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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 this issue of the journal, there are several interesting articles covering a wide range of issues that are very important and relevant for governance. In our regular feature Auditor's Notebook Shri Dharam Vir discusses two subjects of current interest: (i) CAG and the legislatures and (ii) the CAG's audit of private entities. According to Shri Dharam Vir, the old compact that has traditionally governed the relationship between the PAC and the CAG with each being viewed as a source of strength to the other came under severe strain in the wake of presentation of a few high profile audit reports like the one on 2G Spectrum for which the then CAG Shri Vinod Rai was questioned by the PAC, although not as a witness. As similar situations may arise in future also when audit reports wittingly or unwittingly get invested with political implications, Shri DharamVir suggests that the relevant rules should unambiguously prohibit summoning of the CAG or any other officer of the CAG's organization as witness.

The second subject in the Auditor's Notebook relates to the implications of a recent Supreme Court Judgment which makes the CAG a truly national auditor authorizing him 'to follow the rupee' irrespective of the instrumentality involved in the raising or spending of what goes into the Consolidated Fund of India or of a state. In terms of the judgment, CAG's right to audit private entities, whether Government assisted or controlled or otherwise, is no longer subject to the discretion of government. The judgment also gives to the CAG the right of access to books of accounts and records of such entities. According to the author the judgment equally poses a challenge to the auditors to develop appropriate capacities including acquisition of domain knowledge to fulfil the expansive mandate in order to meet the expectations of stakeholders.

Incidentally in our January-June 2011 and July December 2011 issues Shri Dharam Vir had discussed some of the issues with the concept of Effective Revenue Deficit (which was introduced by an amendment to the FRBM Act) and the moral hazard of creative accounting/ budgeting associated therewith. It is heartening to note that his views have found resonance in the Report of the Fourteenth

Finance Commission which has recommended the deletion of what it calls this artificial construct from the law.

From the beginning, CAG's dual role in the preparation of accounts and also in their audit has been a subject of debate which have not been muted by the departmentalization of 1976 or the bifurcation of 1984. It has been accompanied by the lack of clarity on the subject of ownership of accounts and the role of the Accountants General (Accounts) with respect to the state government. Shri V. Ravindran in his article "CAG's Dual Role in Accounts and Audit – Challenges and Prospects" expresses his concerns that comments of the Accountant General (Accounts) in the accounts are limited to information available in the budget, accounts and explanations of the executive. The mandate of the Accountant General (Audit) is far more pervasive, since he can personally inspect records and offices. Therefore, according to him, the Report on State Finances should limit itself to audit comments based on substantive testing, without replicating the comments made by the Accountant General (Accounts) or attempting any economic analysis. The Finance Accounts should be made less voluminous and more readable to the common citizen, with detailed information provided on the CAG's website for customized analysis as required.

For the public sector covering all Union and State governments, their Public Sector Enterprises, Statutory and non-statutory Autonomous Bodies including urban and rural local bodies, the 'annual procurement budget' is over 30*per cent* of GDP. In his article "Reforming the Public Procurement System" Shri Subhash Chandra Pandey extensively discusses the institutionalization of public procurement process through manuals and rule books and highlights some of the common problems and shortcomings in the present procurement system. The article examines the salient features of the Public Procurement Bill, 2012 which was introduced in the Lok Sabha in May, 2012 and has since lapsed, while the issues it brought to focus remain outstanding. With high-stake auctions such as telecom spectrum and coal block allocation, and enhanced level of planned capital acquisitions for Defence Services, the importance of having a robust procurement system that can withstand audit and judicial

scrutiny on the touchstones of public interest, integrity, transparency and fair competition can hardly be over-emphasized.

The only mechanism provided in the Constitution for devolution of resources from the Centre to the states is through the Finance Commission under article 275. But the spirit of fiscal federalism in the Constitution was defeated by the creation of Planning Commission and authorizing it to transfer huge amount of central resources to states as plan transfers without any constitutional backing, while limiting the scope of the Finance Commission only to recommend non-plan transfers. The plan transfers which are discretionary in nature are made under article 282 which is meant to deal with exceptional situations; these transfers are also discriminatory, being influenced more by political rather than economic considerations. Shri G. Bhattacharjee in his article "Social Welfare through Centrally Sponsored Schemes" has questioned the role of the Planning Commission as an extra-Constitutional allocator of plan resources in a discretionary manner. When the Gadgil formula attempted to limit the arbitrary discretion of the Centre over these plan transfers, it devised another way of exercising this discretion through the mechanism of Centrally Sponsored Schemes, whose numbers have since proliferated on political considerations, creating further aberrations in our public finances. Even though the Planning Commission has now been wound up and replaced by the NitiAayog, many of these schemes still continue to operate. The author argues that it is high time this 'Centralised welfare' is stopped and the Finance commission be made the sole agency for transfer of resources, plan as well as non-plan.

INTOSAI prepares Standards, guidelines and best practices for dissemination among the auditing community. INTOSAI conceptualized the model of a comprehensive set of International Standards of Supreme Audit Institutions (ISSAIs) for SAIs and called member SAIs to use the ISSAIs as a common frame of reference in public sector auditing. In her article "An introduction to International Standards of Supreme Audit Institutions (ISSAIs), Ms. K. Mani discusses the advantages of implementing ISSAIs which can bring increased uniformity in audit from an international perspective,

enhanced credibility and professionalism. As an active participant of the INTOSAI community, SAI India had committed itself to ISSAI implementation and agreed to create a pool of facilitators as a first step towards alignment with ISSAIs.

The increasing demand for greater transparency and accountability in private and public sector management across the world has prompted wide-ranging changes in audit process and reporting during the last decade. The managers and legislatures in the national governments and international organizations expect the professional auditors to tell them the underlying causes, consequences and recommend corrective action. Shri Saumendra Nath De in his article "The Five C's of Audit Reporting" reflects on five Cs: Criteria, Condition, Cause, Consequence and Correction. Auditors today are faced with an overarching demand to add value in governance. The professional auditors should respond to this demand by focusing on the roots, not just the trees.

In the Document Section, we have included "The National Judicial Appointments Commission Act, 2014" which we hope would be very relevant to the readers.

We hope to get responses from our esteemed readers on the articles in this issue. This being the last issue being brought out by the current Editorial Board, we sincerely thank all our dear readers for the excellent support provided to us during the last three years and wish them all the very best.

Editor-in-Chief

AUDITOR'S NOTEBOOK

Dharam Vir*

(i) CAG and the legislature: some tentative thoughts on the rules of engagement

"In the briefing to explain the 2G Report to the PAC" writes Vinod Rai[1] *"...R P Singh who had prepared the report made a PowerPoint presentation and explained all its myridial aspects. Then members sought clarifications. The process that followed has been best described by newspapers the next morning: 'PAC grills the CAG'. Members of the treasury benches spared no efforts to punch holes in the CAG findings. I have attended PAC meetings both in the state and the centre, but never have I seen the accountant general or the CAG being faulted for his findings and that too with the kind of virulence that was observed in the meeting"*.

"Meetings of the JPC" continues Vinod Rai *"were another revelation. I had written to the chairman offering assistance of the department in the deliberations of the JPC. Our offer was accepted and we were invited to the first meeting. We reached the Parliament annexe where the meeting was to be held, before the appointed time.... We were asked to wait... We waited. And we waited. We were ushered in about an hour and half later. It was only the next day that we learnt from the media that there was heated deliberation about whether the CAG was to be seated with no 'witness' board in front of*

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

[1] Not Just an Accountant; Vinod Rai former Comptroller and Auditor General of India

us or otherwise. Thankfully when we walked in there was no 'witness' board in front of us. We made a presentation. There was no interest in it. Members were out to disprove every word we had written in the report. The discussions, ironically, were on party lines. The questions and the observations made were so hilarious at times and on occasion, so full of insinuation that it was difficult to maintain one's composure. What was remarkable that the members were happier believing what R P Singh[2] had stated in the media, rather than what the CAG and his team of officers from the department had to say".

Although the fraught nature of relationship between the CAG's organization and certain sections of the PAC and the JPC belonging to the then ruling combination has been common knowledge, it is the first time that the extent of the vehemence of antagonism has been made public. That the then CAG has personally chosen to bring it out in the open only adds to the seriousness of the matter.

The sittings of the Parliamentary committees are held in private and while a verbatim record of the proceedings and evidence tendered by the witnesses is kept it is not put in the public domain but only laid on the table of the House when the committee's report is tabled unless decided otherwise by the Committee. The report of the PAC could not be finalized and presented having been held hostage to an elusive unanimity; the JPC tabled its report in the Parliament and also the minutes of its meetings but did not print copies of the latter for easy access and availability. Nevertheless the excerpts from Vinod Rai's book give a flavour of the approach of certain sections of the two Committees to audit that warrants an examination of what may be described as the rules of engagement between the CAG and the Parliamentary committees or even the Parliament.

CAG's Audit Reports on the accounts of the Union are submitted to the President who causes them to be laid before both Houses of Parliament whereafter these stand automatically

[2] LateShriR P Singh had since retired.

transmitted to the PAC. In terms of the Rules of Procedure and Conduct of Business in the Lok Sabha the PAC is tasked inter alia to examine the accounts and the Report of the CAG thereon and satisfy(a) that the moneys shown in the accounts as having been disbursed were legally available for, and applicable to, the service or purpose to which they have been applied or charged; (b) the expenditure conforms to the authority which governs it; and that (c) every re-appropriation has been made in accordance with the provisions made in this behalf under rules framed by competent authority. In a way the starting point of the work of the PAC is the CAG's Audit Report though this does not preclude suomoto examination of any subject at the discretion of the PAC. The PAC is assisted by the CAG in its deliberations; the CAG's organization supplies a Memorandum of Important Points suggesting possible lines of inquiry which may be pursued by the PAC; the CAG or his representative briefs the PAC in advance when a subject is taken up for detailed examination by the PAC[3]; and the CAG or his representative is invariably invited for the sittings of the PAC when he is seated with the Chairman on his right side. The role of the CAG has been encapsulated in the classical expression as that of 'the acting hand of the PAC' and the 'friend, philosopher and guide' of the PAC. The CAG may with the permission of the Chairman even intervene during the examination of witnesses to clarify points and to elicit information material to the PAC work. The CAG may intervene if a witness tries to obfuscate the issues. The second Comptroller and Auditor General of India A K Chanda had described himself as the lord protector of official witnesses who would come to the rescue of a witness if a PAC member were to put an unfair question imputing bad faith to the witness.

The Apex Court has on several occasions considered and pronounced on the position of the Audit Reports vis a vis the Parliament and the PAC. In Arvind Gupta vs Union of India the Apex Court[4] clearly held that the Audit Reports which are mandated

[3]The PAC was seized of the issue of telecom licences much before the presentation of the Audit Report.

[4]Order dated December 1, 2012 in Writ Petition (C) No.393 of 2012.

to be laid before the legislatures are subject to scrutiny by the Parliament or legislatures of the States as the case may be. In a more comprehensive exposition on the subject the Apex Court in Arun Kumar Agrawal vs. Union of India and Others[5] observed that the CAG indisputably is an independent constitutional authority and consequently the Audit Report commands respect and cannot be brushed aside as such but it is always subject to Parliamentary debate and it is possible that the PAC can accept the Government's objection to the CAG Report or reject the report of the CAG. This was also reaffirmed in Pathan Mohammed Suleman Rehmatkhanvs. State of Gujarat[6]

The aforesaid pronouncements of the Apex Court simply lend judicial authority to the long standing accepted position in the matter. The then CAGS Ranganathan had in his evidence before the Joint Committee[7] on the CAG's DPC Act described the PAC as a 'great corrective force'.

The PAC follow up of the Audit Reports ordinarily results in considerable value addition to audit findings because of the wider exposure of the parliamentarians to public affairs. To be sure there have also been instances when the PAC has not agreed with the observations in the Audit Report, sometime in the light of replies or clarifications furnished by the executive after the report has been submitted to the Parliament. In such cases, the PAC discreetly refrains from following up the Audit Report. In one State the PAC did not agree with the comments of the CAG and actually complimented the Government for executing a unique project[8]. On the Audit Report on Disinvestment of Government Shareholding in 1991-92 in selected public sector enterprises the PAC agreed with the CAG's findings about the various acts of omission and

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[5]Writ Petition (C) No. 69 of 2012 decided on May 9, 2013

[6]Special Leave Petition (C)No.32507 of 2013.

[7]Lok Sabha Joint Committee on the Comptroller and Auditor General' (Duties, Powers and Conditions of Service) bill 1969--- Evidence

[8]R K Chandersekharan The Comptroller and Auditor General of India: An Analytical History.

commission of Government but did not endorse the amount of under-realization in the sale of shares which had been assessed as Rs. 3442 crore by audit, and merely concluded that the exercise had "entailed loss of sizeable magnitude to the exchequer" while observing that the exact amount of loss "could be anybody's guess"[9]. Even in the matter of some of the recent Audit Reports like the ones on the Adarsh Housing Society, privatization of the Delhi Airport and the Performance of civil aviation sector, the PAC endorsement of the audit findings and recommendations has not been full-throated.

It also bears to be recalled in this connection that the Joint Committee which inquired into irregularities in securities and banking transactions (popularly known as the Harshad Mehta scam) in the nineties had made critical observations about the methodology of CAG's audit of public sector companies but only as part of its overall scrutiny of the oversight mechanism of the financial sector.[10]

CAG's Audit Reports are prepared in a highly transparent manner and full opportunity is given to Government to offer its response at each and every stage of processing. CAG also shares the audit evidence with Government. Government is specifically invited to confirm the facts and figures mentioned in the Audit Report and offer its comments on the Audit findings as well as recommendations. The reasons for not accepting the replies of Government are also recorded in the Audit Reports. CAG's internal procedures are designed to ensure high quality output. The guiding principle is that each and every statement made in the Audit Report is backed by documentary evidence and each and every conclusion or finding flows from the facts and figures mentioned therein. The Audit Reports are, so to say, speaking documents that ordinarily leave little scope for seeking further clarification even as these are written in a professional manner.

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[9]Report of the Comptroller and Auditor General of India for the year ended 31 March 1992 No. 14 of 1993 Union Government (Civil) and Seventy Fifth Report of the Public Accounts Committee1993-1994 Tenth LokSabha.

[10]Report of the Joint Committee to Enquire into Irregularities in Securities and Banking Transactions 1993 LokSabha Secretariat

The question of the appearance of the CAG before the Parliamentary committees as a witness as distinguished from as an advisor needs to be considered in the above background.

CAG as witness

Under Rule 270 of the Rules of Procedure and Conduct of Business in Lok Sabha a committee of the Parliament has the power to send for persons, papers and records. However, under Rule 269 a witness may be summoned by an order signed in writing by the Secretary General of the Lok Sabha.

Apparently, no such summons were issued to the CAG or any of his serving officers.

From the available information it appears that while the CAG interacted with the PAC as per the normal practice of briefing the PAC, he had volunteered to offer assistance to the JPC in its deliberations and the JPC invited the CAG to appear before the JPC. Although the JPC Report formally lists 'R P Singh former Director General Audit (Posts and Telecommunications)' as one of the witnesses who tendered evidence before it, the representatives of the CAG are merely mentioned in the Introductory Chapter amongst those from whom it had 'briefings and oral evidence". This has left the question of appearance of the CAG before the PAC or the JPC as a witness wide open.

According to a survey carried out by the Commonwealth Parliamentary Association in 2001, the Head of the Supreme Audit Institution appears before the PAC as witness in 79 per cent of the 70 countries covered by the survey[11]. But this has to be viewed in the context of the Constitutional and legal framework relating to the Supreme Audit Institution in each country. For example, in the United Kingdom, the CAG who is an officer of the Parliament may be summoned to give evidence before the PAC as a witness but he also attends the meetings of the PAC as an advisor when the

[11]David G. Mcgee The Overseers Public Accounts Committees and Public Spending Commonwealth Parliamentary Association

evidence is taken by the PAC and he does not sit next to the Chairman, but sits at the other end of the table, opposite to Treasury officials, (and not on the right hand side of the Chairman as in India), and intervenes in the discussions only when the Chairman asks him to clarify a point or when some information is required from him. Of course as in India the CAG in the United Kingdom before the commencement of each meeting a conference is held in the room of the Chairman of the PAC when the CAG and the clerk of the Committee are present and the important points to be raised with the witnesses are discussed. In Canada the relationship between the Auditor general and the PAC is more at arms length; while all Audit Reports stand referred to the PAC, at the PAC meetings the Auditor General appears and gives evidence as a witness only[12].

Be as that it may, the PAC is an instrument of securing the accountability of the executive on behalf of the Parliament and as already averred above, it ordinarily takes off from and follows on the CAG's Audit Reports. The Audit Report provides the staple input for the PAC for holding the Government to account and the PAC is entitled to be satisfied about the veracity of the observations in the Audit Report before these can be used for taking on the executive. Joint Parliamentary Committees are ad hoc committees of the Parliament tasked with in-depth examination of matters of public concern involving acts of omission and commission, if any, of the executive only. The terms of reference of the JPC set up by a motion adopted in the Lok Sabha in February 2011 were as under:

(i) To examine policy prescriptions and their interpretations thereafter by successive Governments, including decisions of the Union Cabinet and the consequences thereof in the allocation and pricing of telecom licenses and spectrum from 1998 to 2009;

(ii) To examine irregularities and aberrations, if any, and the consequences thereof in the implementation of Government decisions and policy prescriptions from 1998 to 2009; and

[12]For example during 2000 the Auditor Generalattended 22of the 31 sittings of the PAC ; in all cases as a witness.

(iii) To make recommendations to ensure formulation of appropriate procedures for implementation of the laid down policy in the allocation and pricing of telecom licences.

