Social Welfare and development

Government Policies and Intervention

Centrally Sponsored Schemes (CSS) Reforms

Issues with CSS

1. Poor performance
    1. Most of the schemes exist in silos planned without any horizontal or vertical integration, resulting in multiple sectoral district plans, unrelated to each other, often mutually conflicting.
    2. The schemes are often rigid and do not provide flexibility required for adaptation to local needs.
    3. Professional support is quite weak as not much attention is paid to this aspect.
    4. Most of the CSS remain expenditure oriented.
    5. No mechanism for tracking funds. Funds released from ministry is treated as expenditure even if it may be lying in bank accounts of the implementing agency.
2. Panchayat issues
    1. Most of CSS deal with matters earmarked for Panchayats and yet PRIs are not integrated well into the schemes.
    2. Sector specific works planned under CSS are not reflected in the Panchayat plans.
    3. Often independent structures are created for each scheme resulting in a multiplicity of delivery structures. No attempt is made to leverage PRIs or previous structures. Line departments controlling the implementation process with no accountability or monitoring.

Recommendations

1. Performance issues
    1. Schemes should not be over structured with rigid guidelines and should leave enough flexibility in decision making at the implementational level.
    2. Social audit, focus on measurable outputs and outcomes.
    3. Monitoring mechanisms for flow of funds.
2. Panchayat issues
    1. Each Ministry of the Government of India should undertake activity mapping with regard to its CSSs and identify the levels where activities need to be located; at the ministry level, at the State Government level or at the Panchayat level.
    2. Sector specific works planned under CSS need to find place in the overall development plan prepared by the Panchayat. Enough scope should be given to the Panchayats so that they could integrate such schemes within the framework of their

areas' holistic development plans.

3. At the stage of conceptualisation, care needs to be taken to ensure that the Panchayats feel assured that the scheme has been designed for local welfare.
4. Panchayats should have an important role in implementation. Parallel bodies should be wound up and merged with standing committees of the PRIs. Some of them may need to have organic linkage with the PRIs.

National Right to Homestead Bill, 2013

Features

1. SC has also said that the issue of a roof over one's head needs to be seen as a basic human right under Art 21. It is also in consonance with the DPSP to eliminate inequalities in status.
2. It will give every one poor shelter less family a right to home and 1/100th of an acre or 10 cents of land area to also carry out supplementary livelihood activities. Families who own land, persons who are paying income tax, government employees, employees from the private sector who earn Rs 84,000 a year will be ineligible.
3. Plans must be formulated at the state and district level for the time bound (within 5 years) implementation of this right. Centre will bear 75% of the cost.
4. The right to homestead can be inherited but cannot be transferred to a new ownership.
5. The title to the homestead shall be granted in the name of an adult woman member of the eligible family.
6. State governments will identify the land for allotment, allot and provide titles, develop the allotted homesteads, provide basic civic amenities, establish a grievance redressal mechanism, monitoring system and ensure transparency and accountability by means such as social auditing.

Analysis

1. About 2 crores poor shelterless families will get home and land. The poorest and most vulnerable among the rural families are those who are landless and shelter less. The Bill will affect them.
2. It will also enable them to take up livelihood activities such as backyard poultry, goat-rearing, horticulture and vegetable cultivation.
3. Where is the government going to get the land from? From all the surplus land that state governments have acquired under various land reform legislations or donated under the Bhoodan movement? But the track record of such land being redistributed has been very poor. 5 mha has been pledged as part of the Bhoodan movement but only 50% has actually been distributed. There is a big scam there.

4. Track record of land reforms has also been poor.
5. How to ensure that people who get land will not have it taken away, either forcibly or by fraud?

Agra Agreement with Jansatyagrah, October 2012

1. Formulation of a National Land Reforms Policy with inputs from the draft prepared by Jansatyagrah and involvement of civil society organisations.
2. Advise the states to provide amend their laws backing for provision of agricultural land and shelter right to the landless and shelter less poor of rural areas.
3. Guarantee 10 cents of land.
4. Advise the states to take up time bound land reforms. To set up a task force on land reforms headed by the MoRD.
5. Establish fast track courts to dispose cases pending and extend legal aid to all the persons belonging to socially deprived sections in matters of land litigation.
6. Effective implementation of PESA and Forest Rights Act.
7. Resolution of forest boundary disputes by keeping Gram Sabhas fully involved.
8. Support the States to carry out survey of common property resources with the direct involvement of the Gram Sabha.

<u>National Land Policy, 2013</u>

1. To enable nomadic tribes to shift to agriculture, it allots 5 acres of agricultural land to every family belonging to nomadic and denotified nomadic tribes, provided they are willing to settle.
2. Religious institutions occupy large tracts of land. Such institutions should not be allowed to use more than "one unit of 15 acres". Exemptions to religious, educational, research and industrial organisations as well as plantations and aqua farms should be strictly discontinued.
3. It takes care of women rights by distributing land only to the woman member of the family. Even in matters of inheritance equal rights to women will be ensured.
4. Property owners holding more than a specified number of residential plots or land beyond ceiling should pay extra tax.
5. Only farmers will be allowed to buy land categorized as agricultural land. But it does nothing to prevent arbitrary change of land use.

