool for strengthening controls

In 2009, CAG released a policy directive known as "Audit Quality Management Framework" (AQMF) with the IAAD-wide applicability. The broader objectives of AQMF are to ensure that the controls are in-builtat all stages of the audit cycle including planning, execution, reporting and follow up with the flexibility to constantly review and update. This can serve as a useful tool to establish risk-control relationships.

Box 1: Risk-Control Relationship

Function	Processes	Risks?	Existing Controls*
ADMN	Finance &Budget	To be identified by field offices	GFR, Receipt and Payment Rules, Delegation of Financial Powers
	Discipline		CCS Conduct Rule
	Entitlement		Fundamental Rules/ Supplementary Rules
	Leave		CCS Leave Rules
	Office Administration		OAD Manual, MSO (T) Administration
A&E	Accounts	To be identified by field offices	Account Code for AGs, MSO (A&E), State Try. Rules

Inspection Wing can facilitate ERM inIAAD

	GPF		MSO (A&E) GPF Chapter, State GPF Rules
	Pension		MSO (A&E) Pension Chapter, State Pension Rules
AUDIT	All Audit Offices	To be identified by field offices	MSO –Audit,
	Civil		Civil Accounts Manual
	Commercial Audit		Revenue Audit Manual & Income Tax Laws, Audit Norms
	Railways		Railway Audit Manual, Railway Audit Norms.
	Defence		Manual of Audit Dept. Defence Service Vol-I Part A
	Autonomous Bodies		Manual of Autonomous bodies
	Audit of PRIs		Manual of Instructions for Audit of PRIs
	Performance Audit		Performance audit guidelines
	IT Audit		Manual of Information Technology Audit

**Preventive controls only, other controls will need to be specified by risk owners.*

To begin with, Inspection Wing of CAG's head quarter office (HQ) can play a catalyst role by working with six volunteer field offices who maychampion the ERM cause and help set up their own ERM frameworks. After attaining some level of maturity, these offices can present themselves as proven examples for a wider acceptance amongst all other IAAD offices.

ERM models and practices in other world bodies

Several ERM models with different nomenclature exist but ISO 31000 is all inclusive.

Soon after the publication of the COSO's ERM framework in 2004, several models on risk architecture (principles, framework and processes) and practice guidance on application of this architecture to particular risks had appeared on the horizon. Of these, the 2009 edition of ISO 31000 released by the International Organization of Standardization (ISO) emerged as a clear winner for its simplistic approach.

Government departments/ agencies in Australia, Canada, New Zealand, South Africa, Turkey and UK are already implementing ERM in varying degrees. Prominent private sector businesses and NGOs in India have also adopted the ISO 31000 framework in their governance

structures.

There is no 'one-size-fits-all' ERM model. Each organisation has a blend of its own.

A review of various risk theories, models and practices suggests that there is no 'one-size-fits-all' ERM model. Interactions with the industry leaders engaged in ERM implementation in India, NAO and GAO and other leading professional institutions such as The Institute of Internal Auditors confirm further that each organisation has a blend of its own ERM framework.

ERM Model for IAAD

Our prescription of risk architecture based on ISO 31000for IAAD could have the following features(see figure 1):

1. Principles
2. Framework
3. Process

Risk mandate to set the tone at the top.

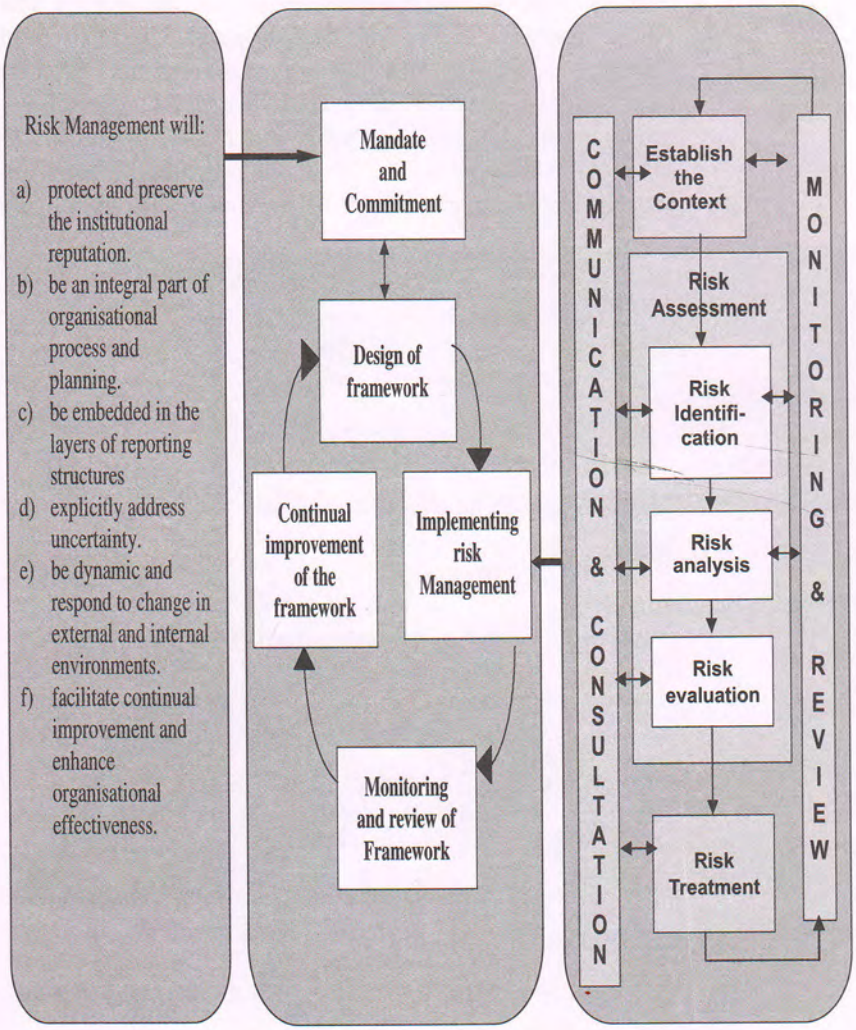
Principles are the drivers for ERM framework. They providethe basis for IAAD's risk management policy.To set the tone at the top, and to make it IAAD-wide practice advisory, arisk management policy (mandate or charter) issued at CAGlevel will have better impact and compliance.

A risk framework built on 'risk management policy'will have the following stages:

a) mandate,
b) design,
c) implementation,
d) monitoring and review,
e) continual improvements.

The process stage is a key component and is the actual implementation part of ERM. It involves the context setting, risk assessment (identification, analysis, evaluation) and treatment. As shown in Figure 1, 'communication & consultation' provides a lifeline while 'monitoring and review' helps refining risk treatment.

Figure 1: Risk Architecture for IAAD



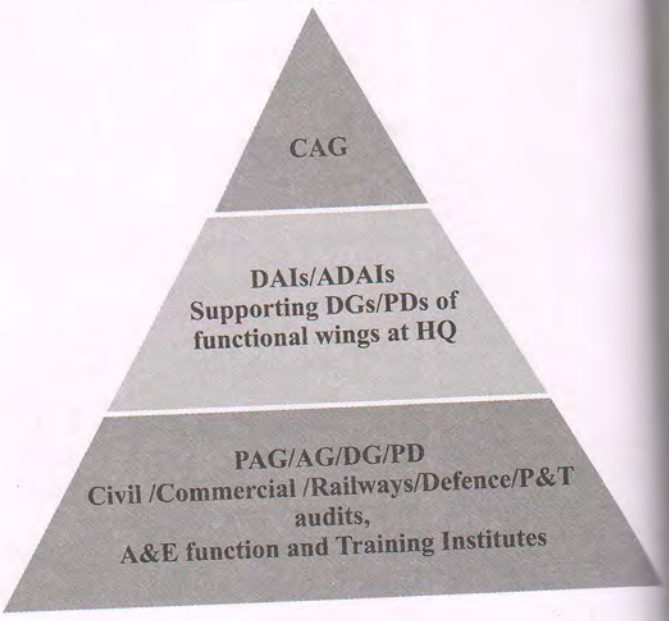
Source: ISO 31000:2009 Risk Architecture.

Risk ownership

Risk ownership will have to rest with the process owners

For ERM to be an effectiveinstrument in realising the organisational objectivesit is necessary to ensure that ownership of risks rest with the process owners;in this case, the IAAD's field offices. Each PAG/ AG will need to involve him/herself in identification, analysis, evaluation and treatment of risks faced by them.There can be several sub-pyramids within each layer of this organisational pyramid, operating under the ownership of respective PAG/DG/ AG/PD. These sub-pyramids will then get integrated into the organisational riskpyramid as showed in figure 2.

Figure 2: IAAD's Risk Pyramid



Risk Committee

As the risk management process is a dynamic activity, it requires constant monitoring by a duly constituted risk committee at the CAG's HQ level as well as at the IAAD's field offices. The risk committee will assume an oversight responsibility by its periodic assessment of the various processes within the organisation and

the risk exposure levels.Depending upon the mitigation treatment given to the individual risks faced at the process stage, the risk committee may decide to upgrade or downgrade a particular risk to be 'high','medium', or 'low' in a manner shown at figure 3.

Key Risks

Assuming that the IAAD's HQ level risk pyramid builds on the field offices' constituting base of the pyramid at level 1, an illustrativelist of risks may include the following: (see box 2)

Box 2: Key Risks-an illustrative list

Level	At	Risks
Level 3	CAG	Safeguarding the organisational reputation
Level 2	DAI/ADAI	1. Inadequate scrutiny by the supporting HQ wings 2. Delayed receipt of audit material from field offices 3. Post-report media handling 4. Inter-wing coordination and 5. Inter-personal relationships
Level 1	PAG/DG/AG/PD (Audit Offices)	1. Improper audit planning 2. Audit failure (*inability to produce report-worthy material)* 3. Delays in report finalisation 4. Non-cooperation of auditees 5. Strike and unrest
	PAG/AG (Accounts Offices)	1. Nonalignment of citizen charter with departmental objectives 2. Inadequate service delivery (Pensions, PF) 3. Improper compilation of accounts 4. Incompatible IT infrastructure 5. Strike and unrest
	DG/ PD	1. Proficiency of faculty 2. Training not being a priority

	Training Institutes	3. Lack of support from feeder offices
		4. Inappropriate training needs analysis
		5. Lack of follow up

Risk of lost opportunities

Just as the act of avoiding a risk can sometimes be a huge risk itself, the risk theorists argue that the entities' inability to seize the available opportunities can at times be prohibitively expensive. A simple example of such a risk may be an investment decision on buying or selling of a stock at a given point in time which may result in a gain or loss. This is true of government department as well because when an opportunity is not availed of at a right time, it could possibly endanger the functional relevance and if prolonged, may even threaten the very basic existence of an organisation. As an innovative and knowledge-centric Government department, IAAD made a brilliant such example in the past.The revenue audit function for instance, was not considered to be a main stream audit function until late seventies. However, when the CAG recognised that an untaxed rupeewas a loss to the Government, a whole new revenue audit function in the audit was created. Needless to say that it is not only the mainstream audit function of the CAG today helping the nation save crores of rupees of taxable revenue every year, but alsomade SAI- India as one of the leaders in revenue audit function of the INTOSAI audit fraternity.

Accounts as basis for the States performance rating- an opportunity for CAG?

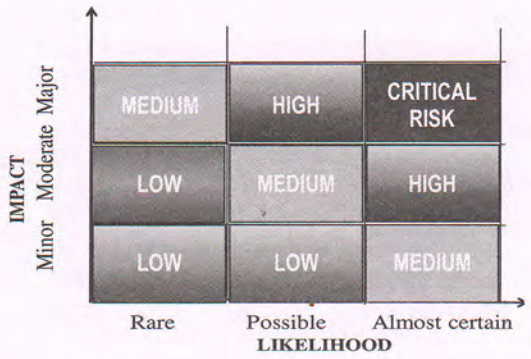
While the debate about CAG's audit 'independence' in concurrently dischargingAccounts & Entitlement function is still on, there is an untapped potential residing in 'Accounting' function of the CAG. Unlike the accounts of the Union Government which are compiled by an independent central authority, the Controller General of Accounts, CAG has a constitutional responsibility to discharge accounts function of the 30 Indian States. A unique feature the State Finance (actual) and Appropriation Accounts (budgetary) is that they are indisputably authentic,available at a

single source. The State governments, Finance Commissions, Union Government and a host of other multi-lateral agencies like World Bank etc. use these accounts to form bases for measurement of States governments' fiscal capacity, levels of expenditure, debt management, GDP growth and the like. The CAG could increase the relevance of these accounts by assigning annual performance "ratings", much like the ratings assigned to world economies by some global rating agencies. The CAG's ratings may be based on certain generally agreed principles and may be published at quarterly, half-yearly and annual intervals. While mid-year ratings help the State Finance Ministers to attempt mid-course corrections and strive for improvements, an annual overall ratingfor an individual state can catch the immediate public attention and highlight the need to be fiscally prudent and thereby ensure fiscal accountability of the State Governments.

How to measure the risks?

Risks can be measured in terms of **'likelihood'** and **'impact'**and presented in a 5X5 or 3X3 risk matrix. For the sake of simplicity, a 3 X 3 risk matrix may be suitable in the context of IAAD(see figure 3). Risk events are rated as High, Medium or Low depending upon its assessment for impact and likelihood as under:

Figure 3: Risk Matrix



Benefits of ERM in IAAD

The ERM framework in IAAD seeks to benefitthe organisation by:

- giving global recognition to CAG's leadership;
- pioneering the cause of ERM in the Government of India;
- increasing the likelihood of achieving objectives;
- exploring new opportunities which add value to work;
- reinforcing stakeholders' confidence in CAG;
- establishing risk-control relationship;
- streamlining resources ;
- minimizing duplication of work, operational surprises and
- building***esprit de corps***.

Three-phase ERM implementation programme

An ERM can be put into practice through a 3-phase implementation programme as follows:

Phase1:

1. Opinion survey
2. Preparation of draft ERM policy/mandate
3. Discussion of draft ERM Policy and in-principle approval to the draft ERM
4. Workshop of PAsG/AsG for 6volunteer offices on pilot basis
5. Preparation & Finalisation of Risk Registers in 6pilot offices

Phase 2:

6. Formal ERM launch in 6pilot offices

Phase 3:

7. Quality Assessment Review of the ERM implementation in 6volunteer offices by Inspection Wing
8. Submission of review results to CAG
9. Brainstorming at a national seminar
10. ERM launch in the whole of IAAD offices (enterprise-wide)

Conclusions

Risk management is a globally recognised, inter-disciplinary

approach to assess, identify, analyse, evaluate and treatrisks faced at various layers of reporting structures. As in any other Govt. department, IAAD's external and internal environments call for anassessment of the organisational risks. As an organisation with high visibility at the national and international levels, IAAD should strive to safeguard the CAG's institutional reputation built over long years of research and innovation. ERM has the potential toachievethe CAG's new vision and mission objectives. Innovative risk taking is also a way of managing risks and the government departments need not be shy of taking risks.

ERM implementation needs a pioneer. CAG has an opportunity to lead the nation by setting an example of having an ERM framework on home turf for his own department.

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IIA research foundation, IIA-Australia. *"Delivering Assurance Based on ISO 31000:2009 Risk management Principles and guidelines."*

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ADEQUACY OF FINANCIAL REPORTING OF DEBT AND ISSUES IN DEBT AND CASH MANAGEMENT IN GOVERNMENT

Ms Vidhu Sood*

1. Introduction

The focus of this article is on studying some aspects of debt and cash management from an audit perspective with special emphasis on the adequacy of financial reporting of Debt. This paper was initiated in ICISA[1] and has benefitted from a three day workshop on debt management conducted in ICISA in January 2012. The topics covered in the workshop included cash and debt management of the Centre and the States- from the RBI perspective, elements of a debt management strategy and risk management framework (Middle office, MoF), detailed discussion on debt situation in States- West Bengal etc. Inputs were also obtained by a visit to Accounts and Entitlement (A&E) and Audit offices in Mumbai in 2012 to attempt some data analysis purely as a study. At Mumbai, a meeting was held with the officers of the Debt Cell in the Expenditure Department to gain some preliminary information on maintenance of debt. The interaction proved useful and offered a few insights into the issue which have been included. Review of literature is mentioned in bibliography and this article also refers to some audit reports which are in the public domain.

This article is organized in three parts. The first part discusses the definition, composition and disclosure requirements of debt. The second part deals with implications of cash

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management on debt management. The third part discusses in brief some issues that can be addressed in audit of debt management.

The third part this article has a bit of scope limitation. Technicalities as given below are not covered as these require formal liaison of Audit with the agencies involved.

Debt, monetary policy and fiscal policy interaction

Efficient market for public debt instruments / functioning of primary and secondary markets / portfolio diversification / introduction of new market instruments

Existence of accountability framework

Databases / Management systems and control at RBI, MoF, State Governments

Role of public debt managers

Efficacy of internal audit

Oversight mechanisms

2. Definition and Composition of Debt and Disclosure requirements

Debt management refers to the effective management of the government portfolio, with the broad objective of minimising the cost of debt in the medium-long term while maintaining a judicious level of risk (IMF and World Bank, 2002).

2.1 Definition of Debt

2.1.1 By definition, public debt in India includes 'Internal Debt' and 'External Debt' for the Union Government and 'Internal Debt' and 'Loans and Advances from the Union Government' for the States. Internal Debt comprises Market Loans, Cash Management bills, Treasury Bills, Special securities, Ways and Means Advances (WMA), Gold bonds, Compensation and other bonds, Securities issued to International Financial Institutions, Securities against small savings etc.

2.1.2 Overall debt includes apart from public debt, certain 'Other Obligations/Liabilities' that are also disclosed in the annual accounts of the Governments. The components of 'other obligations' that have to be disclosed are given in the Indian Government Accounting Standard on Public Debt (IGAS 10; Box 1) and include NSSF (National Small Savings Fund), State PFs (Provident Fund), other accounts, reserve funds and deposits (bearing interest and otherwise).

Box 1: IGAS 10: Other Obligations

Refers to the net outcome of the receipt and payment transactions arising in the public account. It includes Small savings and PF, reserves and deposits. It does not include Remittances, Suspense and Miscellaneous and cash balance. Contingent liabilities, comfort letters etc are not included in 'Debt'

2.1.3 The components of Central Government Debt as appearing in the SDDS National Summary Data (NSD) published by the MoF, and in the Statement of Liabilities (Annex -5 (i)) of the Receipt Budget of the GOI) are consistent with IGAS 10.

2.1.4 In the State Finance Accounts, Statement 6 (Statement on Borrowings) of conforms to the IGAS requirement. However, the detailed statement on borrowings needs to be revised to include 'Reserve Funds and Deposits' to correspond with its summary statement (statement 6). In the Union Finance Accounts (2011-12) overall Debt is depicted as public debt and 'Small savings & PF etc' and has yet to be revised to conform to IGAS.