In the light of the above, a reference to the CAG's Audit Report would only be incidental and the JPC would be free to ignore the observations in the Audit Report if after seeking such clarifications as it might require from the CAG's organization it was not in agreement with the same.

The question of interaction between the State legislature and the CAG's organization came up for consideration earlier when the Bihar legislature resolved in 2000 to constitute a Joint Committee of members of both its houses to probe the role and responsibilities of the Accountant General in the Animal Husbandry Scam on which a Report had already been presented in Assembly[13]. On a reference made to the Attorney General, the Ministry of Law had held that the Joint Committee could not issue summons to the CAG or his officers since the CAG is an independent Constitutional Authority and is not answerable and therefore the CAG or his officers are not bound to comply with the summons and appear before the Joint Committee.

A related question concerns the calling the officers of the CAG to appear before a Parliamentary Committee in their individual capacity and not on behalf of the CAG. The answer to this is provided in the words of the first Comptroller and Auditor General of India Shri Narahari Rao "For all that is included in the Audit Reports" averred Shri Narhari Rao before the PAC in 1951, "the ultimate responsibility is that of the Auditor-General who countersigns the audit report but he holds the Accountant General responsible to himself."[14] A subordinate officer does not enjoy the protection to act without fear or favour that is available to the CAG.

[13] Vijay Kumar The Comptroller and Auditor General of India A Thematic History 1990-2007 Volume I

[14] Statement Made by the Comptroller and Auditor General of India before the Public Accounts Committee on 22 May 1951 on the procedure followed for preparation and submission of Audit Reports to Parliament.

Also, pitting the word of a subordinate officer before the averments of the CAG and asking the latter to clarify his position or to comment upon the former is not the best manner in which proceedings can be conducted. It is totally inconsistent with the dignity of the office of the CAG that a constitutional authority should be called upon to defend himself against the word of a junior officer of his own organization and the CAG would be well within his right to refuse to answer any such question. Given the multiple levels through which an audit comment is developed beginning in some cases at the level of the auditor or the section officer' the implications of summoning subordinate officers to depose before the committee need to be carefully thought through.

The CAG is a high constitutional authority, the persons who occupy this position are seasoned Government servants and to quote from the testimony of S Ranganathan before the Joint Committee "the CAG cannot function with any sense of lack of responsibility"[15]. On the other hand an open attack on the Supreme Audit Institution has the inevitable consequence of demoralizing the large army of auditors who duly and diligently perform their duties and it may also indirectly encourage the law breakers to flout the law. The ultimate consequence may be the diminution of public accountability, good governance and probity in public life with insidious erosion of public trust in the very institution of democracy.

The conclusion that emerges from the foregoing is that a Parliamentary Committee may seek clarifications from the CAG on what is included in the Audit Report. It is not authorized to summon the CAG as a witness. Also that officers subordinate to the CAG whether serving or retired should not be asked to give evidence before the Committee.

An unwritten compact has generally governed the relationship between the PAC and the CAG, with each being a source of strength to the other;while the PAC depends on high quality audit reporting to be effective, the CAG in turn depends on an effective PAC to ensure that the departments take audit outcomes

[15]Report of the Joint Committee ibid

seriously.In the United Kingdom the legislative reforms that resulted in the creation of the institution of the Auditor General were accompanied by procedural reforms that led to the establishment of the PAC; these reforms were seen as part of one package and this has historically reinforced the interdependence of the two entities. This was perceived to have resolved the dilemma that had baffled the Parliament for years "whether expenditure should be controlled by inexpert parliamentarians or expert non-parliamentarians". Critical to this is the non-partisan functioning of the PAC with the members being conscious of their quasi judicial role and obligation irrespective of their political affiliations or loyalties.

The aforesaid compact between the CAG and the PAC came under severe strain in the wake of submission of high profile Audit Reports like the one on 2G. Since similar situations may arise in future when the CAG's Audit Reports get invested with political overtones, wittingly or unwittingly, it is time that the rules of engagement between the CAG and the PAC (or any other Parliamentary committee) are unambiguously defined.

A template is available in the Rules and Procedure and Conduct of Business in the LokSabha and the Directions Issued by the Speaker. In terms of Direction No. 99 a Minster cannot be summoned to appear as a witness before PAC, but the Chairman can have a separate talk with the Minister. The underlying logic is that a Minister is answerable only on the floor of the House,Also, under Rule 270 of the Rules of Procedure if a question arises whether the evidence of a particular person is relevant for the purposes of the Committee the matter shall be referred to the Speaker whose decision shall be final. Some similar safeguards need to be provided in respect of the CAG who is accountable to Parliament in terms of Article 148 of the Constitution read with Article 124(4). The rules should also unambiguously forbid the summoning of a subordinate officer of the CAG to appear before the PAC unless the latter has been associated with the decision making process in a particular case while on secondment with the executive.

(ii) CAG's Audit of Private Entities: Apex Court's Transformative Judgment

CAG's authority to audit private entities is enshrined in Article 149 of the Constitution in terms of which the CAG shall perform such duties and exercise such powers in relation to the accounts of the Union and the States and of *any other authority or body* as may be prescribed by or under any law made by the Parliament. In a recent landmark judgment[16] the Honourable Supreme Court has observed that the power vested in the CAG under Article 149 is part of the basic structure of the Constitution, like Parliamentary democracy, independence of judiciary, rule of law, secular and federal character of the Constitution and so on which cannot be taken away by Parliament.

In line with Article 149, the CAG's (Duties, Powers and Conditions of Service) Act, 1971 contains a slew of provisions relating to CAG's audit of private entities including not merely entities that receive Government assistance in some form but also unassisted entities as will be mentioned later.

In the aforesaid judgment, the Apex Court has also unequivocally clarified that the expression 'body' used in the said Article does not exclude private entities. The petitioner private companies had argued that the expression 'body' should be construed in conjunction with and in the light of continuing terms 'Union', 'States' and 'authority' mentioned in Article 149 which are indicative of some form of State control and hence should exclude non-Government entities like private companies. In this connection the petitioners had also invited reference to the Consembly debates and argued that according to the founding fathers the said expression 'body' was intended to cover only entities that perform the State functions or entities financed or controlled by the State.

The Apex Court has described this as the 'prime question'.

Recalling that the Constitution 'is a living organic thing and

[16] Association of Unified Tele Services Providers and Others vs Union of India Civil Appeal No. 4591 of 2014

must be applied to meet the current needs and requirements', the Honourable Court has held that it is not bound to be understood or accepted to the original understanding of the constitutional economics and that the legislative debates may not be the sole criteria to be adopted by a court while examining the meaning and content of Article 149 as the content and significance has to vary from age to age. Since (i) the telecom companies are required to share a part of revenue receipts with the Government, and (ii) the Government share is credited to the Consolidated Fund of India, which (iii) the CAG is required to audit by law, the Honourable Court chose to give what it called 'purposive interpretation' to Article 149 and held that the expression 'body' used in the said Article includes not merely Government owned or assisted entities but also private bodies.

Interestingly, the Honourable High Court of Delhi, before which the private telecom companies had initially agitated the matter, had left the question open[17]. However, the Honourable High Court had nevertheless come to the conclusion that the CAG has the power to audit the revenue receipts of private entities as these are receipts of the Union by virtue of having accrued from the alienation of spectrum which is a natural resource exclusively vested in the State within the meaning of Article 39 (b) of the Constitution.

It also bears to be recalled that a similar issue had been raised when the CAG's (Duties, Powers and Conditions of Service) Act, 1971 (Act) was on the anvil. Government had then refused to give a categorical assurance that the expression 'body' used in Section 20 of the Act would not be construed to include a private entity.[18] Thus the expression 'body' as used in Section 20 of the Act has always been understood to mean not merely Government owned and/or assisted entities but also private entities.

Under Section 20 of the Act, the President/Governor is vested with the power to entrust the audit of any 'body' or 'authority' to the CAG if it is expedient to do so in public interest and after giving a

[17]Association of Unified Telecom Service Providers and Others vs. Union of India and Others WP(C) No. 3673/2010

[18]Report of the Select Committee

reasonable opportunity to the affected party to make representation against such entrustment. In such cases the CAG is authorized to audit the totality of the accounts of the entity i.e. both the receipts and expenditure and has the right to examine its books and accounts.

There are two sub-sections of Section 20 of the Act. Section 20(1) of the Act authorizes the President/Governor acting suomotu to arrange for CAG's audit even if Government has no financial stake in the 'body' or 'authority'. Under Section 20(2) the CAG is authorized to propose that the audit of any 'body' or 'authority' may be entrusted to him because a substantial amount has been invested in or advanced to such an entity. In either case the final decision rests with Government.

The judgment of the Apex Court takes away such discretion from Government and extends the jurisdiction of the CAG to the audit of private entities in so far as these have a nexus with Government finances.

Incidentally, it is well settled that the expression 'authority' means a person or body exercising power or command vested in it by virtue of the Constitution or any law made by the legislature. The expression 'body' means an aggregate of persons whether incorporated or unincorporated. Thus an ordinary individual would automatically stand excluded from the audit jurisdiction of the CAG unless vested with Constitutional or statutory powers.

The third aspect of the judgment relates to the powers of the CAG to examine the records of private entities. Under the Act, the CAG is authorized to have access to any accounts, books, papers and other documents which form the basis of or are otherwise relevant to transactions to which his duties in respect of audit extend. According to the Apex Court the CAG will not be in a position to perform his duties in relation to private entities, which impact the Government receipts and expenditures, unless the underlying records which are in the exclusive custody of the private entities are also made available to him for his examination.

Significantly, in coming to this conclusion the Apex Court did not explicitly refer to an enabling rule in the rules notified by the Telecom Regularity Authority which obligates the service providers to make available their records to the CAG. Separately however the Apex Court dismissed the challenge mounted by the service providers to the said rule.

Thus the judgment not merely extends the jurisdiction CAG to the audit of private entities in so far as these impact Government receipts or expenditures but also authorizes him to call for the relevant accounts, books and other records from the private entities for the discharge of his duties. In a way, the judgment also blesses the relevant Regulations[19] issued by the CAG under the Act in terms of which CAG has the powers to call for not merely the Government records, not merely the records relied upon by Government in performance of its functions but also such other third party records which the auditor may require for the conduct of audit.

Pivotal to the judgment are the Apex Court's enunciation of the scope of CAG's audit and the reference to Article 151 of the Constitution in terms of which the Audit Reports of the CAG are submitted to the President/Governor who shall cause them to be laid before the appropriate legislature. As regards the former, setting all doubts at rest the Apex Court has repeatedly held that it is the duty of the CAG to examine the economy, efficiency and effectiveness with which the nation's resources are used including the propriety of decision making. Referring to Article 151 the Apex Court has held that the legislature has a right to know whether the nation's resources are so used. Thus all entities that impact the Government receipts and expenditures will attract CAG's audit, CAG has the powers to call for all relevant records belonging to these entities and he has a duty to report to the legislature whether the nation's resources have been used economically, efficiently and effectively irrespective of the instrumentality involved but the extent of his examination in relation to private entities would be restricted to the amounts that impact the Government receipts and expenditure.

[19] Regulation 169 of The Regulations on Audit and Accounts

The landmark judgment opens the doors for CAG's audit of public-private partnerships with concomitant powers to examine their books and accounts. It should also remove the black box and secure CAG's right of access to and examination of records of private entities to which the private partner may outsource some of its functions[20]. Likewise it opens the doors for CAG's audit of sub-grantees to whom some time the original recipient of Government grant may pass on a part or whole of Government funds.

It also opens the possibility of CAG's audit of Government expenditure through several statutory corporations which are currently outside the audit jurisdiction since the relevant laws by or under which these corporations have been established prescribe their audit by Chartered Accountants.

The ratio of the judgment will have a bearing on another case pending in the Supreme Court relating to audit of service tax receipts wherein the CAG's authority to access and scrutinize the relevant books of accounts and records of the assessee has been disputed[21].

The transformative judgment which in a way seeks to make the CAG a truly national auditor, authorizing him to "follow the rupee" also poses challenges to the CAG's organization and calls for appropriate capacity augmentation for fulfilling the expansive mandate and the expectations of stake-holders.

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[20] Such a situation has arisen in the case of the Delhi International Airport Ltd; which has outsourced several services to a number of joint venture companies.

[21] In SKP Securities vs Deputy Director (RA-IDT) a single bench judgment of the High Court of Calcutta had held that the CAG 's audit team deputed to audit the service tax receipts relating to a private party viz. SKP Securities Ltd. did not have the authority to call for the books and the accounts of the assessee

CAG'S DUAL ROLE IN ACCOUNTS AND AUDIT-CHALLENGES AND PROSPECTS

V. Ravindran*

Government accounts are kept in such form as prescribed by the President of India on the advice of the Comptroller and Auditor General (CAG) of India. The prescription of the form of accounts is all pervasive,encompassing the scope and structure of the accounts and the rules and reasoning underlying them. The Executive of the Union (including Union Territories) and State Governments are responsible for 'keeping' the accounts in the prescribed form and preparing the initial and subsidiary accounts of the respective Governments. Prior to the enactment of the CAG's Duties, Powers and Conditions of Service (DPC) Act in 1971, the CAG was responsible for the compilation of the accounts rendered to him by treasuries and Pay and Accounts Offices of the respective Government. Concomitant with such compilation, the CAG was responsible for the 'keeping' of such accounts rendered to him.

Prior to the enactment of the DPC Act, the verb 'kept' as applicable to the CAG was used in Article 150 and referred to the maintenance of accounts of Government transactions. The DPC Act, instead, uses 'keeping' in two contexts:one, in relation to the role of the Executive in maintaining the initial and subsidiary accounts, and two, in relation to the role of the CAG in compiling

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the accounts from the initial and subsidiary accounts rendered to him by the Executive, and the process of compiling such accounts and the preparation of the annual Finance and Appropriation Accounts. Though the DPC Act assigns distinct and separate roles for the three tasks of (i) compiling from the initial accounts, (ii) keeping of compiled accounts, and (iii) preparing the Finance and Appropriation Accounts, these three tasks have always gone together in the Indian context. Consequently, for ease of usage, these can be addressed by the collective term 'preparing the accounts'.

Today, the CAG is responsible for preparing the accounts of only 28[1]State Governments. The accounts of the Union Governmentand Union Territories without Legislature are prepared by the Controller General of Accounts under the Secretary, Department of Expenditure, while the accounts of the National Capital Territory (NCT) of Delhi, Goa and Union Territories with Legislature are prepared by the concerned Director of Treasuries and Accounts under the respective Finance Departments.

Ownership of the accounts follows from the task of preparing the accounts.Consequently, ownership of accounts of NCT Delhi, Goa, the Union Territories, and the Union Government vests entirely with the concerned Finance Departments (Department of Expenditure in the case of the Union Government)that prepare the accounts. The situation in the 28 States whose accounts are prepared by the CAG is a little more complicated. While the concerned State Governments are clearly the owners of the initial and subsidiary accounts since these are processed and signed by subordinate authorities under them, no State Government has come forward to accept ownership of the Finance and Appropriation Accounts. Consequently, there is no option presently, but for the CAG to have the status of ownerof the Finance and Appropriation Accounts of these 28 States thrust upon him.

However, even ownership merits definition. Governments

[1]The accounts of one state (Goa) are not prepared by the Accountant General.

are only proxies for the ultimate owners, viz., the citizens. While it could be argued that the State Government owes primary responsibility only to the people living within the boundaries of the State, the same cannot be said of the preparation of its accounts. A hint of this can be seen in the portion of Section 10 of the DPC Act dealing with the relieving of the CAG of the role of preparing the accounts of State Governments. This section, by mandating the previous approval of the President, firmly locks in the role of the Government of India and by further reduction, of the people of the federation of States that is India, as the ultimate stakeholder of Government accounts in India irrespective of whether they pertain to the Union or the States.

It is the role of accounts to provide disclosure. There are, however, constraints. Accounts follow the Budget. That is, after the Budget (which is prepared by the Executive) is approved by the Legislature, the accounts will necessarily have to adhere to the budget provisions and booking of transactions, even if the heads of account are at variance with those prescribed by the President as advised by the CAG under Article 150 of the Constitution.For instance, while under the norms prescribed by the President, grants in aid are to be booked under the revenue section irrespective of end utilisation, State Governments often budget for and book some of such expenditure under the capital section. Where the preparation of accounts is entirely with the Executive, and the transactions are faithful to budgetary provisions, the accounts, including Finance Accounts, will, in turn, faithfully depict the transactions without any further disclosure. Any deviations from budgetary intent, however, will be depicted in the Appropriation Accounts. Against such constraints on the accounting authority, the CAG, as auditor of the accounts, will need to provide necessary disclosure where the Finance Accounts are prepared by the Executive.

The situation is different when the Finance Accounts are prepared by the CAG, as is the case in 28 States. Here, the Accountant General (Accounts) of the State performs a dual role.

First, as compiler and keeper of the initial and subsidiary accounts, he needs to depict the transactions as they are booked, provided such classifications for booking have been provided in the budget of the State Government (any deviations from budgetary intent will be depicted in the Appropriation Accounts). Such faithfulness in booking according to the State budget should exist even if the expenditure has been partially or fully funded by the Government of India by way of conditional grants or loans, and provides for a different accounting treatment.

Second, since no State Government has yet assumed ownership of the Finance Accounts, the Accountant General (Accounts) needs to provide disclosure to the ultimate stakeholder, viz., thepeople of India, represented primarily by the President of India. Such disclosure is provided by the Notes to Accounts appearing in the Finance Accounts, and is based on the Financial Rules and Regulations issued or endorsed by the Government of India. Where the financial rules and regulations of the State Government are at variance with those issued under the authority of the President, these will also need to be disclosed, except where these have been issued by way of an Act by the concerned State Legislature. Disclosuresare restricted to deviations and financial implications without passing opinions by way of judgement, which is the role of the Accountant General (Audit).

