

# INDIAN JOURNAL OF PUBLIC AUDIT AND ACCOUNTABILITY



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## **The Institute of Public Auditors of India (IPAI)**

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

## CONTENTS

Page no.

**From the President's Desk**

**Editorial**

**Independence of the Supreme Audit Institution (SAI) in Democracy** 1

Thayyil Sethumadhavan

**Mapping of Sustainable Development Goals with Finance Accounts and Budget** 22

Ms. Anita Pattanayak & K.K. Srivatsava

**A vision of Public Auditing 2030** 31

Dr. Subhash Chandra Pandey

**Revenue Sharing in Telecom Sector** 48

Ms. Sangita Choure

**Fiscal Rules and Fiscal Councils: Why do we need them** 53

Dr. Govind Bhattacharjee

**The Role of the Comptroller and Auditor General of India in Combating Corruption** 70

K.P. Shashidharan

## **From the Presidents' Desk**

This is the 25<sup>th</sup> issue of the Journal of Public Audit and Accountability, which embarked on its literary journey in the year 2005. The Journal covers wide range of subjects relating to Audit, Accounts, Accountability, Governance, Management etc. All the stakeholders in public discussions relating to audit, accounts and accountability *e.g.* administrators, auditors, accountants have been contributing to the Journal. We have been presenting the views from the angles of audit and also from the executive.

This issue contains articles on issues of relevance from the learned contributors. We have articles on Independence of the Supreme Audit Institution, Mapping of Sustainable Development Goals with Finance Accounts and Budget, A vision of Public Auditing 2030, Revenue Sharing in Telecom Sector, Fiscal Rules and Fiscal Council, Role of Audit in Combating Corruption.

I am sure the readers will find the articles illuminating. We welcome the valuable suggestions of our esteemed readers for making the Journal more professional and to discharge its objective of dissemination of knowledge on accountability.

**AJIT PATNAIK**

## EDITORIAL

Indulging in future prediction is a natural predilection for individuals. Hence the special place the astrologers enjoy in a society and in the minds of the individuals. While in the case of an individual astrology does the calculations on the basis of position of astronomical bodies, it is difficult to reduce to calculation of movement of heavenly bodies in case of government and institutions. In the case of institutions, it is a particularly difficult endeavour. Institutions have a character of their own and they are also lengthened shadow of one man as Emerson would say. Institutions move in a momentum and they have a collective character. But it will not be also far from truth to say that they reflect the actions and traits of the dominant personality as of Gates in case of Microsoft or Jobs in Apple.

It is a difficult adventure to indulge in study of future evolution of an institution like Audit. Audit is generally known to be a subject of dry facts, a process of preparation of audit objections through cut and dried straight-jacketed procedures. Where deviation is a serious offence, it is natural that all actors in audit would prefer to stick to formulaic approach instead of trying anything novel or innovative. It is no wonder we have very little futuristic literature about audit.

As Bacon would say ‘time is the greatest innovator’ which innovates ‘greatly but quietly’, and ‘first precedent (if it be, good) is seldom attained by imitation’. Perhaps ‘imitation is suicide’ and the individuals and organizations must innovate, if they are not to be affected by stasis. It is high time for all in the profession of government audit both serving and retired to ponder over this. Stagnation is the sure road to decline and fall and an institution to stay in vigour and relevance must evolve and it must encourage original ideas and thinking.

In IPAI through our Journal, we have been encouraging original thinking. In this issue we have articles by authors who have tried to look to the future shape of audit and accounts in years to come. Dr. Pandey has projected the future role of Audit in 2030

into areas of responsibility to international community in fiscal management etc, prevention of money laundering, auditing of election finance, as part of preventive system of governance, advisory role as of Supreme Court on a governmental reference etc. Smt. Anita Pattanayak and Sri Srivastava, have attempted to map sustainable development goals like reduction of poverty, quality education, climate action etc with finance accounts and budget; the exercise has been attempted in respect of Govt. of Mizoram. This will help assess the achievement of Governments in respect of SDG.

Article by Sri Sethumadhavan has argued that SAI must assiduously and zealously guard its independence *vis a vis* the governmental interference particularly in regard to content of Audit Report. He has also argued for audit of CAG organization by external agencies like Institute of Public Auditors. Sri Shashidharan has highlighted the role SAI can play in fighting corruption referring to Lima declaration 1977, which he calls Magna Carta of auditing. Smt Sangita Choure has analysed the issues of revenue sharing in Telecom sector and recommends reforms as per the Digital Communications Policy 2018. Dr. Bhattacharjee has advocated for clear fiscal rules and empowered independent Fiscal Councils to keep the fiscal deficit at desirable levels. He has also recommended integration of public sector accounts with government accounts to get the figures of total public sector expenditure in governmental thrust areas.

**AJIT PATNAIK**  
**Editor**

# INDEPENDENCE OF THE SUPREME AUDIT INSTITUTIONS (SAI) IN DEMOCRACY

THAYYIL SETHUMADHAVAN\*

## Introduction

Public audit is the vital link in preserving probity in public administration. Democracy can survive only in an atmosphere of transparency and accountability. In a democratic set up where division of powers is a basic feature of the constitution and forms the cornerstone of political harmony, it is the public audit performed through the office of the Supreme Audit Institutions (SAI) which ensures that the executive broadly functions with accountability and transparency and discharges its expected tasks with economy, efficiency and effectiveness. The traditional role of public audit got expanded over time to meet this challenge and as the Lima Declaration (1977) of the International Organization of Supreme Audit Institutions (INTOSAI) (the policy making conglomerate of SAIs under the aegis of the United Nations)<sup>1</sup>, has clearly laid down, the task of the SAIs to cope with the emerging challenges is enormous: “Audit is not an end in itself; but an indispensable part of a regulatory system whose aim is to reveal deviations from accepted standards and violations of the principles of legality, efficiency, effectiveness and economy of financial management early enough to make it possible to take effective action in individual access, to make those accountable accept

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<sup>1</sup> (Incidentally, the Comptroller & Auditor of India (CAG) is not only an active member of INTOSAI, but also contributes substantially to the policy formulations of INTOSAI).

responsibility, to obtain compensation, or to take steps to prevent – or at least render more difficult–such breaches”<sup>2</sup>.

Subsequently, Josef Moses, President, Austrian Court of Audit & Secretary General, INTOSAI, reiterated the task of SAIs in clinching manner: “Undisputedly, external public audit is tasked with promoting good governance, enhancing transparency, guaranteeing accountability, maintaining credibility, fighting corruption, strengthening public trust, and ensuring the efficient and effective use of public funds for the benefit of the citizens”<sup>3</sup>.

Democracy is all about good governance and about a transparent and accountable executive functioning with efficiency, economy and effectiveness to promote the welfare of the people within the confines of constitutional and legal framework. In a democratic system of governance, the executive which is the ears and arms of the State functions under the legislative oversight of the Parliament and its decisions are indeed subject to judicial review. There are, thus, adequate checks and balances built into the system for democracy to survive. While the Parliament enacts laws and regulations to enable the executive to function effectively and within the broad confines of the Constitution and law, it will not however be able to verify whether the actions and performance of the executive were carried out in compliance with the laws and budgetary sanctions without the support of an agency capable of scrutinizing the acts and activities professionally and on continuous basis and report to it its findings. This role is entrusted to the Comptroller & Auditor General (CAG) under the Indian Constitution as in most democracies of the world. And in order that they may carry out the assigned function effectively, SAIs are to be reposed with adequate independence<sup>4</sup> by way of freedom of action

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<sup>2</sup> (The LIMA Declaration of Guidelines of Auditing Precepts, INTOSAI, 1977).

<sup>3</sup> Strengthening Public Audit Institutions : INTOSAI (2010)

<sup>4</sup> In the ‘Guiding Principles of Auditing Standards’, Chapter: 4 of the Regulations of Audit & Accounts, 2007 issued by the CAG, the definition of “independence” is summarised in the following words: ‘The auditor and the audit institution should be independent in all matters relating to audit work so that their opinions and reports are impartial’. The scope of the phrase “all matters” has not been defined, but it has wide implications.

and availability of resources. In the words of Vinod Rai, former CAG of India, ‘accountability and transparency, the two cardinal principles of good governance in a democratic set up, depend, for their observance, on how well the public audit function is discharged. It is for this reason that the legislatures of many countries the world over have ensured the independence of supreme audit institutions’<sup>5</sup>.

A Task Force on Independence of SAIs established at the 44<sup>th</sup> meeting of the SAI Governing Board, in its report submitted in 2001, identified several core features which are essential prerequisites for the sustained independence of SAIs. These include an appropriate constitutional and legal framework, independence of the heads and members of the SAI, a sufficiently broad mandate, full discretion in the discharge of SAI’s duties (including on the contents and timing of the audit reports), unrestricted access to information, efficient follow up mechanism and availability of sufficient human and financial resources.

### **Potential Threats to Independence of SAIs**

Political apathy constitutes a major threat to the independence of SAIs. According to Franz Fiedler, formerly Secretary General, INTOSAI and President, Austrian Court of Audit, ‘given the wealth of state power concentrated within the executive branch of the government, there is an underlying danger that this power will be used against the authorities responsible for government audit’. If this is not resisted, “the objective and effective control of financial management of the state would be impaired and any government audit would deteriorate into an act of self-control or an ‘alibi’ of the government for its actions”<sup>6</sup>.

INTOSAI has identified the following as potential threats to the independence of SAIs:

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<sup>5</sup> Not Just an Accountant: Vinod Rai,(The Role of Audit :Page 36).

<sup>6</sup> Strengthening External Public Auditing in SAI Regimes: Contributions and Results of the INTOSAI Conference, 26-27, May, 2010, Vienna.

- (i) Political / governmental initiative aiming at significant amendments to SAI-related regulations without consultation with SAI or opinions of independent experts;
- (ii) Passing amendments that introduce or facilitate political dependence of the SAI's top management;
- (iii) Introducing external audit of SAI's whole activity;- (eg; enabling external auditors to assess the relevance of audit subjects chosen by the SAI, its audit methods, or cost of individual audits;
- (iv) Delaying ( for political reasons) the nomination of SAI Head ( Prolonged vacancy);
- (v) Rejecting ( for political reasons) the nomination of SAI Head;
- (vi) Rejecting ( for political reasons) by the Parliament ( and / or other bodies) the candidate for SAI members proposed by SAI;
- (vii) Politically engaged media that may attack the SAI in order to destroy its reputation;
- (viii) Questioning SAI's political neutrality;
- (ix) Trying to influence the results of SAI's audits or rejecting / questioning them by the Parliament ( and or other bodies);
- (x) Parliament's ( or other bodies') frequent orders or requests for SAI to carry out specific audits ( thereby diminishing the SAI's capability to do audit in other areas);
- (xi) Cutting the SAI's budget planned for specific tasks;
- (xii) Imposing new tasks on the SAI without allocating additional resources.

## **Threat to CAG's Independence in India**

CAG of India has always been known for its professionalism, competence and commitment to the Constitution. Its reports are known for objectivity and thoroughness. Nevertheless, after the CAG of India submitted his celebrated performance audit reports on the sale of 2G Spectrum bringing out patent irregularities in the procedure followed in the award of the valuable natural resources along with the estimated virtual and presumptive losses to the exchequer caused thereby, the ruling dispensation staged a virulent attack on the CAG. The same tactics were continued to be followed when CAG brought out irregularities in the allotment of coal fields to private companies on arbitrary basis and in violation of Article – of the Constitution. The campaign against the CAG included an orchestrated drive by not only political bigwigs, but also by the senior Cabinet Ministers, inside and outside the Parliament as well as through visual and print media with a view to discrediting the CAG and to bring down his credibility by questioning the process of audit and the credibility of CAG's audit findings. Leaders of the ruling coalition went to the extent of attributing political motive to the CAG and his officers in bringing out the above reports. The vituperative campaign was continued relentlessly till the fall of the government in the subsequent general election; and was a text-book case of deliberate attempt to threaten the independence of the CAG by humiliating and discrediting him and the officers of the IA&AD. It was, therefore, not at all surprising when, recently, the criminal proceedings initiated by the Central Bureau of Investigation (CBI) against the perpetrators of the corrupt process failed in a court of law either due to the poor quality of evidence produced or due to the inept follow up of the proceedings in the court, and the accused were acquitted, the same visual media and the tainted politicians went hammer and tongs against the CAG once again questioning his technical competence and credibility. The threat to CAG's independence was apparent on both the occasions.

The above was not an isolated instance in the long history of the CAG of India. For instance, when the CAG brought out a critical audit report over the financial performance of the

Government of Tamil Nadu some years ago, the then Chief Minister not only criticised the local Accountant General in the media for prejudice and questioned his right to conduct a press conference to clarify the major issues brought out in the report; though the Supreme Court affirmed the right of CAG in that regard ultimately. In another similar instance, after the CAG brought out the performance audit report on the fodder scam in the State of Bihar, the Chief Minister (who was later convicted for his role in the widespread irregularity) launched a severe attack on the CAG and on the local Accountant General. The fact of the matter is that whichever political party is in power, no government wants to face audit criticisms fairly, look upon them as an opportunity to set their own records straight and to take remedial measures. CAG's performance audit reports are looked upon as attempts to cast aspersions on the ruling administrations as would impact the political credibility of the governments in position and as instruments of harassment which are best done away with or quietly buried.

It is relevant that on several occasions, departments have even questioned the right of the CAG to conduct performance audits; so much so, the Ministry of Finance had to issue a clarification affirming the position and asking the Ministries and Departments to facilitate the conduct of performance audit by the CAG<sup>7</sup>. Subsequently, the Supreme Court also unequivocally confirmed that "the CAG is a constitutional authority entitled to review and conduct performance audit on revenue allocations relating to the centre, the states and the union territories and examine matters relating to the economy and how the government uses its resources"<sup>8</sup>. So long as the CAG's reports are compendiums of routine procedural and financial lapses carried out by the lower rungs of the administration, the political higher ups find them as useful tools to discipline the bureaucracy; but when performance audit reports touch upon substantive issues of policy

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<sup>7</sup> Ministry of Finance Office Memorandum No: F.No.6(5)-B(R)/99 dated 13<sup>th</sup> June, 2006

<sup>8</sup> Don't Undermine Office of the CAG, says Supreme Court, The Hindu, 1 October, 2012 (Quote at Page 53, Just Not an Accountant): Vinod Rai.

implementation and irregular practices and failures to adhere to probity and propriety in administration as would hurt the political credibility even remotely, the picture changes!

The chronicle of campaign against SAI is not unique to our country. In June, 2009, the Supreme Audit Institution of Denmark brought out an audit report commenting on the inflated rates payable and the poor quality and access to treatment available in certain private hospitals which were approved by the Ministry of Health for use by the regional health centres. The Minister in charge was a powerful politician who later became the Prime Minister of the country; and at his behest, a campaign was mounted against the SAI attributing ‘politicization of the audit’ and the poor quality of the audit report.

Threat to SAI’s Independence exists in most countries and the INTOSAI has been cautioning its members against such attempts. INTOSAI has also taken up the matter with the United Nations to include the need for SAI’s independence in its resolutions.

### **Constitutional Safeguards**

The Constitution of India under Article 148 proclaims that there shall be a CAG of India who shall be appointed by the President under his hand and seal and shall be removed from office in like manner and on the like grounds as a judge of the Supreme Court. It also gives protection to the CAG against any executive action regarding his terms of appointment by entrusting the Parliament with power to regulate his salary and other conditions of service. However, the same protection does not extend to his officers and staff; except that Article 148 (5) states that the conditions of service of the persons working in the Indian Audit & Accounts Department (IA&AD) which is the body of professionals that support and carry out all functions on behalf of the CAG may be fixed by the President, viz the Government of India after ‘consultation with the CAG’. It is pertinent that the salary and allowances and administrative expenses of only the Office of the CAG will remain charged to the Consolidated Fund of India whereas the entire expenditure relating to the various offices of

Accountant Generals and other audit authorities will form part of the usual budgetary process, making them vulnerable to the administrative control of the Ministry of Finance. Effectively, this anomalous position takes away, in practice, the conceived independence of the CAG envisaged in Article 148.

Article 149 of the Constitution provides that the duties and powers of the CAG in relation to the accounts of the Union and the States and of any other authority or body shall be as prescribed by any law made by the Parliament. The envisaged law was passed in 1972 by way of the CAG's Duties, Powers and Conditions of Service Act, 1972 (commonly known as the DPC Act). The Constitution also provides in Article 151 that the reports of the CAG 'relating to the accounts of the Union and States' shall be presented to the President and the Governors concerned respectively 'who shall cause them to be laid before each House of Parliament or the Legislature of the State , as may be'.