2.2 Composition and Magnitude of Debt

To understand the context, it is important to take a look at the composition and magnitude of State and Central Debt and understand some trends. As per 2010-11 accounts data (cumulative) (Receipts budget 2013-14), the GOI debt is summarized below:

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[2]SDDS- Special Data Dissemination Standard- IMF standard

Table 1: GOI Debt (Rs in Crores)

Particulars (1)	2010-11 Accounts (2)	% of total debt (2A)	BEs 2013-14 (3)	% of total debt (3A)
A. Public Debt (1+2)	**2824753.91**	**71.72**	**4486172.01**	**79.38**
1. Internal Debt	2667114.81	67.72	4303309.9	76.14
1.1 Marketable	2283719.89	57.98	3877779.37	68.62
(a) Treasury bills				
91 days	70390.51	1.79	137151.65	2.43
182 days	22000.55	0.56	65003.48	1.15
364 days	42477.69	1.08	130469.69	2.31
(b) Dated securities	2148851.14	54.56	3545154.55	62.73
1.2 Non Marketable	383394.92	9.73	609192.64	10.78
(a) 14 day Treasury bills	103100.18	2.62	97800.22	1.73
(b) Securities issued against NSSF	218485.29	5.55	222605.85	3.94
(c) Compensation & other bonds incl other special securities issued to RBI etc	32494.64	0.83	14321.74	0.25
(d) Securities issued to Internal Fin Institutions	29314.81	0.74	70802.72	1.25
(e) Spl securities issued against securitisation of balance under POIF	0		20800	0.37
2. External debt (book value)	157639.1	4	182862.11	3.20
B. Other liabilities	**1114019.99**	**28.29**	**1165612.21**	**20.62**
1. NSSF	568614.4	14.4	612656.22	10.84
2. State PF	111946.78	2.84	142751.22	2.53
3. Other accounts (incl spl securities issued in lieu of food, fertilizer, oil subsidies etc)	304697.07	7.73	266687.52	4.72
4. Reserves and Deposits	128761.74	3.26	143517.25	2.54
TOTAL DEBT (A+B)*	**3938473.91**	**100**	**5651484.22**	**100**

2.2.2 As will be seen from the above data, market loans (dated securities) etc constitute the larger part of overall debt of the Government. Public account liabilities (provident funds, reserve funds, securities issued to oil marketing companies, fertilizer companies in lieu of subsidies etc) constituted about 28% of overall debt in 2010-11 which as per the BEs of 2013-14 is 20%. Over the period 2007-08 to 2009-10 the corresponding percentage was about 30%.

2.2.3 Comparing Union and States, the figures are as follows:

Table 1A: Union and States- Fiscal parameters

Source CFRA[3] 2010-11 (Union and State Finances- At a Glance)

Year	All States		Union Government	
	% of Revenue Deficit to GSDP	% of Fiscal Deficit to GSDP	% of Revenue Deficit to GDP	% of Fiscal Deficit to GDP
2006-07	1.06*	2.21	3.20	4.41
2007-08	1.32*	1.99	1.81	3.49
2008-09	0.35*	3.09	6.39	7.79
2009-10	0.60	3.88	5.39	6.60
2010-11	0.20*	2.38	3.30	4.99

*Surplus.

Fiscal deficit in the States has, over the last few years, been financed mostly by market borrowings followed by Provident Funds, Reserves, Deposits etc. Securities issued to NSSF used to be a huge source of financing till 2006-07, after which the figures have dwindled.

2.2 Additional Definition and Disclosure Requirements

2.3.1 In the definition of overall Debt, suspense and remittance transactions are not included. Suspense and remittance transactions contain a variety of entries depicting amounts receivable and

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[3]CFRA: Combined Finance and Revenue Account

payable which impact cash balance[4] and some items, the adjustment of which has no impact on cash balance[5]. For a complete picture on all liabilities, in the Statement of Borrowings and Other Liabilities in the accounts, amounts payable (outstanding at the end of the year) under Suspense and Remittance should be disclosed. Some of these items may be suitably disclosed as current liabilities and some may represent outstanding amounts for a longer period of time. Similarly amount receivable may also be disclosed.

2.3.2 In case of Central Government, adjustments like special securities issued to the Oil marketing companies etc (Rs 1,80,000 crores at the end of 2010-11) in lieu of subsidies should ideally be included in the Internal debt of the Government and not 'Other Liabilities'. The issue has been dealt with in audit reports of the CAG of the financial audit of Union Accounts in successive years and under-reporting of fiscal deficit in the 'Budget-At a Glance' had been pointed out. This has implication for planning for redemption of debt in ensuing years.

2.3.3 International guidance on definition and disclosure of Public Debt provides for disclosures which can be suitably included in the finance accounts or annual reports of the MoF, RBI etc.

a. For instance, Letters of comfort or accounts payable are not required to be disclosed in our books of accounts/budget, which are in effect guarantees and should be disclosed.

b. Similarly, disclosure on the means used to finance repayments of loans, and the effects on related sinking fund balances should be made.

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[4]Pay and Accounts Suspense which may depict payables towards central government ministries or 8670- Cheque remittances which depicts unencashed cheques. These impact cash balance on clearance.

[5]For example objection book (OB) suspense consists of entries where vouchers have not been received. Cash is already paid. By the amount of the OB suspense expenditure for the year is understated. For clearing the suspense, the correct classification of expenditure is required, cash is not affected. Refer : annex to statement 18- State Finance Accounts.

c. The use of borrowed funds can also be disclosed, as far as possible. When funds are borrowed for specific projects, details should be shown with respect to the purpose and expected benefits of the projects. Where possible, information should also be provided on expected revenue sources and cash flows to finance the debt and the expected life of the project.

d. Information on risk assessment i.e. information on potential vulnerabilities to fluctuations in interest rates, currency values, or other factors that affect repayment costs is also not readily forthcoming in the documents available in the public domain.

2.3.4 The XII Finance Commission had called for the introduction of a statement called 'Committed liabilities in future', but the same does not appear in Finance accounts as formats have not been formalized and information is either not maintained or aggregated across Governments.

2.3.5 In cases of disclosures on guarantees also, details in the Finance accounts of the States do not always tally with the details obtained from individual organizations/ corporations or companies in the State. The State Governments should have a complete database of guarantees and reconcile the data with their respective Finance accounts. Audit must also assess whether all extant provisions regarding grant of guarantees, risk profiling and prioritization of organizations receiving grants, receipt of guarantee fees etc are being fulfilled (reference: Government Guarantee Policy, MOF, 2010 and the provisions of the GFR, 2005).

Box 2: Unified data on Liabilities

A unified database about all onshore and offshore liabilities of the government (including contingent liabilities) is absent in the present system. Further, no single arm of government is charged with the function of analysing such an integrated database and working towards identifying mechanisms through which the long-term cost of borrowing of the government is minimised. (Report of the Internal Working Group on Debt Management)

2.3.6 A complete database with information on all liabilities (including contingent

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[6]GFR: General Financial Rules

liabilities, off budget liabilities etc) of the Governments is also yet to be established (Box 2).

3. Implications of Cash Management on Management of Debt

3.1 The main objectives of cash management are matching short-term flows and balances efficiently, reducing operational, credit and market risk, managing and minimizing idle balances and ensuring flexibility in matching cash inflows and outflows. The temporary mismatches in cash flows in the country are met through a Ways and Means arrangement and if necessary, overdraft facility, between RBI and the Government of India/States.

3.2 Surplus Cash Balances and over Borrowings

3.2.1 Over the last few years many States have recorded surplus cash balances. A RBI study[7] states that "The buoyancy in small saving collections over the last few years and the automatic channelisation of these funds to the States has meant that State Governments' borrowings through internal debt and public account are more than the amount required for financing their Gross Fiscal Deficits (GFD)[8]." Revenue receipts have also seen an increase across States. Surplus cash balances of a State beyond a level indicated by it is automatically invested in 14-day intermediate Treasury bills (ITBs), which presently carry a rate of interest of 5.0 per cent. This rate is significantly lower than that paid on the market borrowings by the States and on the small savings and thus constitutes a negative carry (situation in which the cost of holding a security exceeds the yield earned; in this case the Government borrows at a higher cost and has to invest surplus cash in low yield instruments) for the State Governments. As an illustration the following table may be seen. GFD financing in Maharashtra over a few years has been depicted in the table.

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[7]RBI Staff Paper on Determinants of Surplus Cash Balances of States in India: A panel data analysis by Kumudini Hajra, Rajeev Jain and Dhirendra Gajbhiye.

[8]Given the fact that States are not allowed to carry forward their unutilised portion of allocated market borrowings to the next financial year, its possible that the States create flexibility for future by raising the entire amount of allocated borrowings, which otherwise are not required for financing their GFD.

Table 2 : Summary GFD Financing Maharashtra (in crores)

Particulars	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12
1. Fiscal Deficit	**17630**	**11553**	**-2821**	**13999**	**26156**	**18857**	**20139**
2. Borrowings (Internal Debt + Loans from GOI)	17917	9850	9230	17558	17739	15967	18164
of which NSSF	*15733*	*8838*	*1475*	*428*	*2751*	*5155*	*(-) 1172*
3. Net Surplus Public Account	2763	3666	-7833	6850	12350	8848	6427
4. Contingency Fund (Net)	-134	183	-4	57	-1	-8	11
5. Cash Surplus (-)	-2916	-2146	-4046	-10396	-3932	-5950	-4463

3.2.2 In 2005-06, borrowings (mainly NSSF) financed the fiscal deficit almost wholly. The following year the borrowing from NSSF could have financed about 76% of GFD. From the year 2008-09 onwards however, NSSF share in total borrowings decreased. The overall surplus in the public account in 2009-10 was Rs 12350.5 crores which could have financed approximately 47% of the fiscal deficit for the year but with borrowings of the order listed above, the net result was surplus cash. Cash balance[9] of the State Government for 2009-10 was analysed (analysis performed in 2012). The analysis indicated that about ` 7744.99 crore was the surplus cash available to the Government in the first quarter of 2009-10 after meeting its payment obligations for the quarter. This suggested that estimation of borrowing requirement may not be dependent on cash management to the extent it should be.

3.2.3 This analysis is in retrospect but being able to forecast cash requirements with a fair degree of accuracy can obviate unnecessary borrowings and debt servicing. It was also understood that the borrowing calendar is decided in advance and is managed by RBI. Even so, steps should be taken to try and address the issue of over borrowings. It is also argued that there could be other components of cash balance that may not be available for the Government to finance its deficits. These would have to be reduced from cash available with the State Government and to that extent

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[9]Data available in the accounts office

estimation/calculation of over borrowings may have to be reduced. For a more efficient cash management scenario and a possible lower borrowing and also to utilize surplus cash balances towards settling short term liabilities, surplus cash must be managed accordingly.

3.3 Centralisation of Cash Balances of Governments

3.3.1 Centralization of government cash balances and establishment of a TSA or a Treasury Single Account structure[10] is an essential feature of cash management. (IMF paper)

3.3.2 As per the Constitution and receipt and payment rules, receipts have to be immediately brought into Government account. In our case, the Government does get a consolidated picture of its receipts and payments at the end of the day. However, to ensure that information from all bank accounts which hold Government funds does reach a single bank account needs to be studied further. In case of the GOI as well as the States there are instances of funds maintained outside Government accounts. For example, in Punjab, the Punjab State Agricultural marketing fund and the Punjab Infrastructure Development fund have been held outside Government accounts. In case of the funds that are sent by GOI to the implementing agencies outside of State budgets, the funds lying in banks or bank accounts of implementing agencies have implications for cash management of the GOI. With technology supporting us in more ways than one, it should be possible to minimize cash lying idle with the banks or lying unspent in the bank accounts of implementing agencies. A similar situation may prevail in the States also.

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[10]Treasury Single Account: An Essential Tool for Government Cash Management; IMF, Fiscal Affairs Department paper, August 2011, prepared by Sailendra Pattanayak and Israel Fainboim

4. Some Issues in Audit of Debt

4.1 The box below describes the operational framework related to debt management as given in the Report of the Internal Working Group on Debt Management (October 2008). In the RBI, the Internal Debt Management Department (IDMD) manages the public debt of GOI/State Governments. It formulates, in consultation with the Ministry of Finance, a core calendar for primary issuance of dated securities and treasury bills, and suggests the size and timing of issuance and conducts auctions, keeping into account the government's needs, market conditions, and preferences of various segments.

	Front Office (Negotiates all loans)	Middle Office (Measures and monitors all loans and conducts policy formulation)	Back Office (auditing, accounting and data consolidation)
Function	Implementation of debt strategy	Strategy formulation	Record keeping etc.
Domestic Debt	PDO (Public Debt Office), RBI, Banks, Post Offices	IDMD (Internal Debt Management Dept), RBI, Budget Division	DGBA and CAS, RBI, CCA(F), MoF
External Debt	BC (Bilateral co-op) & FB Division of MoF	External Debt Management Unit	CAAA (Controller of Aid, Accounts and Audit)

Box 3: Who Manages Debt? (Source: Report of the Internal Working Group on Debt Management (October 2008)

4.2 Debt management functions are performed by agencies including the Reserve Bank and Ministry of Finance/Finance Departments in the States (some States, have a debt cell). Over the last decade considerable thought has gone into separating the debt and cash management functions of the RBI into a

Box 4: Statutory provisions
The legal framework for management of the public debt is provided in Art 292 of the Constitution of India and by the Reserve Bank of India Act, 1934., the Government Securities (GS) Act, 2006 (which replaced the Public Debt Act, 1944) and the Government Securities Regulations, 2007. (FRBM Acts, Reports of the Finance Commissions)

separate Debt Management Office (DMO). Towards this the Middle Office was established in September 2008 in the Ministry of Finance with the intention of merging it into the Debt Management Office (DMO), when it is established. The responsibilities of the Middle Office are as below.

a. Pilot the evolution of the legal and governance framework appropriate to an independent debt office

b. Formulation of a long term debt management strategy consistent with sustainability requirements

c. Formulation of annual debt issuance strategy and periodic calendars of borrowing

d. Forecasting cash and borrowing requirements

e. Formulation of a comprehensive risk management framework

f. Ensuring compliance to debt/cash management policy, strategy and risk guidelines

g. Developing and maintaining a centralized database on Government liabilities

h. Dissemination of debt related information to the public

The Middle Office publishes a quarterly report on public debt which is in the public domain. The bill regarding setting up of the DMO is yet to be placed in the Parliament. Over the last couple of years there has been some rethink on a separate DMO.

4.3 It is known that there is no debt management strategy document of the RBI/GOI in public domain. This ofcourse does not imply that there is absence of strategy. We find some mention of this in the status paper on Debt issued by the MoF (2010-11, 2011-12) which states that "the overall objective of the Government debt management policy is to meet Central Government's financing need at the lowest possible long term borrowing costs and also to keep the total debt within sustainable

levels. Additionally, it aims at supporting development of a well functioning and vibrant domestic bond market.

In the workshop conducted in ICISA in 2012, Mr T Rabi Shankar from the Middle Office, MoF outlined some parameters of a possible debt management strategy and risk management framework. It was discussed that a realistic debt management objective could be to maintain a low cost, prudent and stable debt structure. Some strategic benchmarks against which to evaluate the strategy were also suggested in the workshop such as share of external debt, currency composition, share of marketable debt, share of short term debt, share of indexed and floating debt, maturity distribution etc. Risk Management included discussion on management of interest risk, credit risk, currency risk and operational risk.

Hence, it is imperative that the Governments (Centre and States) clearly determine elements of debt management strategy and risk management framework and put it in public domain. At present the indicators are at best inferred from documents available in the public domain. Audit of Debt Management has to incorporate reporting on these elements.

Box 5: Debt Management Performance Assessment of the World Bank; 'Debt Management Strategy' indicators

Risk Indicators

- Total debt service under different scenarios (macroeconomic projections, policy reforms), particularly sensitivity to interest rate and exchange rates
- Maturity profile of the debt under different scenarios

Strategic benchmarks such as the following:

- Share of foreign currency to domestic debt
- Currency composition of foreign currency debt
- Minimum average maturity of the debt
- Maximum share of debt that is allowed to fall due during one and two budget years
- Maximum share of short-term to long-term debt
- Maximum share of floating rate to fixed rate debt
- Minimum average time to interest rate re-fixing

4.4 Scope for improvement in audit analysis of Sustainability of Debt (States)

4.4.1 Indicator Analysis: Presently debt sustainability is discussed in audit reports (States) by the indicators given below:

[11] Also see RBI publication, State Finances: A Study of Budgets 2013-14

- Quantum Spread (debt stock*rate spread (GSDP growth rate-interest rate) together with Primary Deficit (Fiscal deficit-Interest payments) should be zero for constant, stable debt. If it is positive, debt-GSDP ratio would fall and vice versa.
- Net availability of borrowed funds: Defined as the ratio of debt redemption (Principal + Interest Payments) to total debt receipts; indicates net availability of borrowed funds.
- Sufficiency of non- debt receipts (Resource gap): Adequacy of incremental non-debt receipts of the State to cover the incremental interest liabilities and incremental primary expenditure.
- Interest payment to Revenue Receipts ratio

4.4.2 The table below is an extract from a State Audit Report 2009-10 and 2011-12. The table in the 2009-10 report is followed by a paragraph on sufficiency of non-debt receipts which states that during the year 2007-08 there was a positive resource gap indicating increasing capacity of the State to sustain debt in the medium or long run; however, during the year 2008-09 and 2009-10 there was a negative resource gap indicating the beginning of risk of non-sustainability of debt.

Table 3: Indicators of Debt Sustainability: Trends

Indicators of Debt Sustainability	2007-08	2008-09	2009-10	2010-11	2011-12
Debt stabilisation (Quantum Spread + Primary Deficit) (in cr)	28044	14001	28701	11013	1968
Sufficiency of non-debt receipts (resource gap) (in cr)	14375	-16820	-12157	7299	-111
Net availability of borrowed funds (in cr)	-11130	8848	9794	10756	868
Burden of interest payments (IP/RR)- percent	15	15	16	15	14

In audit, the reasons for the change if analysed further reveal that over a three year period 2007-08 to 2009-10, the reasons for variations lay in the decrease of around Rs 2800 crore mainly due to a huge fall in guarantee fees. The variation is even

huge when seen in respect of 2007-08. This year the Government closed some reserve funds and booked the money under receipts.

4.4.3 In case of another State, the non-debt receipts increased by approx Rs 6300 cr in 2009-10 over the previous year due to conversion of nazul land into free hold land. This too is a one off transaction and cannot be taken as a positive trend to arrive at the conclusion that debt is sustainable. This especially in a State where 96% of debt receipts in the year (2009-10) went into retiring old debt.

4.4.4 The RBI study[12] also mentions that 'overall the debt position of state governments has shown an improvement as is evident from various debt sustainability indicators. However, the recent growth slowdown and volatility in the financial markets may affect the financial health of the state governments, particularly those which have relatively high debt-GSDP ratios. The slowdown in the growth momentum may affect the revenue raising capacity of state governments, which may not only contribute to incremental debt but also have an adverse impact on their debt servicing capacity. Moreover, withdrawal of interest relief for those states which have not adhered to their FRBM targets may increase their debt service burden.'

4.4.5 The audit analysis can be better informed if the analysis goes beyond the one-off transactions which though influence indicators for the year, do not indicate a trend. In the above example, for instance, *sufficiency of non-debt receipts should be seen in the capacity of the state to generate non debt receipts that are sustainable and recurrent.* Any sustainability analysis has to take trend analysis into account and arrive at a comment that is borne out by all indicators/analysis seen together else contraindication within the same reports is a possibility if each indicator is viewed separately. In addition, the extent to which the State is able to meet debt service obligations by its own revenue (other than grants received/debt relief etc) must be analysed.

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[12]RBI publication, State Finances: A Study of Budgets 2013-14

4.4.6 Asset Liability Management : During the workshop, the ALM (Asset and Liability Management) risk management approach to management of debt was also discussed briefly. The ALM Approach entails that the entire balance sheet – assets as well as liabilities are included in risk analysis so that risks can be limited by matching risk characteristic of assets and liabilities. For Governments, there is a general emphasis on liabilities side and assets are not really looked into as much. It is true that because of the nature of government assets, the traditional ALM approach is difficult to apply to debt management. For instance present value of tax revenues would have to be calculated for inclusion in asset side. However, tax revenues and even expenditures are subject to variation as they respond to macroeconomic policy changes. Hence their response to interest rates, exchange rates variation and inflation is difficult to assess. However, the approach is useful as it helps manage liabilities consistent with characteristics of public assets.