Initially, the Notes to Accounts in the State Finance Accounts (introduced in the Finance Accounts of 2009-10) were limited to summaries of significant accounting policies, with comments on the quality of accounts mainly dealing with adverse balances, operation of the omnibus minor head 800, Abstract Contingent Bills, Personal Deposit accounts, non-reconciliation of accounts, outstanding Utilisation Certificates etc. From the Finance Accounts of 2012-13, however, the Notes to Accounts contained additional observations on the estimation of revenue and fiscal surpluses and deficits of the State Government. Such estimation had gained importance with the enactment of the Fiscal Responsibility

and Budget Management (FRBM) Acts by the Government of India and State Governments over the past decade. Governments have made considerable efforts to maintain revenue surplus and fiscal deficit targets, especially since, in the case of State Governments, achievement and maintenance of these targets has beenlinked to substantial financial incentives from Government of India. Such self-interest, indubitably, leads to situations where the State Governments on occasion opt for unwarranted manipulation of the underlying parameters. Even otherwise, ignorance or oversight of appropriate classification procedure in the budget and accounts may result in overstatement or understatement of revenue and of fiscal surpluses and deficits. Appropriate disclosures in the Finance Accounts will be absent when the Executive is entirely responsible for preparing the accounts, and it is left to Audit to provide such disclosure. On the other hand, when the Finance Accounts are prepared by the CAG, as is the case in 28 States, the Accountant General (Accounts) will necessarily have to provide disclosure. The estimation of revenue and fiscal surpluses and deficits from the accounting data and the estimation that it is overstated or understated in terms of norms is a rudimentary exercise not requiring auditing or, in fact, of even higher accounting skills. However, such disclosures should necessarily be made, and they should preferably appear in the Finance Accounts.

Apart from the preparation of accounts, the CAG is empowered with the audit of accounts of the Union, the States, and Union Territories. To this end, and in respect of the audit of the Finance and Appropriation Accounts, the CAG prepares separate Reports on Accounts of the Union Government and Reports on State Finances of individual States.Since the CAG does not prepare the Finance and Appropriation Accounts of the Union Government, the formats of the Report on Union Finances and of the State Finances are different.

In addition to the Reports on Union and State Finances, the CAG also issues various other reports containing detailed audit

comments on transactions of different Ministries/ Departments and State Government bodies, authorities and undertakings in various other audit reports. It therefore follows that the Reports on Union and State Finances, by providing an overview of government transactions, are necessarily more sweeping in scope than the other audit reports of the CAG.

CAG's comments on accounts in the Reports on Union and State Finances tend to follow the beaten path, like depicting trends in revenue and expenditure or excesses and savings and making the 'audit' comment that these were indicative of deficient budgeting, inadequate financial control, and shortfalls in performance due to substantial savings.Attempts at drawing inter-State comparisons primarily on the basis on their belonging to either the General or Special Category (a formulation introduced nearly five decades ago for an entirely different purpose),often result in facile conclusions in Reports on State Finances. While the introduction of Notes to Accounts in the Finance Accounts of State Governments led to greater understanding on what the figures in the Finance and Appropriation Accounts actually meant, this also resulted in many of the comments in the Notes to Accounts being repeated or elaborated upon in the Reports on State Finances under the nomenclature of 'audit' comments. The transition of the Notes to Accounts to the realm of giving the 'exact' revenue and fiscal surplus and deficits as distinct from the surpluses and deficits calculated from the booking in the accounts, an approach not earlier present even in the Report on State Finances, has led to debates on whether such comments are rightly in the nature of audit comments and should not appear in the Notes to Accounts.But as earlier mentioned, such analysis does not require auditing skills and should more appropriately appear in the Notes to Accounts. Yet another venture of the Report on State Finances is in the area of either template driven or free-wheeling economic analysis. To this end, the Reports now contain references to purely economic issues such as absorptive capacities, buoyancy ratios, debt sustainability and

stabilisation, gini-coefficients etc., which, strictly speaking, are extraneous to audit. While these are doubtless part of the legitimate skill set of trained economists, they are likely to lead to circular reasoning, and unsustainable and superficial conclusions when wielded by others.

It would appear evident that the Finance Accounts, Appropriation Accounts and the attendant Reports on State Finances need greater rationalisation and complete overhaul. Presently, the Finance and Appropriation Accounts of State Governments exceed 1,000 pages. The size of the Appropriation Accounts can be substantially reduced by securing the approval of the State Public Accounts Committees to raise the limits for comments. A significant part of the size of the Finance Accounts is attributable to the incorporation of the recommendations of the Union Finance Commissions regarding engendering greater transparency. The incorporation of such information has also, on occasion, changed the character of the Finance Accounts. For example, the Finance Accounts traditionally and, even now, generally depict transactions at the minor head level. However, at the instance of the Finance Commission, the Finance Accounts now contain a statement on salaries, containing information at detailed head level. Similarly, it was decided some years ago to capture from the website of the Controller General of Accounts details of all Central transfers that were directly transferred to implementing agencies instead of being routed through the State Government. Even though these transfers and expenditure therefrom are not part of the revenue and expenditure transactions approved in the State Government budget, this information now appears in the Finance Accounts of State Governments and in the Report on State Finances, which is not ideal. Instead these should appear only in the other audit reports of the CAG dealing with the transfer of such funds and their utilisation. The position will undergo change once the Government of India's decision to route all such transfers directly to the State Government instead of to the agencies is fully implemented.

The powers of the CAG to submit the accounts of the 28 States are derived from the Article 149 of the Constitution and explicitly stated in Section 11 of the DPC Act. This power is inseparable from his power to prepare the Finance Accounts, and does not exist where the Finance Accounts are prepared by the Executive, like in the case of the Union, NCT Delhi, Goa, and Union Territories.

As the preparer of the accounts of the State Governments, the CAG caters to a multiplicity of stakeholders with varied requirements. It is not easy for the Finance Accounts to cater to all these stakeholders equally. Consequently, the Finance Accounts need to revert to their requirement of catering to their primary stakeholder, the 'people'. To achieve this, the CAG should host the accounts of all State Governments on his website with facility for customised extraction and analysis. Presently the CAG stores accounting data of State Governments on independent and dissimilar Voucher Level Computerisation (VLC) databases in the respective offices of the Accountant General (Accounts). Were these data to be integrated on a platform of VLCs, then, wide and customised access by all stakeholders is possible. If this platform can also integrate with it data relating to the Union Accounts, which is presently provided in a limited manner by the CAG in the annual Combined Finance and Revenue Accounts (CFRA), the access would be even more wide ranging and meaningful. If this were to happen, the accounts portion of the Finance Accounts could revert to containing minimum pertinent information. All this is possible in the immediate future.

As the Supreme Audit Authority of the Union and State Governments, the CAG enjoys a unique Constitutional mandate. This mandate should not be frittered away in replicating or adapting comments from the Notes to Accounts or venturing into domains that are presently better occupied by various trained professional analysts and opinionators. Nor should the exercise of the mandate be limited to reproducing the explanations of the Executive without

detailed examination of the facts underlying the deviations from the norm or anticipated outcomes. Accountants General (Accounts) are constrained by the fact that their analysis is almost entirely based on the accounts rendered to them and compliance to financial norms. They lack the wherewithal to examine the rationale underlying transactions or the accuracy, completeness or truth of the explanations offered by the Executive. The task of inspection of treasuries entrusted to the Accountants General (Accounts) is too limited in scope to verify the reasoning behind the budgeting processes and implementation of financial transactions. Such exhaustive verification is possible only through personal inspectionof records and offices, a prerogative extended to the Accountant General (Audit) and not to the Accountant General (Accounts) or other analysts and opinionators. The Report on State Finances should therefore embody the CAG's awareness of this unique position accorded to him by the Constitution and the DPC Act, and provide true audit examination and opinion.

Over the past two years, Accountants General (Audit) have, for the purpose of financial attest audit, initiated, on pilot basis, statistical sampling for selectionof the transaction vouchers of the State Government, that are in the custody of the Accountants General (Accounts). The purpose behind this exercise is not to audit the Accountant General (Accounts) but to verify the completeness and accuracy of transactions reported by the various accounts rendering units to the Accountant General (Accounts), and the reliability of the controls exercised by the Accountant General (Accounts) in compiling and keeping these accounts. It is especially important for the Accountants General (Audit) to realise that any difference of opinion with the Accountant General (Accounts) should be resolved internally. Qualifying the accounts is not an option.

Rather than limiting the financial attest audit to the above mentioned outcome, it is necessary for Accountants General (Audit) to substantially test the transactions arising from the statistical

sampling exercise, by deputing field audit parties, and incorporating findings, as applicable, in the Report on State Finances. In addition, Accountants General (Audit) should verify areas where the disclosures in the Notes to Accounts state that information is incomplete. The Finance Accounts are also products of the CAG and it is incumbent on Audit to provide such information as will make the Finance Accounts complete and reliable documents.

Ultimately a decision is to be taken whether the CAG is obliged to provide information that has not emanated from the accounts, legislations, financial rules or regulations and audit. If it is decided that the CAG should also provide some level of trend analysis, economic analysis, management analysis, graphical representation of data etc., then, this information is more appropriately placed in the Finance Accounts than in the Report on State Finances. The Report on State Finances should entomb the gravitas and professionalism befitting the Constitutional role of the CAG and limit itself to purely audit findings. In the event that such reduction results in only a report of a few pages, this audit report can also be incorporated along with audit certificate in the Finance Accounts instead of appearing as a standalone document.

REFORMING THE PUBLIC PROCUREMENT SYSTEM

Dr Subhash Chandra Pandey*

This paper briefly summarises the institutionalization of public procurement rules through manuals and rule books, highlights some of the common problems and shortcomings in the present procurement system, profiles on-going reforms and the issues requiring resolution.

Procurement of goods and services as part of consumption budget; procurement of capital assets; outsourcing and Public Private Partnership contracts all constitute a very significant audit risk area because of sheer magnitude of financial implications and range of complexity. For the extended public sector covering the Union and State governments, their corporatized Public Sector Enterprises, Statutory and non-statutory Autonomous Bodies including urban and rural local bodies, the 'annual procurement budget' [i.e., total budget less salaries and transfer payments like grant-in-aid, pensions and subsidies] is over 30% of GDP. There is no formal system of aggregating and reporting this data. This is rough estimate based on combined Union and State expenditure being ~ 30% of GDP and the aggregate turnover of Union government PSEs being ~20% of GDP. The procurement profile is highly skewed with high-value contracts (say $10m plus contracts)

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covering may be less than 2% of GDP though lack of data in public domain remains an issue.

Clearly, public procurement level is rather high and thus the governments and government controlled entities have a very high leverage on the economy in generating demand, consumption, investment, jobs and growth. Government, by virtue of its purchasing power can steer the market in a particular direction. Public procurement also serves as an instrument to attain social outcomes. By way of preferential treatment in procurement, it may be used to promote indigenization of foreign technology, development of backward regions or protection of small scale industry. Of late, procurement is also being leveraged especially by some foreign countries to promote the causes of environment, human rights, protection of children and gender equality. Study of public procurement system is important because of the high stakes involved in it.

Taxpayers look for value for money, transparency and non-discrimination, quality of goods, responsiveness / efficiency of service providers while vendors look for a level playing field. Infrastructure development and modernization of defence/police involve very high value contracts with liabilities spanning several years. Governments also try to use public procurement to influence enforcement of labour laws like provision of minimum wages and health/social security benefits to workers. Major governance challenges are involved because the image of any Government is largely influenced by the quality of public procurement.

Existing Regulatory Framework

The regulatory framework for this massive 'public procurement expenditure' is provided by the General Financial Rules promulgated by the Union Ministry of Finance, guidelines issued by the Central Vigilance Commission, a statutory anti-corruption watchdog institution. In 2006, the Ministry of Finance also promulgated two Manuals, one on procurement of goods and

another on procurement of consultancy services as a standard reference point for various government agencies. The Manual of Director General Supplies and Disposal, a government agency created to handle centralised procurement and conclude rate contracts is another reference. These sources provide a general framework and do not go into many procedural aspects. Many government departments handling specialised functions like Railways, Defence, Telecommunication, many CPSEs and State governments have their own procurement manuals/rules/ guidelines. Many of these entities do not have formally promulgated public procurement manuals and polices.

Presently, there is no law passed by the Parliament or any State Legislature to regulate public procurements, though these have always been controversial with allegations of favouritism, inefficiency, quantitative and qualitative compromises and consequent corruption and kickbacks. Procurement related corruption formed one of the action points for the high powered Group of Ministers on whose recommendation a draft legislation was prepared. The Public Procurement Bill, 2012 was introduced by the Ministry of Finance in the Lok Sabha on May 14, 2012. The Bill seeks to regulate and ensure transparency in the procurement process. Salient features of the Bill are as follows:-

- A procuring entity could be a Ministry or Department of the central government, any Central Public Sector Undertaking, any company in which the government has a stake of more than 50%.
- This Bill shall not apply to procurements which are less than Rs.50 lakh, emergency procurements made for disaster management, and procurement for the purpose of national security.
- The basic norms that the procuring entity shall adhere to include: (a) ensuring efficiency, economy and transparency; (b) provide fair and equitable treatment to bidders; (c)

promote competitiveness; (d) ensure the quality is consistent with the price of the bid; and (e) prevent corruption.

- The Bill also defines a Code of Integrity for the procuring entity or Central Purchase Organization (CPO) as well as the bidders. It prohibits acceptance of bribe, collusion, misrepresentation, coercion or threat, and obstruction in the auditing process of the procurement made.
- The procuring entity shall first determine the need for the procurement and estimate the cost of the procurement based on certain specified matters. It may publish information regarding planned procurements.
- The CPO shall not limit participation of bidders or discriminate against or amongst bidders except for the protection of public order and morality, animal or plant life, intellectual, national security. The central government may make procurement mandatory from certain bidders only on the grounds of promotion of domestic industry, socio economic policy, or other considerations in public interest.
- The procuring entity may specify certain requirements for the qualification of bidders. It may also engage in a pre qualification process prior to inviting bids. The pre-qualification shall ordinarily be for a single procurement.
- The CPO may maintain a panel of registered bidders to help identify reliable bidders for certain class of procurements.
- The procuring entity may make modifications to the bidding document or issue clarifications before the last date of submission of bids. It may allot extension of time for submitting the bids if the clarifications need to be taken into account while submitting the bids. .
- The evaluation criteria of the procurement bids shall include

among other factors the price; cost of operating, maintaining, and repairing the goods; time for delivery and completion; terms of payment and guarantee; and qualities such as reliability, and functional competence.

- The Bill provides for exclusion of a bid if the procuring entity determines that the bidder is not qualified; bid contains false information; conflict of interest involved; a bribe or gratification given by a bidder; etc.
- The six methods of procurement listed in the Bill are (a) open competitive bidding, (b) limited competitive bidding, (c) single source procurement, (d) two-stage bidding, (e) electronic reverse auction, and (f) request for quotation and stock purchase.
- The Bill provides for a Central Public Procurement Portal to ensure transparency in the procurement process. Information such as pre-qualification document and details of bidders shall be displayed on the Portal.
- The central government shall constitute one or more independent procurement redressal committees. Any prospective bidder aggrieved by the decision of the CPO may file an application with such a committee.
- The Bill states different degree of penalties for offences such as taking gratification in respect of procurement, interference with the process, making vexation, frivolous or malicious complaints, and abetment of offences.
- The central government shall debar a bidder if he has been convicted of an offence under Prevention of Corruption Act, 1998 and the IPC. A bidder shall be debarred from the procurement process if he breaches the code of integrity for a period not exceeding two years.

Objectives in public procurements

- The basic guiding principles of public procurement include the following:
- Maximising economy, efficiency and effectiveness in procurement. This would mean purchasing of goods / services of required specifications for the intended purpose in a required time frame at the most economical price.
- Fairness i.e. providing fair and equitable treatment to all prospective suppliers / bidders.
- Competition among suppliers for supply of goods / services to be procured so that efficiency can be rewarded and procurement can be made at the most economical price.
- Achieving transparency in the procedures relating to procurement.

The 3 Es - economy, efficiency and effectiveness – and principle of non-discrimination form the core values of the system. Following are some of the representative objectives in public procurement:

- Get the best value for money.
- Provide access to all eligible bidders.
- Promote competition.
- Ensure transparency and openness.
- Build in accountability.
- Reduce scope for corruption and abuse.
- Develop domestic economy.
- Compliment other public policies.
- Be a model purchaser and employer.

Broad parameters of existing system

Purchase Preference and Price Preference Policy: Such policies giving preference to Public Sector Enterprises were in force under which a PSE could be awarded a contract if its revised offered price was matching or at most within 10% of the lowest technically acceptable offer. The Union government has abandoned such preference policies in 2008. Some departments, States, agencies follow the system of 'nomination' i.e., awarding the contracts/works to another government agency but overall trend is to move away from preference and nominations and let government agencies compete with others. Micro, small and medium enterprises (MSME), Khadi and Village industries (KVIs), and certain government sponsored co-operative societies continue to have limited preferences. However, certain items have for long been 'reserved' for exclusive production in and/or procurement from small scale industrial units. The list of items reserved for production by SSIs has been gradually pruned down. Now under an Act of Parliament, a broad percentage share in total procurement is sought to be earmarked for procurement from MSMEs.

Offsets Policy The government has been pursuing a policy of seeking 'offsets' in very high value contracts with overseas suppliers with a view to promote indigenization and domestic industry. Typically, it involves licensed production and/or production under transfer of technology agreements but the offsets policy for defence procurements provides a very big menu of options including FDI, sourcing from India, exports or investment in kind. So far Civil Aviation and Defence are the two major sectors having active offset agreements.