While the constitution envisages the independence of the CAG in principle, there are several inherent lacunae in the legal framework which would act as impediments to the autonomy of the CAG which are discussed elsewhere in this paper. Comparing the constitutional articles on the Supreme Court and the CAG, Rajiv Mehrishi, presently the CAG of India points out that: "I cannot help saying that we have not given the same independence which we have given to judiciary, although I personally feel that the CAG ought to have far greater independence than the judiciary itself"<sup>9</sup>. Vinod Rai also emphasises that although institutions such as CAG, CEC and CIC have been created by the Constitution as establishments of horizontal accountability and to ensure checks and balances within the parliamentary democratic set up, 'as against judicial privileges provided under the Constitution – such that blanket criticism of judicial pronouncements is assumed to be a breach of judicial privilege attracting contempt of court – the CAG has no such cover'. He also highlights that as compared to the virulent attack launched against the CAG for its 2G Spectrum

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<sup>9</sup> Rajiv Mehrishi calls for the same independence as enjoyed by judiciary: Jyotika Sood, Live Mint dated 10 October 2018.

report, no such attack could be orchestrated against the Supreme Court which cancelled the entire 122 licences issued by the government.<sup>10</sup>

### **Legal Base for CAG in India**

Apart from the provisions in the Constitution, the basic law supporting CAG's independence is the DPC Act, 1971. As the name of the Act itself indicates, the Act deals more with the terms and service conditions of the CAG and his powers than establishing the objective, tasks and parameters of public audit. This contrasts with similar enactments in most other countries where the emphasis is on the tasks, rights and obligations of public audit. Moreover, the DPC Act, 1971 entrusts the right to decide the need or essentiality of CAG's audit of certain entities and public bodies with the President, with only a consultation with the CAG being a pre-requisite. The Act does not even define 'audit', which now appears in the Regulations of Audit & Accounts (2007). But it must be remembered that the DPC Act was promulgated at a time when public audit was mostly in an evolving stage and concepts such as performance auditing were yet to develop into comprehensive forms of public auditing. The IA&AD is aware of the need for comprehensive amendment of the DPC Act. As stated by Vinod Rai, the CAG had proposed a new Act<sup>11</sup> to replace the DPC Act with a view to expanding the scope and coverage of public audit and given a presentation to the then Finance Minister. The changes proposed included the long-felt need to bring all public funds and bodies rendering public service within the automatic purview of audit by the CAG; as also to make it the statutory liability of all public servants to furnish time-bound responses to audit queries and observations. The DPC Act having been enacted in 1971 provides for "audit coverage of conventional government departments and public enterprises, but not delivery models such as public-private partnerships, non-governmental

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<sup>10</sup> Role of Audit: Not Just an Accountant; Vinod Rai, Page 51.

<sup>11</sup> Subsequently converted as an amendment to the provisions of the DPC Act, 1971 on the advice of the Finance Ministry (See Page 56, Not Just an Accountant, Vinod Rai).

organizations and panchayati-raj institutions.<sup>12</sup> Vinod Rai also ruefully points out that more than half of the Central Plan expenditure did not fall within the ‘automatic legal audit mandate’ of the CAG<sup>13</sup>.

Further examples of the inadequacy of the DPC Act, 1971 can be seen from the scope of Sections 19 and 20 of the Act. Section 19 provides that the CAG’s audit of companies and corporations will be subject to the provisions of the Companies Act, 1956<sup>14</sup> or of the relevant law relating to the public corporations concerned with an enabling clause for CAG’s audit of such bodies in the States on ‘consent basis’. Further, under Section 20, the audit of any body or authority not entrusted to the CAG by or under any law may be taken up by him on “consent basis” only. These provisions could, in actual practice, limit the authority and independence of the CAG significantly, and do not stand to reason in light of the need for transparency and accountability of public administration.

Vinod Rai brings out three major issues which would need to be included in a modified Audit Act. These are (1) A time limit for the executive to furnish information asked for by auditors in line with perhaps the Right To Information Act; (2) A mandatory requirement for the governments to table audit reports submitted by the CAG to Parliament or Legislatures within a given time limit and (3) most importantly, to include public private partnership projects, and schemes implemented through Panchayati-Raj institutions or societies specifically constituted for the purpose in the automatic audit jurisdiction of the CAG.

Understandably, the government of the day, stung by the avalanche of audit findings relating to various financial irregularities brought to light by the CAG, put the proposed amendments to the DPC Act in cold storage. Unfortunately, no progress has been made even during the reign of the subsequent government which has also practically come to an end. The omission to pass a new and comprehensive Public Audit Act in

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<sup>12</sup> Not just an Accountant, Vinod Rai, Page: 54.

<sup>13</sup> The Role of Audit, Page 35, ‘Not Just an Accountant’, Vinod Rai.

<sup>14</sup> Since replaced by a new Companies Act.

place of the time-worn DPC Act, 1971 will continue to be a persisting threat against the independence of the CAG of India.

## **Regulations of Audit and Accounts**

It is true that some of the shortcomings under the DPC Act, 1971 have been overcome by devising the Regulations of Audit (2007) issued by the CAG which supplement the DPC Act, 1971 and establishes the process and regulations of public audit. For instance, the Regulations assert that CAG is the sole authority to decide the scope and extent of audit. It also affirms that CAG may, apart from the envisaged financial, compliance and performance audits, decide to undertake any other audit of a transaction, programme or organization in order to fulfil his mandate and to achieve the objects of audit. Although the Regulations of Audit & Accounts (2007) fill in several gaps that exist in the DPC Act, 1971, nevertheless, there can be little doubt that it is essential to bring out a revised and comprehensive National Audit Act of India in place of the DPC Act, 1971, with utmost despatch, to provide a sound legal basis for the CAG as well as to enhance its independence.

It may be worth recalling the experience of the UK in this regard. In 1998, the Government of UK appointed an expert committee under Lord Sharman of Redlynch to examine the need and the scope of expanding the coverage of public audit to the entire public expenditures; and his well-known report, captioned appropriately as “Holding to Account” (2001) brought in its scope the audit of what are described as “Non-Department Public Bodies” (NDPB), namely, bodies that have a role in the processes of national government, but which are not government departments or part of one, and which accordingly operate to a greater or lesser extent at an arm’s length from Ministers”. The Government of UK accepted that the CAG should be eligible to be appointed as the auditor for NDPBs thereby plugging a loophole in the process. Similar exercises were followed in certain other countries as well.

Fortunately, the higher judiciary of our country has rendered a helping hand and held that where public interest is involved, the

CAG can exercise his jurisdiction<sup>15</sup>. The Supreme Court also held that CAG's function to carry out examination into economy, efficiency and effectiveness with which government has used its resources is inbuilt in the 1971 Act<sup>16</sup>.

### **Appointment of CAG**

Neither the Constitution nor the DPC Act, 1971 goes into the question of the manner of appointment of the CAG. It is a jealously guarded right of the executive which chooses the CAG from among the senior bureaucrats of the time with inadequate regard for the need for professional background, experience in Public Audit, transparency and independence of the SAI. This came to sharp focus when Shashikant Sharma, former Defence Secretary was appointed as successor to Vinod Rai in 2013. As pointed out by an academic, "while Mr. Sharma is by all accounts an officer of the highest integrity *who enjoys the confidence of the government*, his choice causes deep misgivings about the continued independence of the CAG and the motivations of a government that has been repeatedly chastised by the Supreme Court for failing to respect the autonomy of independent institutions"<sup>17</sup>. Though the Supreme Court declined to interfere in his appointment in a writ petition filed by well-informed civil servants and public figures, the fact remains that there was an inherent conflict of interest in the appointment of Sharma since for almost ten years he was involved in major acquisitions and purchases in the Defence Ministry which he was required to audit later as his own CAG! As against the method of selecting the head of SAIs in countries like the USA, UK, Canada etc., the convention followed in India pales in comparison.

The wisdom and advisability of making the CAG a multi-member body or a Board of Audit, as exists in several other countries, so as to strengthen and broad-base the institution is a

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<sup>15</sup> Association of Unified Tele Service Providers & Others Vs Union of India (CA No. 2014)

<sup>16</sup> Arvind Gupta Vs Union of India; WP (C0 No.393 Of 2012).

<sup>17</sup> "Watching the Watchman": Arghya Sengupta, Stipendiary Lecturer in Administrative Law, Pembroke College, University of Oxford.( The Hindu, May 22, 2013). Italics provided.

topic of continuing interest among practitioners of public audit, but beyond the scope of this discussion. The precedent of the Chief Election Commissioner (CVC) is a living example; undoubtedly, the CVC has become far more effective and credible as an institution after the body was expanded to include three members. It may be recalled that the Constitution Review Commission under Justice Venkatachaliah had also recommended the formation of an Audit Board to replace the CAG as a sole authority for public audit. V.K.Shunglu, former CAG who investigated into the financial irregularities in the conduct of the Commonwealth Games had also suggested a similar step.

The appointment of CAG by the executive without a transparent and established procedure remains a major threat to the independence of the SAI in India. This has to be seen in contra against the established procedure (at the initiative of the Supreme Court) for the appointments of Chief Vigilance Commissioner (CVC), Director, CBI etc., which are not even constitutional positions.

### **Role of Parliament and the Public Accounts Committee**

Parliamentary oversight of the financial management of the government is accomplished primarily through the mechanism of PAC and as often quoted, CAG functions as the friend, philosopher and guide of the PAC. It is essential for the PAC, in turn, to provide comprehensive, unmitigated support to the CAG in his endeavour to bring out qualitative value- for- money audit reports through effective follow up of the audit reports. In reality, however, this has turned out to be a weak link. The Central PAC, in view of time constraints, only selects a few paragraphs from the audit reports for discussion. The rest are to be pursued through ‘Action –Taken Notes’ from Ministries in a somewhat lackadaisical manner. In the case of State PACs which discuss the whole reports, there have been inordinate delays in processing the reports, thereby impacting the effectiveness and independence of audit. Although the Regulations of Audit & Accounts provide for departmental and state-level audit committees to pursue audit findings and to enable their eventual settlements, this is yet to evolve as an effective mechanism.

In case of reports which are inconvenient to the governments in position, there have been practices of appointing Joint Parliamentary Committees (JPC) where members adopt clearly adversary and partisan roles to nullify the impact of the reports. The JPC on 2G Spectrum is a prime example. There have been attempts by politically motivated members of such bodies to destroy the credibility of the CAG by questioning the audit findings and conclusions. This not only affects the independence of the SAI, but also leads to de-motivation of the auditors whose object is solely to safeguard public funds.

In order to enable the Central PAC to strengthen the audit and accountability process, and to make it a powerful instrument of the parliamentary control, there is a case to increase the number of PACs as would be able to discuss all of CAG's reports in time. To start with, a second or an alternate PAC extensively dealing with Defence, Railways and Communications Ministries will perhaps be a good initiative. Another option will be for the Departmental Budget Committees or the Consultative Committees to consider pending audit observations and audit reports relating to each ministry while reviewing the year's budget and activities and to make appropriate recommendations to the Parliament.

It may also be useful if the Parliament and the State Legislatures approve every year resolutions drafted by the PAC, with the support of the CAG, calling for remedial actions in respect of the significant and major observations and findings of the public audit on the state of accounts and budget implementation, somewhat on the lines of the practice followed by the United Nations General Assembly.

### **Accountability to Parliament**

CAG's accountability is to the Constitution of India; and his reports are presented to the Parliament and the State / Union Territory Assemblies as provided in the Constitution. He supports the PACs not only by providing his reports, but also by helping them to examine the reports, by framing questions to the Ministries and Departments to elicit clarifications, by attending the PAC meetings, vetting the reports as also by following up with

ATNs. PACs are normally supportive of the right of CAG to carry out audits including performance audits because audit reports provide the materials for the detailed scrutiny of the financial performance by the Ministries; but not long ago, to everyone's surprise, a member of the Central PAC and the convener<sup>18</sup> of a conference of the Chairpersons of PACs of States and Union Territories, held in 2015 came out with a statement that the CAG should be made accountable to Parliament through a constitutional amendment. It was also reported that a committee had been set up to review the role of CAG in that context; but nothing seems to have happened subsequently. Nevertheless, the pronouncement by the convener of the conference itself posed a threat to CAG's independence. True, SAIs are officers of Parliaments in some countries including the UK; but in India, the Constitution accords a totally independent position to the CAG. It must be noted that subordination to even the Parliament in a system like ours could throw up severe constraints on the CAG, considering that in our Parliamentary democracy, party affiliations are the reigning factor and not necessarily bipartisan approaches to vital issues. As became evident during the debate in the JPC on 2G Audit Report, members tend to adopt party-based approach on audit findings instead of basing their views on facts and figures brought out in the reports; and audit reports could become instruments of political rigmarole. Moreover, demands for carrying out audits of politically sensitive issues within time limits which would suit hidden political interests could arise which could make the CAG, as an Officer of Parliament, a victim of political manoeuvring.

In the list of potential threats to SAI's independence brought out by the INTOSAI<sup>19</sup>, frequent requests and motivated demands from the Parliament for audits of topics chosen by it or interferences in various forms in the internal working and discretion of the CAG could pose major threat to the independence of the CAG. It would appear that the present arrangement provided in the Constitution for the CAG as an authority without allegiance

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<sup>18</sup> Nishikant Dubey, Member of Parliament and Member, PAC and the Convener of the Conference of PAC Chairpersons.

<sup>19</sup> Potential Threats to Independence of SAIs, discussed ante.

to none of the three organs of the state, but with unimpeachable commitment to the Constitution will continue to be the best and desirable option.

### **Submission of Audit Reports and Independence of CAG**

The Constitution in Article 151 provides that the reports of the CAG shall be submitted to the President who shall cause them to be laid before each House of the Parliament ‘as soon as may be after it is received’; a similar provision exists for the States and Union Territories as well. As brought out earlier, neither the Constitution nor the DPC Act, 1971 prescribes a time limit for the laying of the reports, and it is open to the governments to decide when they must be laid before the Parliaments. This places unlimited discretion with the governments to decide the timing of submission of the reports to the Parliament or to the Legislatures and governments could delay them at will in the case of inconvenient reports. In fact, it could be seen from the details periodically given in the Table on submission of audit reports to the Legislatures, appearing on CAG’s website, that delays in tabling the reports are the rule rather than an exception. In order to ensure the independence of audit, therefore, there is a clear need to prescribe statutory limits making it incumbent on the executive to table the audit reports in the legislatures after submission by the CAG within reasonable and specific time limits<sup>20</sup>. As highlighted by Kataria and Mallick (2008:05), “such serious delays or sometimes manipulations on the part of the Government in deciding timing of placement of the reports before the legislature erode the independence of the CAG as well as his effectiveness as constitutional watchdog of public finances”<sup>21</sup>.

The DPC Act, 1971, when amended should include appropriate provisions to remedy the inherent lacuna in the Act in relation with the tabling of Audit Reports in the legislatures.

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<sup>20</sup> In the Amendments to the DPC Act, 1971, proposed by the CAG, a time limit of seven days were prescribed.

<sup>21</sup> Quote from the paper “Inordinate delays in Tabling of CAG’s Reports in the Legislatures”: Prof. Himanshu Upadhyaya and Abhishek Punetha.

## **Access to Information and Records**

Access to information, data and documents is the most important pre-requisite for any audit and the CAG ought to have unfettered and unlimited access to information, data and documents as he considers necessary for carrying out his audits. The DPC ACT, 1971 under Section 18 (b) provides that CAG shall have authority to ‘require that any accounts, books, papers and other documents which deal with or form the basis of or otherwise relevant to the transactions to which his duties in respect of audit extend, shall be sent to such place as he may appoint for inspection’. CAG may also ‘put such questions or may make such observations as he may consider necessary, to the person in charge of the office and call for such information as he may require for the preparation of any account or report which it is his duty to prepare’. The Section also makes it incumbent on the officer in charge to afford all facilities for CAG’s inspection and comply with requests for information in as complete form as possible and with all reasonable expedition’.

But in actual practice, however, getting information, records and data poses the biggest hurdle before auditors. Delays in submission of records and information to audit are common though the executive officers subject to audit know well that such delays will frustrate the effectiveness of audit. The Regulations on Audit & Accounts include extensive provisions regarding making available information, data and documents. According to the Regulations, the time within which information, data and documents are to be furnished to audit will be indicated in the requisitions; and every department or entity shall establish and implement a mechanism to make them available to audit “in time”. The Regulations also include a provision to initiate actions in case of failures to provide information, data and documents to audit. But it is unclear to what extent, in the absence of a specific time limit, such provisions have become really effective.

Vinod Rai compares the provision in the DPC Act with the ‘common man’s right under the Right to Information (RTI) Act- an answer within thirty days, failing which the departmental official is

liable to face punishment. Our request: why not similarly empower the audit officer?’<sup>22</sup>

Access to information to public audit should remain a focus area for the departments and organizations; and the need for legal support in the matter in clear terms is evident. Withholding of information either wilfully or due to the lackadaisical approach of the audited entities will continue to be a real threat against the independence of public audit until an appropriate legal enactment comes into being.