4.4.7 In audit, the robustness of financial assets should be evaluated more closely. Two items that largely make up the financial assets in Government accounts are gross capital outlay (including investments) and loans and advances. CAG's audit reports have successively commented on the quality of return that investments fetch. The following is an extract from an Audit Report of a State.

Table 4: Return on Investment (Audit Report 2011-12)

INVESTMENT/RETURN/COST OF BORROWINGS	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	AVERAGE %
1. Inv at the end of the year (In cr)	31917.62	37531.49	44256.26	56386.38	64192.68	74391.39	83016	
2.Return (In Cr)	3.66	6.16	122.00	71.16	80.88	44.82	30.20	
3.Return (%)	0.01	0.02	0.28	0.13	0.13	0.06	0.04	0.13
4. Average roi on Govt borrowings	7.09	7.78	7.74	7.29	7.38	7.23	7.21	7.37
5. Diff between 4 and 3	7.08	7.76	7.46	7.16	7.25	7.17	7.17	

4.4.8 As on 31 March 2010, 33 companies in which Government has invested Rs 13947.90 cr were incurring losses and their accumulated losses amounted to Rs 8724 cr (net). In case of societies, the report states that losses amount to 17.84% of the initial investments. Similarly in case of loans and advances, the amount at the end of 2009-10 stood at Rs 19590 cr. Interest receipts as percent to outstanding loans was 3.6 % whereas interest payment as percent to outstanding liabilities of State Government was 7.38 % the difference between the two being 3.78 % (It was 4.2% in 2007-08, 6.75% in 2008-09).

4.4.9 Similar situation can be found in other States as well. Loans which cannot be recovered or investments that have been eroded should be reduced from the asset side in the accounts to arrive at a realistic assessment of asset and calculation of asset liability ratio. While audit needs to consistently point out such investments, the Governments would have to respond to carry out the corrections in accounts.

4.4.10 A similar situation arises with off budget borrowings (borrowings that States raise with guarantees through state controlled special purpose vehicles (SPVs) and/or state-owned public sector enterprises). These are pointed out in audit reports but should also be fully disclosed in the Finance (State) accounts, 'Notes to accounts'. These should be disclosed with the statement of liabilities in the Budget and total liability of the State should factor in off-budget liabilities. E.g. following is an extract from AR 2009-10, A.P.

Out of the off-budget borrowing of Rs. 2,231 crore raised by APTRANSCO through adjustment bonds, private placement and banks during 2001-09 the government repaid Rs. 894 crore up to 2009-10 leaving a balance of Rs. 1,337 crore. During the current year, the Government has not raised any off-budget borrowing but re-paid Rs. 43 crore towards principle and Rs. 115 crore as interest of earlier years, leaving an amount of Rs. 1,294 crore outstanding.

4.4.11 In fact in the table below from the Audit Report of Rajasthan, 2009-10, gives the details of the borrowings by public sector undertakings for fulfilment of State Plans.

Table 1.18: Borrowings by the Public Sector Undertakings for fulfillment of State Plans

(₹ in crore)

	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	Outstanding Balance as on 31.03.2010
Power Utilities (Rajasthan Rajya Vidyut Prasaran Nigam Limited)	337.12	605.12	877.26	3,796.94	4,123.60[39]	5,650.84[39]	13,858.21[40]
Rajasthan State Road Transport Corporation	74.31	95.43	68.98	59.83	141.59	161.33	270.50
Rajasthan State Road Development and Construction Corporation Limited	31.75	15.80	6.67	-	-	-	17.43
Public Health Engineering Department	-	-	-	-	-	-	29.88
Rajasthan Housing Board	9.31	0.40	-	-	-	-	24.41
Total	**452.49**	**716.75**	**952.91**	**3,856.77**	**4,265.19**	**5,812.17**	**14,200.43**

Source: Finance Department

The Finance Department intimated (July 2010), that State Government does not use the borrowings of Public Sector Undertakings for meeting State's budgeted plan expenditure and also that its debt servicing is not made through Consolidated Fund of the State. Hence, the State Government treated these as the borrowings of Public Sector Undertaking only and not off-budget borrowings of the State Government. Funds borrowed by Government companies could become a contingent liability for the Government if the companies are unable to repay. There is often a pressure on the State Government to step in even through there may be no legal requirement to do so. Hence, it is imperative that borrowings of State owned companies are managed prudently.

These borrowings could devolve on the Government as some of these corporations are incurring losses. The Commercial Audit report for the State, for the same period, mentions the loss being made by Rajasthan Rajya Vidyut Prasaran Nigam Limited (Rs 860.77 crore). It also mentions Rs 495.54 cr as the loss made by Rajasthan Rajya Vidyut Utpadan Nigam Limited. In addition, for instance, the Audit Report for the State for the year 2011-12 mentions that the State had undertaken to repay principal and interest towards Rs 945.38 cr raised by Zila Parishads from HUDCO, but this was not added to the fiscal liability of the State as depicted in the State Finance Accounts.

4.4.12 In wake of the losses being made by the corporations, their financial viability is in question and they may not be able to pay back borrowed funds. The loans contracted by these organizations could easily devolve as liabilities of the State Governments. This is also true in case of States guaranteeing the borrowings of such loss making enterprises. It is therefore imperative that an assessment of

total asset and liability of the State/Union should be done in all alternative scenarios for a comprehensive evaluation of debt management.

4.5 Issues in Calculation of Debt; Creative Accounting?

4.5.1 In its paper, Government Debt: Status and Road Ahead, November 2010, MOF states that *"for the Central Government, investment of huge cash surpluses by State Governments in 14-days Treasury Bills result in payment of interest at two stages for the same amount of borrowed money. At the first instance the interest accrues from Centre's borrowing to finance its budgeted deficit partly arising on account of expenditure budgeted as releases to States. This released money from the Centre comes back to it as investment in 14 days treasury bills by the State Governments, thus creating interest burden for the second time for the Central Government and also reducing the availability of liquidity in the system. While consolidating the general government debt, this component of 14-days Treasury Bills needs to be netted out from State Governments' debt as this is in the form of inter-government transaction. While netting 14-days treasury bills investment amounting to ` 93,776 crore outstanding at the end of March 2010 from the State Debt estimated at ` 16,36,403 crore in BE 2009-10, the outstanding debt as percentage of GDP will decline from 26.3 per cent to 24.8 per cent of GDP."*

4.5.2 The 14 Day treasury bills, being cash equivalent, carry a 5% rate of interest. If rediscounted before maturity, they may fetch a return of 2.5-3%. The SDLs that State Government contracts is 7.5-8.5% and are long term loans (definitely more than a year). It is not understood how liabilities and assets of differing maturities, carrying different rates of return and not intended to be settled in the same accounting cycle[13]/simultaneously are being netted to

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[13]In the absence of any rules/accounting principles in Government in this regard, international guidance on setoff, (IAS 32 (international Accounting Standard) *Financial Instruments: Presentation)* was referred to for guidance on how such transactions can be handled. The IAS 32 states that an entity can offset a financial asset and financial liability when, and only when, an entity currently has a legally enforceable right of set-off and intends either to settle on a net basis or to realise the financial asset and settle the financial liability simultaneously

calculate State Government Debt. This practice incorrectly reduces debt as a percentage of GDP by about 1-1.5 percentage points. Infact the fiscal consolidation roadmap for the State Governments has been charted out in the MoF paper accordingly, which needs attention as long term fiscal consolidation is being made dependent on short term cash surpluses, which can reverse on a day to day basis.

4.5.3 A similar issue stands with the calculation of Effective Revenue Deficit (ERD). The Revenue Deficit is presently reduced by the amount of grants given for capital asset creation to arrive at the effective revenue deficit. Separate identification of grants given for capital asset creation from overall grants given by the Government should have been intended to serve as the starting point to assess asset creation in the economy. Instead it has become an exercise in creative accounting. There are now targets given in the FRBM (GOI) with respect to the ERD which is obviously lower than overall revenue deficit. This is notwithstanding the fact that the actual revenue expenditure of the Union Government is unchanged whether grants are given for asset creation or otherwise. Setting targets on ERD in fiscal responsibility legislations may not be prudent in the medium/long run.

5. Conclusions

5.1 Financial reporting of debt must address elements of definition and disclosures in debt comprehensively.

5.2 The Centre and the States need to elucidate a comprehensive debt management strategy and risk assessment framework that should be placed in the public domain.

5.3 The ALM approach enables management of liabilities consistent with the characteristics of public assets. An assessment of total assets and liability of the State/Union should be done in all alternative scenarios including off budget liabilities, guarantees etc. A comprehensive database of investments and loans needs to be maintained centrally in all States and position of quality of asset evaluated in audit. Assets of Government must be evaluated for possible erosion of the asset base.

5.4 Any debt sustainability analysis in audit has to take trend analysis into account and arrive at a comment that is borne out by all indicators/analysis seen together and which analyses underlying transactions.

5.5 In audit, the extent to which the State is able to meet debt service obligations by its own revenue (other than grants received/debt relief etc) could be analysed.

5.6 Creatively accounted for data to meet set fiscal targets must continue to be commented upon in audit.

5.7 Cash management units will be helpful in the States to be able to prepare credible cash forecasts. Cash management plans should be reviewed in audit to assess the extent to which cash availability and forecasting is built into the borrowing plans. Audit of debt and cash management could be undertaken as a whole.

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ENVIRONMENTAL AUDITING (EA) AND AUDITING ENVIRONMENTAL MANAGEMENT SYSTEM (EMS): ROLE OF PUBLIC AUDITORS IN GREEN AUDIT

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Introduction

In view of the global concern over degradation of natural resources, ozone layer depletion, global warming, climate change, consequent sensitization towards environmental protection and sustainable development, industry and business have been increasingly adopting Environmental Management System (EMS) to meet the expectations of the stakeholders. While ISO 9001:2000 deals with Quality Management System, ISO 14000 series address environmental management systems, environmental auditing, environmental performance evaluation, life cycle assessment, environmental labeling and environmental aspects in product standards. The International Standards Organization defines EMS as 'the part of the overall management system that includes organizational structure, planning activities, responsibilities, practices, procedures, processes and resources for developing, implementing, achieving, reviewing and maintaining the environmental policy'.

This paper enunciates global and national initiatives concerning environmental protection and sustainable development, the concept of sustainable development, essential elements of EMS,

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important areas to be looked into while conducting an audit of EMS, SAI India's experience in EA and possible benefits of successful implementation of EMS and role of the public auditors in factoring environmental concerns in audits.

PART- 1

(a) Global Initiatives for Environmental Protection and Sustainability

The United Nations Conference on Sustainable Development - Rio+20 was held in June 2012 at Rio de Janeiro, Brazil where all the heads of the government had unanimously agreed to renew the commitment to sustainable development by ensuring an economically, socially and environmentally sustainable planet for the present and future generations. The conference reinforced the commitment of the world community to eradication of poverty and hunger by promoting integrated, sustainable, inclusive and equitable economic and social development. Nations unanimously resolved striving to achieve the Millennium Development Goals by 2015 and promote ecosystem conservation, regeneration, restoration and resilience of natural resources in spite of the emerging global environmental challenges.

The world community reaffirmed its commitment to sustainable development. The concept is defined clearly for the first time by Brundtland Commission as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs". Sustainable development incorporates essentially three elements; firstly, protecting the environment and using natural resources wisely; secondly, recognizing the needs of everyone while ensuring social progress; and finally maintaining high level of economic growth. It is, therefore, essentially a trade-off between otherwise conflicting interests of economic advancement, social progress and environmental protection.

The first major international event where world nations seized of the problems arising out of uncontrolled exploitation of natural resources and environmental degradation was the UN conference on human environment in Stockholm in 1972. The

Earth Summit held in Rio de Janeiro in 1992 was instrumental in formulating possible strategies to protect the future of life on earth in the form of Agenda 21, blue print for sustainable development. In the conference, 168 countries signed the Convention on Biological Diversity, which required countries to identify and monitor their genetic resources and draw plans and action programs to conserve including setting up protected areas. Kyoto Protocol was signed in 1997 wherein 166 countries committed themselves to reducing or restricting Green House Gases (GHG) emissions. The world summit on sustainable development in Johannesburg in 2002 was another important landmark in the global imperative of sustainable development, because it looked at the road travelled so far, evaluated successes and shortcomings, and proclaimed again the collective commitment to sustainability, without which development is meaningless.

The comity of nations agreed that sustainable development strategies should be holistic and integrated, inclusive, people-centred, benefiting and involving every section of the society including youth, children and women. The nations underscored the importance of linking financing, technologies, capacity building, and dissemination of best practices for developing green economies. Important issues like poverty eradication, food security, nutrition and sustainable agriculture including crops, livestock, forestry, fisheries and aquaculture, water and sanitation, energy, sustainable tourism, transport, cities and human settlements, health and population, productive employment, social protection, disaster risk reduction, climate change, mining, afforestation have been highlighted to initiate suitable policy response, planning and preparing projects targeting to mitigate adverse impacts and to achieve the desired outcome.

(b) The Kyoto Protocol of 1997, Doha Amendment of 2012 and Clean Development Mechanism (CDM)

According to available data, at present the sea levels have risen by 20 cm over the last 130 years and are expected to rise by 1ft to 5ft in the next 100 to 300 years, which might threaten parts of countries like Bangladesh, Maldives, Egypt, Kiribati, Tuvalu or even cities like Shanghai, Tokyo, Mumbai, Amsterdam, London

and New York to be under water. Over the last century, the surface temperature of the earth on an average increased by close to 1°C. This phenomenon has been termed as "Global Warming".

The Kyoto Protocol is an international agreement linked to the United Nations Framework Convention on Climate Change (UNFCC). The Kyoto Protocol was adopted in Kyoto, Japan in 1997 and came into effect on 16 February 2005. The detailed rules for the implementation of the Protocol were adopted in Marrakesh, Morocco, in 2001, known as the "Marrakesh Accords." Its first commitment period started in 2008 and ended in 2012. In Doha, Qatar, in December 2012, the "Doha Amendment to the Kyoto Protocol" was adopted. Under the amendment, new commitments were agreed by Annex I Parties to the Kyoto Protocol from 1 January 2013 to 31 December 2020.

During the first commitment period, 37 industrialized countries and the European Community agreed to set internationally binding emission reduction targets to an average of five per cent against 1990 levels; and during the second commitment period, to reduce GHG emissions by at least 18 per cent below 1990 levels in the eight-year period from 2013 to 2020. The composition of Parties in the second commitment period is different from the first. Recognizing that developed countries are principally responsible for the current high levels of GHG emissions, the Protocol places a heavier burden on them under the principle of "common but differentiated responsibilities."

Under the Protocol, countries must meet their targets primarily through national measures. However, the Protocol also offers them an additional means to meet their targets by way of three market-based mechanisms; i) International Emissions Trading (IET); ii) CDM and iii) Joint implementation (JI). These mechanisms help to achieve emission targets in a cost-effective way and facilitate deployment of appropriate technologies to reduce the impact on climate change. An Adaptation Fund was established to finance adaptation projects and programmes in developing countries that are Parties to the Kyoto Protocol. In Doha, in 2012, it was decided that for the second commitment

period, international emissions trading and joint implementation would provide the Adaptation Fund.

The Kyoto Protocol is seen as an important first step towards a truly global emission reduction regime that will stabilize GHG emissions. In Durban, the Ad Hoc Working Group on the Durban Platform for Enhanced Action was established to develop a protocol, another legal instrument under the Convention, applicable to all Parties. The Working Group is required to complete its work by 2015. In 2012 Doha climate change talks, the mechanisms under Kyoto Protocol serve the objective of both the developed countries with emission reduction targets, who are the buyers of carbon credits as well as of the developing and least developed countries with no emission targets, who are the sellers/suppliers of carbon credits. At present CDM is the relevant mechanism in India and number of entities are generating carbon credits/Certified Emission Reduction (CER) units.

(c) Evolution of EA, INTOSAI – WGEA: Guidelines, Research Papers & Case Studies

The International Organization of Supreme Audit Institutions (INTOSAI) Working Group on Environmental Auditing (WGEA) has been publishing research papers and reports on Environmental Auditing (EA) since 1998 and disseminating updated methodology, approach and techniques. The study papers published periodically by WGEA are available on its website http://www.environmental-auditing.org. These papers help SAIs to have better understanding of environmental issues and conducting EA by exchange of experience, guidelines, data and other informative material. INTOSAI-WGEA has so far published 26 papers including 7 Drafts under finalization. While some of these papers give fundamentals of how to conduct EA with SAI's known frameworks of Compliance, Financial and Performance audits, other papers focus on auditing significant environmental issues like water, biodiversity, waste management, energy, forest, fisheries, climate change, mining, land, environmental accords, natural resource accounting and environmental accounting.

Concerted efforts by INTOSAI-WGEA helped SAIs in attempting innumerable EA reports on different issues in a systematic and organized manner. These EAs have facilitated the nations to address environmental issues and formulate appropriate policy response and programmes like improving water quality of rivers and watersheds, controlling invasive species, protection of plants, animals, and ecosystems, management of natural resources, mitigation of environmental degradation of construction, reduction of pollution, desertification, strengthening biosphere.

PART 2

(a) ISO 14001 Standard - Environmental Management System (EMS)

Following the success of the ISO 9000 series of quality management standards, the ISO 14000 series of standards have been designed to cover the environmental issues for the organizations in the global markets. An EMS audit under ISO 14001:2004 is a management instrument to help identifying and mitigating environmental impact of the organization's activities, products and services; enhancing its environmental performance by implementation of a systematic and holistic response by formulating suitable environmental policy, planning, setting up quantitative and qualitative periodical objectives and targets and thereby continuously evaluate, measure and improve the organization's environmental management system.

ISO 14001:1996 and periodical versions like ISO 14001:2004 standard specify requirements for an EMS to enable an organization to formulate a policy and objectives keeping in view mandatory legislative compliance and information about significant environmental impacts. It applies to those environmental aspects, which the organization can control and over which it can be expected to have an influence. EMS helps the organization to identify its environmental goals and establish a program for monitoring its progress. There are essentially three components of an EMS: firstly, a written program requiring the organization to commit to producing the highest quality product with the lowest possible environmental impact; secondly, education and training;

and finally, knowledge of applicable local and central environmental regulations. EMS works on Deming cycle of 'Plan, Do, Check and Act' and demands the organization to adopt a continual cycle of planning, implementing, reviewing, and continuously improving the actions that an organization takes to meet its environmental obligations. Advances in technology like new computer devices, wireless Internet access and updated Computerized Audit Tools (CATs) and real time video conferencing have enhanced effectiveness of EA substantially since its inception.

(b) Elements of EMS and Audit of EMS

The ISO 14001 EMS standard essentially consists of seventeen elements and an attempt has been made to highlight the important audit coverage in respect to each of them.

(i) Environmental policy – Clause 4.2 of the ISO 14001 requires that the top management shall define the organization's environmental policy. Audit can examine the following:

- Is the environmental policy appropriate to the nature, scale and environmental impacts of its activities, products or services?
- Does the policy include a commitment to continual improvement and prevention of pollution?
- Does it include a commitment to comply with relevant environmental legislation and regulations, and with other requirements to which the organization subscribes to?
- Does it provide the framework for setting and reviewing environmental objectives and targets?
- Has the policy been documented, implemented, maintained, communicated to all employees, and is available to the public?