DRAFT LAND REFORM POLICY

- The Ministry of Rural Development released a Draft National Land Reforms Policy for discussion and comments.
- The Policy seeks to address several land related issues such as inequity in access to land, especially for marginalised communities; inefficient land usage; and poor dispute resolution mechanisms.
- Key features of the Draft Policy are:
  - **National land use plan**: The central government must create a national land use plan based on information from tehsils, districts, regions and states.
  - **Assignment of land to landless:** State governments must evolve comprehensive policies for the assignment of land to the landless.
  - **Land rights for Scheduled Castes, Scheduled Tribes and nomadic communities**: The states shall review existing law and policies pertaining to the alienation/transfer of land belonging to Scheduled Castes, Scheduled Tribes and nomadic communities and take necessary steps for removing constraints.
  - **Land for nomads**: The central government must enact a Right to Minimum Land Holding Act through which every nomadic family will be entitled to at least five acres of cultivable land.
  - **Land rights for women**: Several suggestions have been made to improve women's access to land including homestead land distribution only in the woman's name rather than joint titles with husbands, granting 'group land titles' to groups of women, among others.
  - **Dispute resolution**: State governments shall establish an authority at the sub district level and a tribunal at the state level for land related dispute resolution. Land Tribunals at the state level will function as fast track courts to resolve land disputes.

  - **Modernisation of Land Records**: The Policy recommends establishing a National Authority for Computerisation of Land Records and State Authorities for Computerisation of Land Records to enable modernisation of land records.
  - **Training:** Training centres at the national, state and district level must be established or identified to provide training in land administration and management to concerned officials.
  - **Monitoring and evaluation**: All state governments are required to establish a State Land Rights Commission (SLRC) to review the progress made by state governments on the realisation of land rights. A Land Reforms Unit must be established in every State Academy for Administration. The central

DRAFT LAND REFORM POLICY

[*For the salient features of the draft Land Reform policy, please refer to July 2013 current affairs notes*]

ANALYSIS

- The proposed framework has done well to protect the existing land of the marginalised sections, but falls short in improving the condition of the landless. Despite laws such as the Forest Rights Act which are meant to protect their rights, tribal communities remain the most exploited and worst affected. About 40 per cent of the total land acquired so far belongs to them.
- To set this right, the proposed policy has directed all States to delineate tribal habitation areas within a year, and statutorily protect them.
- It reaffirms the importance of the gram sabha and assigns it the role of a competent authority. No project is to be undertaken or land acquired without its consent.
- In the event that mining is taken up after getting consent, the sabha would retain ownership of the land and receive 50 per cent of royalty or revenues.
- The policy also proposes to create funds to help the vulnerable poor who tend to sell land when in distress.
- The land rights of women have been another vexatious issue. Despite 75 per cent of India's working women being involved in agriculture, the state has invariably ignored them and allotted land to the male head of a family. This has made it difficult for women to free themselves from violent relationships and claim relief. The draft policy has done the right thing by recommending future allotments in their name.
- To make this change more effective, related reforms such as joint holding of land by women groups that would help them access financial assistance should also be implemented.
- The proposed policy fails to exhibit similar creativity when it comes to distributing surplus lands to the needy. About 30 per cent of rural households remain landless, while the wealthiest 10 per cent holds 55 per cent of the land. About 8 million rural households are yet to get even the promised minimum — 1/10th of an acre.
- It is naïve to assume that advances in surveying techniques would improve the situation when the core problem is a reluctance to enforce reforms.
- The Minister of Rural Development has proposed well-meaning changes, but contradictory positions taken by other ministers in recent months on infrastructure projects and mining in tribal areas, have raised serious doubts about the future of the proposed policy.
- If the government is serious about equitable development, it has to implement an improved land reform policy without delay.

Issues Arising out of Design and Implementation

Development Processes

Development Industry

Social Capital

1. It refers to those institutions, relationships, and norms that shape social interactions. It binds together the community and make cooperative action possible. The basic premise is that such interaction enables people to build communities, to commit themselves to each other, and to knit the social fabric.
2. In many cases it provides a cogent explanation for the failure of economic policies.