### **Restrictions on Contents and Dissemination of Audit Reports**

The Task Force on Independence of SAIs established by INTOSAI (1998) had identified ‘freedom to decide on the contents and timing of its audit reports and to publish and disseminate them’ as an essential prerequisite for an effective government audit to be performed by SAIs. In the recently published CAG’s Audit Report No.3 of 2019<sup>23</sup>, CAG of India prefaces the Report with an observation that CAG was forced by the Ministry of Defence (MOD) to redact<sup>24</sup> commercial details on the audit findings of Medium Multi Role Combat Aircraft (MMRCA) included in Volume II of the Report. The Report clarifies that the Ministry of Defence (MOD) had requested CAG’s Office to do so citing reference to an Inter Government Agreement (IGA) and the provisions of an Indo French Agreement concerning the protection of classified information and material in the field of Defence. CAG’s Office, in response, intimated the MOD about CAG’s *reluctance / refusal* to carry out the redaction of price information *on account of difficulties in comprehension and lack of precedence of redaction of commercial details in audit reports*<sup>25</sup>. However, MOD, on grounds of security concerns strongly reiterated its demand, thereby forcing CAG to redact such information from the Report.

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<sup>22</sup> Not Just an Accountant: Page 55

<sup>23</sup> Union Government (Defence Services) Air Force: Report No.3 of 2019; Performance Audit Report of the Comptroller & Auditor General of India on Acquisition in Indian Air Force.

<sup>24</sup> Censor or Obscure for legal or security purposes; edit for publication.

<sup>25</sup> Emphasis added.

## **Role of Media in Preserving Independence of SAI**

INTOSAI identifies politically engaged media that may attack the SAI in order to destroy its reputation as a potential threat to independence. As discussed earlier, we have seen this happening in real terms in India when the CAG brought out his reports on the arbitrary disposals of national assets by unscrupulous politicians in concert with weak or corruptible bureaucrats. The written as well as the visual media took upon themselves the role of arbitrators to judge the correctness and the veracity of the audit reports depending on which side of the ruling dispensation they were at that time. There were not only criticisms on the findings of the CAG, but also there were vituperative attacks on the institution of CAG. Fortunately however, there was also a section of the media which took a balanced view and made efforts to present the facts objectively<sup>26</sup>.

The threat to the independence of the CAG from biased publications and politically motivated media is real and needs to be countered with diligently crafted strategies and approaches. It is true that the media interest in CAG's reports is a positive feature and a gain for the cause of public accountability in view of the wide dissemination of the findings of the CAG in public domain. However, it is crucial that the SAI does not get influenced in any manner by the bouquets or brickbats, and continue to carry out its tasks with aplomb and dispassionate equanimity.

### **External Audit of CAG's Accounts**

There have been occasional demands for the external audit of the accounts of the IA&AD by another independent auditor as exists in the case of the National Audit Office, UK, for instance. Since the CAG has an extensive internal inspection wing which carries out the function effectively, the objective can be taken as fulfilled. However, if at any time, the demand for an external audit is concurred to for the sake of added transparency,<sup>27</sup> care must be

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<sup>26</sup> Strengthening External Public Auditing in INTOSAI Regions: Contributions and results of the INTOSAI Conference, 26-27, May, 2010, VIENNA.

<sup>27</sup> Perhaps, it may be a good idea to entrust the external audit of the CAG's subordinate units to the Institute of Public Auditors of India (IPAI) which has a pool of experienced and competent audit professionals who will be responsive to the need to carry out the financial audit without impacting the independence of the SAI.

taken that such an audit is restricted to the financial management of the Department, and does not impinge on the absolute discretion of CAG in the matter of selection of topics for audit, timing of audit or the audit methodology, as has been clearly brought out in the recommendations of the INTOSAI referred to in the relevant paragraph above.

One must recall in this context the report of the peer review of CAG's Performance Audits carried out by an international team of auditors under the leadership of SAI, Australia, carried out in 2012. The report brought out certain weaknesses in the reporting pattern of our SAI and made valuable recommendations which were of substantive value. Such reviews, while not impacting the independence of the SAI, provide significant value addition to the working of the SAI concerned.

### **Way Forward**

The purpose of this discussion is to briefly highlight the potential threats to the independence of the CAG in the context of the situation existing in India and in the background of the caution sounded by the INTOSAI. It is evident that there are serious threats to the independence of the CAG in India, both inherent and potential. The need for concerted action to identify the threats and to guard against them by appropriate legal and administrative and societal measures cannot be gainsaid. As advised by INTOSAI, 'an SAI that creates even the slightest impression of subservience will soon be at the risk of being influenced by the executive powers and deprived of its independence in practical terms'.

The first and foremost step towards protecting and preserving the independence of the CAG in India will be by managing to get a new and comprehensive National Audit Act passed by the Parliament with absolutely clear clauses and provisions defining the objective, role, rights and responsibilities of public audit in place of the dated DPC Act, 1971. This will call for substantial efforts on the part of the senior management of the CAG with active support from the CAG himself. The rest would follow as natural concomitants.

To quote INTOSAI again, if SAIs earn recognition for their objectivity and the quality of their audit activities, they will have no problem making their point and successfully defending their independence<sup>28</sup>. In the case of the CAG of India, the first part of the bargain has already been accomplished. What remains is the push for institutionalizing its independence through legislative measures and by pursuing a strategic media policy, among other things.

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<sup>28</sup>Strengthening External Public Auditing in INTOSAI Regions, INTOSAI Conference, 2010, Vienna.

# MAPPING OF SUSTAINABLE DEVELOPMENT GOALS WITH FINANCE ACCOUNTS AND BUDGET

Ms. ANITA PATTANAYAK & K.K SRIVATSAVA\*

## General Introduction:-

### The initiative: World Institute for Development Economics Research (WIDER):-

The Initiative: World Institute for Development Economics Research (WIDER):-

At the WIDER in Helsinki in July 1988, Professors Martha Nussbaum and Amartya Sen organized a conference to deliberate upon issues like what is meant by the 'quality of life', and the requirements in terms of social policy for improving it. At the aggregative level, economists use a crude measure of per capita income as indicative of human welfare. There is a criticism that this single crude measure provided by per capital income is insufficient and there is a need to assess a number of distinct areas of human life in determining how well people are doing. The conference in Helsinki suggested, inter alia, that we should instead measure people's capabilities, that is, whatever they are able to do and to be in a variety of areas of life. That was an important way of encouraging debate on the issue of improving the quality of life with a view to lead up to comprehensible results by policy-makers.

When the prosperity of a nation or the quality of life of its inhabitants is talked about, how much money is available for a

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given number of people (the analogue of GNP per capita, still widely used as a measure of quality of life) is not a comprehensive tool. There are questions involving the distribution of these resources and what they do to people's lives: how they are able to conduct their lives. We have to know about their life expectancy, health care, medical services, education - and not only about its availability, but about its nature and its quality. As the two economists write in their edited book-THE QUALITY OF LIFE. 'Life is more than a set of commercial relations, and that the human being - is an 'unfathomable mystery', not to be completely 'set forth in tabular form'.'

Policy makers and economists have by and large accepted that the life that a person leads can be seen as a combination of various doings and beings, which can be generically called functioning. Some functioning may be elementary matters like being adequately nourished and disease-free while other may be more complex, such as having self-respect, preserving human dignity, taking part in the life of the community, and so on. Economists/policy makers use another term 'capability' of a person which refers to the various alternative combinations of functioning, any one of which (any combination, that is) the person can choose to have. In this sense, the capability of a person corresponds to the freedom that a person has to lead one kind of life or another.

Further developments culminated into Millennium Developments Goals (eight goals) in year 2000 and Sustainable Development Goals (seventeen goals) in year 2015. There are some fundamental differences between MDGs and SDGs: while the former aimed at reaching half way, the latter's aim is to finish the problems; in MDGs there was element of rich nations aiding poor recipients, SDGs are universally applicable to all countries; SDGs are more comprehensive in as much new areas are targeted to be tackled; SDGs are more inclusive in terms of people's participation; in the field of education, MDGs focused on quantity while SDGs address the issue of quality too, etc.

## **Indian Context:-**

Coming to Indian context, the commitment of India to implement the Sustainable Development Goals was spelt out through the speech and commitment made by the Honorable Prime Minister of India at the UN Summit for the adoption of post 2015 Development Agenda. In his speech the Honorable PM said that with regard to the Sustainable Development Goal, ‘today, much of India’s development agenda is mirrored in the Sustainable Development Goals.’ Some of the salient features of the Honorable P M are-

1. Since independence, the country has pursued the dream of eliminating poverty from India.
2. The attack on poverty today includes not only expanded conventional schemes of development, but also a new era of inclusion and empowerment, turning distant dreams into immediate possibilities; new bank accounts for 180 million; direct transfer of benefits; funds to the unbanked enterprise, micro enterprises and micro finance, drawing also on the strength of digital and mobile applications.
3. The focus is on basics, housing, power, water and sanitation for all – important not just for welfare, but also human dignity. These are goals with definite date, not just a mirage of hope.
4. Development is intrinsically linked to empowerment of women and it begins with a massive programme on educating the girl child that has become every family’s mission.
5. Making our farms more productive and better connected to markets; and, farmers less vulnerable to the whims of nature.
6. Reviving manufacturing, improving services sector, investing on an unprecedented scale in infrastructure; and, making cities smart, sustainable and engines of progress.
7. There are ambitious and purposeful plan for renewable energy, energy efficiency, huge afforestation programme,

reforming transportation, cleaning up cities and rivers. The concern is not only with climate change but also climate justice: sensitivity and resolve to secure the future of the poor from the perils of natural disasters.

8. There is a need to look for changes in our life styles making our dependence on energy less.

## **Mapping of Sustainable Development Goals with Finance Accounts**

A question has arisen whether the sustainable development goals (Niti Aayog) can be mapped to the Finance Accounts of the State and if so, the role played by the State Government in achieving the sustainable goals can be assessed from the Finance Accounts in terms of financial achievements i.e. budget provisions in Detailed Appropriation Accounts and the figures of expenditure as appeared in the Statements of Finance Accounts for the years 2015-16 and 2016-17. At present, the Finance Accounts, generally depict transactions up to the Minor Head. The figures in the Finance Accounts are depicted as net i.e. after accounting for recoveries as reduction of expenditure.

In the Finance Accounts presently the receipts and expenditure of the State Government up to the minor head except Statement No. 16 (Statement of capital expenditure wherein information upto sub head level is depicted) are shown. Thus, in the present system, the Finance Accounts contains information on the tiers such as sector, sub-sector, major, sub-major head/minor head. Below these tiers, there is no information available in the Finance Accounts with reference to the budget (Demands for Grants). Thus, to that extent the Finance Accounts do not depict the picture of receipts and expenditure of all the programmes/Schemes which were passed by the State legislature and executed by the State Government.

The sustainable development goals as listed below would be fulfilled by the State Government through their own budget or by way of transfer of funds by the Government of India as Grants-in-aid and directly to the executing agencies, for implementation of central schemes etc., executed by the State machinery.

## Scope of Work-

- (i) Mapping the Finance Accounts figures with 17 sustainable development goals.
- (ii) Mapping and exhibiting budget provisions as per Detailed Appropriation Accounts and the figures of expenditure as appeared in the Statements of Finance Accounts for the years 2015-16 and 2016-17.

For the purpose of this pilot study, the State of Mizoram is selected as being small, it is manageable and after that it can be scaled up.

There are 17 sustainable goals as listed below:-

1. No poverty.
2. Zero hunger.
3. Good health and well-being.
4. Quality education.
5. Gender equality.
6. Clean water and sanitation.
7. Affordable and clean Energy.
8. Decent work and economic growth.
9. Industry innovation and infrastructure.
10. Reduce inequalities.
11. Sustainable cities and communities.
12. Responsible consumption and production.
13. Climate action.
14. Life below water.
15. Life on land.
16. Peace, justice and strong institutions.
17. Partnership for the goals.

## **Methodology adopted for mapping-**

1. Read and understand the Sustainable Development Goals and breaking the main Goal in Goal components.
2. Mapping of Goal components with the ‘Functions’ which are denoted by the ‘Major Heads’ in Classification structure of the Government Accounting. An illustrative Sustainable Development Goal-wise list of Major heads in respect of Government of Mizoram is given in succeeding para.
3. Mapping of ‘Major Heads’ with all the grants of the Budget (Demand for grants) and Detailed Appropriation Accounts.
4. Based on the accounting classification (viz. sector, sub-sector, major, sub major head, minor head and Sub-head) in the Detailed Appropriation Accounts, the head of Accounts (Minor Heads) are linked with the Statements of Finance Accounts (viz. Statement Nos. 15, 16 and 18).
5. Indirect expenditure like ‘Direction and Administration’ etc. has been excluded in the mapping as it is not directly or solely charged on a particular ‘Scheme’.
6. Mapping and exhibiting budget provisions as per Detailed Appropriation Accounts and the figures of expenditure as appeared in the Statements of Finance Accounts for the years 2015-16 and 2016-17.

## **Documents used for Mapping-**

For the purpose of mapping the Detailed Appropriation Accounts (including Demand for Grants) and Finance Accounts of Government of Mizoram for the year 2015-16 and 2016-17 have been selected.

The study of Appropriation Accounts and Finance Accounts and the 17 Sustainable Development Goals of the Niti Aayog revealed that the sustainable development goals (Niti Aayog) can be mapped to the Finance Accounts of the State. The major heads of Accounts of the state of Mizoram contains the financial information on the sustainable development goals in the following table-

Table on an illustrative Sustainable Development Goal-wise list of Major Heads in respect of Government of Mizoram

Goal No.	Goal	Goal Components	Major Heads (Codes)
1	No poverty	Poverty Alleviations Food, Employment, Housing, Water, Public Health	2210, 2215, 2216, 2230, 2401, 2403. 2404, 2405, 2408, 2501, 2505, 2701, 2702, 2801, 3054, 3456.
2	<b>Zero Hunger</b>	<b>End Hunger- Achieve food security, nutrition, Sustainable Agriculture</b>	<b>2236, 2401, 2402, 2403, 2404, 2405, 2408, 2415, 3456, 3475, 4403, 4405, Improved 4408, 6403 Promote</b>
3	Good health and well-being	Child Maternal HIV/AIDS	Health, 2210, 2211, 2235 Health,
4	<b>Quality Education</b>	<b>Primary Education- Girls Education, Male and Female youth literacy rate</b>	<b>2202, 2203, 4202</b>
5	Gender equality	Girls Education, Women Employment	2202, 2203, 2204, 2230, 2235, 2501, 2851, 2852
6	Clean water and sanitation	Drinking Water- Urban/Rural, Sanitation- Toilets/Latrines, Hydropower- Irrigation, Floods.	2215,2217,2245,2701,2702,2705, 2801,2810
7	Affordable and clean Energy	Energy- Renewable Wind, Water, Solar	Electricity, 2801,2810 resources-
8	Decent work and economic growth.	Economic Productive Employment	Growth, 2230, 2425, 2435,2501, 2505, 2851, 2852, 2853
9	Industry innovation and infrastructure	Infrastructure, Industrialisation, Innovation Agribusiness	2059, 2215, 2217, 2220,2403, 2404, 2405, 2415, 2435, 2701, 2702, 2801, and 2810, 2059, 2851, 2852,2853,3053, 3054,3055, 3056, 3275
10	Reduce inequalities	Inequality, Protection health	Social 2202, 2203, 2204, 2210, 2211, including 2217, <b>2225, 2235</b> , 2501, 2425, 2506, disabilities, 2515, 2505, 2575, 2851, 2852,

		Risk to rural women 2853, in maternal mortality.	
11	Sustainable cities and communities.	Slum Areas, Carbon Emissions, Sanitation, supplies, Energy	2215, 2217, 2501,2515, 2801, Sewage, 2810,3435 Water Green
12	Responsible consumption and production.	Food, Reduced emitter	GHG 2401, 2403, 2405, 2406, 2408, 2501(04), 2801, 2810,2851, 2852, 3435, 3456
13	Climate action	Combat change	Climate 2406, 2501(04), 2701, 2702, 2801, 2810, 3425, 3435
14	Life below water	Conserve resources	marine 2405, 3056, 3425, 3435
15	Life on Land	Forests, draught, degradation, animal breeds (husbandry), biodiversity	agriculture, 2210, 2245, 2401,2402, 2403, 2404, soil 2406, 2415, 2501, 3435
16	Peace, justice and strong institutions.	Justice for all, Corruption, Castes/Tribes, Refugees	2014, 2053, 2055, 2056, 2070, 2225, Scheduled 2235
17	Partnership for the goals	Means of implementation, internet users	2220, 2217,2501, 2575,3275

The mapping of Demand for grant /Detailed Appropriation Accounts with Finance Accounts is illustrative and not exhaustive. Details are ascertainable from the Demands for grants and Detailed Appropriation Accounts of the State. Some of the sub-heads includes budget/expenditure for both from the State Exchequer as well as grants-in-aid from the Central Government under Central Schemes.