(ii) Environmental aspects – The organization should identify environmental attributes of its products, activities and services and determine those that could have significant impacts on the environment. Factors to be kept in mind are

ecological effects, human health impacts, catastrophic effects, resource depletion, and probability of occurrence of impacts, regulatory impacts and financial and other business concerns. While evaluating environmental aspects, an auditor should consider mandatory standards prescribed by the regulatory authorities for air emissions, water effluence, solid and hazardous waste, land contamination, land, raw material and resource use. He should also be aware of concerns raised by the community regarding noise, odour, dust, traffic pollution etc. in normal, shut down and emergencies. Audit focus/checks can be on the following:

- Has the organization identified environmental aspects correctly with reference to its specific activities, products or services?
- Does it comply with applicable legal and regulatory requirements?
- Have the objectives and targets derived from evaluation process?
- Has the environmental impact, whether adverse or beneficial, wholly or partially resulting from an organization's activities, products or services been correctly perceived and factored into EMS?

(iii) Legal and other requirements – The organization should identify applicable environmental laws, rules, and other requirements, which should be complied with. EMS requires the organization to establish an up to date documentation process and communicate to all concerned for planning and compliance. It has to evaluate how far EMS has addressed compliance with the mandatory regulations.

(iv) The organization must establish environmental goals and targets in line with its environmental policy, taking into account anticipated environmental impacts and other relevant factors. The public auditor who audits EMS should examine the process of determination of targets and achievements against each of them. He can also see whether objectives and

targets are derived from the organization's environmental policy and whether the performance of objectives and targets are reviewed and monitored periodically by the top management for taking appropriate, corrective and preventive actions for continual improvement.

(v) Environmental management programme – The organization should make an environmental action plan to achieve objectives and targets. An effective environmental management programme is a road map for achieving environmental goals. It shall specify designation of responsibility for achieving objectives and targets at each relevant functional level of the organization as well as the means and time frame by which they are to be achieved. Audit can examine whether the environmental action plan is in conformity with set objectives and targets and it delineates actions for application of programmes to new or modified activities, products or services.

(vi) Structure and responsibility – EMS enables the organization to establish roles and responsibilities and allocate appropriate resources to achieve the objectives. A public auditor can independently assess whether adequate financial, technological, human resources with specialized skills have been provided to undertake the tasks. EMS requires appointment of a management representative who is assertive, knowledgeable and independent. Auditor needs to evaluate the entire organizational structure, assess the adequacy of resources and see whether environmental management is integrated with other business functions.

(vii) Training awareness and competence – EMS requires that employees are well aware of environmental concerns and adequately trained to competently carry out their assigned environmental responsibilities. The entire process of training needs to be evaluated independently in audit. The organization should identify its training needs and ensure that all personnel, whose work may create a significant impact on environment, have received appropriate training.

(viii) Communication – EMS demands that the organization establishes internal and external communications on environmental management issues. Auditor needs to evaluate the effectiveness of internal communication between the various levels and functions of the organization and the process of receiving, documenting and responding to relevant communication from external interested parties.

(ix) EMS documentation – EMS documentation describes how EMS is being implemented in the organization in its entirety. EMS documentation may be maintained either on paper or electronically and it inevitably describes the core elements of the management system and their interaction and provides directions to related documentation. Auditor should examine documented environmental policy, organizational structure and key responsibilities, description of ISO 14001 requirements and how far they have been complied with. He should refer to key procedures, controls and other system elements, evaluate emergency response plans and training programmes.

(x) Document control – EMS ensures effective management of procedures and other system documents. The auditor can go through basic EMS manual, Environmental Management Programme manual and EMS procedures manual and come to an independent judgment on economy, efficiency and effectiveness of implementation of EMS in the organization with reference to the standard. It should be kept in mind that EMS documentation should be dynamic and in line with changing organizational responsibilities with reference to new regulations.

(xi) Operational control – Organization is required to identify, plan and manage the operations and activities in line with its environmental policy, objectives and targets. Auditors should see activities assigned to prevent pollution and conserve resources. While developing new products, designing new process and reengineering activities for strategic environmental management, the organization has to take into

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account environmental opportunities, anticipating change and responding to emerging trends.

(xii) Emergency preparedness and response – EMS requires identification of potential emergencies and developing procedures for preventing and responding to such eventualities. Auditor should assess the risk potential for accidents and emergencies. Emergencies may include process hazards such as fire, natural disasters and accidental emissions of toxicants. The main emphasis in audit is to evaluate the industry's preparedness for potential accidents and emergencies with a view to substantially minimize the impact of uncontrolled events. The auditor shall review and comment, where necessary the organization's emergency preparedness and response procedure, in particular, after the occurrence of accidents. The auditor can have an independent assessment by checking how far the organization is periodically testing such procedures where practicable.

(xiii) Monitoring and measurement – EMS requires effective monitoring of key activities and tracking of performance. Auditor must ascertain operations and activities having significant environmental impacts, key characteristics of these operations and activities and methodology followed in measuring the key characteristics. In EMS audit, performance indicators such as quantity of toxic emissions per unit of production, quantity of hazardous waste generated per year, number of employees who have undergone environmental training, average time taken for resolving nonconformities, energy use per unit of production and percentage of solid waste recycled/ reused.

(xiv) Nonconformity and corrective and preventive action – Nonconformity refers to a situation when the system does not meet the EMS criteria or its implementation is not consistent with the ISO 14001 standard. Auditor should analyze system deficiencies to identify problems, root causes and to oversee whether corrective and preventive actions are identified and implemented to rectify the deficiencies. There should be

documentation indicating corrective actions taken from time to time.

(xv) Records – Records are important to ensure proper functioning of EMS as well as satisfying the regulatory authorities. Key issues in records management are identification of records to be maintained, authority who keeps them, and where and how they are kept, the retention time and how they are accessed, stored and disposed.

(xvi) EMS audit – EMS audit is generally conducted by a qualified EMS auditor. It refers to a systematic and documented verification process to determine whether an organization's EMS conforms to the audit criteria set by the organization and for communication of the audit results to the top management. An effective EMS programme requires developing audit procedures and protocols based on the environmental importance of the activity concerned, determination of audit frequency and schedule, deployment of trained auditor and maintenance of updated audit records. A public auditor can evaluate the effectiveness and efficiency of EMS auditor by independently reviewing the entire process of implementation of EMS in an organization with reference to the standard, applicable legislative and regulatory requirements, and environmental policy set by the top management.

(xvii) Management review – EMS requires that the organization's top management reviews the EMS to ensure its continuing suitability, adequacy and effectiveness. Auditor should keep in mind new standards, legislations, regulations and environmental performance indicators and oversee how far the EMS is in compliance with them. He should also obtain scientific/technical data on products, materials and processes used and how far they are in alignment with environmental regulations. The key issue is whether the EMS is suitable, efficient, effective and cost effective under the given circumstances of the organization. Management reviews are essential for continual improvement and ensuring that the EMS continues to meet the organization's needs. The auditor

should go through the internal audit reports and corrective and remedial action taken as well as reports of emergencies such as spills, leaks and incidents, accidents and corrective and preventive action taken thereafter to avert such occurrences in future.

PART – 3

(a) India's Approach to Sustainable Development

Along with the international efforts and commitments undertaken, various environmental legislations were enacted in our country followed by rules and regulations framed under these acts. Some of the significant legislations are the Factories Act, 1948, the Mines Act, 1952, Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981, the Public Liability Insurance Act, 1991, the Energy Conservation Act, 2001, and the all-encompassing Environmental Protection Act, 1986, empowering the government to bring out appropriate regulations to address any pressing environmental concerns. A few important rules framed under the Environmental Protection Act, 1986 are the Environmental Protection Rules, 1986, the Biomedical Waste (Management and Handling) Rules, 1998, the Hazardous Wastes (Management and Handling) Rules, 1989, the Municipal Solid Wastes (Management and Handling) Rules, 2000, the Ozone Depleting Substances (Regulation and Control) Rules, 2000 and the Noise Pollution (Regulation and Control) Rules, 2000. Regulatory and implementing institutional infrastructures have been set up, and environmental standards for ambient air, water and waste disposal have been fixed, entrusting significant responsibilities to both private and public sectors.

(b) SAI India's Approach to Environmental Auditing (EA)

In the well-researched book of history titled as 'The Comptroller & Auditor General of India – A Thematic History – 1990-2007' the departmental historian and ex-Deputy Comptroller and Auditor General, Shri. Vijay Kumar allocates a complete Section on 'Environment Audit' mentioning it as 'perhaps the most challenging' emerging audit. Chapter 19 of 2002 edition of C&AG's Manual on Standing Orders (Audit) deals with different

facets of Environmental Auditing. Basic objective is mentioned as 'to ensure that appropriate and adequate policy and procedures are in place and are duly complied with to achieve the goal of sustainable development'.

IA&AD's initial attempts on Environmental Audit began when two or three important audit reviews on environmental aspects were brought out including Ganga Action Plan a flagship programme for cleaning the river Ganga of all pollutants and a report on 'Afforestation of waste land and agro-forestry' in 1995–96 Audit Report on Haryana Government. Series of Environmental Audit related reports were brought out on Ganga Action Plan in March 2000 Union Government (Scientific Departments) as well as in the Audit Reports of the concerned State Governments. In 1995–96, Audit Report of Maharashtra Government featured a review on Pollution Control Board of Maharashtra. In 2000–01, Audit Report an important Environmental Audit related review called 'Implementation of Environmental Acts relating to Water Pollution' appeared in the category of Compliance Audit.

SAI India is an active member of INTOSAI WGEA and ASOSAI Working Group on Environment. SAI India had been conducting a long duration International training programmes on Environmental Audit. More than 100 participants from 40 countries participated over the years. SAI India is a member of the 8th ASOSAI Research Project on *'Guidance on conducting Environmental Audit'* along with China Pakistan, Malaysia and Saudi Arabia. The research group is in process of framing environmental audit guidelines specifically suited for use by member ASOSAI nations. An Indo Polish joint seminar on Environmental Audit was held in November 2007 in Warsaw. The two countries are collaborating to share their experiences in the field of EA.

SAI India also imparted specialized training in EA to officers of SAI Bhutan in July 2007. ASOSAI seminar in China on auditing air pollution issues was attended by representatives of SAI India. India is a member in the INTOSAI WGEA and has been actively participating in the committee's deliberations.

(c) Role of Regional Training Institute (RTI), Mumbai in EA Capacity Building

Shri Vijay Kumar elaborates the pioneering work done in the field of capacity building in EA by the Regional Training Institute, Mumbai. The institute, established in 1980 for catering to the training needs of the 16 offices of the Indian Audit &Accounts Department situated in Mumbai, Pune and Goa was designated by the then Comptroller and Auditor General of India Shri. V. N. Kaul to develop as a Centre of Excellence for training in EA.The office of the Principal Director, Scientific Departments, the audit office of the nodal ministry – Ministry of Environment and Forest was designated as the nodal office for EA in 2002. Consequent to posting of a Principal Director as head of the Institute in 2003, the institute organized many intensive training programmes including training for trainers on EA inaugurated by the CAG of India in 2004 and developed knowledge resources including Structured Training Module (STM) on EA with theory and case studies in 2004, incorporating important inputs from INTOSAI-WGEA papers, training material developed by INOTOSAI Development Institute (IDI), Ministry of Environment and Forest and SAI India's rich expertise in the field of EA since 1998.

As a nodal institute, RTI Mumbai played a key role in capacity building in the area of EA by organizing series of training programmes and workshops, networking with specialized premier environmental institutions, research centres, pollution control boards, academic institutions and NGO activists in the country. The institute continuously trained trainers in all the training institutions as well as audit professionals of SAI India, by collaborating with all other training institutions at regional and national levels in EA and Natural Resource Accounting and trained many national and international audit professionals also. The Institute prepared training material, collected research papers and compiled EA database, disseminated to all the training institutes and audit offices of SAI India. Important products of the institute include STM on Environmental Audit; Compilation of EA reports undertaken by SAI India; Central legislations on EA; International Environmental

Accords signed by Government of India; WHO Water Quality Publication; material on Clean Development Mechanism; Compendium on the First and Second Workshop on Natural Resource Accounting (NRA) organized by the institute in collaboration with Central Statistical Organization. The institute had also developed an Environmental Audit Manual and Structured Training Module on Natural Resource Accounting for SAI India's approval.

(d) Environment and Climate Change: Auditing Guidelines

SAI India prepared a manual in 2010 "Environment and Climate Change: Auditing Guidelines" setting out clearly an audit approach for EA within the broad framework of Regularity and Performance Audit. The Guidelines have two sections: in Section–1 is introduction to Audit of Environment and Climate and Section–11 outlines detailed guidelines for the audit of EA and Climate Change.

Section-1 deals with the basic concepts to comprehend 'environment' and 'climate change'; brief explanation of important international treaties, Basel Convention on Control of Trans-boundary Movements of Hazardous Wastes and their disposal, 1989; London Convention, 1972 on the Prevention of Marine Pollution by Dumping Wastes and Other Matters; MARPOL, 1973/1978 – International Convention for the Prevention of Pollution from Ships; Ramsar Convention, 1971 on wetlands of international importance especially as waterfowl habitat; Convention on Combat Desertification, CBD, 1992; Convention on International Trade in Endangered Species of Wild Fauna and Flora, CITES, 1973; Vienna Convention on Protection of Ozone Layer, 1985 and Montreal Protocol on Substances that Deplete the Ozone Layer, 1987; United Nations Convention on Laws of the Sea, UNCLOS; International Convention for the Control and Management of Ships Ballasts Water and Sediments; The Cartagena Protocol on Bio-safety, Montreal, 2000. The manual also provides important policy initiatives of the government for environmental protection and climate change including important legislations, regulatory bodies like Central Pollution Control Board and State Pollution Control Boards, National Environment

Tribunal, National Environment Appellate Authority, Compensation Afforestation Fund Management & Planning Authority. Further, it provides EA planning and process, objectives, mandate, scope, coverage and evaluation of policy issues in EA, selection of audit criteria, selection of topics, methodology and processing of audit reports. Besides detailed guidelines for conducting financial, compliance and performance audits under EA with detailed questionnaire and checklists.

Section-11 of the manual elaborates relevant background information about strategies, policies, international treaties, legislation and area of audit examination with audit checklists for auditing major domains of EA – Biological Diversity, Air Pollution, Water Pollution, Waste Management, Climate Change, and Coastal Zone Management.

PART –4

(i) Review of Some of SAI India's EA Reports with Compliance and Performance Audit Framework

INTOSAI Working Group on Environmental Audit Guidelines has classified Environmental Audit into five distinct categories: Compliance Audit of Environmental laws, Performance Audit of Environmental programmes/schemes, Environmental impact of any programme or activity, Evaluation of environmental policies and Audit of Environment Management Systems (EMS).

Of the five specific categories of EAs, SAI India has, by now, produced reports identifiable in all the five distinct categories applying the government audit frameworks, though INTOSAI guidelines might not have been fully applied in preparation of some of those earlier reports for obvious reasons. SAI India has not only conducted audit of air, noise, water, waste management, biodiversity, Environmental Impact Assessments, Environmental Management Systems and audit of execution of projects and programmes resulting into policy review by the executive by now, but also endeavoured to tread along new critical domains of environmental audit relating to flora, fauna, rehabilitation and relief issues, urban planning, agricultural activities, energy audit, and even on disaster planning and preparedness. The following

discussion is an attempt to touch upon some of those significant EAs conducted in multi spectra domains of audit.

Reviewing the CAG's central and state reports during 2001 to 2006, about 187 EA reports/paras could be identified on varied subjects ranging from performance audit of Ganga Action Plan, 2000, compliance audits of applicable environmental regulations on air, water, solid waste management, hospital waste management, biodiversity etc. Some of the reports such as Ganga Action Plan were deliberated in depth by the PAC and recommendations offered for better management of the projects. These reports also provided in some cases, key inferences, valuable database and analysis for failure and non-achievement of objectives with a view to help the executive making appropriate changes in policy formulation and strategy. There are few CAG reports falling in the fourth category of EA, commenting on the environmental impact of non-environmental program or any program or activity till 2006 or so.

Reviewing the SAI India reports of 2006, it is seen that Report No.4 – Union Government (Defense Services) contained performance reports on three naval projects – construction of a naval academy, a naval base and modernization of a navy hospital – where environmental impact had been commented upon. These three projects were not essentially environmental projects, but audit had commented environmental impact on coastal ecosystems, destruction of flora, fauna and degradation of beaches. Report No.5 of 2006 – Railways included performance appraisal of medical and health services highlighting non-maintenance of the prescribed standards for drinking water and food products and non-conformity in case of bio-medical waste management in railway hospitals. The Report recommended creation of facilities such as autoclave/incinerator for treatment of biomedical waste. Report No.2 of 2006 on Department of Atomic Energy commented on non-installation of incinerator system even after a lapse of nine years; causing environmental hazard by inefficient nuclear waste management. Performance Audit Report No.18 of 2006 on 'Conservation and Protection of Tigers in Tiger Reserves' is

entirely a performance audit of an environmental project and hence undoubtedly an EA report.

A review of CAG's State Reports prepared in 2006 revealed that Accountant General of West Bengal had undertaken EA of arsenic alleviation programme as part of Receipt, Works and Local Bodies Audit. Accountant General of Himachal Pradesh had reviewed government commercial and trading activities and commented on air, water, soil pollution and non-existence / malfunctioning of sewage treatment plant (STP) and effluents treatment plant (ETP), afforestation and deficiency in EMS of State PSUs. State Report (Commercial & Receipt Audit) contained a report on EMS in a State PSU. State report of Tamilnadu had an EA report on water supply to Chennai city. State Report (Commercial & Receipt Audit) of Andhra Pradesh dealt with environmental safeguards in thermal power station of Power Generation Corporation Limited. Report of Goa for 2006 also contained a performance review on water supply and sanitation programme.

These reports were prepared by following internationally accepted INTOSAI performance audit guidelines and methodology. EA reports of SAI India cut across different streams of SAI India's audits – Defense, Railway, Central Government Departments and State Governments. Some of these reports were on non-environmental projects, but their environmental impacts were commented upon unlike in earlier performance reports and therefore, these reports became EA reports too. Methodology, audit criteria, evidence gathering and analytical techniques used for bringing the audit conclusions were based on internationally accepted performance audit framework. These performance reports are well structured with defined audit scope, objectives, conclusions based on data analysis, supported by relevant and adequate audit evidence, accompanied by recommendations.

In 2006 SAI India conducted audit of floods in Maharashtra commenting on the disaster management and preparedness of the government. In 2007 SAI India had also attempted EA of the fifth category – audit of environment management system of a port, first of its kind on ports by any SAI so far.

(b) Environmental Management by Mumbai Port Trust

It is a pioneering effort for SAI, India to conduct a comprehensive performance audit on environmental management of a port. The audit was primarily aimed at assessing the extent of compliance of applicable, mandatory legislative requirements, performance of the port against the stipulated conditions, obligations and commitments along with effectiveness of implementation of the specified environment protection measures. As there was no comprehensive EA report on ports available on the World Wide Web as a benchmark, SAI India referred to best practices pertaining to environmental management for port as suggested by American Association of Port Authorities' (AAPA) Handbook along with mandatory and relevant regulations for identifying port environmental management practices and thereby deriving irrefutable audit criteria. Audit focused also on the adequacy and effectiveness of implementation of Environmental Management Programmes.

Subsequently comprehensive EA report was also attempted on Jawahar Lal Nehru Port Trust. The Parliament Committee discussed the report and appreciated the efforts of SAI India in undertaking EA.