Role of NGOs

Role of SHGs

Kudumbashree Mission in Kerala

Features

1. Development of Grass Roots Level Community Based Organisation (CBO)
    1. Kudumbashree emphasizes that all developmental programmes relating to nutrition, poverty alleviation, SC/ST development should be run by community based organisations with support of PRIs.
    2. The women are organised into Neighborhood Groups, (NHGs) consisting of 20-40 women with 5 functional volunteers including the secretary and the president.
    3. The group meets once a week in the house of a member.
    4. Many NHGs have come through a mentor Body (either government or an NGO) which provided initial information and guidance to them. Such support often consists of training people.
2. PRI Linkages
    1. These groups are coordinated at the Ward level through Area Development Society (ADS), by federating 8-10 NHGs.
    2. The coordinating Apex Body at the Panchayat level is the Community Development Society (CDS).
3. Planning Process
    1. The aspirations and genuine demands voiced in the NHG meetings form the “micro-plans”, and are scrutinized and prioritized to form a mini-plan at the level of ADS.
    2. A judicious prioritization process at the level of CDS leads to finalisation of a “CDS Plan”. It is the “anti-poverty sub-plan” of the Local-Self Government.
4. Financial Integration
    1. Groups which are mature enough to avail loans are linked with banks under the Bank-linkage programme of the NABARD.
    2. Thrift and Credit Societies are set up at NHG level to encourage the poor to save and to avail easy credits. These facilities have gradually grown into informal Doorstep Banks for NHG members.
    3. It promotes the concept of group accountability ensuring that the loans are paid back.
    4. It provides mutual support to the participants in saving money, preparing a common plan for additional income generation and opening bank accounts. This supports them in setting up micro-enterprises.

Current Challenges in SHG Movement

1. Maintaining the participatory character of SHGs

1. Its primary strength is its solidarity-based participatory character, and in its ability to survive without any significant external support or involvement.
2. Government interventions and subsidies have already started showing negative results. The patronage and subsidies often lead to their politicization.
3. SHG movement should be recognized as a people's movement and the role of government should be only to facilitate and create a supportive environment, rather than 'manage' the movement directly.

2. Expansion in northern states
    1. This is possible only by rapid expansion of financial infrastructure (like NABARD) and capacity building measures in these States.
3. Extension to peri-urban and urban areas
    1. Migrants in such areas don't have any documentary proofs and hence do not have access to organised financial services.
    2. NABARD's mandate is to cater only to rural and semi-urban areas. In Bangladesh, the Grameen Bank does not make any distinction between urban and rural borrowers. NABARD Act should be amended.
    3. In AP, there are many Self Help Promoting Institutions (SHPIs) / mentor organizations. Providing them financial access and creating enabling environment for them is an essential to spread the movement.
4. Issues in financial linkages
    1. Currently, four distinct models of financial intermediation are in operation in various parts of the country namely:
        1. SHG-Bank linkage promoted by a mentor institute
        2. SHG-Bank direct linkage
        3. SHG-Mentor Institution linkage
        4. SHG-Federation model
    2. Linking SHGs to banks is the most effective model which allows an SHG to obtain funds or a credit limit, without giving any collateral, from a local bank – often in multiples of its own savings. The tranche of credit given to a SHG starts initially at a low ratio to savings and gradually increases to a much higher level. In India, this form of credit interaction, where the banks deal directly with individual SHGs has been one of the most successful models.
    3. However, the total outflow from this channel has been rather low because it is inherently linked with the magnitude of the SHG's own savings. In some cases, in order to obtain economic sustainability a cluster of SHGs have gathered together to form a federation. This scales up their activities and also enables them to have access to increased resources from funding institutions.
5. Issues of sustainability, capacity building and use of technology
    1. Many of the activities undertaken by the SHGs are still based on primitive skills related mostly to primary sector. This is characterized by poor value addition per worker and subsistence

wages.

2. Creating SHGs is not an end in itself. They have to be made sustainable. Even after many years of existence, by and large, most SHGs are heavily dependent on their promoter NGOs or government agencies. The withdrawal of NGOs / government agencies even from areas where SHGs have been federated, has often led to their collapse.
3. Capacity building of government agencies and banks is equally essential to create sustainable relationship and there is a positive correlation between the training received by government functionaries/Bank personnel and their overall attitude towards local organisations.
4. There is lack of qualified resource personnel in the rural areas who could help in skill upgradation / acquisition of new skills by group members.
5. Currently, many public sector banks and micro-finance institutions are unwilling to provide financial services to the poor as the cost of servicing remains high. Use of appropriate technology can reduce it.

6. Role of MFIs
    1. This has come under cloud. The sector needs to be regulated although care must be taken that legitimate activities are not hampered.

Cooperatives

Current Challenges

1. Bureaucratisation and government control: There is a post of the omnipotent Registrar of Cooperative Societies who has the final say in almost all cooperative matters. Existence of such a government controlled cooperative infrastructure has gone against the very logic of the cooperative movement.
2. Politicisation of cooperative leadership: The Boards of a majority of cooperative Bodies are dominated by politicians. Politicians joining cooperatives introduces decay in the system.
3. Failure to inculcate self help principle: Self-help is the basic tenet of cooperatives. In its very genesis the movement is opposed to both Market as well as State. Governments have generally been eager to provide financial support to cooperatives and the sector has very often fallen prey to this temptation. The government thus, succeeds in establishing its dominance over them.
4. Failure to inculcate member centrality principle: Cooperatives by their very nature are inward looking organisations. They are meant to serve the member community. The focus of the activities of a cooperative organisation needs to be on its members. Its business is to be

developed around their needs, policies are to be designed according to their views and administration is to be carried out through member participation. But, in practice, cooperatives in India have not adhered to the above norms.