Out of the 17 Sustainable Development Goals of the Niti Aayog as mentioned above, Goal No. 2 – Zero Hunger – End Hunger, achieve food security and improved nutrition and promote sustainable agriculture and Goal No.4-Ensure inclusive and equitable quality education and promote lifelong learning

opportunities for all have been selected for mapping. An analysis of Budget and Expenditure is shown in the following table-

Sl. No.	Year	Budget (Rs. In Crore)	Expenditure (Rs. In Crore)	% of Expenditure to the Budget
Goal No. 2 – Zero Hunger – End Hunger, achieve food security and improved nutrition and promote sustainable agriculture				
1	2015-16	413.61	251.13	60.72
2	2016-17	409.27	252.24	61.63
Goal No.4-Ensure inclusive and equitable quality education and promote lifelong learning opportunities				
1	2015-16	1044.64	1097.03	105.01
2	2016-17	1144.85	1129.62	98.66

The exercise of mapping will be sent to the A.G., Mizoram, Aizawl to get this confirmed from the State Government.

### **Conclusion-**

1. Mapping of Sustainable Development Goals with the Major/minor Heads of accounts in the Finance Accounts of the State can be done.
2. The mapping of the heads may not be exclusive for each Sustainable Development Goal due to overlapping nature of functions (Major Heads of Accounts) in various Sustainable Development Goals.
3. The role played by the State Government in achieving the sustainable goals can be assessed from the Finance Accounts in terms of financial achievements i.e. budget provisions/expenditure in Detailed Appropriation Accounts and the figures of expenditure as appeared in the Statements of Finance Accounts
4. The mapping exercise is to be done by each State independently as the functions (Major Heads) of the States may vary from State to State based on the development programmes undertaken by the respective States.

# A VISION OF PUBLIC AUDITING 2030

**Dr. SUBHASH CHANDRA PANDEY \***

## **Introduction**

1. There is a marked variation in the mandate and authority among the SAIs. Some function under the Head of the State, some under the national Legislature and some have independent Constitutional status. The level and strength of other oversight mechanisms on which the SAIs may rely upon also varies. While it be unrealistic to expect the SAIs to move towards a common template in structure, authority, and challenges, broader consensus and convergence seems to be there on what are the basic requirements of a professional audit in terms of Auditing Standards and the efforts to harmonise national standards and practices with these international benchmarks are continuing apace. In this paper, we have attempted to articulate some global areas of concern likely to involve SAIs especially in expanding their role to newer areas of accountability. Some of these concerns are continuing and some are emerging.

2. Long term planning, crystal gazing the emerging scenarios, is a high-risk venture, considering the fast changing world we live in. Exploding knowledge base, increasing connectivity and global integration are catalysts of this change. It is difficult to surmise on what may be the foreseeable stakeholder expectations, resource availability, role, responsibility and competency level of the public auditor in 2030. Crystal gazing about evolution of public auditor essentially involves trying to gauge the evolving forms and processes of governance in the audited entities.

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### **The dynamics of changes: Force at work**

3. We may begin to look at the following drivers of change in the approach, methodology of public auditor.

#### **Technology enabled governance:**

4. Disruptive changes have been brought about by Information Technology in general and Internet in particular in all spheres of human endeavour. Increasingly, we would find that the governance and business processes are administered using enhanced information and communication technologies with exploding use of ERP systems, distributed computing through internet based applications, social media etc. The information technology imposes its own risks and concerns raising the issues of regulation of online activities from the viewpoint of data privacy, data sovereignty/localisation, security threats on unauthorised access to privileged information, enforcing censorship, hacking, phishing, and other cyber-crimes disrupting the online services.

5. After every crisis and catastrophe, there is a phase of discomfort and lament about risk and dangers of technology but soon the comfort factor overcomes the security concerns. The crises may from time to time lead to deceleration of technology use but the inexorable march of technology is likely to be only forward. The endless tussle between those who seek to breach the security systems and those who create higher and higher level security systems will also continue.

6. This whirlpool of increasingly complex and security focussed IT systems is likely to place enormous challenges on public auditors to upgrade their skills matching to the requirement at hand and not be found to be Alice in Wonderland. This poses huge challenge for capacity building especially for SAI which are organized in stratified bureaucracies and have a large component of staff in need of reorienting their skills. To manage this transition with ease and continuity will be one of the biggest challenges for the SAIs. Each SAI is therefore expected to have a technology roadmap in place so that it does not lag behind. It is apt to mention that the Banking and Financial Sector regulators have often been found lagging behind the smart market players and there is now

increased focus in the international discourse in the field about these regulators adopting *FinTech, RegTech and SupTech*, a collective bouquet of IT tools that allow active surveillance of live, high frequency data to track risks and prompt for remedial action. The regulator lag issues is equally apt for the SAIs.

**An aware and demanding social society:**

7. It is expected that there would be greater transparency and oversight from civil society despite governments' failing efforts to stall and even SAIs may not be exempted from the purview of the oversight by civil society. The imperatives of transparency and accountability are likely to only increase, by leaps and bounds.

**International peer pressure:**

8. An important driver of change in the behaviour of national governments has been and will continue to be the direct and indirect international pressure emanating from international treaties, protocols/MOUs, Resolutions passed by the United Nations General Assembly, Security Council and various International Organizations working in a specific areas of governance. The contribution of INTOSAI in raising the level of professionalism among member SAIs is an eloquent testimony to this trend. The multi- lateral, regional and by-lateral commitments under regional groupings like ASEAN SAARC, G-20, G-8, OECD etc. will also continue to mould the actions of the national governments at whatever pace and sequence found expedient by them. The recent, highlighted tensions on trade and terror fronts are not likely to whittle this core trend, at least not for long.

9. There is already a system of the SAIs auditing Externally Aided Projects and furnishing audit certificates to provide assurance to the funding agencies. In the backdrop of increasing international commitments, the SAIs may also be called upon to certify national governments' compliance to international commitments. Alternatively, the SAIs may be called upon to assist the international certification mechanisms or to check the robustness of national certification mechanisms, especially when compliance or breach of such international commitments entails financial incentives/ penalties (e.g., compliance under climate

change protocol which is in works and expected to be up and running by 2030).

10. These tasks will increasingly pose new dilemmas for SAIs whether to be truthful to their respective countries or to the international community who would look up to the SAIs of each country as not insiders complicit with the wrongdoing of national governments but increasingly being asked to discharge a fiduciary responsibility to the international community at large. It is important to recognize this challenge and work towards evolving standards and guidelines to deal with this enormous challenge of expectations.

### **Growing improvements and strength of internal audit system:**

11. This is one of the most important driver of change impacting the SAIs, particularly their size and focus of work. In many countries, the SAIs are predominantly performance audit oriented, mainly due to a fairly robust, statute-based system of inspections and internal audit. Particularly in the developed world, the SAIs are rather small, compact bodies focusing on performance audits whereas in a large number of developing countries, the SAIs still focus predominantly on compliance audits and this difference in orientation is mainly accounted for by the fact that in the developing world, the internal audit systems are apparently not so strong and robust for SAI to gain sufficient confidence in lowering their guard. Rather than pointing out how and where this or that transaction went wrong, the SAIs would be expected to look into the systemic loopholes that allowed the wrong transaction to beat the internal controls already provided in the system. Therefore, the systems audit, an audit of adequacy of internal control mechanism, the audit of robustness of governance system and processes, is likely to gain prominence in the years to come. However, should this happen and it is expected to happen with increasing use of IT in governance, the SAIs have to be ready to shed more of its transaction-oriented compliance audit and focus on system audit. This is likely to lead to corresponding rationalisation of manpower requirements in concerned SAIs.

12. The scope of compliance audit and the concomitant personnel requirements are expected to gradually come down. Therefore, public auditors will be increasingly called upon to mutate into organizations, which are truly knowledge based organizations of management consultants, which means flatter organizations, de-bureaucratization, team work, knowledge over hierarchy, tapping expertise wherever it is available within or outside SAI and working with multi-disciplinary audit teams comprising of personnel from different ranks, fields, specialists including outsiders. Stratified bureaucracies will not suffice.

**The success of rule-based budget management, fiscal stance of the audited entity and role of SAIs:**

13. Fiscal stance of governments and other audited entities, whether it is short term or really long term, has important implications for Financial Attest Audit function of the SAIs. The Legislatures expect the SAIs to evaluate the compliance of the governments to the public debt control legislations (like the FRBM Act in India). The legislations in force in many countries seek to address the issue of inter-generational equity in the management of public finances.

14. This is based on the realization that it may not be prudent for the present generation to live at the expense of the future generation and over-spend beyond its earning and over-exploit the natural resources and leave depleted/degraded natural resources and unsustainable debt burden on future generations. We have to see how the governments respond to this imperative and restrain their expansionary stance or resist the urge to indulge in competitive fiscal expansion as has been going on for past few decades. The trend of collective public debt burden of the governments in the world has shown an exponential increase in last century and the growth has been particularly steep in last 4 to 5 decades. Ever since the governments gave up the gold standard and started printing currency notes without backing of assets like gold to finance more and more fiscal expansion, global economy has been caught in a competition to create fiat currency. On the one hand, it has ushered economic growth and created new jobs in some countries and on the other, it has created structural

imbalances within and across national borders. It has created newer regulatory risks for central bankers and governments alike to manage various credit and asset bubbles, fiscal responsibility and fiscal transparency.

15. Since in an increasingly globalised economy, fiscal irresponsibility of any government poses threat not just to that country but also to all other countries having trade and investment links with that country, calls for international surveillance of fiscal irresponsibility are likely to grow. The SAIs will naturally be called upon to be more vigilant and forthright in reporting on such issues.

### **Extended role of SAI in prevention of money laundering:**

16. Misuse of international commerce to facilitate flow of various shades of black money (proceeds of crime, terror finance, tax evaded income and wealth) is now a widely recognised international concern and financial stability risk. The dirty money moves across borders and gains entry into the financial sector, creating problems for the banking and financial sector regulators.

17. One of the standard audit checks is to see whether import invoices are under-valued to evade payment of due customs duty by importers or whether the export-invoices are over-valued to claim higher than due incentives by exporters. It is now increasingly realised that a reverse trend of under/over-invoicing of trade invoices is a potential source of money laundering purposes and the enforcement authorities worldwide are focusing on this trade-based money laundering (TBML). Not just over-valued but outright fake export/import bills may be produced to justify bank remittances, which would otherwise fall fowl of regulatory framework. A TBML is process of transferring or moving money illegally through trade transactions. The basic techniques of TBML include over and under-invoicing of goods and services, multiple invoicing of goods and services and over or under shipments of goods and services among others.

18. Using trade data, Global Financial Integrity (GFI), an NGO, estimates that in 2013, US\$1.1 trillion left developing countries in illicit financial outflows. This estimate is regarded as

highly conservative, as it does not pick up movements of bulk cash, the mispricing of services, or many types of money laundering such as fraudulent transfer pricing. The figure was \$950 billion in 2011. Four-fifths was trade-based laundering linked to arms smuggling, drug trafficking, terrorism or public corruption.

19. It is symptomatic of the enormous public trust and confidence that voices are being heard seeking a role for the SAI India in checking the valuation of trade invoices with a view to curb TBML. The Special Investigation Team appointed by Hon. Supreme Court of India in 2014 to conduct court-monitored probe into black money cases had recommended audit by the CAG on suspicious exports among several other measures to curb black money generation. Since then there has been massive crackdown on shell companies and benami properties besides post-GST and post-demonetisation identification of a large number of new tax assesseees to minimise the incidence of generation of black money. Through a big data analytics based systems audit, SAI India can strengthen the government efforts. An increasing role for the SAIs in this endeavour may be expected in times to come.

### **Extended role of SAI in campaign finance reform:**

20. Yet another sign of public trust and confidence in the credibility of the institution of SAI India is a standing, formal recommendation on its role in Electoral Reforms. The Election Commission of India, widely credited for conducting free and fair elections at a very large scale, had recommended (2004) a slew of measures to further reform the election process. One of these was publication of audited annual accounts of the political parties for information of the public with auditing being done by any firm of auditors approved by the Comptroller and Auditor General. Presently, the Political Parties are required to file annually a list of their contributors, individually for contributions in excess of Rs. 20,000, with the Election Commission. Audit is not mandatory. The Parties are authorised to receive contributions from domestic, non-government companies and the companies are obliged to meet certain conditions. Introduction of Electoral Bonds is a new experiment in financing of political parties which is presently under judicial review. It may be reasonable to surmise that in the

years to come, increasing demands of transparency and accountability may actually bring about a formal role for the SAIs in campaign finance reform arena.

### **SAI role in enforcing trusteeship of public resources:**

21. As the global economic growth has intensified in past few decades, based on extensive exploitation of natural resources, causing environmental concerns, it is being increasingly realised that scarce public resources cannot be exhausted to the detriment of future generation and the governments are expected to act with prudence and caution in this matter. While arbitrary allocation of natural resources raises governance issues, revenue sharing under Public Private Partnership ventures involving transfer of scarce public resources would increasingly gain priority attention of SAIs. The doctrine that the government is trustee of public resources has now received wide acceptance in jurisprudence.

22. Dismissing the petitions filed by some Telecom Companies, the Hon'ble Supreme Court upheld (April 17, 2014) the right of SAI India to access the records of telecom companies, whether public or private companies, for audit purposes. These companies were allotted spectrum and allowed to provide telecom services under the terms of licenses given by Department of Telecommunications. The companies are under obligation to share a part of their 'adjusted gross revenue' with the Government. The Hon'ble Supreme Court held that since the telecom companies were using spectrum - a scarce public resource - and were under obligation to share revenues with the Government, the CAG had the right to examine their books of accounts to the limited extent of looking into the accounting of sharable revenues so as to satisfy himself whether the Government was getting the revenue share rightfully due to it under the terms of the licenses.

### **SAI's role in global fight against corruption, part of National Anti-Corruption Framework:**

23. United Nations Convention against Corruption (UNCAC) provides a global framework for national institutions. In its resolution 55/61 of 4 December 2000, the UN General Assembly recognized that an effective international legal instrument against

corruption, independent of the United Nations Convention against Transnational Organized Crime was desirable and decided to establish an ad hoc committee for the negotiation of such an instrument in Vienna at the headquarters of the United Nations Office on Drugs and Crime. The Convention was opened for formal signature by member countries on 9-11 Dec 2003 in MERIDA, MEXICO and thereafter at UN headquarters in New York City. In accordance with article 68 (1) of resolution 58/4, after 140 out of 169 member countries had signed the Convention and 30 of them had also ratified the Convention, the UNCAC entered into force on 14 December 2005. A Conference of the States Parties is established to review implementation and facilitate activities required by the Convention.

24. UNCAC does not define corruption as such. It rather defines specific acts of corruption that should be considered in every jurisdiction covered by UNCAC. These include bribery and embezzlement, but also money laundering, concealment and obstruction of justice. Also, in defining who might be considered as possible participants in corruption, UNCAC uses a functional approach to the term ‘public servant’: it covers anyone who holds a legislative, administrative, or executive office, or provides a public service, including employees of private companies under government contract.

25. SAIs are important constituent of any institutional framework of a country’s anti-corruption strategy. The head of the SAI is recognized as the watchdog of public purse. The biggest threat to public purse does not usually come from the outside thieves but from the very people who are supposed to manage it. They allow diversion of inflows to unapproved kitties and unapproved or excessive outflow to give unauthorized, undue and unintended benefits, including of course to themselves.

26. Combating corruption requires both preventive measures as well as ‘therapeutic; measures.

27. One of the preventive strategy to deal with corruption is the review of rules, regulations and procedures to minimize discretion. Abuse of absolute discretion and /or selective/discretionary

enforcement of regulations is a common source of risk of corruption. Often in the process of evolving alternative ‘people-friendly, de-bureaucratized’ procedures, to replace the mistrust-based conventional procedures, certain important checks and balances are lost, giving rise to petty corruption. Replacing mistrust-based conventional procedures with trust-based new procedures must entail severe penalties for breach of trust but that does not happen as often as it should.

28. There are several ways in which the SAIs help abate and fight corruption although the primary responsibility of doing so rests with the Executive Government. Through their work in the area of Compliance Audit and Performance Audit, the SAIs come across aspects of functioning of the auditees that are prone to corruption. The SAIs can point to the systems and procedures involving unregulated discretion vested with public officials. Suggestions to change such ‘risky’ procedures usually stem from Audit Reports. Thus, Audit plays an important role in preventive aspect of battling corruption. Compliance Audit reports bring out deviations from laid down laws and procedures, which may call for a supplementary investigation from a ‘vigilance’ angle if the deviations have been motivated by pecuniary considerations or influence-peddling. The Audit provides a cue from where the investigative agencies can take off further.