(c) Performance Audit of Floods in Maharashtra – Preparedness and Response

Maharashtra state faced unprecedented torrential rainfall in 2005 flooding all the four regions of the state, claiming around 1100 human lives and 27000 cattle lives. Similar disaster repeated in 2006 killing 400 human beings, resulting in relief and rehabilitation measures by the government. Audit reviewed implementation of the disaster management plan and commented on varied deficiencies in the system such as delay in desiltation works in Mithi river, nonfunctioning of the disaster warning system, inadequacies in distribution of relief assistance and diversion of funds. Disaster management audit was done for the first time by SAI India. Report examined the magnitude of the calamity, pre-disaster management, post disaster management, relief and rehabilitation measures, financial management,

monitoring and reporting mechanism, and analyzed the lessons learnt along with sensitivity to error signals. Recommendations were accepted by the government.

(d) EA Audit on Waste Management

In 2008, performance audit on "Management of Waste in India" was conducted across 24 states pointed out deficiencies in policies regarding waste reduction/recycling/reuse, inadequacy of rules for disposal of all different kinds of waste as per the legal provisions and poor compliance to the Municipal Solid waste, Bio-medical waste and Plastic waste rules. Poor quality of data, poor monitoring and lack of accountability led to the ineffective management of waste in India.

(e) Green Audit Report on Green Ministry

The CAG's comprehensive report on Ministry of Environment and Forest, the nodal ministry on environment and sustainable development issue contains observations on green projects and schemes meant for afforestation, conservation of biodiversity, pollution control and environmental awareness, which are administered, monitored and executed by the nodal ministry for environment. The audit finds that funds were provided to concerned agencies for increasing tree cover but the projects were not implemented and forest resources not developed to improve the degraded forest land as planned, leaving more than 70% projects incomplete, funds unutilised and targets unachieved.

In case of biodiversity conservation, the green ministry had not issued important regulations regarding access to biodiversity, transfer of results of research and intellectual property rights. The ministry did not complete identification and preparation of the list of endangered and endemic species, including plant species as well as biological resources as a first step to protect them. Further, surveys and explorations were not adequately carried out to identify fragile ecosystems and protected areas.

The ministry has an ambitious project to improve environment in selected cities—the Eco-city programme. Its prime objective is to prevent and control pollutants in air, water and land,

and create awareness for de-stressing environmental burden in cities having cultural, historical, heritage and tourist importance. The project was conceptualised by the Central Pollution Control Board. Out of the 12 cities to be covered in the first phase, it selected only six cities—Puri, Kottayam, Ujjain, Vrindavan, Tanjavur, Tirupati. As the project implementation was found deficient in many respects, the board was asked to recast the entire Eco-city programme to factor environmental concerns afresh with municipal functions, providing adequate resources for pragmatic and participative planning and implementation.

(f) Compliance with Environmental Legislations in Karnataka Metropolitan Region

The performance audit showed that the Karnataka State Pollution Control Board had not drawn up any concrete action plan to address pollution related issues, leading to under-utilization of available funds; the Board did not maintain a proper inventory of polluting sources, allowed operation of a large number of polluting units without installing pollution control systems; the existing sewage network covered only 40 *per cent* of BMR and the sewage treatment plants received only 47 *per cent* of the sewage generated. The remaining 53 *per cent* was discharged directly into storm water drains and lakes, contaminating the water bodies and ground water. The ground water quality in BMR was affected due to presence of pollutants in excess of permissible limits. Although concentrations of air pollutants continued to be high at many places in BMR, an effective plan to control air pollution could not be drawn up due to non-finalization of source apportionment studies.

(g) Kolkata Environmental Improvement Project

Kolkata Environmental Improvement Project (KEIP) is a joint effort of the Government of India, Government of West Bengal, Kolkata Municipal Corporation and Asian Development Bank to arrest environmental degradation and improve the sewerage and drainage infrastructure in the outer boroughs 39 of the Kolkata Metropolitan Area (KMA) through up-gradation of the city's sewerage and drainage system, restoration of the drainage canals choked by silt, evolving an efficient solid waste

management system, providing basic urban services in slums and improving the facilities in parks and water bodies. The project was started in April 2002 and was scheduled to be completed in June 2007. The completion date has been extended to June 2012.

(h) CAG Report on Water Pollution in India

This is one of SAI India's important EA reports discussing the water pollution in the country which helped the government to grasp the seriousness of the problem and to dovetail appropriate policy response. The Performance Audit was conducted from 2010 to 2011, examining relevant documents at Ministry of Environment and Forests, Central Pollution Control Board, Ministry of Water Resources and Central Ground Water Board at the central government and State Pollution Control Boards, State Environment Departments, State Urban Local Bodies, Nodal Departments and implementing agencies for National River Conservation Plan, National Lake Conservation Plan and selected blocks in districts for ground water in 25 out of 28 states. The sample consisted of 140 river projects, 22 lakes and 116 ground water blocks in 25 States. The results of audit, both at the Central level and the State level, were taken into account for arriving at audit conclusions.

(i) Coal block allocation issue – CAG Report -2012-13

Report of the CAG on 'Allocation of Coal Blocks and Augmentation of Coal Production, 2012' on the Ministry of Coal is referred by media as a report on coal allocation scam or 'coalgate'. Though the report does not discuss the environmental impact of coal mining and environmental management systems in the coal fields, the report can be considered as one of the significant reports on unfair allocation of natural resources by the executive. In 2011-12 CAG of India had conducted Corporate Social Responsibility of Coal India Limited (CIL), Steel Authority of India Limited (SAIL) and Rashtriya Ispat Nigam Limited (RINL).

The report of 2012-13 deals with allocation of coal deposits by the Ministry of Coal to the public sector and private companies during 2004-09. CAG commented adversely on the coal block allocations mainly on three counts; firstly, the Screening

Committee did not follow a transparent and objective method while making recommendations for allocation of coal blocks; secondly, competitive bidding could have been introduced in 2006 by amending the administrative instructions in vogue instead of going through a prolonged legal examination of the issue which delayed the decision making process and finally, the delay in introduction of competitive bidding rendered the existing process beneficial to a large number of private companies amounting to about Rs 1.86 lakh crore.

The government responded stating that the policy of allocation of coal blocks to private parties was not a new policy as the policy had been there since 1993. The Prime Minister made a statement on 25 August 2012 on the floor of the Parliament as the parliamentary business had been disrupted due to contentions in the report. The government found it difficult to accept the notion that a decision of the Government to seek legislative amendment to implement a change in policy should come for adverse audit scrutiny. The issue was contentious and the proposed change to competitive bidding required consensus building among various stakeholders with divergent views, which is inherent in the legislative process.

There are large number of CAG's reports pertaining to different streams like Railway, Telecommunication, Defense, Commercial, Autonomous Bodies, Joint Ventures and reports on Central, States, Urban Local Bodies commenting on significant environmental issues.

(ii) Financial Audits Using EA Framework

In regard to financial audit and certification of accounts of PSUs, autonomous bodies and other organizations, the Institute of Chartered Accountants of India is yet to bring out environmental accounting standards and till such time auditors can only use existing accounting standards for factoring environmental costs including contingent costs, environmental impact on assets, liabilities including contingent liabilities and disclosure. Certified Management Accountant (CMA) guideline categorizes environmental costs as regulatory, upfront, back end, voluntary,

contingent, image and relationship costs. Unless and until mandatory accounting standards are introduced, environmental audit of Balance Sheets, Profit and Loss Accounts of companies, Income and Expenditure accounts of other bodies and organizations could be done to a limited extent only. However, CAG's Report 11 of 2006 commented on non-provision of liability for removal of unauthorized hutments at Indira Gandhi International (IGI) Airport by Municipal Corporation of Delhi. Significant findings of statutory auditors included comment on Brahmaputra Valley Fertilizer Corporation Ltd., stating that the company did not recognize possible impairment loss in respect of unviable Ammonia – I Plant. Audit comments on Central Coal Fields Ltd. included non-provision of sunk cost of dropped project, prospecting, boring and development expenses of project not implemented since 1992-93.

PART – 4

Green Audit and Emerging Role of Public Auditor

Public Auditor's responsibility is much higher than any other auditor, EMS auditor or any green auditor in the sense that the ultimate stake holder of public audit is the public at large through the constitutionally assigned parliamentary, democratic, institutional channel – the legislature, legislative committees, the executive, media and finally catering to the common people, community and public at large. Public Auditor hasan inalienable responsibility of serving the public indirectly by discharging the assigned responsibilities in objective and transparent way, without being biased, partisan, irrational or judgemental and without fear or favour.

Professionalism demands that public auditor should keep pace with the changes in public audit profession as per the changing requirements of time. He is of course not intended to be a bloodhound, attacking ferociously the executive policy and spilling blood but he must consistently remain as an ardent watch dog of public finance, tracking the tax payer's precious resources, ensuring that the mobilization of government receipts is as per the legislative intent; as well asutilization of the government funds by

the targeted beneficiaries. The vision of the public auditor should not be narrow, sectarian, limited as he or she is expected to serve the public by judiciously discharging the responsibilities with due diligence and professionalism. He or she cannot remain static in the audit approach or be blind, deaf or dumb to the changing realities in a rapidly moving world.

Environmental Audit is not like any other traditional audit; because, its scope and ambit are much wider, essentially interlinked with sustainability and development priorities in an environmentally challenging world. EA subsumes all other audits in its fold, looks the issues holistically. At macro level, the impact of policies, planning, programmes, projects, schemes of the three tier governments and administrative establishments at the centre, states and Urban Local Bodies and Panchayati Raj Institutions in the country have to be probed and analysed with EA framework. At micro-level, activities, processes, aspects, products, services of entities functioning within the country impacting the environment should be assessed. Both qualitative and quantitative parameters of the essential components of the EA, analytical framework viz. impact on air, water, atmosphere due to emissions in air, discharge in water, impact on flora, fauna, including human settlements, habitats, and microorganisms and the entire biodiversity including abiotic components, land, waste management, impact on climate and ecology. Audit analytics, framework and tools have to be used to bring valuable audit inputs to help the legislature and executive to improve policy making, planning, implementation, review, monitoring and follow up for continuous improvement.

The Green Auditor has to view the entire gamut of activities of the governments and entities from macro levels to micro levels and vice versa through the green goggles of sustainable development concerns. Audit perspective needs to be necessarily green by evaluating through the environmental angle of Big E- through which other 5Es of Performance Audit essential elements viz. Economy, Efficiency, Effectiveness, Ethics, and Equity will be assessed. The present generation's indispensable obligation to the future generations of leaving the planet earth with its natural resources and habitats intact, the way the present generation has

been enjoying by taking appropriate measures for conservation without affecting permanent damage to ecosystem should be borne in mind. At national level, policies are to be aligned with the obligations, as reflected in the ratified international treaties; legislation should follow to cover all that is committed by the nation at its apex level of policy making; rules, regulations, procedures, standards, norms, practices and processes have to be married to the legislative intent and mandatory commitments.

In compliance with commitments to international accords, the Government of India has taken significant steps towards integrating sustainable development concepts in policy formulation, strategic planning, design of programmes, projects and schemes, cutting across economic, social and environmental sectors. Adoption of Clean Development Mechanism prescribes technological solutions to environmental problems in economic sectors like transport, energy, agriculture and industry. In social sectors like poverty eradication, human resource development, urban governance and service arena, sustainable development concepts are increasingly being embedded. In so far as environmental resources are concerned, though legal and regulatory frameworks have been created to protect environment and reduce impact on air, water, land, forestry, biodiversity, and marine ecosystem, it is the responsibility of government auditors to increasingly use EA for reporting sustainable development status to the stakeholders especially the parliament while auditing economic, social and environmental sectors.

As auditing and accounting are inextricably interlinked, the important pre-requisite for effective environmental auditing is sound environmental accounting. Environmental issues and sustainable development concerns may get finally integrated into environmental accounting: firstly, at macro level, while calculating GDP, consumption of the nation's natural resources, both renewable and non-renewable are not presently taken into account to arrive at green GDP ; secondly, at micro level, in financial accounting, firms and organizations need to estimate and report environmental liabilities including contingent liabilities and environmental costs, contingent costs; thirdly, in internal reporting

and decision making process, management accounting can use data on costs of possible alternative inputs for raw-materials, utilities like water, electricity with reference to emission and discharge of pollutants and conservation of non-renewable resources, choice of technology in processing, preventive and remedial measures to be taken for compliance with mandatory environmental regulations.

In the internal reporting within an organization, data on environmental costs and liabilities can be used for better decision making in areas like use of inputs, choice of technology for processing and handling of byproducts. These can in turn help decision making relating to usage of alternative raw materials, consumption of utilities like water and power, choice of processing technology based on environmental cost of treating emission into air, discharge into water, adverse environmental aspect and impact on flora, fauna and human beings. Treatment of byproducts, conservation of non-renewable resources etc. can be looked into systematically for achieving competitive advantage and image building. Substantial amount of work needs to be done in these areas for evolving an acceptable System of Environmental Economic Accounting (SEEA) which may finally provide a solid foundation for conducting more effective and purposeful environmental auditing.

Successful implementation of EMS helps the organization to derive substantial benefits such as raw material savings from complete processing, substitution, recycling of product inputs; increase in product yields and by-product utilization; reduced energy consumption; less downtime due to careful monitoring of processes; commercial viability of waste conversion; reduced cost of material storage, handling and packaging; reduced costs associated with emissions, discharges, waste handling, transport and disposal; improved consistency in product quality emanating from process changes; safer work place and safer products to customers; and higher product resale and scrap value.

The ultimate objective for effective implementation of EMS goes beyond merely obtaining EMS certification, primarily aiming at integrating environmental decision making into the organization's overall management strategy. A performance audit

of implementation of EMS in an organization evaluates not only its conformity to mandatory and applicable environmental acts, rules and regulations but also adequacy, suitability, effectiveness, efficiency, cost effectiveness and economy in implementation of the system, and wherever applicable even factoring ethics and equity concepts for corporate governance and good governance.

It is true that audit institution has no direct role in policy formulation. But it can facilitate the government in formulating policy and planning projects, programmes and schemes for environmental protection. This is done by providing valuable inputson the basis of analysis of facts and data highlighting policy inadequacies and identifying the systemic and procedural deficiencies in execution andbringing lessons from experience. The prime objective of all environmental programmes—including the stakeholders and those who are responsible for policymaking and planning, formulating projects, executing, monitoring, reviewing as well as auditing—is the same i.e. continuously improving the performance of projects and achieving the desired outcome by taking timely preventive and corrective action.

It is essential for the Public Auditor to wear invariably the Green Spectacle of Environment while auditing so that he or she is in a position to comprehend the sustainable development and environmental preservation issues in correct perspective while discharging the assigned responsibility as an auditor.In 2013, SAI India has established an International Centre for Environmental Audit Sustainable Development (IECD) in Jaipur to impart capacity building and training to EA professionals all over the world and providing facilities for research in the field, but so far, there has been no clear demarcation of EA reports on CAG's website or any analysis or focused study on the subject has been conducted. This gap in the knowledge resources needs to be filled by producing valuable knowledge inputs for international research and further collaboration in studies in the field. Needless to emphasize that along with setting up of an international institution, the crying necessity in the field of EA is the quality and volume of knowledge resources to be produced for capacity building and further specialization in the field. The pioneering efforts initiated

and documented by RTI Mumbai by networking with all knowledge institutions in the field and producing knowledge resources need continuation, encouragement and further augmentation for the purpose of intense professionalization and achieving further excellence in EA.

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THE LOKPAL AND LOKAYUKTAS ACT, 2013

(NO. 1 OF 2014)

[1*st January,* 2014.]

An Act to provide for the establishment of a body of Lokpal for the Union and Lokayukta for States to inquire into allegations of corruption against certainpublic functionaries and for matters connected therewith or incidental thereto.

WHEREAS the Constitution of India established a Democratic Republic to ensure justice for all;

AND WHEREAS India has ratified the United Nations Convention Against Corruption;

AND WHEREAS the Government's commitment to clean and responsive governance hasto be reflected in effective bodies to contain and punish acts of corruption;

NOW, THEREFORE, it is expedient to enact a law, for more effective implementation of thesaid Convention and to provide for prompt and fair investigation and prosecution in cases ofcorruption.

BE it enacted by Parliament in the Sixty-fourth Year of the Republic of India asfollows:—

PART I

PRELIMINARY

Short title, extent, application and commencement

1.(1) This Act may be called the Lokpal and Lokayuktas Act, 2013.

(2) It extends to the whole of India.

(3) It shall apply to public servants in and outside India.

(4) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

PART II

LOKPAL FOR THE UNION

CHAPTER I

DEFINITIONS

Definitions

2. *(1)* In this Act, unless the context otherwise requires,—

(a) "bench" means a bench of the Lokpal;

(b) "Chairperson" means the Chairperson of the Lokpal;

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

(i) the Prime Minister, means the House of the People;

(ii) a member of the Council of Ministers, means the Prime Minister;

(iii) a member of Parliament other than a Minister, means—

(A) in the case of a member of the Council of States, the Chairman ofthe Council; and

(B) in the case of a member of the House of the People, the Speaker of the House;

(iv) an officer in the Ministry or Department of the Central Government, means the Minister in charge of the Ministry or Department under which the officer is serving;

(v) a chairperson or members of any body or Board or corporation orauthority or company or society or autonomous body (by whatever name called) established or constituted under any Act of Parliament or wholly or partly financedby the Central Government or controlled by it, means the Minister in charge ofthe administrative Ministry of such body or Board or corporation or authority orcompany or society or autonomous body;

(vi) an officer of any body or Board or corporation or authority or company or society or autonomous body (by whatever name called) established orconstituted under any Act of Parliament or wholly or partly financed by the Central Government or controlled by it, means the head of such body or Boardor corporation or authority or company or society or autonomous body;

(vii) in any other case not falling under sub-clauses (*i*) to (*vi*) above, means such Department or authority as the Central Government may, by notification, specify:

Provided that if any person referred to in sub-clause (*v*) or sub-clause (*vi*)is also a member of Parliament, then, the competent authority shall be—

(A) in case such member is a member of the Council of States, the Chairman of the Council; and

(B) in case such member is a member of the House of the People, the Speaker of the House;

45 of 2003

(d) "Central Vigilance Commission" means the Central Vigilance Commission constituted under sub-section (*1*) of section 3 of the Central Vigilance Commission Act, 2003;

49 of 1988

(e) "complaint" means a complaint, made in such form as may be prescribed, alleging that a public servant has committed an offence punishable under the Prevention of Corruption Act, 1988;

25 of 1946

(f) "Delhi Special Police Establishment" means the Delhi Special Police Establishment constituted under sub-section (*1*) of section 2 of the Delhi Special Police Establishment Act, 1946;

2 of 1974

(g) "investigation" means an investigation as

defined under clause (*h*) of section 2 of the Code of Criminal Procedure, 1973;

(*h*) "Judicial Member" means a Judicial Member of the Lokpal;

(*i*) "Lokpal" means the body established under section 3;

(*j*) "Member" means a Member of the Lokpal;

(*k*) "Minister" means a Union Minister but does not include the Prime Minister;

(*l*) "notification" means notification published in the Official Gazette and the expression "notify" shall be construed accordingly;

(*m*) "preliminary inquiry" means an inquiry conducted under this Act;

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

45 of 1950
46 of 1950
60 of 1957
30 of 1978

(*o*) "public servant" means a person referred to in clauses (*a*) to (*h*) ofsub-section (*1*) of section 14 but does not include a public servant in respect of whomthe jurisdiction is exercisable by any court or other authority under the Army Act, 1950, the Air Force Act, 1950, the Navy Act, 1957 and the Coast Guard Act, 1978 or theprocedure is applicable to such public servant under those Acts;

(*p*) "regulations" means regulations made under this Act;

(*q*) "rules" means rules made under this Act;

(*r*) "Schedule" means a Schedule appended to this Act;

49 of 1988

(*s*) "Special Court" means the court of a Special Judge appointed undersub-section (*1*) of section 3 of the Prevention of Corruption Act, 1988.