Encouraging Centralised procurement to leverage economies of scale and enhance bargaining power At one point, the belief in demand aggregation as a prudent policy led us to the establishment of DGS&D, which made procurements on behalf of almost all Central Government ministries and departments. Too

much centralisation of procurement often leads to generation of very large demands, indifferent approach particularly towards quality, associated delays and unhealthy practices. Hence, DGS&D's role is now redefined with focus on providing procurement related services to the user Departments like market research, rate contracts, operating e-procurement web portal etc.

Encouraging e-procurement This has been on the reforms agenda for at least last 7 years with Ministry of Finance issuing its first circular on 10th January 2005 but its implementation has been slow due to certain e-procurement portal related outsourcing contracts themselves getting into controversies, general resistance to change and logistical problems in networking such geographically dispersed network of production, distribution and consumption. States have done better. In fact, Andhra Pradesh pioneered the web portal initiative. Of late, this process has picked up momentum and DGS&D's web portal is now gaining increased coverage. Mandatory public of all government tenders on a common web portal has been made compulsory.

Standard modes of procurement include single vendor, limited vendor, open domestic competition and open global competition. For complex procurements, Notices inviting Expression of Interest (EoI) are sought from potential bidders and after consulting them a formal tender or RFP- request for Proposal is issued, typically inviting bids in two parts, technical bid and price bid in separate sealed covers. The technical bids are evaluated by a specialist committee who select the vendors whose offers are technically acceptable. The price bids of only such vendors are opened and the contract is awarded to L1- the lowest bidder after factoring all costs to the purchaser including taxes and delivery costs upto specified destination. Negotiations are not allowed except with L1 in special circumstances of limited competition. [After the successful auction of 3G spectrum based on multi-stage bidding, it is contemplated to extend the same methodology in awarding all high value, complex projects/acquisitions.] Splitting

the contract for awarding to multiple vendors is allowed if so specified in the RFP for advance information of potential bidders.

Major concerns in the procurement regime

Some of the representative concerns in the procurement system are discussed below:

a) Existence of multiple procurement guidelines & procedures : A major problem expressed by the procurement officials is the confusion created by the existence of multiple procurement guidelines and procedures established by multiple agencies. There is neither a single comprehensive public procurement standard nor a single nodal agency to deal with public procurement policy. In the US, the Federal Acquisition Regulation is the public procurement standard which codifies a uniform policy for acquisition of supplies and services by executive agencies. The procedures issued by the various other organizations are only supplementary to these regulations. Office of the Federal Procurement Policy which operates these regulations is centrally responsible for all policy matters relating to public procurement. This office is headed by a committee consisting of the heads of the major procuring organizations. There is an urgent need to put in place a (similar) comprehensive public procurement standard in India with a single authority to handle public procurement issues. The office of the DGS&D can be reconfigured to serve as the nodal agency for all public procurement issues. It should also operate a help desk to provide clarifications and guide the procurement officials.

b) Overt emphasis on procurement procedures and guidelines : Another anomaly in our public procurement regime is that there is an attempt to apply the procurement procedures and guidelines in the letter without an

appreciation of the spirit behind these stipulations. These procedures and guidelines have been framed to uphold the values of competition, transparency, fair play, integrity and value for money while undertaking procurement. The ultimate test of any procedure is its ability to promote these values and adapting to the situation at hand.

c) Poor quality of manpower : The quality of manpower which operates the procurement system is equally crucial. In India, public procurement has never been treated as a specialized activity requiring specialized knowledge and skills. There is a need to either have qualified staff handling procurement or to provide adequate professional training to convert the procurement officials into procurement managers.

d) The fear of vigilance : The lurking fear of landing in vigilance cases, even amongst honest employees, withholds them from giving off their best to the organisation. This fear arises out of the uncertainties about the view that would be taken by vigilance organisation in case of an inadvertent mistake without any mala-fide intention. The numerous and ever changing rules also give rise to such fear.

e) Frequent updates of manuals : In some cases, overemphasis on swift updates of manuals also creates a problem. Those responsible for procurements are not aware of immediate changes and thus are at variance with latest guidelines or instructions.

f) Multiple interpretations of manuals : There has been cases where the same procurement manual has been subjected to multiple interpretations by different set of people. A glaring example would be the issue of 'negotiations with L1' where notwithstanding the clarifications by the CVC, different officers have been making subjective interpretations.

g) Frequent inter-change with other assignments : One can always pick up the threads of the job provided he is there for a stable period. The bureaucratic system in India, however, does not allow for this leeway. As a result, incumbents face frequent transfers due to which they cannot do complete justice to their professional expectations. This tendency discourages job specialization.

h) Lack of avenues / interest in knowledge building : While procurement managers at top level do take interest in knowledge building and keep themselves updated about various facets of procurement including market trends, the same is not true for all levels. In fact, many procurement managers are not even aware about the basic tenets of procurement manuals applicable to their domain area.

i) Lack of centralised data sharing facility: Broadly speaking, data sharing is the practice of making data used for scholarly research 'available' to other investigators. The role and utility of data sharing is quite well known. Whether it is decision making, crisis management, operational issues, negotiations or training and capacity building exercises, the availability of updated data induces elements of rationality and objectivity into decisions that are likely to be effective and sustainable. In the organised sectors such as Government, the role of data sharing cannot be undermined since it brings a lot of uniformity and cost-effectiveness into the hitherto vast and complex bureaucratic organisation. However, while the Government is working on a national 'data sharing policy', lack of data sharing facility obstructs procurement managers to take informed and enlightened decisions.

j) Absence of a central authority to oversee procurement related issues : Presently, there is no central authority that is exclusively responsible for defining procurement policies and for overseeing compliance with the established procedures. The ministries or departments have been delegated full powers to make their own arrangements for procurement of goods. In case however, a ministry or department does not have the required expertise, it may procure goods through the Central Purchase Organization (DGS&D).

k) Absence of an exclusive law governing public procurement : In the absence of an exclusive law governing public procurement, the conditions governing the contract contain provisions for settlement of disputes and differences binding on both parties. Thus, there may be problems related to uniformity of contractual conditions, or the interpretation / implementation of the same.

Public procurement and competition concerns

Most of the time, public procurement is carried out through competitive bidding or tendering process with the intention of achieving maximum economic efficiency through competitive process. Any anti competitive practices in a procurement process, such as collusion, bid-rigging, fraud and corruption, could lead to artificially raised prices, or compromise on the parameters and consequently adversely impact public expenditure and the precious national resources. Ensuring effective functioning of public procurement markets is also part of good governance and necessitates two distinct but inter-relatedchallenges: (i) ensuring integrity in the procurement process (i.e. preventing corruption on the part of public officials) ; and (ii) promoting effective competition among suppliers, including preventing collusion among potential bidders.

The Competition Commission of India, that has been striving to address the competition concerns in the public procurements, has studied the issue in detail and identified following anti-competitivebehaviour in the procurement process:

a) Collusive bidding : Collusive bidding can take form of an agreement among firms to divide the market, set prices, or limit production. It can involve 'wage fixing, kickbacks, or misrepresenting the independence of the relationship between the colluding parties.

b) Bid rotation : In bid-rotation schemes, conspiring firms continue to bid, but they agree to take turns being the winning (i.e. lowest qualifying) bidder. The way in which bid-rotationagreements are implemented can vary.

c) Cover bidding : Cover (also called complementary, courtesy, token or symbolic) bidding occurs when individuals or firms agree to submit bids that involve at least one of the following: (1) a competitor agrees to submit a bid that is higher than the bid of the designated winner, (2) a competitor submits a bid that is known to be too high to be accepted, or (3) a competitor submits a bid that contains special terms that are known to be unacceptable to the purchaser.

d) Bid suppression: Bid suppression schemes involve agreements among competitors in which one or more companies agree to refrain from bidding or to withdraw a previously submitted bid so that the designated winner's bid will be accepted.

e) Market allocation: Competitors carve up the market and agree not to compete for certain customers or in certain geographic areas. Competing firms may, for example, allocate specific customers or types of customers to different firms, so that competitors will not bid (or will

submit only a cover bid) on contracts offered by a certain class of potential customers which are allocated to a specific firm.

Procurement reforms: initiatives by the Government

Union Government has launched a series of initiatives to streamline the public procurement system. Some of them are as follows:

a) Formation of Group of Ministers on corruption: The GoM, in its meeting on 14th February 2011 decided to recommend among others, discretionary quota of ministers that will have monetary impact (38 out of 84 ministries have accepted to have discretionary quotas), permission for prosecution to be given within three months, and fast track procedure for processing corruption cases against guilty bureaucrats.

b) The Cabinet Secretary set up a special committee headed by former Competition Commission of India (CCI) Chairman Vinod Dhall to give recommendations on a comprehensive public procurement law. The Public Procurement Bill 2012 referred above stems from this Committee's report and subsequent inter-ministerial consultations.

c) Public procurement policy in offing : The Government is also working towards a central public procurement policy to bring transparency, curb irregularities and corruption.

d) Single web portal to streamline procurement has been started. All government procurements are being streamlined and every vital information related to such procurements would be posted on a 'single procurement portal'.

e) A national institute dedicated to public procurement is under consideration.

f) Compulsory course on public procurement : Pending the formation of a dedicated cadre on procurement, all public procurement officers are being encouraged to have a minimum level of understanding on public procurement.

g) Institutionalisation of dedicated financial advisers for various procurement authorities with substantial delegation of powers is also under consideration on the lines of practice followed in Defence.

h) Strengthening of audit : Concurrent audit for all high-value procurements as well as involve independent team from outside the purchasing department is under consideration so as leave little space for 'post-facto scam reporting'. Presently, the Ministries appoint 'Independent Monitors' in consultation with the Central Vigilance Commission to oversee/vet the procurement process in very high value procurements so as to pre-empt any irreversible damage ex post.

I) Facilities for data sharing : Non-sensitive data sharing related to commodity prices, market trends, base pricing, and L1 rates could be made available for better and enlightened decision making by procurement managers.

j) Frequent sharing of experiences : Despite very high volumes of procurements in India, there is little space for exchange of views either amongst various departments / ministries of the Government or with the private sector. The Competition Commission of India has been organising regular seminars on procurement since last couple of years, but the mandate is largely focused on institutionalizing 'anti-monopoly practices'. Government procurement system is being fine tuned based on the experiences of the private sector as well as from the experiences of other countries.

There is an ongoing effort to sanitise the procurement system from the ill-effects of excessive reliance on "L1 syndrome". Two alternatives being sporadically practiced in select contracts are giving weight age to ranking/scores in technical evaluation round to price bids and multi-stage bidding like in the auction of 3G spectrum.

Two other important methodological issues connected with the "L1 syndrome" having substantive implications are treatment of taxes and the lifecycle cost of an asset in bid evaluation as elaborated below.

To offset the cost disadvantage of some particular type of production units, the government typically offers some tax exemptions and when such firms compete against firms not having such tax exemptions, or where firms subjected to differential tax regime compete in procurement, there are demands of level playing field by excluding taxes/duties in reckoning the L1. Presently, offloading of certain taxes is allowed when domestic firms compete against foreign firms in a tender. However, where the competition is only between domestic firms, the general rule continues to be to reckon L1 based on all costs to be paid by the purchaser which means including any taxes/duties payable. This sometimes seem to favour the firms located in lower tax States or enjoying tax exemptions. Until the taxation system is harmonised on pan India basis and tax exemptions are phased out or substituted with cash subsidies, there are bound to be issues about irrational taxation providing questionable protection to inefficient units.

Lifecycle costing of an asset in bid evaluation is an extremely complicated issue. For high value equipment, there may be scenarios where competing equipment have widely different equipment cost and maintenance cost. L1 determined purely based on upfront equipment cost ignoring the O&M cost over its lifecycle may turn out to be imprudent purchase later on. Attempts to assess the O&M cost over lifecycle or at least for a few initial years and add

it to the tendered cost of equipment is being tried on a case by case basis but the whole exercise is fraught with risky imponderables and subjective judgment. So long as there is no credible contractual commitment to adhere to the projected O&M costs and the actual fruition of underlying assumptions, this will remain a contentious issue. One can safely draw a parallel with the benefits and risks associated with accrual accounting. It has distinct theoretical advantages over cash accounting but carries the risk of arriving at numbers based on subjective judgment and therefore questionable. We are experimenting and grappling with the issue.

Finally, there are some concerns – some legitimate and others exaggerated, as in any reform process that too much transparency too soon unmindful of what the competitors are doing or can do is bad. Protection of commercial secrets, proprietary technological information, and sensitive price information are all legitimate concerns. In a fair system of bid challenge, winning bid can be provided to the loser on request but is it really necessary to put everything in public domain. We have to guard against the risk of uninformed criticism and uninformed or vexatious litigation stalling public procurement.

Though not exhaustive in its coverage and deficient in parts, the public procurement Bill marked an improvement over the existing system. Getting the legislation passed is only part of the reform process. The Devil lies in details, which are left to be filled up through the subordinate legislation and in the institutional implementation mechanism.

Unfortunately the Bill which was introduced in Lok Sabha on May 14, 2012 lapsed on the dissolution of the House in May 2014. No substitute is in sight. With high-stake auctions such as telecom spectrum and coal block allocation and enhanced level of planned capital acquisitions for Defence Services, the importance of having a robust procurement system that can withstand Audit and judicial scrutiny on the touchstone of public interest, integrity, transparency and fair competition can hardly be over-emphasized.

SOCIAL WELFARE THROUGH CENTRALLY SPONSORED SCHEMES

Govinda Bhattacharjee*

The constitutional mechanism of the Finance Commission and extra-constitutional mechanism of the now-defunct Planning Commission, which was created by a resolution of the Government of India in March 1950, were both created to address the problem of striking an equitable balance between the socio-economic growth of individual states and the disparity that exists between them. The Finance Commission strives to achieve this by transferring resources from the richer to the poorer states through the agency of the Central Government, while the Planning Commission sought to address this problem by allocating Central resources through its Five Year Plans to meet the growth needs of the individual states - by ensuring higher per capita allocation to the poorer states. During the 1950s and 1960s, about two thirds of the Central resources thus used to be transferred to the states through the Planning Commission, which share was subsequently reduced to little.less than half before the Planning Commission was itself disbanded earlier this year.

Finance Commission recommendations cover both the vertical transfer from the Centre to the states as well as horizontal transfers among the states, from the richer to the poorer states, hence these are equalization transfers. Rangarajan and Srivastava (2011)

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pointed out that in the vertical transfer of resources from the centre to the states, there has been a long term stability. While the relevant shares and ratios have undergone changes, the relative shares of the centre and the States have more or less remained stable, especially since the Seventh Finance Commission (1979-84). They further pointed out that prior to the transfers, the Centre collected about 63-64% of the combined revenue receipts, while after transfers states get about 64% of the combined revenue receipts. The states spend nearly 57% of the combined revenue expenditure of the Centre and the states, while the centre spends only 43% of the combined revenue expenditure by retaining only 36% of the revenues.

Finance Commissions are constituted once in every five years under article 280 of the Constitution of India to recommend transfer of central resources to states by two mechanisms: transfer through devolution of taxes and transfer through grants, keeping in mind the redistributive considerations as well as fiscal needs of the states, while giving adequate importance to the consideration for incentives to be given to the states that perform better in terms of fiscal and financial management. The transfers are determined by the three guiding principles of ensuring equalisation, equity and efficiency. Mechanism for automatic devolution of high yielding union taxes to the states has been provided in the Constitution itself in the taxing powers of the union and the states as defined in the articles 270 and 272[1], while grants are to be given to the states under article 275 of the Constitution. While the devolution of taxes is made to reduce both the vertical imbalance between the Centre and the states in terms of availability of resources for development, as well as the horizontal imbalance between the rich and the poor states, the Central grants-in-aid to the states are recommended for bridging their non-plan revenue deficits, for local bodies and Panchayati Raj institutions, for disaster relief, management of environment and sustainable development, upgradation of standards of services and outcomes, for special purposes like health, education etc. as well as for state specific purposes. These are all non-plan transfers, while the transfers made at the behest of the

[1] Art 272 has since been repealed by 80th Amendment to the Constitution enacted for giving effect to the recommendations of the 10th Finance Commission.

Planning Commission are referred to as plan transfers. Constitution does not distinguish between plan and non-plan expenditure, it only provides for yearly transfers to the States in aid of their revenues from the Consolidated Fund of India in article 275 and recognises the need for different states requiring different amounts in respect of such transfers; plan transfers do not have any such statutory authority and are often discretionary in nature. These are made under article 282 of the Constitution which only enables grants to be given for any public purpose by the Union or the States, even if that purpose may not be within the legislative jurisdiction of the Centre or the States.

It has remained a matter of debate whether the plan grants are covered under article 275 mentioned earlier or 282.[2] As pointed out by Paranajape (1988), article 282 derived from section 150 of the Government of India Act 1935 that was mainly used to enable the special Central assistance to Bengal in the wake of the famine of 1943; later ad-hoc grants were also made under this section to provide for special contingencies and to meet unforeseen expenditure needs. This is further supported by the fact that while article 275 is included under part XII of the constitution under the sub-title "Distribution of Revenues between the Union and the States" indicating the regular nature of such distribution, article 282 is included under the sub-title "Miscellaneous Financial Provisions", indicating the non-regular nature of transfers under this provision. Legally, therefore, a plan transfer that includes transfer of revenue from the Union on a regular basis should be covered under article 275 in keeping with the spirit of the constitution, and not under article 282 which gives unfettered discretion to the Centre, and a number of legal and constitutional experts have opined from time to time that it was not intended by the Constitution to be a channel of regular transfers and hence was illegal (Paranajape 1988), Vithal&Sastry (2001).But generally the accepted practice institutionalized by the successive Central Governments has been that while the Finance Commissions looked

[2]Ninth Finance Commission took legal opinion and expressed the view that the plan transfers were very much within the purview of the Finance Commission and covered under article 275.

at the non-plan side of the revenue expenditure and made recommendations for grants to bridge the non-plan revenue deficits of the states, plan grants, revenue as well as capital, are recommended by the Planning Commission. While plan revenue expenditure pertains to revenue component of the different plan projects under execution, capital expenditure is overwhelmingly plan expenditure. The Central Government has also largely limited the role of the Finance Commission only to the examination of non-plan part of the revenue expenditure as indicated in the Terms of Reference of the Finance Commissions.