29. For example, it is noted that the discretionary allotment of public resources is a common source of corruption and if the discretionary allotments can be substituted by rule-based allotment, whether auction or systematic, transparent draw of lots assuring true randomness, the scope of corruption can be minimized.

30. Of course, efforts to promote transparency and competition as anti-dote to corruption face limitations in several areas of niche technology where competition is severely limited or it is beyond the means and capacity of national governments to increase competition, e.g., defence and other high-technology sectors. Even when suppliers are all domestic entities, creating competition may be prohibitively costly in some areas of proprietary, niche businesses. The public procurement reforms need careful balancing of inherent business logic of particular sectors where price can

widely fluctuate depending on quality and post-sales service and the particular technology involved. Large, complex public procurements are not amenable to a simple single stage lowest quote based tendering. There are so many risks and issues to be addressed. Choice of technology or platform of service delivery, well before any considerations of price enter the scene, may itself limit competition. Hence, the governments need to experiment with newer methods of multi-stage bidding to minimise speculative bidding, proxy bidding or various forms of bid rigging

31. It is well-recognised that padded contracts can pose serious risk of corruption. Benchmarking of prices and assessing the reasonability of quoted / negotiated prices places major challenges to public officials and public auditors alike.

32. Fighting corruption involves organized action. There are honest public officials who are intrinsically conditioned to uphold high standards of ethical conduct. Then there are those who remain honest because of lack of opportunity or guts especially when strong enforcement systems are in place and the risks of being caught are higher. Fighting corruption involves increasing the risks and costs for the fence-sitters. Further, there are ways and ways in which the criminals can overwhelm or intimidate individual public officials [and public auditors as well] even if left alone they would have chosen to remain honest but for such coercion. In such cases, the collective State action is required to prevent such compromises. The SAIs following Code of Ethics for public auditors would need to address such issues of involuntary compromises by evolving system of effective supervision and checks and balances. Wider and instantaneous internal dissemination of sensitive information can help minimize the risks of involuntary compromise.

33. Developing and promoting practical tools that reduce the opportunities for corruption and enhance the ability of people and organisations to resist it is a professional job by itself. It calls for closely studying the modus operandi of the corrupt and preparing counter-strategies. The tussle between people making locks and those making (unauthorizedly) duplicate keys to those locks is an endless game.

34. Vigilant SAIs routinely keep their eyes and ears open and scan the media for possible cues from all sort of media, which of course then have to be subjected to professional scrutiny according to the auditing standards on evidence and reporting.

35. Fear of reprisals keeps away potential whistle-blowers from giving cue to enforcement authorities. The silent majority suffers while the evil minority thrives on intimidation of the victims of corrupt practices. It is important for the SAIs to provide a channel of communication to the whistle-blowers. In general anonymous or pseudonymous feedback is disregarded but in jurisdictions with inadequate whistleblower protection laws and mechanism, the SAIs should encourage even anonymous whistleblowers. Technologies are now available which allow a person to digitally communicate while the system erases digital footprints. So long as verifiable material is accessible to SAIs and investigative agencies through such methods, these should be considered acceptable inputs. [The US GAO maintains a hotline for seeking inputs from whistleblowers the inputs of which are taken into account for planning the audits, mostly performance audit oriented. Although 2/3rd of audits taken up at the instance of Congress, whistleblowers inputs are taken seriously to plan for the same.]

36. In the fight against corruption, combat forces can never be enough. It is important to develop coordination at apex level and functional level between the SAI and other agencies entrusted with vigilance, investigation and prosecution. Timely sharing of information can minimise chances of destruction of evidence of wrong-doing. Any outstanding issues such as that of legislative privilege need be addressed so that investigations are launched in a timely manner and incriminating documents are seized before being tampered or destroyed.

37. These are some reflections on ways and means of SAIs getting their act together in contributing to the fight against corruption. SAIs can benefit from as well as contribute in implementation of the UN Convention Against Corruption. For this to be effective, the technical assistance from the UN should include

- a. assistance for strengthening systems for evaluation of follow up action taken by the government on SAI's findings and recommendations as well as for dissemination of SAI's Audit Products not just to the Legislatures but also to other stakeholders
- b. sharing of information and experiences by developing suitable digital platforms;
- c. capacity development in fraud detection and forensic audits;
- d. promotion of institutionalized interaction between the SAI and national agencies entrusted with vigilance, anti-corruption, money-laundering, anti-tax evasion.

### **Extended role of SAI as part of proactive, preventive system of governance**

38. With ever increasing scale of operations of governments, the risk of high and/or irreversible damage by the time something amiss is pointed out by Audit is also increasing<sup>1</sup>. The governments often look up to the SAIs to seek inputs in designing public policy or scheme or auction designs to avoid such situations. Traditionally, the SAIs are averse to intervene as it may compromise their independence and also forfeit their right to

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<sup>1</sup> "Audit does create an impact, but only marginally. The report of the CAG does a great deal of agenda-setting for national debates on corruption in high places. But in most cases, the time-lag between the actual act of corruption and reporting about it in audit is so big that corrupt practices are rarely exposed in time. The Fifth Pay Commission (Vide para 24.8 of the Report) highlighted this aspect, and it recommended that in order to cut down on the time-lag, audit should be concurrent. In the words of the Commission, "Audit should try to be as concurrent as possible. Scandals and scams are known even while they are being planned and executed. If audit draws attention to them forthwith in a well-publicized manner, such scandals can be halted in mid-stride. Post-mortems are useful but can only be conducted while the patient is dead. It is better to cure the patient and try to keep him alive." [Extracted from the Speech by Shri M Veerappa Moily, Chairman, Second Administrative Reforms Commission on the occasion of the National Colloquium on Ethics and Governance – Moving from Rhetoric to Results. September 1, 2006]

comment/criticise the actions and decisions of the audited entities at a later date. Calls on SAIs to whittle down such rigidity are likely to grow.

39. It is noted that even the independent judiciary in a Constitutional system of governance may be called upon to assist the government on request. Realising the importance of such consultation, the Constitution of India has made specific provision for the Supreme Court of India to respond to a Presidential call for 'advice', whether there is a subsisting dispute or issue or a hypothetical issue. Art 143 states as follows:

**143. Power of President to consult Supreme Court.**— (1) If at any time it appears to the President that a question of law or fact has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer the question to that Court for consideration and the Court may, after such hearing as it thinks fit, report to the President its opinion thereon. (2) The President may, notwithstanding anything in the proviso to article 131, refer a dispute of the kind mentioned in the said proviso to the Supreme Court for opinion and the Supreme Court shall, after such hearing as it thinks fit, report to the President its opinion thereon.

40. Further, in several countries including India, there is a system of having a statutory authority (AUTHORITY FOR ADVANCE RULINGS) headed by a Judge to give advance rulings on tax matters, typically investors trying to ascertain their tax liability before taking the investment decisions.

41. Likewise, it should be feasible for the SAIs to provide a well-documented advice, full of qualifications and caveats, a sort of AUTHORITY FOR ADVANCE AUDIT RULINGS in really exception cases where there is high risk of irreversible damage to the national system and public interest. Audit inputs - whether before or after the decision - have the advantage of being unbiased/independent. Of course, the undivided responsibility to take the final decision and be accountable for it must continue to squarely rest with the Executive wing, irrespective of who all from within or outside have been consulted.

## **SAI role for intervention in bidding disputes**

42. Some SAIs like the US GAO have an active role in contract disputes by giving authoritative decisions when unsuccessful bidders challenge the award of contract. A bid protest is a challenge to the award or proposed award of a contract for procurement of goods and services or a challenge to the terms of a solicitation for such a contract. Protests may be filed against procurement actions by federal government agencies by interest parties having proper *locus standi* in the matter. Once the GAO agrees with a protester that the federal agency violated a procurement law or regulation in a prejudicial manner, GAO issues a decision sustaining the protest and recommend that the agency address the violation through appropriate corrective action. The agency must then advise the GAO whether it will comply with the recommendation.

43. There is increasing consensus about improving regulation of Public Procurements in the interest of transparency and accountability. One of the elements of a good public procurement system contemplated under protocols evolved under the WTO regime is the provision of “Bid Challenge”, i.e., providing a formal forum for redressal of grievances of unsuccessful bidders. Apart from regular judicial for a normally available, SAIs may be called upon to render this service for quicker handling of such issues and timely remedial action.

## **Increasing focus of SAIs on systemic issues rather than transactional aberrations**

44. As a rule, the SAIs generally refrain from directly criticising government policies. Some SAIs are explicitly barred from doing so while others do so as a matter of abundant caution and self-abnegation in larger public interest.

45. In India, the SAI has a wide latitude in the matter, being an independent Constitutional authority. The CAG of India is bound by an oath to uphold the Constitution of India, an oath identical to that administered to the Chief Justice and other Judges of the Supreme Court.

46. The Public Accounts Committee of the Parliament once observed: “The Committee is definitely of the view that it is the function of the CAG to satisfy himself not only that every expenditure has been incurred as per prescribed rules, regulations and laws, but also that it has been incurred with ‘faithfulness, wisdom and economy.’ If, in the course of the audit, the CAG becomes aware of facts which appear to him to indicate an improper expenditure or waste of money, it is his duty to call the attention of Parliament to them through his Audit Reports.”

47. The C&AG’s duties and powers are determined by law and the law nowhere prohibits audit from commenting on government policies. In fact, law neither defines ‘policy’ nor ‘audit’. The word policy is nowhere legally defined in any other law and what is not defined cannot be kept outside the purview of CAG’s jurisdiction based on subjective opinions. The CAG’s DPC Act empowers the CAG “to audit” without defining what is meant by the verb ‘to audit’. In fact, the Parliament in their wisdom has empowered the CAG to audit, without defining what the audit means, leaving it its extent and scope to be decided by the CAG. While legally no government decision is beyond the jurisdiction of the CAG (whether policy or no-policy), it has been a self-imposed restraint observed by this institution (as by the judiciary) to generally refrain from criticizing government policy and confined itself to commenting on the implementation of the policy but this self-imposed restraint of the kind usually exercised by the judiciary also can be removed in exceptional cases at the absolute discretion of the CAG.

48. Government policies can attract comment/criticism from Audit or judiciary if the policies are based on limited or no credible inputs providing for the rationale of the policy or where the policy is not backed by a credible implementation mechanism or where the policy is in conflict with the Constitution or an Act of Parliament or where a policy is in conflict with another policy of the same Government (policies followed by lower functionaries may be in conflict with policies of superior formation and sectoral policies may be in conflict with general policy of the Government). In all these cases, the CAG bringing out congenital defects in a

policy is merely to point out to the Government the scope of remedial action. The final decision in any case rests solely with the Government. Neither the CAG's nor the PAC's opinion/advice/recommendation is binding on the Government.

49. The SAI India would not normally question the policy per se, especially a policy that is embedded in an Act of Legislature. However, it does comment sometimes on the inputs that have gone into the policy formulation. Also, Audit often points out lacunae in tax laws especially those detrimental to the interest of public exchequer.

50. Auditing the *process* of policy formulation, looking into the inputs that go into policy formulation, whether it is evidence-based or in vacuum is a primary concern, an enduring and emerging concern of SAIs. It is expected that this will be increasingly the primary concern engaging the attention of the SAIs. We need to prepare for it with great calibration and responsibility. It requires in-depth understanding of governance systems, processes, constraints and available policy alternatives. Blanket bans on SAIs peeping into policies are not likely to be sustained. It may be recalled how the judiciary has coped with the challenges posed by public policy imperatives in an increasing mercantilist economy in balancing the sanctity of contracts on the one hand and wider public interest on the other. "Public policy is a very unruly horse, and when once you get astride it you never know where it will carry you." (Burrough, J., Richardson v. Mellish (1824), 2 Bing. 252; quoted by Lord Bramwell in Mogul Steamship Co.; McGregor, Gow and others, 66 L. T. Rep. 6.)

51. Let us hone our skills in riding this unruly horse. Leaving the arena is not an option as the costs of such abdication of fiduciary responsibility are steadily rising.

# REVENUE SHARING IN TELECOM SECTOR

Ms SANGITA CHOURE \*

## Introduction

The Telecom Policy of 99 (NTP-99) which came into effect from April 99, had introduced revenue sharing model in the Indian Telecom Sector, whereby telecom licensees were required to share a percentage of their Adjusted Gross Revenue(AGR) with the Government as license fee (LF). In addition, mobile telephone operators were also required to pay Spectrum Usage Charges (SUC) for use of the radio frequency spectrum allotted to them. The Department of Telecom., (DoT) GOI, as the licensor of the spectrum entered into agreements with the service providers, inter-alia defining the components of the GR and also defined the deductions permissible for computing the AGR. The Audited Annual Accounts of the service providers to be furnished to the DoT formed the basis for assessing the share due to the Government.

Initially, DoT had allotted the spectrum on administrative allocation basis which continued till 2010. The first auction of spectrum was held in 2010 for 3G and BWA spectrum. Subsequently, post the SC judgment of 2<sup>nd</sup> February 2012 on Auctioning of Natural Resources, the DoT has also been auctioning spectrum to the prospective bidders and auctions were held in November 2012, March 2013, February 2014, March 2015 and October 2016. Whereas the Governments receipts on auction of Spectrum increased from ` 7401.43 cr in 2012-13 to ` 53860.69 cr

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in 2016-17, the Telecom Industry has however complained of huge financial stress whereby they have not only been asked to purchase the spectrum at market prices but are also required to share their revenues with the Government as per the revenue sharing model. The license fees under the model have shown a marginal increase of ` 11456.48 cr in 2012-13 to ` 15614.44 cr in 2016-17

This, Article examines the current status of the revenue sharing model, the audit done by the C&AG and the possible steps required to be taken by the Government to break the current deadlock between the Government and the Industry.

### **Audit by the C&AG**

As mentioned above since the revenue sharing is towards the license fee and spectrum usage charges , these revenues form part of the Consolidated Fund of India , making it obligatory for the C&AG under Section 16 of the C&AG's DPC Act 1971, to satisfy himself that the GOI has indeed received its complete and correct share. In addition the TRAI Service Providers (Maintenance of Books of Accounts and Documents) Rules of 2002 provide for verification of all accounting records maintained by service providers which has a bearing on the Gross Revenue, to be audited by the C&AG of India.

Accordingly, C&AG have carried out the audits of the books of accounts of the Service Providers and have presented three Audit Reports for various periods covering most of the service providers. The Audit though initially planned for in the DoT had to be carried out in the premises of the service providers since the Accounting Records such as General Ledgers and Trial Balance were not available in hard copies but in computerized Accounting Systems using SAP/ERP Systems, which could be accessed only from the premises of the licensees.

The C&AG's audit conducted by using CAAT techniques, have pointed out a total understatement of AGR by private service operators of `1,21,924.30crore for the period 2006-07 to 2014-15 and consequent short payment of revenue share to the GOI of 14,436.92 crore. Besides interest liability also arises for the

short/non-payment. The shortfall in AGR for subsequent periods would be even higher, based on the demands raised by DoT.

The differences in remittances of the revenue dues are arising due to non inclusion of certain incomes which form part of the Gross Revenue as per the license Agreements, such as revenue share netted off or not accounted for on account of discounts given /commissions paid to distributors/dealers/agents, promotional free airtime given to subscribers not recognized as revenue, revenue on roaming netted off with discounts given, infrastructure sharing netted off. In addition non inclusion of certain incomes in the GR, such as forex gains, profit on sale of investments, revenue booked in subsidiary companies books instead of own books, profits on sale of assets, dividend income and ineligible deductions claimed on bad debts written off, etc.

Thus, the private operators had not abided by the terms and conditions of the license Agreement with the DoT for disclosure of the correct GR making it necessary for the Auditors to point out these deficiencies and consequential shortfall in the revenue shared. The DoT have raised demands on the differences pointed out by the C&AG and have also got the Accounts audited by CA firms as special audits.

### **Contention of the Service Providers**

The demands raised by the DoT on the differences in the AGR have not been accepted by the Industry and the operators have approached TDSAT/ various High Courts challenging these demands. There is a huge backlog of revenue locked up in litigation with the Government. The licensees have claimed that they are entitled to give discounts and commissions as part of their business and entitled to net off the revenue and similarly revenues other than those arising from the telecom license cannot be shared with the Government. They have filed petitions with the TDSAT (Telecom Disputes Appellate Tribunal) and the High Courts in some cases raising disputes on the demands raised. Some of them have even challenged Section 4 of the Indian Telegraph Act as violative of the Constitution, under which the GOI only has powers

to give licenses for operating telecom services on such conditions and consideration of such payments as it thinks fit.

## **Breaking the Ice or Restoring the Call Drops**

Telecom Industry forms the backbone of Communications in today's modern world and increasingly digitized world and crucial for any national economy. India today also has international service providers in the Telecom industry. With the Governments call for ease of doing business in the country, does the current scenario of deadlock between the Service providers and the Government augur well for the Government's image as a facilitator for business??