49 of 1988

(*2*) The words and expressions used herein and

not defined in this Act but defined inthe Prevention of Corruption Act, 1988, shall have the meanings respectively assigned tothem in that Act.

(3) Any reference in this Act to any other Act or provision there of which is not in forcein any area to which this Act applies shall be construed to have a reference to the corresponding Act or provision thereof in force in such area.

CHAPTER II

ESTABLISHMENT OF LOKPAL

Establishment of Lokpal

3.(1) On and from the commencement of this Act, there shall be established, for the purpose of this Act, a body to be called the "Lokpal".

(2) The Lokpal shall consist of—

(a) a Chairperson, who is or has been a Chief Justice of India or is or has been a Judge of the Supreme Court or an eminent person who fulfils the eligibility specified inclause (*b*) of sub-section (*3*); and

(b) such number of Members, not exceeding eight out of whom fifty per cent shall be Judicial Members:

Provided that not less than fifty per cent of the Members of the Lokpal shall be from amongst the persons belonging to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes, Minorities and women.

(3) A person shall be eligible to be appointed,—

(a) as a Judicial Member if he is or has been a Judge of the Supreme Court or isor has been a Chief Justice of a High Court;

(b) as a Member other than a Judicial Member, if he is a person of impeccableintegrity and

outstanding ability having special knowledge and expertise of not lessthan twenty-five years in the matters relating to anti-corruption policy, public administration, vigilance, finance including insurance and banking, law and management.

(4) The Chairperson or a Member shall not be—

(i) a member of Parliament or a member of the Legislature of any State or Unionterritory;

(ii) a person convicted of any offence involving moral turptitude;

(iii) a person of less than forty-five years of age, on the date of assuming officeas the Chairperson or Member, as the case may be;

(iv) a member of any Panchayat or Municipality;

(v) a person who has been removed or dismissed from the service of the Unionor a State,

and shall not hold any office of trust or profit (other than his office as the Chairperson or a Member) or be affiliated with any political party or carry on any business or practise any profession and, accordingly, before he enters upon his office, a person appointed as the Chairperson or a Member, as the case may be, shall, if—

(a) he holds any office of trust or profit, resign from such office; or

(b) he is carrying on any business, sever his connection with the conduct and management of such business; or

(c) he is practising any profession, cease to practise such profession.

Appointment of Chairperson and Members on recommendations of selection Committee

4.(1) The Chairperson and Members shall be appointed by the President after obtaining the recommendations of a Selection Committee consisting of—

(a) the Prime Minister—Chairperson;

(b) the Speaker of the House of the People—Member;

(c) the Leader of Opposition in the House of the people—Member;

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

(e) one eminent jurist, as recommended by the Chairperson and Membersreferred to in clauses (*a*) to (*d*) above, to be nominated by the President—Member.

(2) No appointment of a Chairperson or a Member shall be invalid merely by reason ofany vacancy in the Selection Committee.

(3) The Selection Committee shall for the purposes of selecting the Chairperson and Members of the Lokpal and for preparing a panel of persons to be considered for appointmentas such, constitute a Search Committee consisting of at least seven persons of standing andhaving special knowledge and expertise in the matters relating to anti-corruption policy,public administration, vigilance, policy making, finance including insurance and banking, law and management or in any other matter which, in the opinion of the Selection Committee, may be useful in making the selection of the Chairperson and Members of the Lokpal:

Provided that not less than fifty per cent. of the members of the Search Committee shallbe from amongst the persons belonging to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes, Minorities and women:

Provided further that the Selection Committee may also consider any person

otherthan the persons recommended by the Search Committee.

(4) The Selection Committee shall regulate its own procedure in a transparent manner for selecting the Chairperson and Members of the Lokpal.

(5) The term of the Search Committee referred to in sub-section (3), the fees and allowances payable to its members and the manner of selection of panel of names shall besuch as may be prescribed.

Filling of vacancies of Chairperson or Members.

5. The President shall take or cause to be taken all necessary steps for the appointmentof a new Chairperson and Members at least three months before the expiry of the term of the Chairperson or Member, as the case may be, in accordance with the procedure laid down inthis Act.

Term of office of Chairperson and Members

6. The Chairperson and every Member shall, on the recommendations of the Selection Committee, be appointed by the President by warrant under his hand and seal and hold officeas such for a term of five years from the date on which he enters upon his office or until heattains the age of seventy years, whichever is earlier: Provided that he may—

(a) by writing under his hand addressed to the President, resign his office; or

(b) be removed from his office in the manner provided in section 37.

Salary, allowances and other conditions of service of Chairperson and Members

7. The salary, allowances and other conditions of service of—

(i) the Chairperson shall be the same as those of the Chief Justice of India;

(ii) other Members shall be the same as those of a Judge of the Supreme Court:

Provided that if the Chairperson or a Member

is, at the time of his appointment, in receipt of pension (other than disability pension) in respect of any previous serviceunder the Government of India or under the Government of a State, his salary inrespect of service as the Chairperson or, as the case may be, as a Member, be reduced—

(a) by the amount of that pension; and

(b) if he has, before such appointment, received, in lieu of a portion of the pension due to him in respect of such previous service, the commuted valuethereof, by the amount of that portion of the pension:

Provided further that the salary, allowances and pension payable to, andother conditions of service of, the Chairperson or a Member shall not be variedto his disadvantage after his appointment.

Restriction of employment by Chairperson and Members after ceasing to hold office

8.(1) On ceasing to hold office, the Chairperson and every Member shall be ineligiblefor—

(i) reappointment as the Chairperson or a Member of the Lokpal;

(ii) any diplomatic assignment, appointment as administrator of a Union territoryand such other assignment or appointment which is required by law to be made by the President by warrant under his hand and seal;

(iii) further employment to any other office of profit under the Government of India or the Government of a State;

(iv) contesting any election of President or Vice-President or Member of either House of Parliament or Member of either House of a State Legislature or Municipal it yor Panchayat within a period of five years from the date of relinquishing the post.

(2) Notwithstanding anything contained in sub-

section (*1*), a Member shall be eligibleto be appointed as a Chairperson, if his total tenure as Member and Chairperson does notexceed five years.

Explanation.—For the purposes of this section, it is hereby clarified that where theMember is appointed as the Chairperson, his term of office shall not be more than five yearsin aggregate as the Member and the Chairperson.

Member to act as Chairperson or to discharge his functions in certain circumstances

9.(1) In the event of occurrence of any vacancy in the office of the Chairperson byreason of his death, resignation or otherwise, the President may, by notification, authorisethe senior-most Member to act as the Chairperson until the appointment of a new Chairpersonto fill such vacancy.

(2) When the Chairperson is unable to discharge his functions owing to absence onleave or otherwise, the senior-most Member available, as the President may, by notification,authorise in this behalf, shall discharge the functions of the Chairperson until the date onwhich the Chairperson resumes his duties.

Secretary, other officers and staff of Lokpal

10.1 There shall be a Secretary to the Lokpal in the rank of Secretary to Governmentof India, who shall be appointed by the Chairperson from a panel of names sent by theCentral Government.

(2) There shall be a Director of Inquiry and a Director of Prosecution not below therank of Additional Secretary to the Government of India or equivalent, who shall be appointedby the Chairperson from a panel of names sent by the Central Government.

(3) The appointment of officers and other staff of the Lokpal shall be made by theChairperson or such Member or officer of Lokpal as the

Chairperson may direct:

Provided that the President may by rule require that the appointment in respect of anypost or posts as may be specified in the rule, shall be made after consultation with the UnionPublic Service Commission.

(4) Subject to the provisions of any law made by Parliament, the conditions of serviceof Secretary and other officers and staff of the Lokpal shall be such as may be specified byregulations made by the Lokpal for the purpose:

Provided that the regulations made under this sub-section shall, so far as they relate tosalaries, allowances leave or pensions, require the approval of the President.

Inquiry Wing

11.(1) Notwithstanding anything contained in any law for the time being in force, the Lokpal shall constitute an Inquiry Wing headed by the Director of Inquiry for the purpose ofconducting preliminary inquiry into any offence alleged to have been committed by a publicservant punishable under the Prevention of Corruption Act, 1988:

49 of 1988

Provided that till such time the Inquiry Wing isconstituted by the Lokpal, the Central Government shall make available such number of officers and other staff from its Ministriesor Departments, as may be required by the Lokpal, for conducting preliminary inquiriesunder this Act.

(2) For the purposes of assisting the Lokpal in conducting a preliminary inquiry underthis Act, the officers of the Inquiry Wing not below the rank of the Under Secretary to theGovernment of India, shall have the same powers as are conferred upon the Inquiry Wing of the Lokpal under section 27.

CHAPTER IV

PROSECUTION WING

Prosecution Wing

12.(1) The Lokpal shall, by notification, constitute a Prosecution Wing headed by the Director of Prosecution for the purpose of prosecution of public servants in relation to any complaint by the Lokpal under this Act:

Provided that till such time the Prosecution Wing is constituted by the Lokpal, the Central Government shall make available such number of officers and other staff from itsMinistries or Departments, as may be required by the Lokpal, for conducting prosecution under this Act.

49 of 1988

(2) The Director of Prosecution shall, after having been so directed by the Lokpal, filea case in accordance with the findings of investigation report, before the Special Court andtake all necessary steps in respect of the prosecution of public servants in relation to anyoffence punishable under the Prevention of Corruption Act, 1988.

2 of 1974

(3) The case under sub-section (2), shall be deemed to be a report, filed on completionof investigation, referred to in section 173 of the Code of Criminal Procedure, 1973.

CHAPTER V

EXPENSES OF LOKPAL TO BE CHARGED ON CONSOLIDATED FUND OF INDIA

Expenses of Lokpal to be charged on Consolidated Fund of India.

13. The administrative expenses of the Lokpal, including all salaries, allowances andpensions payable to or in respect of the Chairperson, Members or Secretary or other officersor staff of the Lokpal, shall be charged upon the Consolidated Fund of India and any fees orother moneys taken by the

Lokpal shall form part of that Fund.

CHAPTER VI

JURISDICTION IN RESPECT OF INQUIRY

Jurisdiction of Lokpalto include Prime Minister, Ministers, members of Parliament, Groups A, B, C and D officers and officials of Central Government

14.(1) Subject to the other provisions of this Act, the Lokpal shall inquire or cause aninquiry to be conducted into any matter involved in, or arising from, or connected with, anyallegation of corruption made in a complaint in respect of the following, namely:—

(a) any person who is or has been a Prime Minister:

Provided that the Lokpal shall not inquire into any matter involved in, or arisingfrom, or connected with, any such allegation of corruption against the Prime Minister,—

(i) in so far as it relates to international relations, external and internalsecurity, public order, atomic energy and space;

(ii) unless a full bench of the Lokpal consisting of its Chairperson and allMembers considers the initiation of inquiry and at least two-thirds of its Membersapproves of such inquiry:

Provided further that any such inquiry shall be held *in camera* and if the Lokpal comes to the conclusion that the complaint deserves to be dismissed, therecords of the inquiry shall not be published or made available to anyone;

(b) any person who is or has been a Minister of theUnion;

(c) any person who is or has been a member of either House of Parliament;

49 of 1988

(d) any Group 'A' or Group 'B' officer or

equivalent or above, from amongst thepublic servants defined in sub-clauses (*i*) and (*ii*) of clause (*c*) of section 2 of thePrevention of Corruption Act, 1988 when serving or who has served, in connectionwith the affairs of the Union;

(*e*) any Group 'C' or Group 'D' official or equivalent, from amongst the publicservants defined in sub-clauses (*i*) and (*ii*) of clause (*c*) of section 2 of the Preventionof Corruption Act, 1988 when serving or who has served in connection with the affairsof the Union subject to the provision of sub-section (*1*) of section 20;

49 of 1988

(*f*) any person who is or has been a chairperson or member or officer or employeein any body or Board or corporation or authority or company or society or trust orautonomous body (by whatever name called) established by an Act of Parliament orwholly or partly financed by the Central Government or controlled by it:

Provided that in respect of such officers referred to in clause (*d*) who haveserved in connection with the affairs of the Union or in any body or Board or corporationor authority or company or society or trust or autonomous body referred to in clause(*e*) but are working in connection with the affairs of the State or in any body or Boardor corporation or authority or company or society or trust or autonomous body (bywhatever name called) established by an Act of the State Legislature or wholly orpartly financed by the State Government or controlled by it, the Lokpal and the officers of its Inquiry Wing or Prosecution Wing shall have jurisdiction under this Act inrespect of such officers only after obtaining the consent of the concerned State Government;

(g) any person who is or has been a director, manager, secretary or other officer of every other society or association of persons or trust (whether registered under any law for the time being in force or not), by whatever name called, wholly or partlyfinanced by the Government and the annual income of which exceeds such amount asthe Central Government may, by notification, specify;

(h) any person who is or has been a director, manager, secretary or other officer of every other society or association of persons or trust (whether registered under any law for the time being in force or not) in receipt of any donation from any foreignsource under the Foreign Contribution (Regulation) Act, 2010 in excess of ten lakh rupees in a year or such higher amount as the Central Government may, by notification, specify.

42 of 2010

Explanation.—For the purpose of clauses (*f*) and (*g*), it is hereby clarified that anyentity or institution, by whatever name called, corporate, society, trust, association of persons, partnership, sole proprietorship, limited liability partnership (whether registered under anylaw for the time being in force or not), shall be the entities covered in those clauses:

49of 1988

Provided that any person referred to in this clause shall be deemed to be a publicservant under clause (*c*) of section 2 of the Prevention of Corruption Act, 1988 and theprovisions of that Act shall apply accordingly.

(2) Notwithstanding anything contained in sub-section (*1*), the Lokpal shall not inquire into any matter involved in, or arising from, or connected with, any such allegation ofcorruption against any member of either House of Parliament in respect of anything

said ora vote given by him in Parliament or any committee thereof covered under the provisionscontained in clause (2) of article 105 of the Constitution.

(3) The Lokpal may inquire into any act or conduct of any person other than thosereferred to in sub-section(*1*), if such person is involved in the act of abetting, bribe giving orbribe taking or conspiracy relating to any allegation of corruption under the Prevention ofCorruption Act, 1988 against a person referred to in sub-section (*1*):

49 of 1988

Provided that no action under this section shall be taken in case of a person serving inconnection with the affairs of a State, without the consent of the State Government.

(4) No matter in respect of which a complaint has been made to the Lokpal under this Act, shall be referred for inquiry under the Commissions of Inquiry Act, 1952.

60 of 1952

Explanation.—For the removal of doubts, it is hereby declared that a complaint under this Act shall only relate to a period during which the public servant was holding or servingin that capacity.

Matters pending before any court or committee or authority for inquiry not to be affected .

15. In case any matter or proceeding related to allegation of corruption under thePrevention of Corruption Act, 1988 has been pending before any court or committee of eitherHouse of Parliament or before any other authority prior to commencement of this Act or prior to commencement of any inquiry after the commencement of this Act, such matter orproceeding shall be continued before such court, committee or authority.

49 of 1988

Constitution of benches of Lokpal

16.(1) Subject to the provisions of this Act,—

(a) the jurisdiction of the Lokpal may be exercised by benches thereof;

(b) a bench may be constituted by the Chairperson with two or more Members asthe Chairperson may deem fit;

(c) every bench shall ordinarily consist of at least one Judicial Member;

(d) where a bench consists of the Chairperson, such bench shall be presidedover by the Chairperson;

(e) where a bench consists of a Judicial Member, and a non-Judicial Member, notbeing the Chairperson, such bench shall be presided over by the Judicial Member;

(f) the benches of the Lokpal shall ordinarily sit at New Delhi and at such other places as the Lokpal may, by regulations, specify.

(2) The Lokpal shall notify the areas in relation to which each bench of the Lokpal may exercise jurisdiction.

(3) Notwithstanding anything contained in sub-section (2), the Chairperson shallhave the power to constitute or reconstitute benches from time to time.

(4) If at any stage of the hearing of any case or matter it appears to the Chairperson ora Member that the case or matter is of such nature that it ought to be heard by a benchconsisting of three or more Members, the case or matter may be transferred by the Chairpersonor, as the case may be, referred to him for transfer, to such bench as the Chairperson maydeem fit.

Distribution of business amongst benches.

17. Where benches are constituted, the Chairperson may, from time to time, bynotification, make provisions as to the distribution of the business of the Lokpal amongst the benches and also provide for the matters which may be dealt with by each

bench.

Power of Chairperson to transfer cases.

18. On an application for transfer made by the complainant or the public servant, theChairperson, after giving an opportunity of being heard to the complainant or the publicservant, as the case may be, may transfer any case pending before one bench for disposal toany other bench.

Decision to be by majority.

19. If the Members of a bench consisting of an even number of Members differ inopinion on any point, they shall state the point or points on which they differ, and make areference to the Chairperson who shall either hear the point or points himself or refer the casefor hearing on such point or points by one or more of the other Members of the Lokpal and such point or points shall be decided according to the opinion of the majority of the Members of the Lokpal who have heard the case, including those who first heard it.

CHAPTER VII

PROCEDURE IN RESPECT OF PRELIMINARY INQUIRY AND INVESTIGATION

Provisions relating to complaints and preliminary inquiry and investigation

20.(1) The Lokpal on receipt of a complaint, if it decides to proceed further, may order—

(a) preliminary inquiry against any public servant by its Inquiry Wing or anyagency (including the Delhi Special Police Establishment) to ascertain whether thereexists a *prima facie* case for proceeding in the matter; or

(b) investigation by any agency (including the Delhi Special Police Establishment) when there exists a *prima facie* case:

Provided that the Lokpal shall if it has decided to proceed with the preliminary inquiry, by a general or special order, refer

45 of 2003

the complaints or a category of complaints or a complaintreceived by it in respect of public servants belonging to Group A or Group B or Group C or Group D to the Central Vigilance Commission constituted under sub-section (*1*) of section 3of the Central Vigilance Commission Act, 2003:

Provided further that the Central Vigilance Commission in respect of complaints referredto it under the first proviso, after making preliminary inquiry in respect of public servantsbelonging to Group A and Group B, hall submit its report to the Lokpal in accordance with the provisions contained in sub-sections (*2*) and (*4*) and in case of public servants belongingto Group C and Group D, the Commission shall proceed in accordance with the provisions ofthe Central Vigilance Commission Act, 2003:

45 of 2003

Provided also that before ordering an investigation under clause (*b*), the Lokpal shall call for the explanation of the public servant so as to determine whether there exists a*prima facie* case for investigation:

Provided also that the seeking of explanation from the public servant before aninvestigation shall not interfere with the search and seizure, if any, required to be undertakenby any agency (including the Delhi Special Police Establishment) under this Act.

(*2*) During the preliminary inquiry referred to in sub-section (*1*), the Inquiry Wing or anyagency (including the Delhi Special Police Establishment) shall conduct a preliminary inquiryand on the basis of material, information and documents collected seek the comments on the allegations made in the complaint from the public servant and the competent authority

andafter obtaining the comments of the concerned public servant and the competent authority, submit, within sixty days from the date of receipt of the reference, a report to the Lokpal.