Distinction of expenditure into plan and non-plan components has again been a subject of debate during the last few decades and to resolve it the Planning Commission had appointed a "High Level Expert Committee on Efficient Management of Public Expenditure" headed by Dr. C Rangarajan which had submitted its report in July 2011in which they had recommended for removal of the distinction between plan and non-plan expenditure, leaving the Planning Commission only with the task of formulating the five year plans.[3] The Government is yet to accept this report.

It must be pointed out that states were more dependent on the Planning-Commission-allocated non-statutory transfers of a discretionary nature outside of the constitutional machinery for resource transfers through the Finance Commission because such non-statutory transfers used to constitute the bulk of total transfers to the states. George and Gulati (1985), in their study for the period from 1956-84, had pointed out that states' dependence on the Centre had increased over time as a major part of the total devolution of fiscal resources was dependent on Centre's discretion, further the nature of such dependence was also undergoing a change which was not in keeping with the spirit of constitutional devolution. About 60 percent of the gross transfers to the states were effected by the Planning Commission during 1951-84, and the increase in the discretionary component was leading to increasing inequality in such transfers[(George & Gulati (1985)]. As shown by Khemani

[3]Report of the Rangarajan Committee (2011), pp. 6-7

(2003) in his studies of inter-governmental transfers during 1972-95, allocation of resources by the Planning Commission was often influenced by political rather than rational economic considerations, with the result that the states ruled by the same political party at the Centre was often favoured by higher allocations. In the statutory transfers by Finance commissions, however, no such discriminations were noticed. Unlike the statutory transfers by Finance Commissions under article 275 mentioned earlier, Planning Commission transfers are discretionary by nature, and hence more vulnerable to political considerations. Singh and Vashishta (2004) also echoed similar observation in their study of the inter-governmental transfers during 1983-93, where they noticed states with more political relevance to the ruling dispensations at the Centre wielding greater bargaining powers with the Central Government.Paranjape (1988) rightly argued that the role of the Planning Commission as the most important extra-Constitutional allocator of resources was jeopardizing the Centre State relations in the matter of development planning and financing. Garg (2006) pointed out that Central assistance for the state plans have been used as the principal instrument of control of the states by the Centre for influencing them and for interfering with the states' autonomy.

In 1968, the Fifth Finance Commission was constituted by the Government of India to recommend the devolution of taxes and grants to the states for the period 1969-74. It submitted its report in 1969, where it noted huge disparities existing among the 17 Indian states. The richest state had a per capita income of Rs 619 and the poorest Rs 292 only; the largest had a population of 9 crore and the smallest only 4 lakh. It expressed concern that the need for equalization among the states demanded a more positive redistributive policy than simply dividing the grants on the basis of population – by taking the reality of the rich and poor states into account. In this context it correctly observed,

The transfer of funds recommended by the Finance

Commission can only partially fulfill the objective of equalization in view of the division of functions which now exists between the Planning Commission and the Finance Commission whereby the former looks after developmental needs and gives plan grants for this purpose. As the language of Article 275 stands, there is nothing to exclude from its purview grants for meeting revenue expenditure on Plan schemes nor is there any explicit bar against grants for capital purposes.

We are not, however, able to agree with this view as it would blur the entire division of functions between this Commission and the Planning Commission[4].

Thus for the first time, it considered the Planning Commission transfers to look at the totality of funds at the disposal of the states before making its recommendations, though it was asked to recommend grants under article 275, 'other than the requirements of the Five Year Plan'.The terms of reference of the next finance commission made it abundantly clear that the Commission was to look only into the non-plan maintenance expenditure on plan schemes completed earlier and into the non-plan capital gap of the states, keeping the plan expenditure out of its reach.

Central Plan Assistance and Gadgil Formula

States now are given Central Assistance for their Annual Plans and Five Year Plans under:

(a) Normal Plan Assistance (NCA) for Central Plans and State Plans;

(b) Additional Central Plan Assistance for implementation of externally assisted projects;

(c) Additional Central Plan Assistance (ACA) for Centrally Sponsored Schemes;and

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[4]Report of the Fifth Finance Commission, Para 2.9, 1969.

(d) Special Plan Assistance (SCA) that includes Special Central Assistance for Hill and Border Areas, North Eastern Council etc.

The Normal Central Plan Assistance (NCA) is given as per a formula which is known as Gadgil Formula since 1969, after Dr. D.R. Gadgil, the then Deputy Chairman of the Planning Commission. The origin of the formula can be traced back to 1965, when the need for a set of principles was emphasized by some Chief Ministers for allocation of Central assistance to states for the Fourth Five Year Plan. The Gadgil formula was adopted to introduce into the discretionary nature of the plan assistance some semblance of rationality that effectively curbed the absolute discretion the Centre enjoyed over such transfers. This formula has been revised from time to time and is now called the modified Gadgil Formula or the Gadgil / Mukherjee formula for determining the Central Assistance to a State (after Dr Gadgil and Shri Pranab Mukherkee, the then Deputy Chairman of the Planning Commission). Under this formula adopted since 1991, the Central Plan assistance is given to the States based on a combination of criteria having different weightages.[5]

Before the Gadgil formula was applied, the states used to get more resources from the Centre as loans and less as grants, plan and non-plan combined, leading to increasing indebtedness of the states. This situation was substantially changed since the Fourth Plan onwards, after the Central assistance started getting distributed as per the Gadgil formula [Goswami (2007)].But the major contribution of the Gadgil formula has been to bring in discipline, transparency and objectivity in the plan transfers that severely attempted to limit the arbitrary discretion the Centre had hitherto

[5]30% of total Central Assistance is reserved for the 11 special category states. The rest 70% is distributed among the 17 general category states according to the following criteria with their respective weightages: (i) Population (1971): 60%; (ii) Per Capita Income: 25% (20% according to deviation method only for states with per capita income below the national average and 5% according to the distance method covering all States); (iii) Fiscal and Financial Performance: 7.5% (Tax effort: 2.5%; Fiscal Management: 2%; National Objectives: 3%, of which 1% each will be allocated for population control and elimination of female illiteracy; 0.5% each will be allocated on on-time completion of externally aided projects and success in land reforms); (iv) Rest 7.5 allocation will be on the basis of special problems of the states.

enjoyed over these transfers. Of course the Centre would devise another way of exercising its discretion through the mechanism of the so called Centrally Sponsored Schemes.

Centrally Sponsored Schemes (CSS)

The CSS followed from the Directive Principles in the Constitution that enjoins upon the state to "secure a social order for the promotion of welfare of the people" (article 38), or, to provide for "early childhood care and education to children below the age of six years" (article 45), or the "right to work, to education and to public assistance in certain cases" (article 41). In fact, the Government of India Resolution of 1950 establishing the Planning Commission mentioned the Fundamental Rights as well as the Directive Principles of State policy in the Constitution that 'the State shall try to promote the welfare of the people' and asserted that the objective behind setting up of the Commission was to further the 'declared objective of the Government to promote a rapid rise in the living standards of the people by efficient exploitation of the resources of the country, increasing production and offering employment opportunities'.[6] **However, no transfer of resources from the Centre to meet the needs of above is envisaged in the Constitution;** besides, the ad-hoc manner in which these schemes have been allowed to proliferate without any rhyme or reason, or the way many of these have been and are being run raises legitimate doubts about the sincerity of their purpose and in their actual and potential use more for meeting the political ends of the powers that be than for the stated purpose of improving standards of public services to the citizens of the country.

The Centrally Sponsored Schemes which are initiated by the Centre *de facto* constitute a ploy by the Centre to indulge in exercising its discretion to make grants to states – a discretion that the Gadgil Formula apparently took away. As at the end of 2011-12, there were as many as 147 CSS operating in the country, despite transferring a large number exceeding this to the states during many

[6] Resolution No. I.P(C) /50 dated March 15, 1950 constituting the Planning Commission, Paragraphs 3 and 4.

previous times.[7]

Till the Fourth Five Year Plan, Central assistance was given to states for implementation of the plan schemes within the state's jurisdiction. Funds were allocated scheme-wise and the system lacked the requisite flexibility and efficiency for efficient and effective implementation of these schemes. A separate classification for CSS was introduced in the Fourth Plan. Before that, most schemes for which funds were given in the Central Plan but which were implemented by the states were later transferred to the states as part of the state plans. At the end of the third plan, there were 92 such plan schemes which were, so to say, 'assisted' or 'sponsored' by the Centre. A sub-committee of the NDC had considered the need for harmonizing their structure and funding patterns with the schemes run by the states in 1967 and recommended a reduction in their number. But instead the draft Fourth Plan included as many as 147 such schemes which were finally cut down to 90, with varying funding patterns by the Centre and the States (between 50% to 100% of Central funding). Another NDC Committee appointed in 1968 recommended for the CSS a ceiling of 1/6th of total Central Plan Assistance to States, which were never heeded by the Central ministries which merrily went on increasing their numbers and bypassed this recommendation cleverly by treating them as 'Central Sector Schemes' though they were very much in the nature of CSS. This Committee also laid down the criteria for selection of a CSS, which mainly stipulated that they should relate to pilot projects, surveys and research; should have regional and inter-state character and an overall significance from the all India angle. From time to time, a large number of these schemes were transferred to the states and the resultant savings to the Centre were also transferred to the states as "Additional Block Assistance" based on the "Income Adjusted Total Population Formula".

During the 4th and 5th Plan periods, the administrative

[7]Till March 1977, Central assistances for centrally sponsored schemes were released by the Ministry of Finance in 8 installments; since then Central Ministries have been releasing these funds directly to the State Governments or executing agencies.

ministries went on introducing one CSS after another, ignoring the advice of the NDC Committee and the criteria for CSS laid down earlier and often without any justification. States did not object as all these were 100% financed by the Centre. When after the Emergency, the Congress Government was replaced by the Janata Government at the Centre, they terminated the Fifth Plan (1974-79) prematurely in 1978 while preparing to launch the 'Rolling Plan" and appointed a Committee to re-examine the running of the CSS. At that time there were 116 CSS, besides 74 other schemes of the same nature but called the Central Sector schemes in order to bypass the 1/6th limit for CSS (Vithal&Sastry, (2002), p 59). The Committee consulted the states which argued that a proliferation of these schemes run by the centre had effectively shrunk the amount of Central assistance available for state plans while the Centre argued that but for these innovative schemes, the states' development would not be uniform. The Committee recommended that the CSS should be financed 100% by the centrein respect of certain health, family planning schemes and power projects, while in respect of CSS for rural and agricultural development and for weaker section, the cost should be shared by the Centre and the states. These recommendations were adopted in the Sixth Plan (1978-83) where 70 CSS were transferred to the State Plans.

The Sixth Plan was reformulated by the newly elected Congress Government for 1980-85, treating the previous two plans as annual plans. But the number of CSS continued to proliferate and by the end of the Sixth Plan, their numbers had risen to 201. Their allocation which was Rs 1238 crore in 1980-81, was also increased to Rs 9318 crore for the revised Sixth Plan (1980-85) representing 35% of the total central Assistance for state plans, far exceeding the 1/6th limit that was laid down earlier.

It was also seen that the developed states gained from CSS in terms of per capita plan assistance while, the backward states like Bihar, Rajasthan, UP and Orissa received much lesser per capita assistance than they otherwise would have got under the Gadgil

formula due to the large number of CSS eating up a substantial chunk of the total Plan funds. Since most schemes required a matching grant from the States, states that were in a position to afford these grants reaped the benefits; some states of course gave its own part of contribution so as to attract the funds which they later diverted towards meeting their non-plan expenditure, mainly on account of salaries of their staff.

The NDC formed another Committee headed by Shri P V Narsimha Rao, the then Minister for HRD, in 1985 which added to the exiting criteria the condition that any CSS selected for implementation must fulfil an important national objective like poverty alleviation or providing the minimum standards of education, besides retaining 149 of the 262 schemes from the 6th plan period and removing any limit for outlay on the CSS. But the criteria recommended were so broad that it rather facilitated the continued proliferation of the CSS which went on as shown in Table 1:

Table 1: Centrally Sponsored Schemes

Plan Period	No. of CSS at the end of the plan	Total Allocation of Central funds (Rs Crore)
4th Plan (1969-74)	90	6145
5th Plan (1974-79)	190	6357
Annaul Plan (1979-80)	201	9318
6th Plan(1980-85)	262	15757
7th Plan(1985-90)	125	14104
8th Plan(1992-97)	236	29483
9th Plan(1997-2002)	360	99001
10th Plan(2002-07)	188	229762
11th plan(2007-12)	147	660506

(Source:4th to 8th Plan: Vithal&Sastry (2002), p. 19; 9th Plan onwards: B K Chaturvedi Committee Report on theRestructuring of CSS, Planning Commission (2011), p. 18)

As Vithal&Sastry observed,

> The original exercise at the time of the Gadgil formula first set a limit of 1/6 of total central assistance for State Sector Plan and then specified what type of schemes could be formulated within this limit. What all needed is now to reiterate their limit and ask some groups to decide schemes within that limit…..(2002, p. 76).

But the resistance to this came mainly from the Central Ministries dealing with State List, Ministries that had grown in size because ofthese schemes.And there lies the crux of the problem. These Ministries do not want to see any shrinking of their turfs; these are mainly the ministries of Agriculture, Health and Rural Development etc. These are the Ministries that handle thousands of crores of rupees of allocations under the CSS that they can dole out to the rural electorates, creating and using a niche for their political masters. During 2012-13, these 3 ministries alone consumed Rs 1.91 lakh crore, or 13% of the total expenditure budget of the Union. These Ministries have grown in size essentially on the CSS implemented by the States, and they are the ones that most strongly resist the scrapping of these schemes. No Government irrespective of the political dispensation that is in power would be likely to give up such easy privileges for buying votes. Besides, many of the flagship schemes run by the Central Government were also used as failsafe conduits to divert public money to party or private funds. The system was also playing havoc with state budgets since almost 60-70% of the total grants received by the States from the Centre passed outside their budgets directly to the executing agencies of the CSS, which could be autonomous Government organizations or NGOs or a combination of the two, and in the process the normal budgetary and accounting controls that regulate any Government expenditure were done away with, since any expenditure that is not passing through the treasuries would not be captured in the accounts compiled by the Accountants General of a state. In fact till today, there is no database in existence which would give up-to-date

information about all the CSS running within a State – their number, the money spent on these or the benefits from them that have accrued to the people. It is a typical case where public money is spent ostensibly on public purposes but outside the machinery of public accountability system ensured and enforced by the State government budget, accounts and Legislative or Parliamentary Committees – and all this in the name of economic and social welfare of the weaker sections of our society!

The 360 CSS at the end of 9th Plan consumed about 60% of total Central Assistance provided to the states. For the 10th Plan, the Planning Commission under a zero-base budgeting exercise had weeded out 48 schemes, besides merging 161 schemes into 53 and retaining the remaining 135 schemes, making a total of 188. For the 11th Plan, of the total allocation of Rs 6.6 lakh crore for 147 schemes, the 9 flagship schemes (IAY, MNREGA, PMGSY, TSC, NRDWM, NRHM, ICDS, SSA and MDM) alone consumed Rs 5.24 lakh crores or 79.4% of the total allocation. Consequently, as a result of much higher allocation to CSS, and also due to the fact that after the Twelfth Finance Commission recommendations, the Centre was only giving grants and not grants as well as loans as it used to give to the States earlier, the NCA to the States came down to 6.74% of the Centre's Gross Budgetary Support (GBS). The pattern of Central assistance also varied from 100% to 90% for NE States, 65% in SSA, 75% in IAY and a number of other schemes. One Expert Group headed by Shri Arvind Varma appointed in October 2005 recommended that all CSS funds should be routed through the State budget and hence subjected to the usual checks exercised by the Accountants General (Audit). This was of course found unacceptable by the Planning Commission which recommended establishment of a scheme-wise reliable information system with the help of the Chief Controller of Accounts attached to the Ministries. What was not mentioned was that the Ministries would not accept any independent authority exercising oversight functions over what they considered their exclusive turf.

A committee headed by Shri B K Chaturvedi was set up in April 2011 - it submitted its report in September 2011. Its major recommendations are:

(i) CSS with outlays less than Rs 100 crore made no national impact and hence should be weeded out or merged with other schemes;

(ii) Their number should be reduced to 59, categorized into:

(a) 17 flagship schemes to address major gaps in health, education, irrigation, rural and urban development etc. including the existing 9;

(b) 39 CSS classified into major sub-sectoral schemes to address sub-sectors of the major sectors like agriculture, education etc and sector umbrella schemes to improve the effectiveness of plan expenditure; and

(c) 11 ACA/ CSS schemes including 8 flagship schemes (AIBP, NSAP, JNNURM, RKVY, R-APDRP, RGGVY, BRGF), besides the existing 9;

(iii) NCA should not fall below 10% of GBS; except in case of new flagship schemes, all CSS would be 100% Centrally funded; and

(iv) "Efforts must be made to gradually move over to transfers through the State budgets…..Transfer mechanism should be worked out, so that over a period of Twelfth Plan all transfers are routed through State Governments and not directly to the independent societies at the State or district level." The 2014-15 now had adopted this approach.