The Constitution (One Hundred and Eleventh Amendment) Bill, 2009 / 97th CA Act, 2011

1. The Bill seeks to develop professionally managed and autonomous cooperatives.
2. The state legislature may fix the number of board members but <21. At least 1 would be SC/ST and 2 women and term of the board will be 5 years.
3. A maximum of 2 people with experience in the field can be "co-opted" in the Board.
4. The elections of the new board will take place before the end of term of the previous.
5. The Board can be superseded or suspended for its failure but within 6 months elections will have to be conducted.
6. Independent audit, professional management.

Role of Donors, Charities, Institutions, Other Stakeholders

Issues with Legal Framework for Societies / Charities

1. Excessive state control
    1. While the original Act (Societies Registration Act, 1860) was remarkably clear in not introducing any form of state interference, except routine matters of filing annual statements, many of the legislations (through post-Independence amendments) went for widespread governmental controls. The legal measures include:
        1. Power of enquiry and investigation.
        2. Cancellation of registration and consequent dissolution.
        3. Modify / annul a decision of the governing body and even its supersession.
        4. Appointment of administrator.
2. Multiplicity of laws and jurisdictions
    1. The multiplicity of laws even within a state has prevented growth of a proper institutional framework in this sector.
    2. Diversity of laws across the States has given rise to emergence of nonuniform practices. If an institution registered in one State desires to expand its activities to any other area, it needs to comply with a different set of legal requirements.
3. Issue of giving priority attention to larger organisations
    1. India has a large number of voluntary sector organisations, a majority of whom are very small in terms of their scale of operations. Currently, the overseeing authorities spend a disproportionately large amount of time and staff on routine matters relating to smaller charities and the attention given to larger organisations is inadequate and ineffective. Thus, many important and urgent matters of such institutions remain unattended or take

inordinately long to get settled.

NGO Issues

Promoting Accountability and Transparency - Accreditation

1. A large number receive grants from government. These organisations vary greatly in their capability and credibility. In the absence of any system of accreditation, the government has found it extremely difficult to distinguish between good organisations and those which have been set up almost solely for the purpose of receiving government grants.
2. Thus there is need to have a system of accreditation and certification for NGOs, which would facilitate and bring transparency in the Government-NGO partnership.
3. The procedure adopted for accreditation should not be so complex as to lead to harassment, delay and corruption.
4. Accountability and transparency is essential; therefore, there is a need for accreditation through an independent agency like the National Accreditation Council.

Exemption from IT Act

1. There are inordinate delays in getting the approval for exemption from Section 80G of IT Act. In fact, there have been many instances where, by the time a certificate is made available, the case becomes due for seeking renewal.
2. Such an exemption should be granted to a charity in perpetuity; there should be no need for its renewal. The tax authorities in any case have the powers to cancel the registration if any misuse is detected. A time limit of say 90 days should be fixed for grant / rejection of approval.

FCRA, 2010

Prior Regulations of Foreign Contribution

1. NGO has to register itself.
2. It can receive foreign contribution only through a particular branch of one bank only as specified in the application for registration.
3. The funds can be used only through that intimidated bank branch.
4. It has to disclose to the government the amount of each foreign contribution received, the source, and the manner in which such foreign contributions is to be utilized.
5. The Government may require it to obtain its prior permission before accepting any foreign

contribution.

6. Government has the power to inspect, seize and audit.

Features and Issues

1. It expands the list of prohibited organisations to those of political nature (not being a political party) and electronic media from receiving foreign contribution.
    1. No guidelines have been given to define 'organizations of political nature not being a political party' leaving ample scope for subjectivity and harassment.
2. Contributions shall be utilised only for the purpose for which the same have been received. It prohibits the use of foreign contributions in any speculative business, 'activities detrimental to national interest'.
    1. Such terms have not been defined and leave ample scope for subjectivity and harassment.
    2. Incidentally IT Act allows the voluntary sector to invest funds in government securities and mutual funds.
3. It caps administrative expenses at 50% of the receipt of foreign contribution.
    1. The Union Government has been authorized to prescribe the element which shall be included in the administrative expenses. This gives considerable discretionary powers to the government.
    2. It may be difficult to differentiate between the administrative and project related expenses. For example, health care.
4. It makes provision for intimating grounds for refusal of registration or prior permission under the Bill.
5. It provides arrangement for sharing of information on receipt of foreign remittances by the concerned agencies to strengthen monitoring.
6. It makes registration valid for five years and renewal / cancellation after that.
    1. The Government can refuse to grant registration or permission to an organisation on grounds of indulging into conversion.
    2. A necessary condition for securing registration is that the applicant organisation should have undertaken meaningful activity in its chosen field or should have a meaningful project for the benefit of the people for whom the foreign contribution is proposed to be utilized. This again is a matter of subjective satisfaction and is open to misinterpretation.
    3. There are several grounds on which a certificate of registration could be refused. The words like likelihood of diversion of funds for ‘undesirable’ purposes admit subjectivity.
    4. No time limit has been prescribed in the proposed Bill for grant or refusal of a certificate of registration or its renewal. This limit was 90 days in the previous Act.
7. It allows the recipient to open more accounts in other Banks for utilizing the foreign contribution.
8. No appellate provisions are there over government’s powers to prohibit receipt of foreign contribution, to grant registration, or to order suspension / cancellation / renewal of certificate

etc.