(3) A bench consisting of not less than three Members of the Lokpal shall consider every report received under sub-section (2) from the Inquiry Wing or any agency (includingthe Delhi Special Police Establishment), and after giving an opportunity of being heard to thepublic servant, decide whether there exists a *prima facie* case, and proceed with one or moreof the following actions, namely:—

(a) investigation by any agency or the Delhi Special Police Establishment, as thecase may be;

(b) initiation of the departmental proceedings or any other appropriate actionagainst the concerned public servants by the competent authority;

(c) closure of the proceedings against the public servant and to proceed againstthe complainant under section 46.

(4) Every preliminary inquiry referred to in sub-section (1) shall ordinarily be completed within a period of ninety days and for reasons to be recorded in writing, within a furtherperiod of ninety days from the date of receipt of the complaint.

(5) In case the Lokpal decides to proceed to investigate into the complaint, it shall direct any agency (including the Delhi Special Police Establishment) to carry out theinvestigation as expeditiously as possible and complete the investigation within a period ofsix months from the date of its order:

preliminary inquiry or, as the case may be, investigation as it deems fit.

(10) The website of the Lokpal shall, from time to time and in such manner as may bespecified by regulations, display to the public, the status of number of complaints pendingbefore it or disposed of by it.

(11) The Lokpal may retain the original records and evidences which are likely to berequired in the process of preliminary inquiry or investigation or conduct of a case by it or bythe Special Court.

(12) Save as otherwise provided, the manner and procedure of conducting a preliminaryinquiry or investigation (including such material and documents to be made available to thepublic servant) under this Act, shall be such as may be specified by regulations.

Persons likely to be prejudicially affected to be heard.

21. If, at any stage of the proceeding, the Lokpal—

(a) considers it necessary to inquire into the conduct of any person other thanthe accused; or

(b) is of opinion that the reputation of any person other than an accused is likelyto be prejudicially affected by the preliminary inquiry,

the Lokpal shall give to that person a reasonable opportunity of being heard in the preliminaryinquiry and to produce evidence in his defence, consistent with the principles of naturaljustice.

Lokpal may require any public servant or any other person to furnish information, etc.

22. Subject to the provisions of this Act, for the purpose of any preliminary inquiry or investigation, the Lokpal or the investigating agency, as the case may be, may require anypublic servant or any other person who, in its opinion, is able to furnish information

orproduce documents relevant to such preliminary inquiry or investigation, to furnish anysuch information or produce any such document.

Power of Lokpal to grant sanction for initiating prosecution.

2 of 1974
25 of 1946
49 of 1988

23.(1) Notwithstanding anything contained in section 197 of the Code of Criminal Procedure, 1973 or section 6A of the Delhi Special Police Establishment Act, 1946 orsection 19 of the Prevention of Corruption Act, 1988, the Lokpal shall have the power to grantsanction for prosecution under clause (*a*) of sub-section (*7*) of section 20.

(2) No prosecution under sub-section (*1*) shall be initiated against any public servantaccused of any offence alleged to have been committed by him while acting or purporting toact in the discharge of his official duty, and no court shall take cognizance of such offenceexcept with the previous sanction of the Lokpal.

(3) Nothing contained in sub-sections (*1*) and (*2*) shall apply in respect of the personsholding office in pursuance of the provisions of the Constitution and in respect of which aprocedure for removal of such person has been specified therein.

(4) The provisions contained in sub-sections (*1*), (*2*) and (*3*) shall be without prejudiceto the generality of the provisions contained in article 311 and sub-clause (*c*) of clause (3) ofarticle 320 of the Constitution.

Action on investigation against public servant being Prime Minister, Ministers of Members of Parliament.

49 of 1988

24. Where, after the conclusion of the investigation, the findings of the Lokpal disclose the commission of an offence under the Prevention of Corruption Act, 1988 by a publicservant referred to in clause (*a*) or clause (*b*) or clause (*c*) of sub-section (*1*) of section 14, the Lokpal may file a case in the Special Court and shall send a copy of the report together withits findings to the competent authority.

CHAPTER VIII

POWERS OF LOKPAL

Supervisory powers of Lokpal

25.(1) The Lokpal shall, notwithstanding anything contained in section 4 of theDelhi Special Police Establishment Act, 1946 and section 8 of the Central VigilanceCommission Act, 2003, have the powers of superintendence over, and to give direction to theDelhi Special Police Establishment in respect of the matters referred by the Lokpal for preliminary inquiry or investigation to the Delhi Special Police Establishment under this Act:

25 of 1946
45 of 2003

Provided that while exercising powers of superintendence or giving directionunder this sub-section, the Lokpal shall not exercise powers in such a manner so as torequire any agency (including the Delhi Special Police Establishment) to whom the investigation has been given, to investigate and dispose of any case in a particular manner.

(2) The Central Vigilance Commission shall send a statement, at such interval as the Lokpal may direct, to the Lokpal in respect of action taken on complaints referred to it underthe second proviso to sub-section (*1*) of section 20 and on receipt of such statement, the Lokpal may issue guidelines for effective and expeditious disposal of such cases.

(3) Any officer of the Delhi Special Police Establishment investigating a case referredto it by the Lokpal, shall not be transferred without the approval of the Lokpal.

(4) The Delhi Special Police Establishment may, with the consent of the Lokpal, appointa

panel of Advocates, other than the Government Advocates, for conducting the casesreferred to it by the Lokpal.

(5) The Central Government may from time to time make available such funds as may berequired by the Director of the Delhi Special Police Establishment for conducting effectiveinvestigation into the matters referred to it by the Lokpal and the Director shall be responsiblefor the expenditure incurred in conducting such investigation.

Search and seizure

26.(1) If the Lokpal has reason to believe that any document which, in its opinion,shall be useful for, or relevant to, any investigation under this Act, are secreted in any place,it may authorise any agency (including the Delhi Special Police Establishment) to whom theinvestigation has been given to search for and to seize such documents.

(2) If the Lokpal is satisfied that any document seized under sub-section (*1*) may beused as evidence for the purpose of any investigation under this Act and that it shall benecessary to retain the document in its custody or in the custody of such officer as may beauthorised, it may so retain or direct such authorised officer to retain such document till thecompletion of such investigation:

Provided that where any document is required to be returned, the Lokpal or the authorised officer may return the same after retaining copies of such document dulyauthenticated.

Lokpal to have powers of civil court in certain cases.

5 of 1908

27.(1) Subject to the provisions of this section, for the purpose of any preliminaryinquiry, the Inquiry Wing of the Lokpal shall have all the powers of a civil court, under theCode of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely:—

(i) summoning and enforcing the attendance of any person and examining himon oath;

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

(iii) receiving evidence on affidavits;

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

(v) issuing commissions for the examination of witnesses or documents:

Provided that such commission, in case of a witness, shall be issued only wherethe witness, in the opinion of the Lokpal, is not in a position to attend the proceeding before the Lokpal; and

(vi) such other matters as may be prescribed.

45 of 1860

(2) Any proceeding before the Lokpal shall be deemed to be a judicial proceedingwithin the meaning of section 193 of the Indian Penal Code.

Power of Lokpal to utilise services of officers of Central or State Government

28.(1) The Lokpal may, for the purpose of conducting any preliminary inquiry orinvestigation, utilise the services of any officer or organisation or investigating agency ofthe Central Government or any State Government, as the case may be.

(2) For the purpose of preliminary inquiry or investigating into any matter pertaining tosuch inquiry or investigation, any officer or organisation or agency whose services areutilised under sub-section (*1*) may, subject to the superintendence and direction of theLokpal,—

(a) summon and enforce the attendance of any person and examine him;

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

(c) requisition any public record or copy thereof from any office.

(3) The officer or organisation or agency whose services are utilised under sub-section(2) shall inquire or, as the case may be, investigate into any matter pertaining to the preliminary inquiry or investigation and submit a report thereon to the Lokpal within such period as maybe specified by it in this behalf.

Provisional attachment of assets

29.(1) Where the Lokpal or any officer authorised by it in this behalf, has reason tobelieve, the reason for such belief to be recorded in writing, on the basis of material in hispossession, that—

(a) any person is in possession of any proceeds of corruption;

(b) such person is accused of having committed an offence relating to corruption;and

(c) such proceeds of offence are likely to be concealed, transferred or dealt within any manner which may result in frustrating any proceedings relating to confiscationof such proceeds of offence,

43 of 1961

the Lokpal or the authorised officer may, by order in writing, provisionally attach suchproperty for a period not exceeding ninety days from the date of the order, in the mannerprovided in the Second Schedule to the Income-tax Act, 1961 and the Lokpal and the officer shall be deemed to be an officer under sub-rule (*e*) of rule 1 of that Schedule.

(2) The Lokpal or the officer authorised in this behalf shall, immediately after attachmentunder sub-section (*1*), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Special Court, in a sealed envelope, in

the manner asmay be prescribed and such Court may extend the order of attachment and keep suchmaterial for such period as the Court may deem fit.

(3) Every order of attachment made under sub-section (*1*) shall cease to have effectafter the expiry of the period specified in that sub-section or after the expiry of the period asdirected by the Special Court under sub-section (*2*).

(4) Nothing in this section shall prevent the person interested in the enjoyment of theimmovable property attached under sub-section (*1*) or sub-section (*2*), from such enjoyment.

Explanation.—For the purposes of this sub-section, "person interested", in relationto any immovable property, includes all persons claiming or entitled to claim any interest inthe property.

Confirmation of attachment of assets.

30.(1) The Lokpal, when it provisionally attaches any property under sub-section (*1*)of section 29 shall, within a period of thirty days of such attachment, direct its Prosecution Wing to file an application stating the facts of such attachment before the Special Court and make a prayer for confirmation of attachment of the property till completion of the proceedingsagainst the public servant in the Special Court.

(2) The Special Court may, if it is of the opinion that the property provisionally attachedhad been acquired through corrupt means, make an order for confirmation of attachment ofsuch property till the completion of the proceedings against the public servant in the SpecialCourt.

(3) If the public servant is subsequently acquitted of the charges framed against him,the

property, subject to the orders of the Special Court, shall be restored to the concernedpublic servant along with benefits from such property as might have accrued during theperiod of attachment.

49 of 1988

(4) If the public servant is subsequently convicted of the charges of corruption, theproceeds relatable to the offence under the Prevention of Corruption Act, 1988 shall beconfiscated and vest in the Central Government free from any encumbrance or leaseholdinterest excluding any debt due to any bank or financial institution.

51 of 1993

Explanation.—For the purposes of this sub-section, the expressions "bank", "debt"and "financial institution" shall have the meanings respectively assigned to them in clauses(*d*), (*g*) and (*h*) of section 2 of the Recovery of Debts Due to Banks and Financial InstitutionsAct, 1993.

Confiscation of assets, proceeds, receipts and benefits arisen or procured by means of corruption in special circumstances.

31.(1) Without prejudice to the provisions of sections 29 and 30, where the SpecialCourt, on the basis of *prima facie* evidence, has reason to believe or is satisfied that theassets, proceeds, receipts and benefits, by whatever name called, have arisen or procured bymeans of corruption by the public servant, it may authorise the confiscation of such assets, proceeds, receipts and benefits till his acquittal.

(2) Where an order of confiscation made under sub-section (*1*) is modified or annulledby the High Court or where the public servant is acquitted by the Special Court, the assets, proceeds, receipts and benefits, confiscated under sub-section (*1*) shall be returned to suchpublic servant, and in case it is not possible for any reason to return the assets, proceeds, receipts and benefits, such public servant shall be paid the price thereof

including the moneyso confiscated with interest at the rate of five per cent. per annum thereon calculated from thedate of confiscation.

Powers of Lockpaltorecommend transfer or suspension of public servant connected with allegation of corruption.

32.(1) Where the Lokpal, while making a preliminary inquiry into allegations ofcorruption, is *prima facie* satisfied, on the basis of evidence available,—

(i) that the continuance of the public servant referred to in clause (*d*) or clause(*e*) or clause (*f*) of sub-section (*1*) of section 14 in his post while conducting thepreliminary inquiry is likely to affect such preliminary inquiry adversely; or

(ii) such public servant is likely to destroy or in any way tamper with the evidenceor influence witnesses,

then, the Lokpal may recommend to the Central Government for transfer or suspension ofsuch public servant from the post held by him till such period as may be specified in theorder.

(2) The Central Government shall ordinarily accept the recommendation of the Lokpal made under sub-section (*1*), except for the reasons to be recorded in writing in a case whereit is not feasible to do so for administrative reasons.

Power of Lokpal of give directions to prevent destruction of records during preliminary inquiry

33. The Lokpal may, in the discharge of its functions under this Act, issue appropriatedirections to a public servant entrusted with the preparation or custody of any document orrecord—

(a) to protect such document or record from destruction or damage; or

(b) to prevent the public servant from altering or secreting such document orrecord; or

(c) to prevent the public servant from transferring or alienating any assetsallegedly acquired by him through corrupt means.

Power to delegate

34. The Lokpal may, by general or special order in writing, and subject to such conditionsand limitations as may be specified therein, direct that any administrative or financial powerconferred on it may also be exercised or discharged by such of its Members or officers oremployees as may be specified in the order.

CHAPTER IX

SPECIAL COURTS

Special courts to be constituted by Central Government

49 of 1988

35.(1) The Central Government shall constitute such number of Special Courts, as recommended by the Lokpal, to hear and decide the cases arising out of the Prevention of Corruption Act, 1988 or under this Act.

(2) The Special Courts constituted under sub-section (*1*) shall ensure completion of each trial within a period of one year from the date of filing of the case in the Court:

Provided that in case the trial cannot be completed within a period of one year, the Special Court shall record reasons therefor and complete the trial within a further period of not more than three months or such further periods not exceeding three months each, for reasons to be recorded in writing before the end of each such three months period, but not exceeding a total period of two years.

Letter of request to a contracting state in certain cases.

2 of 1974

36.(1) Notwithstanding anything contained in this Act or the Code of Criminal Procedure, 1973 if, in the course of an preliminary inquiry or investigation into an offence or other proceeding under this Act, an application is made to a Special Court by an officer of the Lokpal authorised in this behalf that any evidence is required in connection with the

preliminary inquiry or investigation into an offence or proceeding under this Act and he is of the opinion that such evidence may be available in any place in a contracting State, and the Special Court, on being satisfied that such evidence is required in connection with the preliminary inquiry or investigation into an offence or proceeding under this Act, may issue a letter of request to a court or an authority in the contracting State competent to deal with such request to—

(i) examine the facts and circumstances of the case;

(ii) take such steps as the Special Court may specify in such letter of request; and

(iii) forward all the evidence so taken or collected to the Special Court issuing such letter of request.

(2) The letter of request shall be transmitted in such manner as the Central Government may prescribe in this behalf.

(3) Every statement recorded or document or thing received under sub-section (*1*) shall be deemed to be evidence collected during the course of the preliminary inquiry or investigation.

CHAPTER X

COMPLAINTS AGAINST CHAIRPERSON, MEMBERS AND OFFICIALS OF LOKPAL

Removal and suspension of chairperson and Members of Lokpal

37.(1) The Lokpal shall not inquire into any complaint made against the Chairperson or any Member.

(2) Subject to the provisions of sub-section (*4*), the Chairperson or any Member shall be removed from his office by order of the President on grounds of misbehaviour after

the Supreme Court, on a reference being made to it by the President on a petition signed by at least one hundred Members of Parliament has, on an inquiry held in accordance with the procedure prescribed in that behalf, reported that the Chairperson or such Member, as the case may be, ought to be removed on such ground.

(3) The President may suspend from office the Chairperson or any Member in respect of whom a reference has been made to the Supreme Court under sub-section (*2*), on receipt of the recommendation or interim order made by the Supreme Court in this regard until the President has passed orders on receipt of the final report of the Supreme Court on such reference.

(4) Notwithstanding anything contained in sub-section (*2*), the President may, by order, remove from the office, the Chairperson or any Member if the Chairperson or such Member, as the case may be,—

(a) is adjudged an insolvent; or

(b) engages, during his term of office, in any paid employment outside the duties of his office; or

(c) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body.

(5) If the Chairperson or any Member is, or becomes, in any way concerned or interested in any contract or agreement made by or on behalf of the Government of India or the Government of a State or participates in any way in the profit thereof or in any benefit or emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of sub-section (*2*), be

deemed to be guilty of misbehaviour.

Complaints against officials of Lokpal

38.(1) Every complaint of allegation or wrongdoing made against any officer or employee or agency (including the Delhi Special Police Establishment), under or associated with the Lokpal for an offence punishable under the Prevention of Corruption Act, 1988 shall be dealt with in accordance with the provisions of this section.

49 of 1988

(2) The Lokpal shall complete the inquiry into the complaint or allegation made within a period of thirty days from the date of its receipt.

(3) While making an inquiry into the complaint against any officer or employee of the Lokpal or agency engaged or associated with the Lokpal, if it is *prima facie* satisfied on the basis of evidence available, that—

(a) continuance of such officer or employee of the Lokpal or agency engaged or associated in his post while conducting the inquiry is likely to affect such inquiry adversely; or

(b) an officer or employee of the Lokpal or agency engaged or associated is likely to destroy or in any way tamper with the evidence or influence witnesses,

then, the Lokpal may, by order, suspend such officer or employee of the Lokpal or divest such agency engaged or associated with the Lokpal of all powers and responsibilities hereto before exercised by it .

49 of 1988

(4) On the completion of the inquiry, if the Lokpal is satisfied that there is *prima facie* evidence of the commission of an offence under the Prevention of Corruption Act, 1988 or of any wrongdoing, it shall, within a period of fifteen days of the completion of such inquiry, order to prosecute such officer

or employee of the Lokpal or such officer, employee, agency engaged or associated with the Lokpal and initiate disciplinary proceedings against the official concerned:

Provided that no such order shall be passed without giving such officer or employee of the Lokpal, such officer, employee, agency engaged or associated, a reasonable opportunity of being heard.

CHAPTER XI

ASSESSMENT OF LOSS AND RECOVERY THEREOF BY SPECIAL COURT

Assessment of loss and recovery thereof by Special Court.

49 of 1988

39. If any public servant is convicted of an offence under the Prevention of Corruption Act, 1988 by the Special Court, notwithstanding and without prejudice to any law for the timebeing in force, it may make an assessment of loss, if any, caused to the public exchequer onaccount of the actions or decisions of such public servant not taken in good faith and forwhich he stands convicted, and may order recovery of such loss, if possible or quantifiable,from such public servant so convicted:

Provided that if the Special Court, for reasons to be recorded in writing, comes to theconclusion that the loss caused was pursuant to a conspiracy with the beneficiary orbeneficiaries of actions or decisions of the public servant so convicted, then such loss may,if assessed and quantifiable under this section, also be recovered from such beneficiary orbeneficiaries proportionately.

CHAPTER XII

FINANCE, ACCOUNTS AND AUDIT

Budget

40. The Lokpal shall prepare, in such form and at such time in each financial year asmay be

prescribed, its budget for the next financial year, showing the estimated receipts andexpenditure of the Lokpal and forward the same to the Central Government for information.

Grants by Central Government

41. The Central Government may, after due appropriation made by Parliament by law inthis behalf, make to the Lokpal grants of such sums of money as are required to be paid forthe salaries and allowances payable to the Chairperson and Members and the administrativeexpenses, including the salaries and allowances and pension payable to or in respect ofofficers and other employees of the Lokpal.

Annual statement of accounts

42.(1) The Lokpal shall maintain proper accounts and other relevant records andprepare an annual statement of accounts in such form as may be prescribed by the CentralGovernment in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Lokpal shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him.

(3) The Comptroller and Auditor-General of India or any person appointed by him inconnection with the audit of the accounts of the Lokpal under this Act shall have the samerights, privileges and authority in connection with such audit, as the Comptroller and Auditor-General of India generally has, in connection with the audit of the Government accounts and,in particular, shall have the right to demand the production of books, accounts, connectedvouchers and other documents and papers and to inspect any of the offices of theLokpal.