Like the Rangarajan Committee report as mentioned earlier, the Chaturvedi Committee Report is also yet to be accepted by the Government. Till 2013-14, there were only 137 centrally sponsored schemes. Some semblance of reason was sought to be brought in later by restructuring these into 66 schemes, including the 17

Flagship programmes with significant outlays, for the remaining years of the ongoing 12th Plan (2012-17). It was also decided to abolish the direct transfer of funds for centrally sponsored schemes to agencies that were implementing these schemes in the states without routing the funds through their budgets. But much more needs to be done, in terms of integrating and streamlining these programmes further by co-ordinating, monitoring and directing their deliveries towards specific, target-oriented and time-bound outcomes. A suitable accountability architecture which is missing also needs to be created.

As pointed out earlier, article 282 has often been misused by the Centre to make discretionary transfers which were against the spirit of the Constitution. The Centre has often used the plan transfers as a means of exercising control over the states. The transfers under this article often lacked transparency. The intrusion of an extra constitutional authority like the Planning Commission into the working of Finance Commission in respect of transfer of resources from the Centre to the states through the means "discretionary transfers" as opposed to "statutory transfers" violates the principles of federalism implicit in the financial relations between the Union and the States as defined in the Constitution of India. The situation is made murkier by the implementation of numerous Centrally Sponsored Schemes (CSS) which include the flagship schemes of the Central Government on which astronomical sums are spent each year, often with questionable justifications. All these constitute a politically maneuvered aberration in the Indian financial system and in fact, an assault on the fiscal federalism principles. This aberration was further eroded by the direct fiscal transfers by the Centre outside the States' budgets and accounts, bypassing the internal controls that are inherent in budget execution and accounting. They not only render the process illegal and unconstitutional, they dilute and undermine the authority of the States. These direct transfers under the CSS have been burgeoning since the last few decades and now constitute

between one-half and two-thirds of the total Central grants coming to the States.

Table 2 shows such transfers during the last 5 years, from which it is seen that the total amount of Gadgil Formula transfers form a miniscule part of the total Central plan transfers to States, barely amounting to 10% of the total transfers during the last 4 years and the current year (budget estimates). Direct transfers far exceed the Central assistances for State plans and the total amount of transfers in respect of Central Plan and Centrally Sponsored Plan Schemes that is routed through the State budgets is a small part, barely 30%, of the total transfers under the Plans. It makes a mockery of the principles of federalism in fiscal and financial relations between the Union and the States; and not simply that. There seems to be a pattern in systematically and deliberately increasing the extra-budgetary transfers at the cost of budgetary transfers. The transfers under Gadgil formula have suffered the most; their share in total transfers over the last 3 plans (ninth to eleventh) has gradually fallen from 35% during ninth plan to only 10% during 11th plan, while the share of direct transfers has increased from 20% to 52% over the same period. It was a way of making sure that the Gadgil transfers that limited the discretion of the Centre were rendered ineffective, and to remind the States of their dependence upon the Centre. The plan funds routed through the state budgets constituted only 29% of the total transfers of the State, another glaring example of disregarding the autonomy of the States.

Table 2: Central Plan Assistance to States (Excludes UTs with/without Legislature

RsCrore

	2008-09 Actuals	2009-10 Actuals	2010-11 Actuals	2011-12 RE	2012-13 BE
Central Assistance for State Plans, of which	73.611	79,157	89,747	101,105	124,249
NCA as per Gadgil formula	**15948**	**17,442**	**20,008**	**21,831**	**25,589**
Additional Central Plan Assistance to States for Central and Centrally Sponsored Schemes passed through State Budgets	50,319	49,604	55,163	61,275	78,507
Special Plan Assistance including Special Central Assistance for Hill and Border Areas etc.	7,344	12,111	14,576	17,999	20,153
Direct Transfer of Central Plan Assistance to State/ District Level Autonomous Bodies / Implementing Agencies outside budget	83224	90,520	118,740	112,803	133,358
Percentage of Direct Transfers in Total Transfers	51.92	51.72	56.06	51.74	50.64
Percentage of Gadgil Formula Transfers in Total Transfers	9.95	9.97	9.45	10.01	9.72

(Source: Union Budget 2011-12 and 2012-13: Expenditure Budget, Vol. I, Statements 16 to 18.)

Some interesting trends are noticed in this. First, the statutory transfers under Finance Commissions' recommendations initially constituted only one third of the total transfers during the first plan period, this proportion has gradually increased to 53% during the 10th and 11th plan periods. Still about half the total transfers take place through non-statutory mechanism of the Planning Commission. Second, the non-discretionary Plan assistance to states (under Gadgil Formula and other transfers tied to specific projects) use to dominate the total plan transfers, but the proportion of such transfers in the total transfers have declined progressively, with the result that now the discretionary transfers, most of which are extra-budgetary, account for the bulk of such transfers.

On account of huge funds allocated under the ill-conceived, ill-designed and poorly implemented Centrally Sponsored Schemes in the name of social welfare, Union budgets are increasingly becoming statements of subsidies doled out in the name of the poor and passed on to the states as grants, without appropriate monitoring and control mechanisms. In 2008, Mr Chidambaram magnanimously granted the Agricultural Debt Waiver and Debt Relief Scheme 2008 under which Rs 60000 crore of debt owed by the marginal/ small farmers were waived. A recent CAG report on the implementation of this scheme pointed out how the funds meant for debt relief to farmers were diverted to benefit the private micro-financing institutions[i]. Inefficient designs and inadequate controls in respect of most flagship welfare schemes like MNREGA would result in similar leakages and large scale misappropriation of public funds.

Thankfully the first step has been taken to stop all these aberrations that have long plagued our fiscal and financial systems by disbanding the anachronism called Planning Commission that enjoyed unrestrained and illegitimate authority to play with taxpayers' money. The next logical step would be to transfer all Centrally Sponsored Schemes to the states along with all resources meant for them. The State would then decide which ones they would need to implement and how. That would also signal the end of existence of all Central Ministries dealing with state subjects that consume a substantial portion of the taxpayers funds and dole these out in the name of centralized welfare to buy votes, money that otherwise could create productive capacities in the economy to serve the cause of social and economic welfare much better.

The newly constituted NitiAAyog must devise an efficient mechanism for monitoring and evaluating the implementation of these programmes by the States. On this primarily will depend whether it truly becomes what its name suggests - the National Institution for Transforming India.

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[i] http://saiindia.gov.in/english/home/Our_Products/Audit_Report/Government_Wise/union_audit/recent_reports/union_performance/2013/Civil/Report_3/Exe_Summ.pdf

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AN INTRODUCTION TO INTERNATIONAL STANDARDS OF SUPREME AUDIT INSTITUTIONS (ISSAIs)

Ms. K. Mani*

The International Organisation of Supreme Audit Institutions (INTOSAI) is the association for government audit community worldwide. Established in 1953 as an autonomous independent and non-political organisation, it collaborates with its 195 member SAIs to enhance professional capacities,share knowledge and thereby improve public sector auditing. Thus, it helps in having strong public administration by encouraging value based governance.

Genesis of ISSAI

INTOSAI prepares Standards, guidelines and best practices for dissemination among the auditing community. These are developed under the auspices of three standing committees of INTOSAI, i.e., the Professional Standards Committee (PSC), the Knowledge Sharing Committee (KSC) and the Capacity Building Committee (CBC). INTOSAI conceptualised the model of a comprehensive set of International Standards of Supreme Audit Institutions (ISSAIs) for SAIs. In the XX INCOSAI congress at Johannesburg in 2010,INTOSAI called members to use the ISSAI framework as a common frame of reference and to implement

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ISSAIs in accordance with their mandate and national legislation. Thus, the introduction of ISSAIs are set to give INTOSAI members a new framework on international standards, guidelines and best practices for public sector auditing.

Objectives of ISSAI implementation

The main advantage of implementing ISSAI will be increased uniformityin audit from an international perspective,enhanced credibility and professionalism. In the coming years,substantial efforts will be made to spread awareness of the ISSAIs in the INTOSAI regions by encouraging SAIs to implement the ISSAI framework. ISSAI cover the core audit disciplines of financial, performance and compliance audits. The adoption of the ISSAI will act as milestone in the strengthening of the global public sector audit profession.The benefits and values of using the ISSAIs are considered to be profound and far-fetching. It has become a necessity in modern day for the SAIs to introduce and sustain professional audit techniques in line with the international standards. However, Implementation of the ISSAI is not a straightforward process. Adoption of uniform standards is a challenging process since there are different practices in each SAI in terms of their national legislation, audit mandate, institutional structure etc. It needs a whole lot of planning and establishing systems and procedures. It takes a centralised agency to oversee the process, preparation, adoption and codification of standards. Then, there needs a system to disseminate them worldwide and encourage SAIs to adopt them and subsequently peer review it to stay on track.

Before any SAI takes on the time-consuming task of implementing the ISSAIs, a query that would come to mind is `what possible benefit can the SAI get from taking on such project'? It is important to be convinced about the advantages and needs of ISSAI implementation. The draft guidance on implementing ISSAIs lists the following three benefits of ISSAI implementation.

- **Quality** – Carrying out audits in accordance with globally

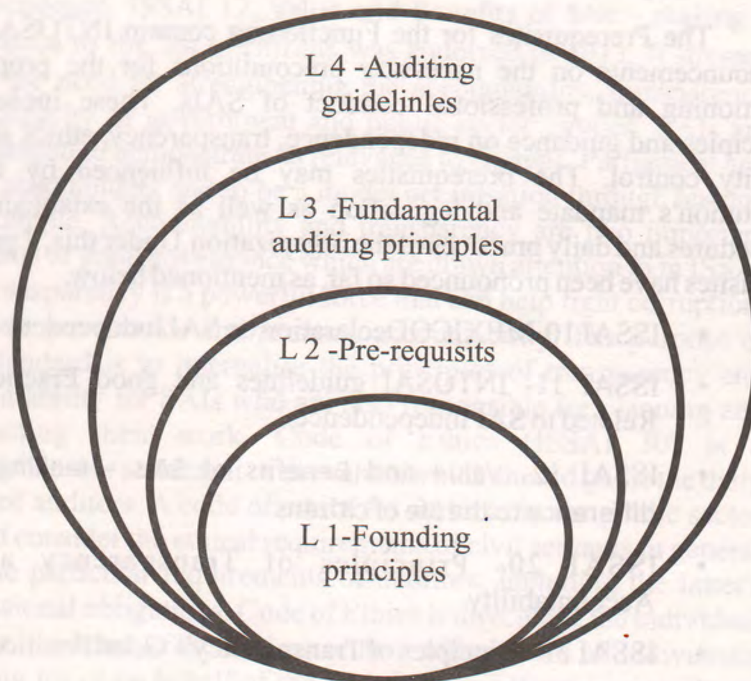
accepted standards will ensure a certain level of quality and consistency in audits. All SAIs strive to earn the trust of citizens and stakeholders alike. Applying internationally accepted standards in audits is one important step in the direction of earning this trust. A high quality standard will reduce auditor's risk. The credibility of all audit organizations is built on the quality achieved in its audits. Using similar audit methods in different countries can inspire organizations to continuous improvement in their process.

- **Credibility** – Using globally accepted standards will strengthen the credibility of both the audit organization and its products. External stakeholders will gain increased confidence and trust in the work of auditors who uses globally accepted standards. The results and conclusions of an audit conducted in accordance with globally accepted standards can stand external scrutiny. The transparency provided by using standards well known to audited organizations and other stakeholders also leads to increased credibility of the audit results. These will help SAIs engage with their stakeholders for improved institutional framework and stronger audit mandates.
- **Professionalism** – Standards form the basis of professionalization of audit work and audit organizations by providing a structured process for the audit work. Common standards can improve opportunities for exchange of professional views and experiences across national borders. Joint training activities and sharing experiences will be easier if auditors apply the same set of professional standards. Globally accepted standards also provide a common language between public and private sector auditors in areas of similar responsibilities.

ISSAI framework

Prior to the adoption of the ISSAIs, INTOSAI had separate Auditing Standards since 1998 and updated in 2001. When INTOSAI decided to keep pace with changing timesby "providing an up-to-date framework of professional standards", INTOSAI Professional Standards Committee decided to merge the existing and new INTOSAI standards and guidelines into ISSAIs.

ISSAIs form a hierarchy of official pronouncements with four levels. They explains the founding principles from Level 1 to actual standards at Level 4progressively. At Level 4, it explains the detailed standards to be followed for Financial Audit, Performance audit and Compliance audit.



Inside ISSAI levels

Level 1: Founding Principles

Level 1 of the ISSAI framework contains the founding principles of ISSAI, numbered as ISSAI 1, 'The Lima Declaration'. This declaration of 1977 calls for an independent government auditing. A Supreme Audit Institution which cannot live up to this fundamental demand does not fulfil the standard. A well-functioning institutions of democracy and rule of law are the pillars on which the Declaration of Lima is founded.The concepts of this Declaration are timeless and are at the core of public sector auditing.

Level 2: Pre-requisites for the functioning of SAIs-(ISSAIs 10-99)

The Prerequisites for the Functioning contain INTOSAI's pronouncements on the necessary preconditions for the proper functioning and professional conduct of SAIs. These include principles and guidance on independence, transparency, ethics and quality control. The prerequisites may be influenced by the institution's mandate and legislation as well as the established procedures and daily practices of the organization.Under this, 7 pre-requisites have been pronounced so far, as mentioned below.

- ISSAI 10-MEXICODeclaration on SAI Independence
- ISSAI 11- INTOSAI guidelines and good Practices Related to SAI Independence
- ISSAI 12- Value and Benefits of SAIs - making a difference to the life of citizens
- ISSAI 20- Principles of Transparency and Accountability
- ISSAI 21- Principles of Transparency – Good Practices
- ISSAI 30- Code of Ethics
- ISSAI 40- Quality Control for SAIs

While the Lima declaration is the foundation for the standards, Level 2 ISSAIs elucidates the bases on which public audit is conducted. Mexico declaration highlights the need for independence of SAI heads and members (of collegial institutions), and sufficiently broad mandate and full discretion in the discharge of SAI functions. The need for the right& obligation to report on their work and the freedom to decide the content and timing of audit reports are emphasised in Mexico declaration. Financial and managerial/administrative autonomy and the availability of appropriate human, material, and monetary resources are other factors which determine the objective nature of audit by SAIs. These are substantiated by examples of good practices worldwide in ISSAI 11- Guidelines and good Practices Related to SAI Independence. ISSAI 12, Value and Benefits of SAIs - making a difference to the life of citizens was endorsed in 2013. It stresses upon the need for strengthening the accountability, transparency and integrity of government and public sector entities. SAIs are encouraged to demonstrate its relevance to citizens, Parliament and other stakeholders and to be a model organisation through leading by example. Accountability and transparency are two important elements of good governance which are drawn attention to in ISSAI 20. Transparency is a powerful force that can help fight corruption, improve governance and promote accountability. The purpose of this standard is to internalise the principles of transparency and accountability for SAIs who are also responsible for planning and conducting their work. Code of Ethics (ISSAI 30) is a comprehensive statement of the values which should guide the daily work of auditors. A code of ethics for auditors in the public sector should consider the ethical requirements of civil servants in general and the particular requirements of auditors, including the latter's professional obligations. Code of Ethics is directed at the individual auditor, the head of the SAI, executive officers and all individuals working for or on behalf of the SAI. Due to differences in culture, language, and legal and social systems, it is the responsibility of

each SAI to develop its own Code of Ethics. SAI is looked upon with trust, confidence and credibility. The auditor promotes this by adopting and applying the ethical requirements. ISSAI 40, Quality Control for SAIs will assist SAIs to establish proper systems of quality control which covers all their work.

Level 3: Fundamental Auditing Principles(ISSAIs 100-999)

- ISSAI 100- fundamental principles of public sector auditing.
- ISSAI 200 - fundamental principles of Financial auditing
- ISSAI 300- fundamental principles ofPerformance auditing
- ISSAI 400 -fundamental principles of Compliance auditing.

Level 3 ISSAIs are the fundamental principles for public sector auditing which provide a conceptual basis for public sector auditing and ensure consistency with the ISSAI framework. These ISSAIs have recently been revised (2013) through a harmonisation project and establishes the basic concepts and principles in the three types of auditing. The specific principles of the three audit types are elaborated in the ISSAI 200, 300 and 400. At ISSAI 100, mandate for audit like scope, objectives and types of audit, materiality are discussed. General outlines relating to planning, conducting and reporting and follow-up of audit are explained further. At ISSAI 200-400, standards elaborate the governing principles of specific types of audit.

Level 4: Auditing Guidelines(ISSAI 1000-4999)

These Auditing Guidelines translate the fundamental auditing principles at Level 3 into more specific, detailed and operational guidelines that can be used on a daily basis in the conduct of auditing tasks. The purpose of the guidelines is to

provide a basis for the standards and manuals on public sector auditing which may be applied by the individual members of INTOSAI. The General auditing guidelines (ISSAIs 1000-4999) contain the recommended requirements of financial, performance and compliance auditing and provide further guidance to the auditor. These are grouped as general guidelines covering three forms of audit and specific audit guidelines for special audits, as given below.