The C&AG's Report of 4 of 2016 has also recommended that with so much of litigation over AGR , it is high time that it is reviewed and redefined so that it results in unlocking of the revenues. Secondly the revenue sharing model was introduced in an era where spectrum was given on administered and low prices. With the introduction of auction of spectrum since 2010 at market prices should the Government insist on sharing revenues, once they have got the price on sale of spectrum?? Is it necessary for the Government to see how an operator is conducting his business post the sale of spectrum?

The litigation continues on the revenue sharing model with stays by the judiciary on the demands and no one knows how the mountains of arrears are going to be recovered. In order to meet the financial stress and fierce competition, the Industry has become dynamic in its operations that one is seeing sales/ mergers/ collaborations amongst the private operators. How will the Government ensure its revenues in this fast changing scenario? Are taking of Bank Guarantees or withholding permissions for mergers/sales the way to do business?

The National Digital Communications Policy 2018 of September 2018 has announced that spectrum as a natural resource would be optimally priced to ensure sustainable and affordable access to digital communications. It has also recognized the need

to reform the licensing and regulatory regime by reviewing the levies and fees including LF, SUC and the definition of AGR.

The need of the hour is to reform the revenue sharing model for license fees and spectrum usage charges whereby the latter should not be recovered at all once the operators have paid for the spectrum upfront and the license fee calculation should be a simple and flat structure easy for administering and which would be largely acceptable to the Industry.

Therefore with the announcement of Policy Initiatives with the Digital Communications Policy 2018, the challenge to the Government would lie in its speedy implementation. How is the past litigation going to be resolved to unlock the legitimate revenue due? Well certainly all stakeholders including the Auditors are watching keenly!!

# FISCAL RULES AND FISCAL COUNCILS: WHY DO WE NEED THEM

**Dr. GOVIND BHATTACHARJEE\***

The interim budget presented this February has understandably attracted a lot of criticism not only because of the sops provided in an election year to various segments of voters, but also raised serious questions about the credibility of the budget numbers. Attempts at window-dressing the budget is nothing new. Indeed, overstating revenue estimates and understating the expenditure estimates have long been a disturbing feature not only of the Union budgets, but equally of all state budgets. A study<sup>1</sup> pointed out that between 1991 and 2014, there were six interim budgets and 18 regular budgets. On the average, the variances between estimated and actual figures in respect of revenue and fiscal deficits in the interim budgets ranged far higher than the regular budgets (46.4 percent and 81.3 percent) for fiscal and revenue deficits respectively in the interim budgets as against 5.5 percent and 10.3 percent in the regular budgets.

Our budget preparations are shrouded in the utmost secrecy which defies logic in a connected world and reinforces the opaqueness that envelopes our tax administration. The same kind of opaqueness also characterizes the government accounts – both at the Central and state levels. There are numerous instances of use of creative accounting to deflate the deficits and debts, as any review of the CAG reports across states and Union over the years would

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<sup>1</sup> Deepa S Vaidya, K Kanagasabapathy, “Playing with Fiscal Arithmetic Interim and Non-Interim Budgets since 1990-91”, *EPW*, April 05, 2014.

reveal. Irregular and highly objectionable methods are used to realize unrealistic targets, while off-budget transfers, extra-budgetary transactions and deferment of payments to suppliers, are often exploited to suppress the levels of debt and deficits. Similarly for financing of the deficits, PSUs are forced to buy back their shares from the Government which, being controlled by the Government, only transfers money from the PSUs to the Government without diluting the control opens profitable PSUs to undue risk of liquidity crunch, rather than through sales of public equity to private investors.

The recent case of HAL, a cash rich company a few years ago which was forced to borrow heavily from the banks in order to pay the salaries of its employees is a case in point. Disinvesting the stakes of the government in profitable PSUs to finance the soaring fiscal deficits has become a standard operating procedure of the Central Government in order to push their populist agenda. Disinvestment is also taking the Exchange Traded Funds (ETFs) route through the securitization of public sector equity in the form of ETFs by selling the equity from multiple profitable enterprises in one bundle. PSUs are being made to buy not only their own equity but also the equity of other PSUS which puts a spanner in their own modernisation and expansion plans, being forced to part with their cash reserves to the Government. Eight out of 16 disinvestment transactions in 2018-19 were “buybacks” of government-held equity by the public sector undertakings concerned. All this is merely an accounting exercise that shifts borrowing out of the budget to other sections of the public sector.<sup>2</sup>

Fiscal marksmanship which refers to the accuracy of budget estimates has generally been poor in India. Poor marksmanship is often the result of consistent overestimation of revenue and underestimation of expenditure. This has more serious implication for the country’s economy from higher borrowing resulting from larger deficits than estimated and also of the credibility of its public finances with the international lending and rating agencies. As elections come near, governments everywhere tend to present a

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<sup>2</sup> C.P. Chandrasekhar, “The new fiscal arithmetic”, *Frontline*, March 15, 2019

rosy picture of the economy and public finances in order to increase their populist spending, unless there is an institutional mechanism to arrest such tendencies. Such mechanisms do exist in many countries across the globe. In the developed countries and in some developing countries as well, the most common institutional mechanisms used are the so called Fiscal Rules and Fiscal Councils.

The IMF defines a fiscal rule as one that “imposes a long-lasting constraint on fiscal policy through numerical limits on budgetary aggregates. Fiscal rules typically aim at correcting distorted incentives and containing pressures to overspend, particularly in good times, so as to ensure fiscal responsibility and debt sustainability.” As per the World Bank, a fiscal rule imposes a long-lasting constraint on fiscal policy through numerical limits on budgetary aggregates for arresting the pressures to overspend, and ensure fiscal responsibility and debt sustainability. There are four types of rules: Budget Balance Rules (BBR), Debt Rules (DR), Expenditure Rules (ER), and Revenue Rules (RR), as applied to the government or the public sector. Budget Balance Rules restrict the size of the deficit and thereby control the of the debt ratio. The countries that follow a structural budget balance rule include EU, Indonesia and Israel which imposes an overall deficit ceiling of 3 percent of GDP. Debt Rules set an explicit limit on the stock of public debt, like in Liberia and Poland where a debt ceiling of 60 percent of GDP has been applied. Expenditure Rules limit spending, either by putting a ceiling on its growth, or on the relevant ratio to GDP, as in Peru which restricts the real growth of current expenditure within a ceiling of 4 percent of GDP. Revenue Rules set ceilings or floors on revenues, or prescribes the use of windfall revenues. Thus Kenya maintains revenues at 21-22 percent of GDP.<sup>3</sup> Debt rules are most frequently used by countries, followed by Budget Balance Rules and Expenditure Rules. Revenue rules are the least used. Many countries also use the rules in combination.

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<http://www.worldbank.org/content/dam/Worldbank/document/SSF13%20Session1%20Fiscal%20Rules%20and%20Small%20States.pdf>

According to the IMF, India does not have any fiscal rule at present, though the Fiscal Responsibility and Budget Management Act (FRBMA), 2003 qualified for a BBR till 2008 by defining a current budget balance within 3 percent of GDP, following the EU ceiling of 3 percent.<sup>4</sup> Originally the FRBMA target was to reduce the fiscal deficit to 3 percent of GDP by 2008, but during the global financial crisis of 2008-09, the deadlines were moved further out and eventually the rule was suspended in 2009. In 2011, given the process of ongoing recovery, the Economic Advisory Council publicly advised the Government of India to reconsider reinstating the provisions of the FRBMA. The escape clause in the fiscal rule law (FRBMA) allows the government not to comply with the targets in exceptional circumstances "as the central government may specify." In 2013, the authorities modified the FRBMA implementation rules to re-establish a deficit reduction path aiming to achieve the original medium-term target of 3 percent of GDP; in 2015, the deadline for this was set as 2017-18.5 However, the target has been shifting every year; the interim budget 2019 placed the fiscal deficit at 3.4 per cent in 2018-19 against a targeted 3.3 per cent and is to remain at that level in the current fiscal, with the slight deviation from the deficit reduction "glide path" for providing relief to the farmers suffering from low or negative net incomes.

For the fiscal rules to be effective they have to be designed in simple manner, providing them with the necessary flexibility and enforceability in the face of changing economic circumstances. Flexibility requires that precise exceptions to be specified for dealing with unexpected events, like natural disasters or impact of global recession etc. on the domestic economy, like what happened in the aftermath of 2008 global economic meltdown. About 90 countries have put in place one or more fiscal rules as of 2016 over the last three decades and most of them are too complex, overly

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<sup>4</sup> <https://www.imf.org/external/datamapper/fiscalrules/map/map.htm>

<sup>5</sup> <https://www.imf.org/external/datamapper/fiscalrules/matrix/matrix.htm>

rigid, and difficult to enforce.<sup>6</sup> Fiscal rules not only make a government responsible and accountable for fiscal policy but also help prioritize among the many competing demands on the budget. Countries with excessive deficits and lax rules invariably have higher borrowing costs because lenders and investors perceive them as risky. “By demonstrating a government’s commitment to well-managed public finances, fiscal rules can create room in the budget to finance policies that promote growth, enhance the economy’s resilience to adverse shocks, and reduce excessive income inequality.”<sup>7</sup>

Fiscal rules are often prerequisite to serious reforms. From the experience of the countries, it is seen that the rules evolve as countries mature in managing of their public finances. Initially in the first generation, they remain rather rigid with vaguely defined exceptions, but they are gradually replaced by second generation rules, which are more flexible with new and better-defined exceptions and easier to enforce by adding correction mechanisms that foresee what the government should do when they have to break the rule.<sup>8</sup>

In the aftermath of the financial crisis of 2008, many countries adopted fiscal rules. In 1990, only five countries—Germany, Indonesia, Japan, Luxembourg, and the United States—had fiscal rules that covered at least the central government level. That number surged to 45 by March 2012, and to 85 by 2013. By 2015, their number has reached 92. Now more countries are operating with more than one rule, or with rules which are flexible enough to accommodate the vicissitudes of business cycles, while strengthening the enforcement mechanisms, and also correction mechanisms or debt brakes. Effective enforcement of fiscal rules would require, apart from political commitment, financial reporting

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<sup>6</sup> Xavier Debrun, Luc Eyraud, Andrew Hodge, Victor Lledo, Catherine Pattillo, Abdelhak Senhadji, “Fiscal Rules: Make them Easy to Love and Hard to Cheat”, April 13, 2018, <https://blogs.imf.org/2018/04/13/fiscal-rules-make-them-easy-to-love-and-hard-to-cheat/#more-23225>

<sup>7</sup> *Ibid.*

<sup>8</sup> Jamaica and Grenada have introduced correction mechanisms in 2014 and 2015.

standards, adequacy of public financial management systems (PFMS), credible budget reporting systems, effective internal and external audit and free availability of budget and public finance data in the public domain released by the government.

After the financial crisis, many countries wanted to adopt a Medium Term Fiscal Policy (MTFP) of balancing government revenue and expenditure over a medium term so as to inoculate against the risks which had turned their economies topsy-turvy during the crisis; they found adoption or strengthening of fiscal rules a ready solution, in fact MFTP would be unworkable without the fiscal rules. In India also, we had adopted a MTFP after the FRBMA was enacted in 2003. As serious debt crisis shook most economies all the world over after the crisis, the major focus was on debt sustainability and credibility of fiscal policy, by curtailing expenditure and containing overall deficits, so as to provide adequate assurance to the financial markets in respect of sovereign borrowings. The underlying rationale for this lay distrust of politicians or governments, and to depoliticize the fiscal framework.<sup>9</sup> While independent central banks operating within an inflation targeting framework as in India strive towards macroeconomic stability in a country, the fiscal rules are essential to remove the discretionary intervention of politicians which can otherwise play havoc with credibility of macroeconomic policies and upset the effectiveness of inflation targeting efforts of the central banks.<sup>10</sup>

All fiscal rules include the provision of bench-marks and numerical targets, such as public debt ceiling of 60 percent of GDP for advanced countries and 40 percent of GDP for developing countries, or fiscal deficit ceiling of 3 percent of GDP, etc. There is nothing sacrosanct about these numbers, they are neither absolute nor immutable; in fact, they do not emerge from a consistent theoretical framework of optimal level; of debt etc. The 60 percent

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<sup>9</sup> Kopits, George (2001), "Fiscal Rules: Useful Policy Framework or Unnecessary Ornaments?", IMF working paper WP/01/145.

<sup>10</sup> Anis Chowdhury and Iyanatul Islam, "Fiscal Rules – Help or hindrance", 4 October 2012, <https://voxeu.org/debates/commentaries/fiscal-rules-help-or-hindrance>.

limit was based on the median public debt levels at the time of the framing of the Maastricht Treaty. Another IMF study that recommends an external debt limit of 40 percent of GDP for developing countries.”<sup>11</sup> While macroeconomic stability is necessary, but it may not be sufficient for long term growth, for which reduction of poverty and inequality and increasing the efficiency of public spending and taxation are equally important, the absence of which will inevitably undermine the prospect of long-term growth, which alone can ensure debt sustainability. While framing fiscal rules, these points need to be remembered, and rules be provided with adequate flexibility to cushion against social risks arising from inequality and non-inclusivity resulting from inefficient and inequitable public policies.

All over the world, successful fiscal rules are supported by strong supporting institutions that enhance fiscal transparency and accountability; this ensures that the fiscal rules enjoy the continued support of political parties, both in power and in opposition, largely because they find it difficult to dismantle the structure of the fiscal rules once it is put in place. These are called such as fiscal councils which act as public watch dogs to evaluate fiscal policy, but what characterizes their functioning is the degree of autonomy and independence from the government. Their design must ensure “a strict operational independence from politics, the provision or public assessment of budgetary forecasts, a strong presence in the public debate (notably through an effective communication strategy), and an explicit role in monitoring fiscal policy rules.”<sup>12</sup> Unlike in the case of Central Banks tasked with formulation and implementation of monetary policy, fiscal councils cannot be independent of the political nature of the fiscal policy and the nature of the political system prevalent within a country, though it needs to be free of any political bias towards any particular brand of fiscal policy. For countries with a deeply fractious nature of political discourse like ours, this point will become extremely important if and when we decide to establish an

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<sup>11</sup> IMF (2002). “Assessing sustainability”, May 28, Washington D.C, p. 25.

<sup>12</sup> Xavier Debrun *et al*, “The Functions and Impact of Fiscal Councils”, July 13, 2016, IMF.

independent fiscal council; despite recommendations by various Committees and Commissions, India has never attempted to create one, understandably for political reasons.

There are about 40 independent fiscal councils in the world today, from only three in 1970, and most of them are in Europe. Two-thirds of the existing fiscal councils were established after the global financial crisis, as a part of the reforms to restore the credibility and sustainability of fiscal policies. Two-thirds of the existing fiscal councils and three-fourths of the post-crisis fiscal councils (20 out of 26) are located in Europe, as a result of the requirement for European Union member states in the aftermath of the euro area debt crisis — “to establish national independent bodies to monitor compliance with fiscal rules and produce or at least assess or validate macroeconomic and budgetary forecasts.” In Europe, safeguarding fiscal councils’ independence in legislation and mandating them to monitor fiscal rules is becoming the norm.<sup>13</sup>

Specifically, the IMF defines fiscal council as “a permanent agency with a statutory or executive mandate to assess publicly and independently from partisan influence government’s fiscal policies, plans and performance against macroeconomic objectives related to the long-term sustainability of public finances, short-medium term macroeconomic stability, and other official objectives. In addition, a fiscal council can perform one or several of the following functions: (i) contribute to the use of unbiased macroeconomic and budgetary forecasts in budget preparation (through preparing forecasts, or proposing prudent levels for key parameters), (ii) identify sensible fiscal policy options, and possibly, formulate recommendations, (iii) facilitate the implementation of fiscal policy rules, and (iv) cost new policy initiatives.” A fiscal council which looks into macroeconomic issues is also distinct from a public audit institution which is concerned more with legal and microeconomic issues; besides a fiscal council’s inputs are necessary for planning and policy

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<sup>13</sup> Ibid.

making, while audit is by and large a post-mortem examination.<sup>14</sup> With a fiscal council, the budget number would acquire greater credibility by imparting greater accountability and transparency into the budget process.

Fiscal councils can take different forms and have different accountability arrangements; the degree of independence enjoyed by them can also vary from country to country. In many countries, like Australia, Canada, Georgia, Kenya, Italy, South Africa and the USA- they are attached to the Parliament in the form of a Parliamentary Budget Office. In some countries – like Belgium, Croatia, Denmark, Japan, Netherlands, Slovenia and the UK - they are attached to the executive. Fiscal councils have different names like the Congressional Budget Office (USA), Council of Economic Experts (Germany), Office for Budget Responsibility (UK), Economic Council (Denmark), Federal Planning Bureau (Belgium), Fiscal System Council (Japan) Bureau for Economic Policy Analysis (Netherlands), Institute of Macroeconomic Analysis and Development (Slovenia), etc. Some countries- like Belgium – have more than one fiscal council (High Council of Finance and Federal Planning Bureau, both attached to the executive).