(4) The accounts of the Lokpal, as certified by

the Comptroller and Auditor-General ofIndia or any other person appointed by him in this behalf, together with the audit reportthereon, shall be forwarded annually to the Central Government and the Central Governmentshall cause the same to be laid before each House of Parliament.

Furnishing of returns, etc. to Central government.

43. The Lokpal shall furnish to the Central Government, at such time and in such formand manner as may be prescribed or as the Central Government may request, such returnsand statements and such particulars in regard to any matter under the jurisdiction of theLokpal, as the Central Government may, from time to time, require.

CHAPTER XIII

DECLARATION OF ASSETS

Declaration of assets

44.(1) Every public servant shall make a declaration of his assets and liabilities in themanner as provided by or under this Act.

(2) A public servant shall, within a period of thirty days from the date on which hemakes and subscribes an oath or affirmation to enter upon his office, furnish to the competentauthority 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 public servant holding his office as such, at the time of the commencement of thisAct, shall furnish information relating to such assets and liabilities, as referred to in subsection(2)to the competent authority within thirty days of the coming into force of this Act.

(4) Every public servant shall file with the competent authority, on or before the31st July of every year, an annual return of such assets and liabilities, as referred to insub-section (2), as on the 31st March of that year.

(5) The information under sub-section (2) or sub-section (3) and annual return undersub-section (4) shall be furnished to the competent authority in such form and in suchmanner as may be prescribed.

(6) The competent authority in respect of each Ministry or Department shall ensurethat all such statements are published on the website of such Ministry or Department by31st August of that year.

Explanation.—For the purposes of this section, "dependent children" means sonsand daughters who have no separate means of earning and are wholly dependent on thepublic servant for their livelihood.

Presumption as to acquisition of assets by corrupt means in certain cases.

45. If any public servant wilfully or for reasons which are not justifiable, fails to—

(a) to declare his assets; or

(b) gives misleading information in respect of such assets and is found to be inpossession of assets not disclosed or in respect of which misleading information wasfurnished,

then, such assets shall, unless otherwise proved, be presumed to belong to the publicservant and shall be presumed to be assets acquired by corrupt means:

Provided that the competent authority may condone or exempt the public servant fromfurnishing information in respect of assets not exceeding such minimum value as may beprescribed.

CHAPTER XIV

OFFENCES AND PENALTIES

Prosecution for false complaint and payment of compensation etc. to public servant

46.(1) Notwithstanding anything contained in this Act, whoever makes any false andfrivolous or vexatious complaint under this Act shall, on conviction, be punished withimprisonment for a term which may extend to one year and with fine which may extend to onelakh rupees.

(2) No Court, except a Special Court, shall take cognizance of an offence under subsection(*1*).

(3) No Special Court shall take cognizance of an offence under sub-section (*1*) excepton a complaint made by a person against whom the false, frivolous or vexatious complaintwas made or by an officer authorised by the Lokpal.

(4) The prosecution in relation to an offence under sub-section (*1*) shall be conductedby the public prosecutor and all expenses connected with such prosecution shall be borneby the Central Government.

(5) In case of conviction of a person [being an individual or society or association ofpersons or trust (whether registered or not)], for having made a false complaint under thisAct, such person shall be liable to pay compensation to the public servant against whom hemade the false complaint in addition to the legal expenses for contesting the case by suchpublic servant, as the Special Court may determine.

(6) Nothing contained in this section shall apply in case of complaints made in goodfaith.

45 of 1860

Explanation.—For the purpose of this sub-section, the expression ''good faith'' meansany act believed or done by a person in

good faith with due care, caution and sense ofresponsibility or by mistake of fact believing himself justified by law under section 79 of theIndian Penal Code.

False complaint made by society or association of persons or trust

47.(1) Where any offence under sub-section (*1*) of section 46 has been committed byany society or association of persons or trust (whether registered or not), every person who,at the time the offence was committed, was directly in charge of, and was responsible to, thesociety or association of persons or trust, for the conduct of the business or affairs oractivities of the society or association of persons or trust as well as such society or associationof persons or trust shall be deemed to be guilty of the offence and shall be liable to beproceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such personliable to any punishment provided in this Act, if he proves that the offence was committedwithout his knowledge or that he had exercised all due diligence to prevent the commissionof such offence.

(2) Notwithstanding anything contained in sub-section (*1*), where an offence underthis Act has been committed by a society or association of persons or trust (whetherregistered or not) 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, secretaryor other officer of such society or association of persons or trust, such director, manager,secretary or other officer shall also be deemed to be guilty of that offence and shall be liableto be proceeded against and punished accordingly.

CHAPTER XV

MISCELLANEOUS

Reports of Lokpal

48. It shall be the duty of the Lokpal to present annually to the President a report onthe work done by the Lokpal and on receipt of such report the President shall cause a copythereof together with a memorandum explaining, in respect of the cases, if any, where theadvice of the Lokpal was not accepted, the reason for such non-acceptance to be laid beforeeach House of Parliament.

Lokpal to function as appellate authority for appeals arising out of any other law for the time being in force.

49 of 1988

49. The Lokpal shall function as the final appellate authority in respect of appealsarising out of any other law for the time being in force providing for delivery of publicservices and redressal of public grievances by any public authority in cases where thedecision contains findings of corruption under the Prevention of Corruption Act, 1988.

Protection of action taken in good faith by any public servant.

50. No suit, prosecution or other legal proceedings under this Act shall lie against anypublic servant, in respect of anything which is done in good faith or intended to be done inthe discharge of his official functions or in exercise of his powers.

Protection of action taken in good faith by others.

51. No suit, prosecution or other legal proceedings shall lie against the Lokpal oragainst any officer, employee, agency or any person, in respect of anything which is done ingood faith or intended to be done under this Act or the rules or the regulations madethereunder.

Members officers and employees of Lokpal to be public servants

52. The Chairperson, Members, officers and

45 of 1860

other employees of the Lokpal shall bedeemed, when acting or purporting to act in pursuance of any of the provisions of this Act,to be public servants within the meaning of section 21 of the Indian Penal Code.

Limitation to apply in certain cases.

53 The Lokpal shall not inquire or investigate into any complaint, if the complaint ismade after the expiry of a period of seven years from the date on which the offence mentionedin such complaint is alleged to have been committed.

Bar of Jurisdiction

54. No civil court shall have jurisdiction in respect of any matter which the Lokpal isempowered by or under this Act to determine.

Legal assistance

55. The Lokpal shall provide to every person against whom a complaint has beenmade, before it, under this Act, legal assistance to defend his case before the Lokpal, if suchassistance is requested for.

Act to have overriding effect.

56. The provisions of this Act shall have effect notwithstanding anything inconsistenttherewith contained in any enactment other than this Act or in any instrument having effectby virtue of any enactment other than this Act.

Provisions of this act to be in addition of other laws.

57. The provisions of this Act shall be in addition to, and not in derogation of, anyother law for the time being in force.

Amendment of certain enactments.

58. The enactments specified in the Schedule shall be amended in the manner specifiedtherein.

Power to make rules.

59.(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, suchrules may provide for all or any of the following

matters, namely:—

(a) the form of complaint referred to in clause (*e*) of sub-section (*1*) of section 2;

(b) the term of the Search Committee, the fee and allowances payable to itsmembers and the manner of selection of panel of names under sub-section (*5*) ofsection 4;

(c) the post or posts in respect of which the appointment shall be made afterconsultation with the Union Public Service Commission under the proviso to subsection(*3*) of section 10;

(d) other matters for which the Lokpal shall have the powers of a civil courtunder clause (*vi*) of sub-section (*1*) of section 27;

(e) the manner of sending the order of attachment along with the material to theSpecial Court under sub-section (*2*) of section 29;

(f) the manner of transmitting the letter of request under sub-section (*2*) ofsection 36;

(g) the form and the time for preparing in each financial year the budget for thenext financial year, showing the estimated receipts and expenditure of the Lokpalunder section 40;

(h) the form for maintaining the accounts and other relevant records and theform of annual statement of accounts under sub-section (*1*) of section 42;

(i) the form and manner and the time for preparing the returns and statementsalong with particulars under section 43;

(j) the form and the time for preparing an annual return giving a summary of itsactivities during the previous year under sub-section (*5*) of section 44;

(k) the form of annual return to be filed by a public servant under sub-section (5)of section 44;

(l) the minimum value for which the competent authority may condone or exempta public servant from furnishing information in respect of assets under the proviso tosection 45;

(m) any other matter which is to be or may be prescribed.

Power of Lokpal to make regulations.

60.(1) Subject to the provisions of this Act and the rules made thereunder, the Lokpalmay, by notification in the Official Gazette, make regulations to carry out the provisions ofthis Act.

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

(a) the conditions of service of the secretary and other officers and staff of theLokpal and the matters which in so far as they relate to salaries, allowances, leave orpensions, require the approval of the President under sub-section (4) of section 10;

(b) the place of sittings of benches of the Lokpal under clause (f) of sub-section(1) of section 16

(c) the manner for displaying on the website of theLokpal, the status of allcomplaints pending or disposed of along with records and evidence with referencethereto under sub-section (10) of section 20;

(d) the manner and procedure of conducting preliminary inquiry or investigationunder sub-section (11) of section 20;

(e) any other matter which is required to be, or

may be, specified under this Act.

Laying of rules and regulation

61. Every rule and regulation made under this Act shall be laid, as soon as may be afterit is made, before each House of Parliament, while it is in session, for a total period of thirtydays 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 sessionsaforesaid, both Houses agree in making any modification in the rule or regulation, or bothHouses agree that the rule or regulation should not be made, the rule or regulation shallthereafter 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 validityof anything previously done under that rule or regulation.

Power to remove difficulties

62.(1) If any difficulty arises in giving effect to the provisions of this Act, the CentralGovernment may, by order, published in the Official Gazette, make such provisions notinconsistent with the provisions of this Act, as appear to be necessary for removing thedifficulty:

Provided that no such order shall be made under this section after the expiry of aperiod of two years from the commencement of this Act.

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

PART III

ESTABLISHMENT OF THE LOKAYUKTA

Establishment of Lokayukta

63 Every State shall establish a body to be known as the Lokayukta for the State, ifnot

so established, constituted or appointed, by a law made by the State Legislature, to dealwith complaints relating to corruption against certain public functionaries, within a period ofone year from the date of commencement of this Act.

THE SCHEDULE

[*See* section 58]

AMENDMENT TO CERTAIN ENACTMENTS

PART I

AMENDMENT TO THE COMMISSIONS OF INQUIRY ACT, 1952

(60 OF 1952)

Amendment of section 3

In section 3, in sub-section (*1*), for the words ''The appropriate Government may'', thewords and figures ''Save as otherwise provided in the Lokpal and Lokayuktas Act, 2013, theappropriate Government may'' shall be substituted.

PART II

AMENDMENTS TO THE DELHI SPECIAL POLICE ESTABLISHMENT ACT, 1946

(25 OF 1946)

Amendment of section 4A.

1. In section 4A,—

(i) (for sub-section (*1*), the following sub-section shall be substituted, namely:—

''(*1*) The Central Government shall appoint the Director on therecommendation of the Committee consisting of -

(a) the Prime Minister — Chairperson;

(b) the Leader of Opposition in the House of the

People — Member;

(c) the Chief Justice of India or Judge of the Supreme Court nominatedby him — Member.'';

(ii) sub-section (2) shall be omitted.

Insertion of new section 4BA.

2. After section 4B, the following section shall beinserted, namely:—

Director of prosecution

"4BA. (1) There shall be a Directorate of Prosecution headed by a Director whoshall be an officer not below the rank of Joint Secretary to the Government of India, forconducting prosecution of cases under this Act.

(2) The Director of Prosecution shall function under the overall supervision andcontrol of the Director.

(3) The Central Government shall appoint the Director of Prosecution on therecommendation of the Central Vigilance Commission.

(4) The Director of Prosecution shall notwithstanding anything to the contrarycontained in the rules relating to his conditions of service, continue to hold office fora period of not less than two years from the date on which he assumes office".

Amendment of section 4C.

(3) In section 4C, for sub-section (1), the following sub-section shall be substituted,namely:—

(1) "The Central Government shall appoint officers to the posts of the level ofSuperintendent of Police and above except Director, and also recommend the extensionor curtailment of the tenure of such officers in the Delhi Special Police Establishment,on the recommendation of a committee consisting of:—

(a) the Central Vigilance Commissioner— Chairperson;

(b) Vigilance Commissioners — Members;

(c) Secretary to the Government of India in charge of the Ministry ofHome — Member;

(d) Secretary to the Government of India in charge of the Department ofPersonnel — Member:

Provided that the Committee shall consult the Director before submittingits recommendation to the Central Government".

PART III

AMENDMENTS TO THE PREVENTION OF CORRUPTION ACT, 1988

(49 OF 1988)

Amendment of section 7, 8, 9 and 12

1. In sections 7, 8, 9 and section 12,—

(a) for the words ''six months'', the words ''three years'' shall respectively besubstituted;

(b) for the words ''five years'', the words ''seven years'' shall respectively besubstituted.

Amendment of section 13.

2. In section 13, in sub-section (2),—

(a) for the words ''one year'', the words ''four years'' shall be substituted;

(b) for the words ''seven years'', the words ''ten years'' shall be substituted.

Amendment of section 14.

3. In section 14,—

(a) for the words ''two years'', the words ''five years'' shall be substituted;

(b) for the words ''seven years'', the words ''ten years'' shall be substituted.

Amendment of section 15.

4. In section 15, for the words ''which may

Amendment of section 19.

5. extend to three years'', the words ''whichshall not be less than two years but which may extend to five years'' shall be substituted.

In section 19, after the words ''except with the previous sanction'', the words ''saveas otherwise provided in the Lokpal and Lokayuktas Act, 2013'' shall be inserted.

PART IV

AMENDMENT TO THE CODE OF CRIMINAL PROCEDURE, 1973

(2 OF 1974)

Amendment of section 197.

In section 197, after the words ''except with the previous sanction'', the words ''saveas otherwise provided in the Lokpal and Lokayuktas Act, 2013'' shall be inserted.

PART V

AMENDMENTS TO THE CENTRAL VIGILANCE COMMISSION ACT, 2003

(45 OF 2003)

Amendment of section 2.

1. In section 2, after clause (*d*), the following clause shall be inserted, namely:—

'(*da*) ''Lokpal'' means the Lokpal established undersub-section (*1*) of section 3of the Lokpal and Lokayuktas Act, 2013;'.

Amendment of section 8.

2. In section 8, in sub-section (2), after clause (*b*), the following clause shall beinserted, namely:—

''(*c*) on a reference made by the Lokpal under proviso to sub-section (*1*) of section 20 of the Lokpal and Lokayuktas Act, 2013, the persons referred to in clause (*d*)of sub-section (*1*) shall also include—

(i) members of Group B, Group C and Group D services of the CentralGovernment;

(ii) such level of officials or staff of the corporations established by orunder any Central Act, Government companies, societies and other localauthorities, owned or controlled by the Central Government, as that Governmentmay, by notification in the Official Gazette, specify in this behalf:

Provided that till such time a notification is issued under this clause, all officials or staffof the said corporations, companies, societies and local authorities shall be deemed to be thepersons referred in clause (*d*) of sub-section (*1*).".

Insertion of new sections 8A and 8B.

3 After section 8, the following sections shall be inserted, namely:—

Action on preliminary inquiry in relation to public servants

49 of 1988

''8A. (*1*) Where, after the conclusion of the preliminary inquiry relating to corruption of public servants belonging to Group C and Group D officials of theCentral Government, the findings of the Commission disclose, after giving anopportunity of being heard to the public servant, a *prima facie* violation of conductrules relating to corruption under the Prevention of Corruption Act, 1988 by such publicservant, the Commission shall proceed with one or more of the following actions, namely:—

(*a*) cause an investigation by any agency or the Delhi Special PoliceEstablishment, as the case may be;

(*b*) initiation of the disciplinary proceedings or any other appropriate actionagainst the concerned public servant by the competent authority;

(*c*) closure of the proceedings against the public servant and to proceedagainst the complainant under section 46 of the Lokpal and Lokayuktas Act,2013.

(2) Every preliminary inquiry referred to in sub-section (1) shall ordinarily becompleted within a period of ninety days and for reasons to be recorded in writing,within a further period of ninety days from the date of receipt of the complaint.

Action on investigation in relation to public servants

8B.(1) In case the Commission decides to proceed to investigate into thecomplaint under clause (a) of sub-section (1) of section 8A, it shall direct any agency(including the Delhi Special Police Establishment) to carry out the investigation asexpeditiously as possible and complete the investigation within a period of six monthsfrom the date of its order and submit the investigation report containing its findings tothe Commission:

Provided that the Commission may extend the said period by a further period of six months for the reasons to be recorded in writing.

2 of 1974

(2) Notwithstanding anything contained in section 173 of the Code of Criminal Procedure, 1973, any agency (including the Delhi Special Police Establishment) shall, in respect of cases referred to it by the Commission, submit the investigation report tothe Commission.

(3) The Commission shall consider every report received by it under sub-section (2) from any agency (including the Delhi Special Police Establishment) and may decideas to—

(a) file charge-sheet or closure report before the Special Court against the public servant;

(b) initiate the departmental proceedings or any other appropriate action against the concerned public servant by the competent authority.".

Insertion of new section 11A.

4. After section 11, the following section shall be inserted, namely:—

Director of Inquiry for making preliminary inquiry

"11A. (*1*) There shall be a Director of Inquiry, not below the rank of Joint Secretary to the Government of India, who shall be appointed by the Central Government forconducting preliminary inquiries referred to the Commission by the Lokpal

(2) The Central Government shall provide the Director of Inquiry such officers and employees as may be required for the discharge of his functions under this Act.".

P.K. MALHOTRA,
Secy. to the Govt. of India.

CORRIGENDA

In the Securities Laws (Amendment) Second Ordinance, 2013 (9 of 2013), as publishedin a Gazette of India, Extraordinary, Part II, Section 1, Issue No. 32, dated the 16th September,2013,—

1. At page 3, line 19, *for* "the disgorge", *read* "to disgorge".
2. 2. At page 4,—

(*i*) in line 4, *for* "cluase" *read* "clause";

(*ii*) in line 12, *for* "sub-clause", *read* "sub-clauses".

3. At page 6, line 15, *for* "purpose", *read* "purposes".
4. At page 8, line 43, *for* "sub-section", *read* "sub-sections".
5. At page 10, line 24, *for* "secton", *read* "section".

CORRIGENDA

In the Readjustment of Representation of Scheduled Castes and Scheduled Tribes

inParliamentary and Assembly Constituencies (Third) Ordinance, 2013 (10 of 2013), as published in the Gazette of India, Extraordinary, Part II, Section 1, Issue No. 41, dated the 27th September, 2013,—

(i) at page 1, in the Preamble, in paragraph 3, in the line 2, *for* "Parliament", *read* "Parliamentary"; and

(ii) at page 4, in line 15, *for* "to any", *read* "of any".

CORRIGENDA

In the Indian Medical Council (Amendment) Second Ordinance, 2013 (11 of 2013), aspublished in the Gazette of India, Extraordinary, Part II, Section 1, Issue No. 42, dated the28th September, 2013,—

(i) at page 2, in line 32, *for* "reprsentatives", *read* "representatives".

(ii) at page 3, in line 3, *for* "provide", *read* "may provide".

(iii) at page 3, in line 40, *for* "sub-section", *read* "sub-sections".

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