General Auditing Guidelines

- ISSAI 1000-2999 Implementation guidelines on Financial Audit
- ISSAI 3000-3999 Implementation guidelines on Performance Audit
- ISSAI4000-4999 Implementation guidelines on Compliance Audit

Specific Auditing Guidelines (ISSAI 5000-8999)

- ISSAI 5000-5099 guidelines on International institutions
- ISSAI 5100-5199 guidelines on Environmental Audit
- ISSAI 5200-5299 guidelines on privatization
- ISSAI 5300-5399 guidelines on IT audit
- ISSAI 5400-5499 guidelines on audit of Public Debts
- ISSAI 5500-5599 guidelines on audit of Disaster-Related Aid
- ISSAI 5600-5699 guidelines on Peer Reviews
- ISSAI 5700-5799 Guidelines on Audit of Corruption Prevention (planned for endorsement in 2016)
- ISSAI 5800-5899 Guidelines on Cooperative Audit between Supreme Audit Institutions (planned for endorsement in 2016)

Financial audit guidelines focus on determining whether an entity's financial information is presented in accordance with the applicable financial reporting and regulatory framework. The scope of financial audits in the public sector may be defined by the SAI's mandate as a range of audit objectives in addition to the objectives of an audit of financial statements prepared in accordance with a financial reporting framework.

ISSAIs on Financial audit are adopted from International Standards on Audit (ISAs), which are developed, approved and issued by the International Auditing and Assurance Standards Board (IAASB) of IFAC. The ISAs form an integrated part of the INTOSAI Financial Audit Guidelines in accordance with the dual approach. These ISSAIs are accompanied by Practice Notes (PN). The Practice Notes are developed by the Financial Audit Subcommittee (FAS) of Professional Standards Committee to provide relevant guidance on applying the ISAs in audits of financial statements under the audit jurisdiction of SAIs. The ISA and corresponding Practice Note together constitute one guideline, or ISSAI on financial audit. Guidelines on Financial Audit are the most comprehensive of all the standards, containing 38 standards. It covers the general practices followed in financial audit worldwide, starting with planning, sampling, field audit, evidence gathering, reporting, documentation and the opinion to be given.

Standards on performance audit(ISSAI 3000-3999) describes the extension of government auditing principles to performance audit and the standards to be followed in initiating, planning and conducting Performance Audit. There are two standards under this, viz, Implementation Guidelines for Performance Auditing (ISSAI 3000) and Performance Audit Guidelines: Key Principles (3100).

Standards on Compliance audit (ISSAI 4000,4100,4200) deal with the responsibility of the SAI to audit whether the activities

of public sector entities are in accordance with the relevant laws, regulations and authorities that govern such entities.INTOSAI recognise the fact that compliance audit is the most diverse among the three forms of audit practiced. The objective, scope and nature of a compliance audit depends on a number of factors, including the mandate and constitutional role of the SAI, as well as laws and regulations that are relevant to the audited entity. In general, the objective of compliance auditing is to enable the SAI to report to the appropriate bodies on the audited entity's compliance with a particular set of criteria. Such criteria may be derived from laws, regulations, parliamentary decisions etc. Compliance audit is also carried out as part of the audit of financial statements or as part of a performance audit.Some SAIs have special compliance audit tasks and responsibilities like SAIs which are organised as Courts of Accounts, activities related to suspected fraud and corruption, assessment of the truth and completeness of information submitted by ministers to parliament etc. The standards recognise diversity and accommodates the variations by providing a broad framework to be followed.

ISSAI Implementation initiatives by INTOSAI

The INTOSAI Strategic Plan and the ISSAI Rollout Model approved by INTOSAI Governing Board in October 2011 mandated Intosai Development Initiative (IDI) to support ISSAI Implementation. IDI has launched a comprehensive capacity development programme called the ISSAI Implementation Initiative (3i programme). The programme activities started in the five English speaking INTOSAI regions from 2012. The first phase of the 3i Programme covers level 2 ISSAIs and level 4 ISSAIs in financial, performance and compliance audit and aims toassess needs at regional and SAI level.It works for capacity creation for implementation of level 2 and level 4 ISSAIs in financial, performance and compliance audit through dissemination of documents and by training a group of ISSAI facilitators. It also aims at handholding at SAI level by providing support for assessing

implementation needs and other start-up activities. This will create an active knowledge community for ISSAI implementation and wider outreach.

ISSAI implementation in India

As an active participant of the INTOSAI community, India has committed itself to ISSAI implementation. As part of this, SAI India agreed to create a pool of facilitators and systematically implement ISSAIs. To adopt the four levels of ISSAIs in SAI India, a bottom to top approach(ie, Level 1 to 4) is more practical than top to bottom approach. We are *de-facto*complied with Level 1 ISSAI on SAI independence through our constitution. At Level 2, the pre-requisites like SAI independence are also complied with to the maximum*ab-initio*. The logical next step here is to check the compliance with level 3 ISSAI's since they set the foundation for level 4 ISSAIs. Level 3 is the stage to do a gap analysis in SAI India with respect to our manuals, procedures, instructions and operational practices. Since we have one of the most diverse administrative structures, thus various forms of audits, this must be the area where we spent maximum time and efforts on. To appreciate this, let us look in to the types of financial audits we undertake.

- Certification of Finance and Appropriation accounts of Union of India
- Certification of Finance and Appropriation accounts of States and UT's
- Certification of Financial statement of government companies and corporations.
- Certification of accounts of Autonomous Bodies.
- Certification of Accounts of agencies receiving Govt. Grants.
- Account of the Externally Aided Projects.

The way the accounts are kept, the statutory requirements, format of accounts, immediate stakeholders are all different in the above cases. For example, Govt. Accounts are kept on cash basis, accounts of Autonomous bodies are kept in a different format prescribed showing balance sheet, Receipts and payments & Income & Expenditure accounts. Moreover, there are many scenarios in Level 4 we may not use at all in certain types of financial audit like using the work of predecessor auditor or expressing a negative audit opinion in government accounts. Thus, there can't be one-size-fits-all scenario and for these reasons,we cannot adopt ISSAI level 4 off-the-shelf, which had heavily borrowed from the International Standards on Auditing (ISA). The ideal steps which SAI India following should be, in the wake of our diverse practices and recent revision of level 3 ISSAI itself, is adoption at level 3 ISSAI and alignment with level 4 ISSAI on a broad-brush basis.

Thus, SAI India has to make their Level 3 ISSAI adoption such that the standards can be applied to all types of account certification listed above. The benefit is that we have manuals/instructions for all the six types of financial audit. Our current manual on financial attest audit is aligned with level 3 ISSAIs. A one-to-one comparison shows that all requirements as per Fundamental principles of Financial Audit (ISSAI 300) are adequately addressed in our Financial Attest Audit Manual. It deals sufficiently in detail all issues to be considered while auditing financial statements. It also touches upon subjects like subsequent events, and use of specialists. It explains broadly about subsequent events (ISSAI 1560), going concern (ISSAI 1570) and their applicability. Scenarios like govt. Departments as always going concerns and non-applicability of disclaimer to government accounts are also incorporated. Apart from this, we have manuals for certification of appropriation accounts, Finance accounts, Autonomous Bodies etc. Our current efforts should, thus, be more towards revision of manuals and checking of practices actually in

the field to identify gaps and take corrective action for deviations.

In case of performance audit, there are just two ISSAI standards. ISSAI 3000- Implementationguidelines and ISSAI 3100- Performance Audit Guidelines, key principles. These draws the contours of the applicability of government auditing principles to performance audit, selection of topic and conducting audit. SAI India has recently come out with its revised Performance Audit Guidelines (June 2014). It explicitly pronounces that 'the revision of the original guideline is to stay aligned to the new ISSAIs and to contextualise it to the SAI India pattern'. This new guidelines elucidate the same principles as in ISSAIs. i.e, selection of topics, evidence collection methods, documentation and reporting. As part of SAI India commitment to INTOSAI on ISSAI implementation, the ISSAI facilitators are in the process of ICAT assessment i.e., a gap analysis of our practices and procedures followed vis-a-visour manuals and that of ISSAI standards.

Compliance audit varies widely in different SAIs. ISSAIs differentiate two types of compliance audit. Compliance audit separately from audit of Financial Statements and compliance audit guidelines related to audit of Financial Statements.Compliance audit separately from audit of Financial Statements, which is followed in our SAI mainly deals with the compliance with rules and regulations, documentation, quality control, understanding the audited entity, risk assessment and materiality. In SAI India, principles for compliance audit are spread across many manuals/guidelines. The basic manuscript in this regard is the Manual of Standing Orders(MSO) - Audit, Regulations on Audit & Account-2007 and manual on Auditing Standards. The current gap analysis for manuals and practices in compliance audit is being done on MSO(Audit), Regulations on Audit&Accounts, and Auditing Standards-2002 by the ISSAI facilitators.

Steps towards adoption/alignment

- Open commitment in international forum with goals and

time lines at SAI level. As an active participant of the INTOSAI community, SAI India had already committed itself to ISSAI implementation.

- Intense training at middle management level to get the ideas and practices trickle down. As part of this, SAI India is creating a pool of ISSAI facilitators, who will spearhead the process. Through the training initiatives of IDI, a group of Certified ISSAI facilitators are being groomed in SAI India for the three forms of audit, who will assist in adoption of ISSAI at various levels.

- Standards, Manuals and instructions to be checked for compliance with ISSAIs. SAI India has already started treading towards this path. The recently revised Financial Attest Audit Manual and Performance Audit Manual exemplifiesthat. The ISSAI facilitators are being deployed for the work of gap analysis in manuals and standards. Apart from these, on a test check basis, practices followed in different offices and wings of SAI India area also being scrutinised for deviations.

- Human resource training and awareness creation: These can be achieved by familiarisation of the topic through structured training programme to internalise the concept in the department. We have already started the process of training at all levels of IA&AD hierarchy. This will facilitate the procedures and process becoming ISSAI compliant.

- Encouraging and incorporating ISSAI compliant practice. E.g.; In financial audit, we are moving towards certification of consolidated financial statements. Till now, we have been doing only the stand alone accounts of the main companies. Under the new laws, we need to refer the provisions under ISSAI to recognise the work of component auditors and accept the audit certificate

given by them if the government company has a JV, subsidiaries which are not government companies as per share holding pattern.Such events will prompt us to change practice or adopt international standards.

- Output monitoring. ISSAI is more process oriented than product. There will not be any conspicuous changes in the audit report because of ISSAI adoption. But there is a need for self-evaluation for the process we follow. INTOSAI does not bound SAIs to agree for peer review in ISSAI adoption, but is open to the format. SAI India could do peer review or agree for measurement against benchmarks laid out for adoption levels.

Significance of ISSAI implementation

The current thinking in SAI India is for adoption at level 3 and adaption at level 4. For this, we need to create a facilitating environment and active intervention. World over, there is enhanced accountability, transparency and stakeholder interest in governance. In this era of peer review and public scrutiny, it is a good idea to adopt international standards. It gives acommon platform to understand each other's practices and adopt the best practices.These are mostly self-complied and mostly self-assessed practices. By non-adoption, SAI may notbe losing anything, but adoption is definitely a welcome step forward. By proper and systematic adoption, SAIs can improve their quality, credibility and professionalism as envisaged by INTOSAI.

THE FIVE Cs OF AUDIT REPORTING

Saumendra Nath De*

Foreword

Audit process for both internal and external auditors has undergone a paradigm shift in the last decade. The globalization of business and advances in technology led to increasing demands for value added audits that prompted changes in all aspects of audit processes and its reports. Additionally, the organizational and technological complexity of the modern business and public sector management across the world raised public demand for transparency in governance. The audit profession has responded to this demand as much by improving the quality of its audit work as its reports. The standard setting bodies in the private sector (The IIA[1] for Internal Auditors and IAASB[2] of IFA[3] for the External Auditors) and also in respect of government audit (INTOSAI[4] in particular) spearheaded the change by revamping existing standards to encourage high quality audit work and reporting.

So, gone are the days when auditors' reports would only list out their findings and recommend the management to follow up.

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[1]Institute of the Internal Auditors

[2]International Auditing and Assurance Standards Board

[3]International Federation of Accountants

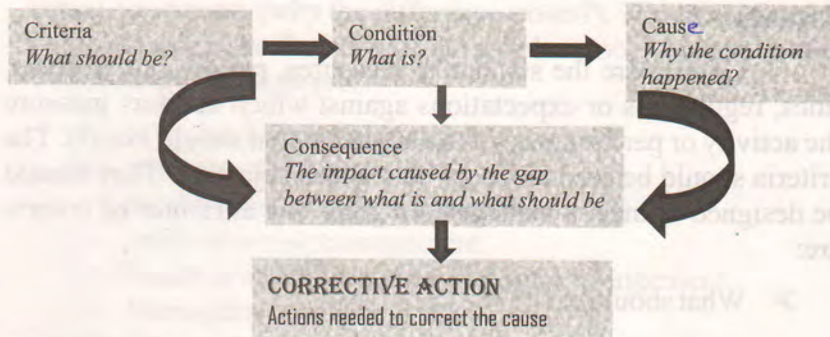
[4]International Organizations of the Supreme Audit Institutions

The demands for transparency and accountability prompted the public sector auditors to switch to reports that add value by analyzing the causes and by suggesting ways to improving governance and delivery of services. With such reporting, the users of the Report can get a better understanding of the auditor's work and the significance and consequence of the auditor's findings. Additionally, the Auditors Report would be a key tool for establishing accountability and taking corrective action.

Audit in the international organizations like the United Nations have also adopted these changes. Managers and legislatures in the national governments and international organizations are now increasingly wanting to know from their auditors how to fix the problems in their respective organisations as pointed out by audit. The auditors are now expected to interpret the maladies, diagnose the cause and discuss the impact on the health of the entity and only then recommend corrective action.

What are 5Cs?

The change in the end product of the auditors' work has influenced the entire audit process. The professional auditors in their work today focus on the roots, not just the trees. While reporting on their findings, the auditors tell about the criteria and look at the conditions and seek to understand the cause of the unusual circumstances and report on them to help the management and legislators to improve governance and transparency. The audit process has to expand to include recording the deviations and unusual events and then explaining and documenting the reasons that led to the unusual events and deviations. The audit evidence now needed greater depth and spread to support the analysis of the causes of deviations for which the audit procedures needed to be more varied. The reports thus have a logical and cause-and-effect structure while using the five attributes (the 5Cs) as shown in the following diagram:



How does 5C work?

While planning and executing an assignment, auditors start with deciding the criteria (C1) against which the performance or compliance is measured. It is the benchmark that is easily understood and accepted by the auditee or the client. Having set up the benchmark, the auditor proceeds to look at what is the condition (C2) as against the benchmark (criteria).They note the gap between the two and document it in their working papers. But while the gaps may be evident and known to the management, they need the professional auditor to analyze the cause (C3) of the unusual circumstances and deviation- it may be weak control, unmitigated risk, fraud or failure in planning and execution or human failures. A major drive to know the cause is the need of the auditee to be accountable and to pinpoint why something went wrong so that the accountability can be established. Only the auditor can explain the causes in a convincing and balanced manner in many circumstances. So the auditee expects to hear from the auditor why something went wrong and who could be accountable for this. They also need to know from the specialist what would be the consequence (C4) if the weakness and the risks are not addressed. In this background the auditor as the specialist makes his recommendations for corrective action (C5). Now we can look at the more formal explanation of the 5Cs.

Criteria

Criteria are the standards, measures, policies, procedures, rules, regulations or expectations against which auditors measure the activity or performance of the auditee (what should exist?). The criteria should be credible, convincing and objective. They should be designed to meet a management goal. The attributes of criteria are:

- What should exist?
- Written requirements (laws, regulations, instructions, manuals, policies, directives, etc.).
- Overall objectives of client, auditee, agency, organization.
- Auditor's experience.
- Common Sense, Prudence, International standards, Best practices.

Condition

The condition is a factual evidence or statement describing the results of audit (what does exist?). The condition should include sufficient information to promote an adequate understanding of the matter(s) being reported. The attributes of condition are:

- What does exist?
- What it is?
- What is not complied with?
- What is not done correctly?
- What is defective?
- What is deficient?
- What is in error?
- Is it isolated or widespread?

Cause

The reason for the difference between the expected and

actual conditions. (why the difference exists?). The cause should be complete and go to the heart of the problem; not just the symptom. The attributes of cause are:

- Why the difference exists?
- Absence of internal controls.
- Weaknesses in internal controls.
- Ineffective risk management.
- Faulty or ineffective organizational arrangement.
- Management not doing its job.
- Lack of training.
- Lack of communication.
- Negligence or carelessness.
- Instructions are faulty.
- Lack of resources.
- Dishonesty.
- Insufficient effort or interest.
- Unwillingness to change.

Consequence (Effect)

The risk or exposure the organization and/or others encounter because the condition is not consistent with the criteria (the impact of the difference). The effect should be logical and likely to occur. The attributes of consequence are:

- Loss of exchequer.
- Loss of reputation.
- Uneconomical or inefficient use of resources.
- Loss of potential income.
- Violation of law.
- Ineffectiveness and inefficiency (job not being done as well as it could be).
- Funds improperly spent.
- Information, records or reports are not useful, meaningful, or accurate.
- Loss of control over resources.

- Job not being done properly.
- Lowered morale.

Corrective action (Recommendation)

Corrective actions are based on the auditor's observations and conclusions. They call for action to correct existing conditions or improve operations. Corrective actions may suggest general or specific approaches to correcting or enhancing performance as a guide for management in achieving desired results. They should address the cause of the finding, be implementable and capable of being monitored. The attributes of corrective actions are:

- The action necessary to bring the condition in line with the criteria and correct the underlying problem.
- Should be specific, address the root cause and be helpful.
- Should pinpoint accountability and responsibility.
- Should not supersede management's responsibility to manage.