9. The powers of inspection, search and seizures may be tools for causing harassment to NGOs and puts them virtually in a position of subordination to the authorities.

Mechanisms, Laws, Institutions and Bodies for Vulnerable Sections

ROSHNI

- In a bid to further reach out to rural youth in the country's 24 most critical Left-Wing-Extremism-affected districts, the Centre introduced a placement-oriented skill-development scheme targeting 50,000 persons, mostly tribals.
- At least 50 per cent of the candidates covered under the scheme would be women and extra efforts would be made to proactively cover Particularly Vulnerable Tribal Groups (PVTGs) on a priority basis.
- The programme entails providing beneficiaries aged between 18-35 years with requisite training for the trade or job chosen as per the Participatory Identification of Poor.
- The launch of Roshni comes soon after the brutal Maoist attack on a Congress Convey in Chhattisgarh's Bastar district in which nearly 16 people, including two senior Congress leaders, were killed.
- The employment programme would be on the lines of 'Himayat', being run in Jammu and Kashmir, and two pilot projects being run in Jharkhand's west Singhbhum and Chhattisgarh's Sukma districts.
- The training will be imparted through public-private and public partnerships. Four training modules of durations ranging from three months to one year shall be taken up to meet the diverse needs of the youth, depending on their entry-level qualifications.
- Placement-linked, market-driven, fully-residential skills training will be provided in fields such as tailoring, construction, mobile repairing, nursing and retail.
- The training providers will ensure 75 per cent placement defined as continuous employment for three months at higher than minimum wages. Placements will be provided anywhere in India.

Governance and Polity

Separation of Powers Between Various Organs

MINIMUM QUALIFICATION FOR JOURNALISTS

- Information and Broadcasting Minister recently proposed licences, qualifications and common entrance examinations for journalists.
- Journalists in India have no special rights. Unlike the United States, freedom of the press in the country does not flow from any special provision or amendment to the Constitution, but from the right to free speech and expression.
- Article 19(1) (a) of the Indian Constitution confers this right subject only to reasonable restrictions specified in Article 19(2).
- Therefore, this proposal is to try to circumscribe and limit the fundamental right to freedom of speech and expression.
- Dissemination of information might be the business of some news organisations, but it is also an essential part of the everyday activities of countless Indians who talk, post, upload or tweet what they see, hear, sense or think.
- What distinguishes journalists employed by a news organisation and private individuals taking advantage of social media and personal communication channels to disseminate information is not the nature of their work, but the public standing and credibility that they command.
- Any attempt to prescribe licences and qualifications for journalists will necessarily end up limiting what ordinary citizens can do.
- As in other democracies, newspapers in India do not require a licence to operate. In authoritarian or managed democracies, where press licensing is the norm, the threat of a cancelled licence is often enough to ensure the media toes the official line. If journalists are to be given licences, newspaper licensing may not be far behind.

- All of this is not to say that news organisations need make no effort to improve the standards of their journalism. In the race to be the first to break the news, television channels, and sometimes newspapers too, often get their facts wrong and the context mixed-up.
- The Minister wants the minimum qualification to apply equally to subject experts contributing to a news organisation, reckoning that they would not resent the requirement.
- But, as the best journalism schools have already realised, practice, not theory, makes a good journalist. What is mooted as an exercise to raise the quality of journalism could just as well pose a threat to the free

TRAI V/S NEWS BROADCASTERS

- In March, TRAI decided to enforce the 12-minute per hour advertisement cap rule, which is part of the original licensing agreement signed by the broadcasters but has not been enforced.
- According to a TRAI source, this was preceded by long consultations. For at least a year and a half, the industry has known about TRAI's intent. The aim is to improve the "quality of consumer experience" and "service."
- But channels say this would make their operations unsustainable. In May, the Indian Broadcasting Foundation asked TRAI for 'regulatory forbearance'. The regulator agreed that between July and September entertainment channels could have 16 minutes of ads, while news channels could telecast 20 minutes of ads.
- However TRAI noted that certain channels were repeatedly showing ads beyond the limit prescribed during the transition. So TRAI had filed a complaint on August 16 with the Delhi Chief Metropolitan Magistrate against 14 channels seeking criminal prosecution for non-compliance.
- However, in a decision that has come as a breather to news broadcasters, the Telecom Disputes Settlement and Appellate Tribunal (TDSAT) has restrained the Telecom Regulatory Authority of India (TRAI) from taking coercive action against channels for non-compliance of the 12-minute ad-cap rule.
- While the order does not stay TRAI's decision to enforce a 12 minute ad-cap from October 1, it deprives the regulator from any power to take action, which will give leeway to channels.