In France, the fiscal council -the High Council of Public Finance - is attached to the Audit Institution (Court de Comptes), in Finland, the National Audit Office performs the task of the fiscal council. The last two are exceptions, but the nature of audit institution in these countries are also different. France has a Court model distinct from the British Westminster model followed in India and other Anglophone countries, while in Finland, the National Audit Office of Finland, apart from auditing central government finances, also evaluates fiscal policy and monitors political party and election campaign funding, which are not done by most public audit institutions in other countries. In Austria, the fiscal council (Government Debt Committee) is attached to the Central Bank, which is also an exception.

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<sup>14</sup> Ibid.

In a number of countries, like Germany, Sweden, Ireland and most Balkan countries, they are standalone institutions, unattached to the Parliament or the executive, but with its own accountability structure and independence guaranteed by law. Their remit and task also differ from country to country but all conform to the basic objective of ensuring fiscal stability, transparency, credibility of government budgets and accounts. While the mere existence of fiscal councils is no guarantee for better fiscal outcomes, empirical evidence suggests the councils do help fiscal performance across diverse political and governance systems in countries. In countries with better Public Financial Management (PFM) systems and good statistical governance, they are expectedly found to be more effective. In most countries, the members of the fiscal council are drawn from academia, policy experts, civil servants and non-citizen experts in that order in terms of relative frequencies; their tenures range from three to nine years.

Since independence, the public finance management systems in India have been characterized by unsustainable levels of fiscal deficit. The first time India had enacted a fiscal rule was in 2003 when it had enacted the Fiscal Responsibility and Budget Management (FRBM) Act, in order to attain fiscal sustainability by limiting central government debt and fiscal deficit levels. Under the FRBM Act, the fiscal deficit was to be reduced steadily to 3% of GDP and revenue deficit be eliminated by fiscal year 2009. Nudged by the 12<sup>th</sup> Finance Commission (FC), most states also followed suit by 2006 save West Bengal and Sikkim. By 2010, all state in India had their respective FRBM Acts and were scrupulously following it. In the aftermath of the global financial crisis, many states had to amend their respective Acts revising the benchmarks but soon reverted back to the original ceiling limits shortly afterwards. By and large the states have been following their FRBM Acts. It is the Centre that has consistently been guilty of tinkering with the ceilings, shifting it indefinitely and tweaking the Act itself when it found the ceilings too inconvenient for driving its populist agenda, irrespective of political dispensation.

As the states had repeatedly asserted, correctly, that fiscal rules should apply equally to the Union Government and the States, there was evidently a need for building disincentives in the Act itself for restraining the former from violating the fiscal rules, which was not there. Further, the escape clause were vaguely defined and there was practically no accountability for missing the targets. Reliance on fixed targets or numbers instead of say, a range, also restricts the government from dealing with the dynamics of market economies in a vast country like India, and prevents the fiscal policy from being countercyclical and in achieving fiscal correction when needed.

The Union Government's FRBM Act came into effect in August 2003, but had to be amended within a year, in July 2004. Rules were modified twice over the years and breached frequently. The conventional wisdom of financing current expenditure by current revenue was discarded and an artificial concept of effective revenue deficit was introduced in the statute in 2012. While 2003 was characterized by strong growth, low inflation and reasonably adverse balance of payments, the global financial crisis of 2008 precipitated macroeconomic instability and ultimately to "taper tantrum" as a result of it. It was during this crisis period that the Govt. decided to abandon the path of fiscal consolidation,

The 14<sup>th</sup> FC noted that FRBM Rules in conducting the stated fiscal policy correction or fiscal adjustment path, as recommended by the 13<sup>th</sup> FC had not been effective for the Union Government, in the absence of hard budget constraints and any cost of non-compliance except the threat of downgrade by sovereign rating agencies. It emphasized the need to design a basic incentive-compatible framework for the Union and State Governments to hold each other accountable over agreed fiscal targets and hence the "need for stronger mechanisms for ensuring compliance with fiscal targets and enhancing the quality of fiscal adjustment, particularly for the Union Government."

The FRBM framework has certainly improved in the level of fiscal transparency, with a greater degree of publicly available information about government finances and budgetary processes. It

is also critical to improve the accuracy, periodicity, quality and comprehensiveness of public finance statistics – especially on debt of the Union and the States. The 14<sup>th</sup> FC noted that the rule-based fiscal legislation has been effective in enabling fiscal consolidation and improvement of fiscal management, particularly at the State level and advised the Union Government to do away with the concept of “Effective Revenue Deficit”. Even the 13<sup>th</sup> FC had recommended that the Union Government should institute a process of independent review and monitoring of the implementation of its own FRBM process, initially through a committee to conduct an independent review of FRBM compliance, including assessment of the fiscal impact of policy decisions on the FRBM roadmap. Such a committee could ultimately evolve into a full-fledged Fiscal Council and act as an autonomous body. The 14<sup>th</sup> FC also reiterated the need for establishing an independent fiscal council at the Union level which could undertake ex-ante assessment of the impact of fiscal policy and the fiscal implications of budget proposals, while ex-post evaluation of the impact of fiscal policy can be done by the CAG, as per amendment to the FRBM Act inserting a new section 7A in 2012 which requires the CAG to conduct a periodic review of the compliance of the provisions of the FRBM Act by the Union Government. “While the Union Government has been generally able to enforce fiscal rules on the States”, the Commission observed that “its own record of adherence to fiscal rules has not been impressive. Prima Facie, recent experience invites our attention to the need for a fiscal council at the Union Government level.” For bringing in more flexibility, the 14<sup>th</sup> FC also recommended amendments to the FRBM Acts by the States to provide for the statutory flexible limits on fiscal deficit and amendment by the Union “to reflect the fiscal roadmap, omit the definition of effective revenue deficit and mandate the establishment of an independent fiscal council.”<sup>15</sup>

On the sustainability of debt, the 14<sup>th</sup> FC noted that Article 292 of the Constitution envisages fiscal responsibility of the Union government in the form of enactment of a legislation imposing a

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<sup>15</sup> Para 14.96-102, Vol-I, Report of the 14<sup>th</sup> Finance Commission. Govt. of India.

ceiling on Union debt, something that the Public Accounts Committee and the Estimates Committee of the Parliament had also reiterated without eliciting any action from the Union Government. In this context, the Commission deliberated on the advisability of a new FRBM legislation.

The Government of India had established a committee in May 2016 for reviewing the FRBM Act, under the Chairmanship of Shri N K Singh, the current Chairman of the 15<sup>th</sup> FC, to determine fiscal consolidation targets and to recommend the roadmap for fiscal consolidation. The Committee has submitted its report to the Government in January 2017, in which it recommended the creation of an independent fiscal council that would provide forecasts and advise the government on whether conditions exist for deviation from the mandated fiscal rules and also included a draft of the new FRBM Act in place of the FRBM Act 2003. The Government has amended in the FRBM framework through Finance Act 2018 and notified FRBM (Amendment) Rule 2018 in April 2018 in line with Committee's recommendations, without acting on the recommendation regarding the Fiscal Council.

The FRBM Review Committee identified Debt is the new anchor and recommended to use public debt to GDP ratio as a medium-term anchor for fiscal policy in India. With a public debt close to 70% of GDP, India is among the most indebted emerging economies. The Committee considered a debt ceiling combined with fiscal deficit as an operational target can provide a robust fiscal framework for India, and debt is the “ultimate objective of fiscal policy” which can be taken as an anchor. It recommended a ceiling of 60% of GDP for general government debt - 40% for the Centre and 20% for the States. As regards fiscal deficit it assumed a combined fiscal deficit of the centre and the states of 5% of GDP, divided equally between the centre and the states, in the medium-term. The fiscal roadmap suggested by it for the Union Government is shown in Table 1:

**Table 1: Fiscal Roadmap 2017-2023**

Period	Targets		
	Debt to GDP (%)	Fiscal deficit (% of GDP)	Revenue deficit (% of GDP)
FY17	49.4	3.5	2.30
FY18	47.3	3.0	2.05
FY19	45.5	3.0	1.80
FY20	43.7	3.0	1.55
FY21	42.0	2.8	1.30
FY22	40.3	2.6	1.05
FY23	38.7	2.5	0.80

Source: Report of the FRBM Review Committee, 2017, p. 135

Most importantly, the Committee recommended setting up an independent Fiscal Council to serve “both an ex-ante role – providing independent forecasts on key macro variables like real and nominal GDP growth, tax buoyancy, commodity prices – as well as an ex-post monitoring role, and also serve as the institution to advise on triggering the escape clause and also specify a path of return.” As discussed earlier, the fiscal rules should have adequate flexibility to absorb and respond to rude shocks, and the Committee suggested an “escape clause” permitting temporary and moderate deviations from the baseline fiscal path, only for “overriding considerations” of national security, war, serious natural calamity jeopardizing income and growth, structural reforms in the economy and a sharp decline in real output growth of at least 3 percentage points below the average for the previous four quarters. It also recommended that the deviation from the stipulated fiscal deficit target shall not exceed 0.5 percentage points in a year. The Escape Clauses can be invoked by the Government “after formal consultations and advice of the Fiscal Council, provided it is accompanied by a clear commitment to return to the original fiscal target in the ensuing fiscal year.”

As observed earlier, quality of public finance data is an important parameter for determining the effectiveness of fiscal rules, and the Committee was right to flag it. Another committee established by the National Statistical Commission under the chairmanship of Shri D K Srivastava, the Fiscal Statistics

Committee, which submitted its report in January 2018, also addressed this issue and came to the same conclusion regarding the establishment of a fiscal council to co-ordinate with the government to provide harmonized fiscal statistics and estimate the overall public sector borrowing requirements.

The Committee examined in details the current system of data collection across different levels of the Government, identified its shortcomings and suggested some remedies. It noted that to get an idea of the complete size of public sector intervention in the economy, government accounts at appropriate levels should also be integrated with public sector accounts, which is not available under the present system of accounting. The regular government accounts include accounts of departmental enterprises but exclude non-departmental public sector enterprises. The Committee identified the need for a few more consolidated accounts like of (1) central government including UTs and central public sector enterprises, (2) state level account of state governments, state level local governments and state public enterprises, (3) all state governments including all state level public enterprises and (4) central government including UTs, state governments and central and state level public enterprises.

There are also issues in the transition to an accrual system of accounting as recommended by various Finance Commissions, which were concerned with the shortcomings of the current cash based system, where income is reported not when earned but when received in cash and expenses are booked not when incurred but when consumed. In contrast the accrual based accounting recognizes flow of resources at the time economic value is created, changed, transferred, or extinguished irrespective of whether it was backed by a cash transaction, and therefore allows for better cost benefit analysis and clearer determination of debt and liabilities.<sup>16</sup> However, recognizing the constraints in making such a transition, the 12<sup>th</sup> FC had wanted the Centre and the states to append certain additional statements to the existing accounts for more informed policy making, like: (i) statement of subsidies given, both explicit

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<sup>16</sup> Report of the Fiscal Statistics Committee, Para 4.13

and implicit, (ii) a statement containing expenditure on salaries by various departments/units, (iii) detailed information on pensioners and expenditure on government pensions; (iv) data on committed liabilities in the future; (v) statement containing information on debt and other liabilities as well as repayment schedule; (vi) accretion to or erosion in financial assets held by the government including those arising out of changes in the manner of spending by the government; (vi) implications of major policy decisions taken by the government during the year or new schemes proposed in the budget for future cash flows; and (vii) statement on maintenance expenditure with segregation of salary and non-salary portions. This has also not been done so far, despite the succeeding FCs reiterating these recommendations.

There were also considerable divergence and discrepancy in the same data reported by different sources and agencies. Implementation of GST has posed a big challenge in consolidating and integrating fiscal data into the reporting framework, as has the extensive spread of digital platforms to capture data including fiscal data. There are also many other issues and challenges in amalgamating fiscal data, which the Committee considered as “public good”, as it has the “characteristics of being both a consumption good and investment good”, and the data system needs to developed “in the framework of ‘information’ federalism wherein cooperation, coordination and competition among the different tiers of federal governance would build up a modern state-of-the-art fiscal data system”. The inconsistency and opaqueness of the data system have been reported by the CAG in its Report No. of 2016 on the Compliance of FRBM Act, 2003.

In view of all these issues, problems and challenges, the Committee felt the need “to identify a suitable organizational structure where compilation of fiscal data may happen so that it can be standardized and made publishable. Such an institution should be apex body of fiscal statistics coordinating the central, state and local governments as also the relevant institutions such as the RBI, CSO, CAG and CGA. There is also a need to conceptualise a suitable apex institution and for evolving a methodology for developing an interface between this apex

institution and the various institutional and departmental sources of data in India's federal system of governance." Because such an institution has to access data across various agencies, it has to be a Government agency to have the authority to do so. It noted the recommendation of the FRBM Review Committee in this respect as discussed earlier and recommended that such a Fiscal Council should act as a (a) Fiscal Data Coordinator, (b) Fiscal Data Analyst, (c) Fiscal Consolidation Path Monitor, (d) Fiscal Aggregates Forecaster, and (e) Fiscal Policy Advisor. Such a Fiscal Council can help in closing many of the existing institutional gaps in India's fiscal data system.

If India has to emerge as a major player in the global economic and political arena and play its part successfully, it is essential to fix the problems of its fiscal and monetary policies and align them to the global best practices. All global best practices are rule-based, provide for institutions and mechanisms that promote fiscal and macroeconomic stability and create a transparent and comprehensive fiscal data system which inoculate the economy against unforeseen risks. With our economy growing and diversifying, we can no longer ignore or postpone fixing our system bedevilled with too many loose ends. It is therefore high time to seriously act upon the recommendations of the Finance Commissions as well as the Committees discussed above and institute a fiscal system architecture based on fiscal rules and an independent fiscal council.

# THE ROLE OF THE COMPTROLLER & AUDITOR GENERAL OF INDIA IN COMBATING CORRUPTION

**K. P. SHASHIDHARAN\***

The recent Supreme Court's judgement on defence procurement, citing the Comptroller and Auditor General of India (CAG)'s report and subsequent controversy have brought back the role of the Supreme Audit Institution of India (SAI) in public discourse. Some questions before the nation are: Is CAG mandated to detect or fight against corruption? Are there any specific provisions which regulate CAG's role relating to corruption? Can CAG's reports help in detecting or preventing corruption in public offices?

## **Constitutional provisions regarding CAG**

The constitutional provisions relating to CAG's appointment, service conditions, duties, mandate, powers, form of accounts, calculation of 'net proceeds' and submission of his reports to the legislature are contained in Articles 148 to 151 and 279 read with Third Schedule and Sixth Schedule. Article 148 deals with the appointment of CAG by the President and safeguards his positions and service conditions by stating that 'he shall only be removed from office in like manner and on like grounds as a Judge of the Supreme Court'. His salary and other conditions of service shall be determined and by Parliament by law and shall be protected. It is explicitly stated that CAG 'shall not be eligible for further office either under the Government of India or under the Government of any State after he has ceased to hold his office.

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## **Duties, powers and service conditions of CAG**

The CAG's (Duties, Powers and Conditions of Service) Act, 1971 enacted under the constitution with subsequent amendments 1976, 1984, 1987 and 1994 specify CAG's duties, powers in relation to government accounts, audit of receipts and expenditures of three tiers of the Indian governments edifice including audit of public companies. CAG audits autonomous, regulatory bodies and other public entities, where there is specific legislative provision to make CAG audit mandatory.

Besides, the regulations on audit and accounts issued by CAG in 2007 with amendments notified in 2010 and 2013 explicitly elaborate the scope and extent of audit, guiding principles, auditing standards, types of audits, audit planning, process, techniques, procedures, and reporting as well as the general principles of accounting. There are a few important judgements of the judiciary on the powers CAG to conduct performance audit, time, scope and extent of audit, duty of CAG regarding examination of expenditure, his power to audit the revenue of telecom companies. The Constitutional provisions, CAG's (DPC) Act, 1971, regulations and judgements do not mention CAG's responsibility explicitly to fight against corruption<sup>1</sup>.

CAG performs such 'duties and exercise such powers in relation to the accounts of the Union and of the States and of any other authority or body as may be prescribed by or under any law made by Parliament'. He conducts audit of the entire receipts and expenditure of the three tiers of the government and submits the audit reports 'to the president, who shall cause them to be laid before each House of Parliament and to the Governors of the States, and administrator of the Union Territories who shall cause them to be laid before the concerned legislature. However, while performing his mandated duties, CAG acts as the financial 'watchdog', oversees the receipts and expenditure of the governments, helps the legislature to have oversight and control in

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<sup>1</sup> 1. CAG of India website: <https://cag.gov.in/content/instructions-government-india>.

enforcing executive accountability. CAG is mandated to report to the legislature to ensure that tax payers' money voted by parliament is spent as per standards of financial propriety and the applicable rules only for the purpose for which it is sanctioned. CAG's constitutional mandate thus facilitates the legislative scrutiny, oversight, critical insight, and control over the executive's performance and accountability in letter and spirit.