Global perspective on 5C

The US Government Accountability Office (GAO) was among the pioneers in promulgating the auditing standards and offered guidance on the key elements of audit finding in its Yellow Book. In the current Yellow Book, the GAO offers the following guidance on identifying the cause associated with the observed condition:

"The cause identifies the reason or explanation for the condition or the factor or factors responsible for the difference between the situation that exists (condition) and the required or desired state (criteria), which may also serve as a basis for recommendations for corrective actions. Common factors include poorly designed policies, procedures or criteria; inconsistent, incomplete, or incorrect implementation; or factors beyond the control of program management. Auditors may assess whether the

evidence provides a reasonable or convincing argument for why the stated cause is the key factor or factors contributing to the difference between the condition and the criteria." The INTOSAI in its standards (ISSAI 100-400, 4100 etc.) also emphasized the need of Reporting with the five elements.

The professional practice of internal auditing promulgated by the Institute of Internal Auditors required a traditional audit finding to include the five elements namely the criteria, condition, cause, effect and recommendation. The Internal Audit Division, Office of Internal Oversight Services of the United Nations had adopted the International Standards for the Professional Practice of Internal Auditing (Standards) developed and maintained by the Institute of Internal Auditors (IIA) and required a reportable audit finding on the similar lines.

The 5C reporting has added to the credibility for the auditor's work and standardized the reports despite diversity of engagement processes. Thanks to the 5C reporting, the auditee now understands how the auditor performed his/her work and what is the value addition in the process. It has demystified the audit process. They are no more left to guess why the unusual events happened and what needs to be done. Scope of dispute over the audit findings has decreased due to openness of the auditors' reports. The value addition by the auditors' work is now a reality.

Another noticeable change influenced by the 5C Reporting is the improved accountability. With the audit report written in 5C format, the oversight bodies like the Audit Committee in the corporate sector and the Public Accounts committees in the governments and public sector have now greater flexibility to understand and act upon the auditor's findings. They need to spend less time to understand the cause of the adverse findings and focus more on the corrective action and accountability issues. The oversight process is thus strengthened consistent with public expectation for greater transparency and accountability.

Case Study

The office of the Internal Oversight Services in the United Nations conducted an audit of Air Operations in the Peacekeeping Missions. The audit report was published in the OIOS website and is now a public document. This report elucidates how the audit findings were crafted on the line of the 5C's to add value to the operations by drawing attention to the causes and impact of the weakness noticed in audit.

Background

The Air Transport Section in Department of Field Support (DFS) manages the United Nations aviation programme within DFS, the Department of Peacekeeping Operations (DPKO) and the Department of Political Affairs.

At Headquarters of the UN, the Section provides advice and technical expertise to senior leadership and ensures that adequate planning, oversight and quality assurance capacity exists to successfully implement the aviation programme.

At the mission level, the Section is responsible for: (a) providing policy, procedures and overall guidance on air operations; (b) providing missions with air assets and related airfield and aviation ground support equipment and services; (c) performing aviation oversight under the DFS Aviation Quality Assurance Programme to ensure contracted services complied with the requirements of the United Nations and the International Civil Aviation Organization Standards and Recommended Practices; and (d) planning and executing training courses and workshops for staff development.

During 2012-13 and 2013-14, the Section was involved in requisitioning and/or managing 85 commercial aviation contracts for 133 aircrafts and 20 letters of assist/agreements with the troop–contributing countries to provide, maintain and operate 70 aircrafts and corresponding air assets used in the implementation of

the mandates of field missions. The air operations in DFS and missions in these two years cost $758 million and $808 million respectively.

Audit Finding#1

Adequate aviation quality management system was required

Criteria:

The DPKO/DFS Aviation Manual required the Air Transport Section to ensure services provided by contracted air carriers complied with the United Nations aviation policy. To implement this requirement, the Manual required field missions to monitor and evaluate vendor's performance and conduct quality inspections/audits. The Section was required to: (a) implement procedures to ensure field missions complied with the requirements for vendor performance evaluation and quality inspection/audit; and (b) conduct independent monitoring and quality inspections/audits through field visits; and (c) document and analyze the results of inspections/audits and evaluations to ensure corrective actions were taken by DFS senior management to eliminate the causes of unsatisfactory performance.

Condition:

Field missions had, except as indicated below, complied with the requirement to monitor and evaluate the performance of vendors, conduct quality inspections/audits and submit the required reports to the Air Transport Section. A review of the DFS carriers' evaluation report database and related supporting documents indicated that field missions had completed and submitted to the Air Transport Section 88 percent of the 1,561 required performance evaluations for the audit period. These performance evaluation reports included information on all aspects of contracts including aircraft, management, aircrew, missions, and safety maintenance standards.

Condition:

However, the Air Transport Section had not implemented comprehensive aviation quality management programme. For example, the Section was not conducting field visits to perform independent monitoring activities and quality inspections/audits.

Cause:

This resulted due to lack of resources and Missions' inaction to prioritize and allocate existing resources sufficient to monitor the performance of vendors and conduct quality inspections.

Consequence (Effect):

This had impacted on the effectiveness of the aviation quality management programmes and increased the risk of noncompliance by contracted air carriers with the United Nations aviation policy.

Condition:

Furthermore, the Air Transport Section was not documenting and analyzing results of vendor performance evaluations and quality inspections/audits. This Section was preparing periodic performance reports for some of the larger aircraft; but not all mission aircraft.

Cause:

This was due to lack of adequate information technology tools that would serve as a repository of all aircraft inspections/audits and support reliable aviation performance management and reporting to DFS senior management.

Consequence (Effect):

As a result the DFS senior management could not take necessary corrective actions to address cause of unsatisfactory performance.

Corrective Action(Recommendation):

DFS should expedite the implementation of a comprehensive aviation quality management programme that includes adequate procedures in the Aviation Manual for independent monitoring of field activities, analysis of results of vendor performance evaluations and quality inspections/audits conducted as well as corrective actions taken to ensure that air operations are effectively and efficiently managed.

Management Response: DFS accepted the recommendation and stated that it would support effective implementation of a comprehensive aviation quality management programme system to benefit aviation safety and contract management. DFS was also considering procuring web-based quality management software to improve management of air operations and to ensure conformance to the Standards and Recommended Practices of the International Civil Aviation Organization and the United Nations.

Audit Finding#2

Air Transport Section's review and documentation of air operations planning conducted by field missions required improvement

Criteria:

According to the Secretary-General's Bulletin on the organization of DFS, the Air Transport Section was required to provide air assets and related airfield and aviation ground support services of the right type and number to facilitate the execution by field operations of mandated tasks. To address this, the Section was required to: (a) review field missions' planning for all aviation activities; (b) review specifications, statements of work and invitations to bid prepared by field missions; and (c) collaborate with the Procurement Division and field missions on the administration and management of aviation contracts.

Condition:

The Air Transport Section had implemented adequate

procedures relating to the planning of aviation activities, procurement of air assets and administration of the related contracts. For example, the Section: (a) supported the planning of five major projects and the resulting acquisition of critical air assets, such as the unmanned aerial systems, for missions as well as aircraft equipped with information technology tools to provide flexibility to missions and lower the cost of air operations; (b) reviewed specifications, statements of work in respect of 35 procurement actions in 2013; and (c) collaborated with the Procurement Division and field missions on the administration of aviation contracts.

Condition:

However, the Air Transport Section was not providing sufficient oversight of field missions' planning of air operations. For example, a review of aviation plans of three peace-keeping missions indicated that they had not developed the required aviation support plans. In another peacekeeping mission, the aviation support plan was not linked to its current concept of operations.

Cause:

This resulted as the Air Transport Section did not identify those field missions that had not prepared aviation support plans due to lack of adequate oversight.

Consequence (Effect):

As a result, the air operations were not done in cost-effective manner.

Condition:

Moreover, the Air Transport Section lacked standardized operational procedures for some of its new air assets such as the unmanned aerial systems that were acquired and being operated on an experimental basis in three missions.

Cause:

This resulted as the Transport Section had not established

appropriate policies and standard operating procedures for operating its new air assets.

Consequence (Effect):

As a result the missions could not adequately ensure that the crew operating the aerial vehicles met the required qualifications and experience; the aircrafts were airworthy and operated in compliance with the regulations of the respective national authorities.

Corrective Action(Recommendation):

DFS should implement adequate procedures to ensure that the Air Transport Section conducts adequate oversight of the planning of field missions' air operations and that the results are properly documented.

Management Response: DFS accepted the recommendation and stated that it would establish a comprehensive business process that would support the development/review of concept of operations, budgeting, procurement, utilization and performance management reporting with benchmarks developed for acquisition, budgeting and utilization.

Corrective Action(Recommendation):

DFS should establish appropriate policy and standards in the Aviation Manual to govern the use of new air assets such as the unmanned aerial systems.

Management Response: DFS accepted the recommendation and stated that it would establish appropriate policy and standards to govern the use of new technologies, such as the unmanned aerial systems.

Indian SAI context

Factors that exist in auditee organization's internal and external environment and other factors that are specific to a particular business process of an organization affect the audit processes. For example, in Indian SAI, the audit processes for the government owned railway operations differ from that for the defense operations and programmes.

There is a great diversity of organization types (ranging from

scientific organizations to autonomous bodies and public commercial enterprises to government organizations) the audit of which falls under the purview of the Comptroller and Auditor General of India. Further the audit organizations vary from small to very large. The diverse nature of organizations and engagement type in the Indian Audit and Accounts Department led to differences in audit objective and procedures of auditing. Despite such divergence, audit reports have traditionally followed a uniform reporting structure. Irrespective of engagement type, auditors compare circumstances observed against relevant criteria and determine the possible financial and operational implications. Till recently, audit reports of many SAIs that contained exceptional audit findings focused on "what went wrong" without explaining "why it went wrong?" its consequence and the corrective actions required. Thus despite their brilliance, the audit findings fall short of adding value to auditee's operations.

Like many other SAIs, the Reports of the SAI India, till a decade ago, focused less on the causes and impact of adverse conditions. It was more concerned with the so called results of audit in the form of cost savings, cost avoidance, recovery of amounts overpaid or incorrectly paid, and potential of income/revenue generation. It has since moved with time to formally state the elements of criteria, condition, cause, consequence and corrective action.

It has often been said that internal auditors cannot see the forest for the trees. Richard Chambers, the president and CEO of the Institute of Internal Auditors counted on his experience to contemplate that the auditors often cannot see the roots for trees. After all, given the impressive advancement in the audit profession over the last decade, stakeholder's expectations from audit are not restricted to know "what went wrong". But the auditor can now stand up to stakeholder's expectations by showing them "why" of the things and how a "corrective action" can add real value to the organization.

DOCUMENT

THE NATIONAL JUDICIAL APPOINTMENTS COMMISSION ACT, 2014

(NO. 40 OF 2014)

[*31st December, 2014.*]

An Act to regulate the procedure to be followed by the National Judicial Appointments Commission for recommending persons for appointment as the Chief Justice of India and other Judges of the Supreme Court and Chief Justices and other Judges of High Courts and for their transfers and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Sixty-fifth Year of the Republic of India as follows:—

Short title and commencement.

1 *(1)* This Act may be called the National Judicial Appointments Commission Act, 2014.

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

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) "Chairperson" means the Chairperson of the Commission;

(b) "Commission" means the National Judicial Appointments Commission referred to in article 124A of the Constitution;

(c) "High Court" means the High Court in respect of which recommendation for appointment of a Judge is proposed to be made by the Commission;

(d) "Member" means a Member of the Commission and includes its Chairperson;

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

(f) "regulations" means the regulations made by the Commission under this Act.

Headquarters of Commission

3. The Headquarters of the Commission shall be at Delhi.

Reference to Commission for filling up of vacancies.

4(1) The Central Government shall, within a period of thirty days from the date of coming into force of this Act, intimate the vacancies existing in the posts of Judges in the Supreme Court and in a High Court to the Commission for making its recommendations to fill up such vacancies.

(2) The Central Government shall, six months prior to the date of occurrence of any vacancy by reason of completion of the term of a Judge of the Supreme Court or of a High Court, make a reference to the Commission for making its recommendation to fill up such vacancy.

(3) The Central Government shall, within a period of thirty days from the date of occurrence of any vacancy by reason of death or resignation of a Judge of the Supreme Court or of a High Court, make a reference to the Commission for making its recommendations to fill up such vacancy.

Procedure for selection of Judge of Supreme Court.

5*(1)* The commission shall recommend for appointment the senior most judge of the supreme court as the chief justice of India if he is considered fit to hold the office:

Provided that a member of the commission whose name is being considered for recommendation shall not participate in the meeting

(2) The Commission shall, on the basis of ability, merit and any other criteria of suitability as may be specified by regulations, recommend the name for appointment as a Judge of the Supreme Court from amongst persons who are eligible to be appointed as such under clause (3) of article 124 of the Constitution:

Provided that while making recommendation for appointment of a High Court Judge, apart from seniority, the ability and merit of such Judge shall be considered:

Provided further that the Commission shall not recommend a person for appointment if any two members of the Commission do not agree for such recommendation.

(3) The Commission may, by regulations, specify such other procedure and conditions for selection and appointment of a Judge of the Supreme Court as it may consider necessary.

Procedure for selection of Judge of High Court.

6. *(1)* The Commission shall recommend for appointment a Judge of a High Court to bethe Chief Justice of a High Court on the basis of *inter se* seniority of High Court Judges andability, merit and any other criteria of suitability as may be specified by regulations.

(2) The Commission shall seek nomination from the Chief Justice of the concerned High Court

for the purpose of recommending for appointment a person to be a Judge of that High Court.

(3) The Commission shall also on the basis of ability, merit and any other criteria of suitability as may be specified by regulations, nominate name for appointment as a Judge of a High Court from amongst persons who are eligible to be appointed as such under clause (2) of article 217 of the Constitution and forward such names to the Chief Justice of the concerned High Court for its views.

(4) Before making any nomination under sub-section (*2*) or giving its views under sub-section (*3*), the Chief Justice of the concerned High Court shall consult two senior-most Judges of that High Court and such other Judges and eminent advocates of that High Court as may be specified by regulations.

(5) After receiving views and nomination under sub-sections (*2*) and (*3*), the Commission may recommend for appointment the person who is found suitable on the basis of ability, merit and any other criteria of suitability as may be specified by regulations.

(6) The Commission shall not recommend a person for appointment under this section if any two members of the Commission do not agree for such recommendation.

(7) The Commission shall elicit in writing the views of the Governor and the Chief Minister of the State concerned before making such recommendation in such manner as may be specified by regulations.

(8) The Commission may, by regulations, specify

such other procedure and conditions for selection and appointment of a Chief Justice of a High Court and a Judge of a High Court as it may consider necessary.

Power of President to require reconsideration.

7 The President shall, on the recommendations made by the Commission, appoint the Chief Justice of India or a Judge of the Supreme Court or, as the case may be, the Chief Justice of a High Court or the Judge of a High Court:

Provided that the President may, if considers necessary, require the Commission to reconsider, either generally or otherwise, the recommendation made by it:

Provided further that if the Commission makes a recommendation after reconsideration in accordance with the provisions contained in sections 5 or 6, the President shall make the appointment accordingly.

Officers and employees of Commission.

8(*1*) The Central Government may, in consultation with the Commission, appoint such number of officers and other employees for the discharge of functions of the Commission under this Act.

(*2*) The terms and other conditions of service of officers and other employees of the Commission appointed under sub-section (*1*) shall be such as may be prescribed.

(*3*) The Convenor of the Commission shall be the Secretary to the Government of India in the Department of Justice.

Procedure for transfer of Judges.

9 The Commission shall recommend for transfer of Chief Justices and other Judges of High Courts from one High Court to any other High Court, and for this purpose, specify, by

regulations, the procedure for such transfer.

Procedure to be followed by Commission in discharge of its functions.

10*(1)* The Commission shall have the power to specify, by regulations, the procedurefor the discharge of its functions.

(2) The Commission shall meet at such time and place as the Chairperson may directand observe such rules of procedure in regard to the transaction of business at its meetings(including the quorum at its meeting), as it may specify by regulations.

Power to make rules.

11.*(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, such rules may provide for all or any of the following matters, namely:—

(a) the fees and allowances payable to the eminent persons nominated under sub-clause (*d*) of clause (*1*) of article 124A of the Constitution;

(b) the terms and other conditions of service of officers and other employees of the Commission under sub-section (*2*) of section 8;

(c) any other matter which is to be, or may be, prescribed, in respect of which provision is to be made by the rules. .

Power to make regulations.

12.*(1)* The Commission may, by notification in the Official Gazette, make regulations consistent with this Act, and the rules made thereunder, to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the

following matters, namely:—

(a) the criteria of suitability with respect to appointment of a Judge of the Supreme Court under sub-section (2) of section 5;

(b) other procedure and conditions for selection and appointment of a Judge of the Supreme Court under sub-section (3) of section 5;

(c) the criteria of suitability with respect to appointment of a Judge of the High Court under sub-section (3) of section 6;

(d) other Judges and eminent advocates who may be consulted by the Chief Justice under sub-section (4) of section 6;

(e) the manner of eliciting views of the Governor and the Chief Minister under sub-section (7) of section 6;

(f) other procedure and conditions for selection and appointment of a Judge of the High Court under sub-section (8) of section 6;

(g) the procedure for transfer of Chief Justices and other Judges from one High Court to any other High Court under section 9;

(h) the procedure to be followed by the Commission in the discharge of its functions under sub-section (1) of section 10;

(i) the rules of procedure in regard to the transaction of business at the meetings of Commission, including the quorum at its meeting, under sub-section (2) of section 10;

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

Rules and regulations to be laid before Parliament.

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

Power to remove difficulties.

14.*(1)* If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, after consultation with the Commission, by an order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty:

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

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

DR. SANJAY SINGH,
Secretary to the Govt. of India.

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PATRON

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K.L. Kapoor

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