ANALYSIS

- The Telecom Regulatory Authority of India (TRAI) is being unreasonably insistent on enforcing a cap of 12 minutes per hour on TV advertising, an ill-conceived policy. cartelisation needs to be checked by CCI
- The market is perfectly capable of negotiating the proportion of advertising to programming. An unacceptably high rate would discourage viewers and the resulting dip in revenue and influence would serve as an automatic disincentive.
- Advertising, which partly or wholly pays for programming, may be seen as a cost levied on the viewer's time and attention. Limiting advertising is not very far removed from state-controlled product pricing, unacceptable in a democracy committed to liberalisation.
- TRAI's objective of providing better service to viewers is unexceptionable, but it forgets that viewers are capable of deciding their acceptable dose of advertising.
- Besides, advertising bodies have always argued that ads are of social and economic value, helping viewers to make informed choices. This is not wholly true, but some advertising is indeed designed for public service and may be counted as a form of programming.
- On the issue of seeking criminal prosecution of channels, TRAI seems to have gone overboard, but it would be unfair to blame it for going by the rule-book.
- The regulator is acting on behalf of consumers, who form the silent majority, rather than the vocal media businesses, which constitute a minority.
- At stake is not freedom of expression, but the bottom line, which is in trouble because of structural factors. Many news channels have a top-heavy model with distorted salary patterns. News networks have expanded way beyond their means. Their credibility is at an all-time low.
- A skewed television rating system allowed them to project greater reach than they had; expanding measurement to smaller towns is already reflecting different — and more realistic — viewership patterns.

The gloomy economic environment is not helping. Many channels made a conscious decision to move towards integrated newsrooms to take advantage of technology.

- To only blame the TRAI decision for recent job-cuts — as is being done to exert pressure on it to pull back — is disingenuous.

TRAI ON FDI IN BROADCASTING

- The Telecom Regulatory Authority of India (TRAI)has recommended raising the foreign direct investment (FDI) limit for broadcast carriage services up to 100% and for uplinking of 'news and current affairs' TV channels and FM radio services up to 49%.
- Broadcast carriage services, for which the telecom regulator has recommended 100% FDI, include DTH, HITS, IPTV, mobile TV, teleports, cable networks and multi-system operators.
- The information and broadcasting ministry had in July sent a reference to the telecom regulator, asking it to examine a finance ministry proposal for increasing FDI limits in media.
- TRAI's recommendations broadly pertain to three segments of the broadcasting sector — broadcast carriage services, television content services and FM radio services.
- Currently, only 26% FDI is allowed in uplinking of news and current affairs channels and FM radio services.
- It has also been recommended that the FIPB approval process be streamlined and made time-bound.

Electoral Reforms

Party Funding

1. Allow open contributions to individual candidates. Currently, our laws allow people to contribute to parties and not individual candidates. This only results in centralising the control of party funds and weakening the connection between citizen and candidate.
2. Low limits ignore the numerous legitimate expenses associated with campaigning.
    1. In the private sector, a marketing campaign aiming to reach 20 lakh people may cost at least Rs 100 per person. But to reach 20 lakh voters, politicians cannot spend more than Rs 2 per voter!
    2. Therefore, across the board, parties have tried to cope by favouring candidates with black money and the networks and capability to expend those resources.

CBI Autonomy Affidavit

1. Executive interference
    1. Accountability Commission: A 3-member Accountability Commission of retired Supreme Court judges to act as an independent ombudsman to examine complaints against it. CVC will be its ex-officio member. It will insulate the CBI's probe from external influence and may also oversee its investigation in certain circumstances. It will be mandated to inquire into allegations of misbehavior, impropriety against CBI officers including the director.
    2. Director of Prosecution: The director of prosecution, who reports to the law

minister, will continue to have the powers to scrutinize CBI chargesheet once the investigation is over. He will be responsible for prosecution of CBI cases and will continue to be appointed by the Centre on the recommendation of a selection committee headed by the CVC. The other members of the committee will be the DoPT secretary, home secretary and law secretary. The CBI director will be the member-convener of the committee.

3. CVC would have the power of superintendence and administration over the CBI for cases to be probed under the PoCA. The Centre would be vested with the power in other matters.

2. Sanction
    1. Proposal
        1. It would be examined only by a committee of secretaries, including Secretary (Personnel), CVC, Secretary of the ministry concerned. It will give a decision within 90 days post which sanction would be deemed given.
        2. The order regarding sanction would also contain in detail the reasons behind the decision as well.
    2. Current practice
        1. The matter is first examined by the minister concerned and, after his refusal, comes to the committee of secretaries (not including the CVC). Now ministers will be kept out of it.
        2. There is no time limit for the grant / rejection of sanctions.
3. CBI director
    1. Proposal
        1. He would be appointed through a collegium consisting of the Prime Minister, the Leader of the Opposition in the Lok Sabha and the Chief Justice of India.
        2. His tenure would be a minimum of 2 years and he will not be transfered without the consent of this collegium.
        3. Only the President would have the authority to remove or suspend the director, on a reference by the CVC for misbehavior or incapacity.
    2. Current practice
        1. A committee comprising the CVC, VCs, MIA secretary, and Public Grievances secretary takes into consideration the views of the outgoing director and then recommends a panel of eligible IPS officers. The centre then picks one of the names.
4. Financial powers of the CBI Director
    1. They would be increased at par with those of the head of the CRPF director general.