### **CAG Reports exposing corruption**

CAG's mandate does not specifically and explicitly intend to deter, detect or prevent fraud or corruption. While performing audit functions as a constitutional watch dog, suspicious deals, abnormal transactions, and deviance from applicable rules may come to light. Circumstances may show that there is something to be investigated by the investigating agencies. Detection of corruption in audit is incidental or accidental and not mandated. The objectives of CAG audit is to ensure compliance with applicable rules, verify whether the financial statements are true and fair and the government organizations are performing as planned, government projects, programmes and schemes are implemented to achieve the planned qualitative and quantitative outputs and outcome. However, while performing the duties of the statutory functions of a watch dog, CAG's Reports exposed varied genres of political, financial, bureaucratic and corporate scandals<sup>2</sup> since independence. Some of the recent ones cover different spheres of government activities. They range from fodder, allocation of 2G Spectrum, coal blocks, D-6, scams relating Commonwealth games, arms deal, suspicious defence procurement deals, corruption deals relating to food, health, housing, construction of infrastructural projects, projects' execution and centrally sponsored schemes, various socioeconomic and educational projects and programmes, and land deal scams of the three tiers of governments central, states and urban and rural local bodies. Thus, while performing his constitutional responsibilities, CAG plays a vital role to help deterring, detecting, help taking

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<sup>2</sup> 2.Wikipedia: List of Scandals in India  
[https://en.wikipedia.org/wiki/List\\_of\\_scandals\\_in\\_India](https://en.wikipedia.org/wiki/List_of_scandals_in_India)

remedial and preventive action. It helps preventing public sector corruption and providing good governance. The nature of SAIs' work relating to checking and verifying the public accounts, assessing regulatory compliance with reference to laws and rules, financial propriety standards and guidelines enables the national auditor to contribute substantially to anti-corruption efforts.

CAG's reports only show evidence of certain abnormal transactions and suspicious circumstances. These audit observations are further investigated by anticorruption agencies of the government. CAG reports of the union and states have been highlighting financial improprieties, irregularity, and waste of national resources, time overrun, and cost overrun and execution of projects without realizing the specified quality and quantity parameters.

CAG inputs provide critical inputs, violation of rules, abnormal circumstances with insights for detailed investigation by the specialised law enforcement and anti-corruption agencies like Central Vigilance Commission (CVC), Central Bureau of Investigation (CBI), and Directorate of Revenue Intelligence (DRI) etc. SAI's mandate is nothing more and nothing less than doing professional, and independent auditing without fear or favour to ensure compliance of applicable regulations, financial propriety, critical evaluation of performance of multifarious government projects, programmes and schemes with reference to policy, planning, targets, milestones and planned output and outcome. While performing the mandated duties, CAG highlights deficiencies in internal controls, segregation of powers, defective planning, implementation and inadequate monitoring. CAG reports red-flags deviations from rules, nonconformity to laid-down procedures and anomalous nature of transactions supported with irrefutable evidence. When CAG's reports are submitted to the people's representatives on behalf of the citizens pointing therein omissions, commissions and nonconformity to mandatory laws, rules of the executive, the constitutional watchdog serves the nation in fighting against corruption.

CAG's constitutional mandate, duties and responsibilities have been questioned and the Supreme Court clarified the national

auditor's duties in various judgements as well. CAG become credible, authentic and reliable source material for legislative committees, courts, anticorruption and investigating agencies such as Central Vigilance Commission, Central Bureau of Investigation, Chief Information Commission, Enforcement Directorate. Anti-corruption Bureau, Transparency International, Financial Intelligence Unit, authorities under the Administrative Law to control corruption and media under various Acts and regulations including IPC, CRPC, FEMA, the Right to Information Act and the Citizen Charters. The explicit mandate of CAG of India as a supreme audit institution (SAIs) of the country is undoubtedly to oversee the entire gamut of public revenue and expenditure to ensure financial prudence and propriety.

### **CAG is a watch dog, not a blood hound or a lapdog**

CAG is not a bloodhound. He is always compared as a constitutional watchdog. The opposition may become critical at times highlighting the possibility when the political executive rewards a committed bureaucrat by appointing him or her as CAG, the watchdog may tend to become an extra loyal lapdog or function with fear and favour instead of without fear and favour. There can be criticisms of his views becomes a bit lopsided, biased or compromised, in showing and seeking more affection rather than being restless, and conscientious in barking like a watch dog to alarm financial wrong doings and white collar crimes. If robust audit is undertaken, and CAG is given adequate powers to execute his mandate, and CAG reports are done judiciously on priority and available to the legislature for scrutiny in a time bound manner, and the implementation of recommendations are given on top priority in a well-structured follow up audit process, the level of public corruption can be substantially mitigated. These innovative changes will ensure putting the nation's engine of economic growth and development on planned trajectory to the destination. SAIs role is thus obvious in the crusade against corruption. Focussed and intense capacity building, up skilling in use of audit software solutions and right orientation can enhance the anti-corruption knowledge, capabilities and expertise of public auditors. To enhance audit effectiveness, CAG audit professionals must be

adequately trained to be computer savvy to use innovative audit software, Computer Aided Audit Tools.

CAG's role as a watchdog over the country's financial integrity must be established. CAG has the unequivocal mandate to assess whether public funds are utilised economically, efficiently, effectively, equitably, ethically and in conformity with applicable laws and regulations and sustainable environmental concerns. Compliance Audit scrutinises comprehensively conformity to laws and rules in providing service delivery and project execution. Financial audit examines the budget, books of accounts and other relevant records to make an assertion regarding the true and fair nature of the financial statements or financial health of the entity. The mother of all audits, Performance audit can go further into depth to evaluate the performance of a project or organization or a sector with reference to the policy, planning, vision, mission, budgeted outlay, specific measurable qualitative and quantitative parameters, targets, milestones and outcome. Performance audit is all embracing taking into its fold all audit types, methodology, techniques, proceedings and process including audit of information communication technology, ICT application in e-governance, fraud audit. It may use expert opinions, scientific reports, survey results, and integrates if need be inputs from internal audit and peoples' audit or social audit. A robust CAG audit process is both bottom up and top down driven, synergising and energising the entire audit organization in the audit drill. Audit process becomes vertically, horizontally and diagonally integrated.

SAI's role to deter corruption as incidental or accidental while performing statutory duties is well recognised in other nations too. OECD and World Bank studies find SAIs have helped in fight against corruption though SAIs are not statutorily considered as an anti-corruption bodies or scam investigating agencies. The Lima Declaration of Guidelines on Auditing Precepts<sup>3</sup> adopted in 1977 at the IX INCOSAI in Lima (Peru) act as guideline for the government auditing done by INTOSAI. It is

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<sup>3</sup>3. The Lima Declaration of Guidelines on Auditing Precepts: <http://www1.worldbank.org/publicsector/pe/befa05/LimaDeclaration.pdf>

considered as the Magna Carta of government auditing. The Lima Declaration of Guidelines on Auditing Precepts agreed by INTOSAI in 1998 encompasses the purpose of government audit, pre-audit, post audit, internal and external audit, types of audits, tax audits, audit of public contracts, works, commercial enterprises as well as professionalism and independence of SAI and the officials of SAI. The four core objectives outlined in the Lima Declaration highlight the following:

- *the proper and effective use of public funds*
- *the development of sound financial management; and;*
- *the proper execution of administrative activities*
- *the communication of information to public authorities and the general public through the publication of objective reports.*

A study by INTOSAI concludes that SAI provides ‘audit or assurance services by comparing economic information with a framework for financial reporting, and to produce knowledge derived from the conduct of audit investigations, which creates the basis for the implementation of corrective actions’. Of different audit models, the Westminster model or Anglo-Saxon or Parliamentary model used in the UK and most of the Commonwealth countries including India aims to ensure parliamentary accountability by submitting SAI reports for detailed examination by parliamentary committees, viz. Public Accounts Committee and Committee on Public Undertakings.

Independence of audit is guaranteed by the Constitution and the CAG’s (DPC) Act, in India. The specific objectives of auditing is clear: effective management of public resources; enforcing prudential financial management systems and procedures; ensuring proper execution of executive and administrative activities; and reporting to the legislature and thereby to the media and the general public. Audit objective is stated clearly; ‘audit is not an end in itself but an indispensable part of a regulatory system whose aim is to reveal deviations from accepted standards and violations of the principles of legality, efficiency, effectiveness and economy of financial management early enough to make it possible to take corrective action in individual cases, to make those accountable

accept responsibility, to obtain compensation, or to take steps to prevent--or at least render more difficult--such breaches'. It further reinforces that 'effective pre-audit is indispensable for the sound management of public funds entrusted to the state' to be carried out by a SAI or other audit institutions. Post-audit by a SAI is a must which ensures the responsibility of those accountable for other audits as well. Internal audit and external audit services must be functionally and organisationally independent as far as possible within their respective constitutional framework.

As external auditor, SAI has the responsibility to assess the effectiveness of internal audit. SAI conducts legality audit, regularity audit and performance audit to ensure sound financial management and accounting. Performance audit examines the full range of government activity including organisational and administrative systems to ensure the legality, regularity, economy, efficiency and effectiveness of financial management. Audit must be done professionally without being influenced by the audited organisations. The independence and autonomy of SAI are provided under the Constitution and law. The government is solely responsible for its acts and omissions. Audit of public contracts and public works tendering shall 'cover not only the regularity of payments, but also the efficiency of construction management and the quality of construction work'. The expansion of the economic activities of government shall be subject to audit by SAI.

The independence, constitutional mandate and responsibilities of CAG enables him or her to create an effective environment for deterrence against corruption. CAG can effectively contributes to the prevention of corruption by deterrence and promoting sound public financial management systems and practices based on effective internal controls and checks and balances, segregation of powers, supervision, inspection, monitoring and review by the superiors within the organizations or system, reliable reporting and robust internal control mechanisms guaranteeing transparency and accountability in the public sector. CAG effectively contributes to a system of financial checks and balances, provides with financial discipline and propriety standards with a robust framework to support

financial integrity to government operations. CAG thus plays a significant role in raising credibility and awareness to the risks of corruption and promoting good governance and standards of financial integrity. The deficiencies in the internal control systems and deviations from the rules and procedures are highlighted with suitable recommendations for effective checks and balances.

CAG reports on the centre and the states invariably examine the working of the organizations as envisaged within the policy framework and as per the vision, mission, policy, plan, stated quantitative and qualitative targets, physical outputs and outcome. Fraud and corruption are done by collusion. As per the fraud triangle, where there is control lapse, there is a tendency to exploit the ineffective control environment by the people who are within the organization colluding with external agencies. Robust internal control systems and procedures with segregation of powers under effective supervision, monitoring, whistle blowing system can go a long way in reducing corruption in the public.

### **Increasing role of Audit**

India's unprecedented economic growth since liberalization of economy in 1990s, there has been enormous expansion in government receipts and expenditure. NITI Aayog Strategy for New India @75, November, 2018<sup>4</sup> maps the ambitious trajectory of government policy, planning, milestones and goals. This policy document is supplemented and complemented by appropriate budgets from year after year. Unprecedented growth of receipts and expenditure estimates in the Budget and continuously growing government accounts and multiplicity of activities provide unprecedented challenges, and new opportunities for CAG to find out control weaknesses within the government organisations. There is therefore increasing need for effective enforcement of rule of law and rule of financial laws as well. Audit must be reoriented towards intense focus on timely execution of projects without leakage and siphoning of funds, various kinds of frauds, waste, misappropriation and misuse of resources, prompt release and utilisation of resources on various ambitions high value budgeted

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<sup>4</sup> NITI Aayog Strategy for New India @75

socioeconomic, educational and infrastructural schemes, projects, and programmes.

In the government expenditure landscape, hardly any projects are executed or delivered on time, realizing envisaged quality output and outcome within the specified budget outlay. Probably only exception is Delhi Metro. Audit eyes must be intensely focussed on help in effective planning, implementation, monitoring, reviewing for timely execution of various projects at the three government levels, centre, states, urban and rural local bodies' levels. Along with deterrence, audit must be able to ensure remedial, corrective midcourse action to set things right as well as preventive measures. Big Data Analytics will require robust innovative audit software tools and CAATs and highly tech savvy, knowledgeable, trained audit professionals to do effective auditing.

Massive public expenditure application of Information Communication Technologies and e-governance are part and parcel of digital India's service delivery, public administration and governance. Increasing tax and non-tax-revenue, borrowings and huge expenditure allocations in budgets after budgets demand extensive and intense audit probe and scrutiny. Multifarious projects in every gamut of government operations aiming to achieve 17 Sustainable development Goals along with their 169 targets need to be subjected to meticulous data analytics and audit analysis to ensure proper service delivery, project management for effecting good governance.

Ministries, attached and subordinate offices, public sector companies, joint ventures, Special Purpose Vehicles, Autonomous bodies, societies, regulatory bodies and watchdogs are many. Many of regulatory bodies in India do watchdog functions. Many of them are led by retired government functionaries. Some of them have overlapping functions. There is a big list of them<sup>5</sup> including Reserve Bank of India, Securities and Exchange Board of India, Central Electricity Regulatory Commission, Competition Commission, Institute of Chartered Accountants of India, Insurance Regulatory and Development Authority,

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<sup>5</sup> [https://en.wikipedia.org/wiki/List\\_of\\_regulators\\_in\\_India](https://en.wikipedia.org/wiki/List_of_regulators_in_India)

Pension Fund Regulatory & Development Authority, Telecom Regulatory Authority of India, Financial Stability and Development Council, Food Safety and Standards Authority of India, Bureau of Indian Standards, Board of Control for Cricket in India, Organisation Of Plastic Processors of India, Project Exports Promotion Council of India. It is interesting to examine how far they do their functions. Audit needs to examine hitherto neglected issues like NPA crisis and role of CAs, SEBI's effectiveness in capital market regulation, how far the food safety and standards prevent food adulteration in the country or how far plastic waste management is done.

The prime responsibility for the detection of corruption lies with the organizations and institutions such as CVC, CBI, Enforcement Directorate, Serious Fraud Investigation Office, and other anti-corruption agencies. However, as a credible constitutional machinery, CAG has predominant role in uncovering malpractice, deviations in rule conformity, detecting impropriety in expenditure, ineffective performance in project execution and fraudulent financial reporting. Many a time, these reports become source material for investigative agencies and intense debate and investigation by private agencies through PIL, Right to Information Act, and proactive media led probes which can uncover many corrupt activities.

Falsified statements and claims, illegal bidding practices, tax and customs evasion, overpayment and non-delivery of good and services as well as malpractice in the liquidation of public companies are some of the fraudulent and corrupt activities that auditors may encounter. While SAIs have limited capacity and authority to investigate cases of corruption, they can pass cases on to the relevant authorities. Corruption may be detected during all three types of audit: financial, compliance and performance. The primary purpose of financial audits is not to detect corruption but to ensure that financial statements are not misleading and reflect an organisation's genuine economic transactions. Corruption is more often revealed through compliance audits, which are designed to ensure the legality of financial transactions and verify that these comply with existing laws, rules and regulations. Breaches of laws

and regulations may indicate fraudulent or corrupt activities. Similarly, performance audits that assess the management of public resources can be designed to include some references to laws and regulations and thereby help identify fraud and corruption. When a project or programme exceeds its planned costs, time frame and fails to achieve the specified qualitative and quantitative parameters in execution, it merits further probe by investigative agencies.

However, the effectiveness of an SAI also depends on the extent to which its recommendations are acted upon by the concerned authorities charged with governance. There must be effective mechanisms in place to ensure the implementation of SAI recommendations. PAC and COPU are able to discuss only a few selected CAG reports and audit observations. There needs to have innovative reforms to set up effective constitutional bodies or mechanism to examine CAG reports and to ensure that recommendations are implemented.

### **Limitation of CAG**

CAG institution has its limitations. CAG's (DPC) Act, 1971 needs to be amended to empower CAG to see that the government departments reply to audit enquiries in a time bound manner, within 30 days or so. The statute must stipulate a clear timeframe for the tabling of audit reports on the floor of the legislature. The Central and State governments delay in making public the CAG audit reports that contain embarrassing observations. CAG's legal mandate must need suitable amendments to ensure more effective and efficient expenditure management by specifying by amending the DPC Act to enable CAG audit mandatory in modern government structures like joint ventures, special purpose vehicles and public-private partnerships. Ambiguities in its mandate make CAG inadequate in audit of certain areas of public economic activity. An amended modernised Audit Act can only ensure more robust expenditure management by more proactive, effective and efficient CAG audit. It is high time that CAG's DPC Act to be revised to empower CAG to cover hitherto uncovered domains of government activities.