Separation of Powers: Legislature vs Executive

Office of Profit

1. Constitutional scheme
    1. Legislators can't hold any office of profit under the government other than an office declared by the legislature by law not to disqualify its holder.
    2. The underlying idea was to obviate a conflict of interest between executive duties and legislative functions. The principle is that such a person cannot exercise his functions independently of the executive.
2. Misuse in India
    1. In countries like Britain, such fusion of executive and legislature is not, by and large, leading to corruption or patronage. That is because such a political culture has been evolved there.
    2. In our case, public office is perceived to be an extension of one's property. That is why, sometimes, public offices are a source of huge corruption and a means of extending patronage.
    3. Constitutional provisions relating to office of profit have been violated in spirit over the years even when the letter is adhered to. Legislatures kept on expanding the list of exemptions from disqualification only to protect holders of certain offices from time to time.
3. Recommendations
    1. Often, the crude criterion applied is whether or not the office carries a remuneration. But the real criteria should be whether executive authority is exercised by the office or not.
    2. Committees of a purely advisory nature can be constituted with legislators irrespective of the remuneration and perks associated with such an office.
    3. But appointment in statutory or non-statutory executive authorities including positions on the governing boards of public undertakings with direct decision making powers undoubtedly violate separation of powers.
    4. If a serving Minister, by virtue of office, is a member of certain organizations like the Planning Commission, where close coordination and integration with the executive is vital, it shall not be treated as office of profit.

MPLADS Scheme

1. The argument advanced that legislators do not directly handle public funds under these schemes, as these are under the control of the District Magistrate is flawed. In fact, no Minister directly handles public money. Even the officials do not personally handle cash, except the treasury officials and disbursing officers.

2. Making day-to-day decisions on expenditure after the legislature has approved the budget, is a key executive function.
3. These funds should have actually gone to the PRIs.

Dispute Resolution Mechanisms and Instiutions

Judiciary

Structure and Organization

Functioning

Judicial Reforms

Audio Recording of Court Proceedings

1. Argument is it could lead to swifter dispensation of justice.
2. If the government is able to provide the necessary infrastructure, then there is no problem. But doing so would be a big challenge.
3. Sometimes arguments in a single case go on for days. Recording such lengthy arguments, will it help?
4. Quality of audio recording is also an issue. So perhaps it should serve as a secondary tool and primary should remain the stenos.

Gag on Judges' Observations in the Judicial (Standards and Accountability) Bill

1. Sometimes, in order to elicit a good answer from the counsel, the judge may pose several questions. That does not mean that the judge is casting aspersions. The effort is only to get the correct answer from the counsel.
2. The SC is trying to convey to the subordinate judiciary that the judge has to be interactive. Such a gag order goes against the spirit.
3. Unless a judge expresses his views, how will the arguing counsel know whether or not the judge is accepting his arguments.
4. The interaction between the judge and the counsel is not the decision of the judge. There is no need to flash news on the basis of what the judge observes in court. What is needed is media code of conduct.

Issue of Judicial Overreach

1. When Parliament passes a law, somebody may approach a court and then the court has to see if the law is constitutional.
2. If there is no legislation on a particular subject, the court can suggest certain guidelines (for example, Vishakha guidelines).
3. This perception is growing because of the cases of alleged scams that are coming before the courts.

On the Collegium

1. Names of kith and kin of sitting and retired judges are routinely recommended.
    1. Once the collegium makes its recommendation, the matter goes to the government, which can question any name and seek reconsideration. The only thing is such objection must not be due to politics.
2. Extraneous considerations such as caste, religion, political considerations, personal quid pro quo have crept into the system.
3. The system is opaque, no one outside knows what criteria are there for selection.
4. The real issue is not who appoints the judges but how they are appointed. Irrespective of whether it is the executive, the judiciary or a commission, as long as the process is opaque and appointments are made on personal considerations, we will continue to have variations of the same problems. The crucial need is to evolve objective criteria and usher in transparency in the process.
5. Data relating to members of the judiciary seeking elevation to higher judiciary should be available online, available to the public.
6. We can follow a version of the UK system where all assessment criteria are well defined and assessment is evidence based. If there is not enough evidence to support a person's candidature, he/she is not considered.

<u>The Judicial Appointments Commission Bill, 2013</u>

Establishment and composition of Commission

1. The Commission shall be chaired by the CJI and shall comprise of two other senior most Judges of the Supreme Court, the Union Minister for Law, and two eminent persons to be nominated by the collegium.
2. The collegium comprises the Prime Minister, the CJI and Leader of Opposition of the Lok Sabha. The eminent members will retain membership for a three year period and are not eligible for re nomination.

Functions of Commission

1. Its mandate includes recommending persons for appointment as Chief Justice of India and transfers of all judges.
2. The procedure for recommendation with respect to appointment of High Court Judges includes eliciting views of the Governor, Chief Minister and Chief Justice of High Court of the concerned state, in writing.

Reference to Commission for filling up of vacancies

1. Upon the arising of a vacancy in the High Court and Supreme Court, references to the Commission shall be made by the Central Government.
    1. In the case of vacancy due to the completion of term, reference shall be made two months prior to the date of occurrence of vacancy.
    2. In the case of vacancy due to the death, resignation, reference shall be made within a

period of two months from the date of occurrence of vacancy.

The Constitution (One Hundred and Twentieth Amendment) Bill, 2013

1. The Bill seeks to enable equal participation of Judiciary and Executive, make the appointment process more accountable and ensure greater transparency and objectivity in the appointments to the higher judiciary.
2. Amendment of 124 (2)
    1. Providing for appointment of Judges to the higher judiciary, by the President, after consultation with Judges of the Supreme Court and High Courts in the states.
3. Insertion of new article 124A to provide for
    1. Parliament to make a law that provides the manner of appointment to higher judiciary.
    2. Judicial Appointments Commission to be setup.
    3. JAC law to lay down the following features of the Commission: (i) the composition, (ii) the appointment, qualifications, conditions of service and tenure of the Chairperson and Members, (iii) the functions, (iv) procedure to be followed, (v) other necessary matters.

Ministries and Departments of Government

Structure and Organization

Governance Reforms

Strengths of the Existing System

1. Time tested system: Adherence to rules and established norms, well developed institutions.
2. Stability: Permanent civil service has provided continuity and stability during the transfer of power from one elected government to the other. This has contributed to the maturing of our democracy.
3. Political neutrality: Many important institutions which are politically neutral have evolved.
4. National integration: Public servants working in Government of India as well as its attached and subordinate offices have developed a national outlook transcending parochial boundaries. This has contributed to strengthening national integration.

Weaknesses of the Existing System

1. Undue emphasis on routine functions: The Ministries are often unable to focus on their policy analysis and policy making functions due to the large volume of routine work. This leads to national priorities not receiving due attention.
2. Procedures and not outcomes are important.
3. Lack of separation of policy making, implementation and regulatory functions.

4. Proliferation of Ministries/Departments: The creation of a large number of Ministries and Departments has led to illogical division of work and lack of an integrated approach even on closely related subjects. Ministries often carve out exclusive turfs and tend to work in isolated silos.
5. An extended hierarchy with too many levels: It leads to examination of issues at many levels causing delays, corruption and lack of accountability.
6. Risk avoidance.
7. Absence of coordination.
8. Fragmentation of functions: There has been a general trend to divide and subdivide functions making delivery of services inefficient and time-consuming.

Core Principles of Reforming Government Structure

1. Government should only focus on its core areas.
2. Decentralization based on the principle of subsidiarity.
3. Integration of functions and subjects. Subjects which are closely inter related should be dealt with together.
4. Separation of policy making from implementation: Ministries should concentrate on policy making while delegating the implementation to specialized agencies.
5. Agency based system: Improved coordination. Agency based system should be created.
6. Reducing hierarchies. This will improve efficiency and accountability.
7. Flatter organizational structure for enhanced team work.
8. Increasing inter-ministerial coordination: It would also be unrealistic to expect for curtailment in the size of the Council of Ministers in an era of coalition politics. Instead, a more pragmatic approach would be to retain the existing size but increase the level of coordination among the departments by providing for a senior Cabinet Minister to head each of the 20-25 closely related Departments. Individual departments or any combination of these could be headed as required by the Coordinating/First Minister, other Cabinet Minister(s)/Minister(s) of State.

Functioning

Pressure Groups and Formal / Informal Associations

Their Role in Polity

Media Reforms

TRAI Regulations

1. It plans to recommend the creation of an ‘institutional buffer between corporate owners and newspaper management’. This is to ensure that corporate ownership of media must be separated from editorial management as the media serves public interest. There is no

problem with corporates investing in or owning media houses for profits. But the problem arises when the corporate wants to abuse the media it controls to project a colored point of view for vested interests. There is conflict of interest here.

2. TRAI will also suggest ways to restrict cross-media ownership in line with practices in most other democracies. Certain media houses have interests in all forms — television, print, and radio — which led to “horizontal integration. TRAI is contemplating a “two out of three rule”, whereby a media house could have interests in two of three mediums among print, TV or radio.

Statutory Bodies

Issues With Functioning of Statutory Commissions

Should Different Commissions be Merged with NHRC?

1. Idea is to merge all Commissions into a comprehensive Human Rights Commission with separate Divisions for Scheduled Castes, Scheduled Tribes, Women and Children. Chairpersons of the NCM, NCSC, NCST and NCW are members of NHRC for the discharge of various functions except inquiring into a complaint.
2. Yes - merge them
    1. Overlapping jurisdictions and duplication
        - Multiplicity of commissions leads problems of overlapping jurisdictions and even duplication of efforts in dealing with complaints. Sometimes different commissions may even contradict each other. Example is the clash between NCM and NHRC on Assam riots.
        - To prevent overlapping jurisdictions and duplication, laws are there. For example, NHRC cannot inquire into any matter which is pending before a State Commission or any other Commission duly constituted under any law for the time being in force.
        - But in the absence of networking and regular interaction between different commissions, implementation of the law is difficult and duplication exists especially at the preliminary stage.
        - There is a need to provide a more meaningful and continuous mode of interaction between the various commissions - both at the national and the state levels. Common electronic databases and networks should be created. Common standards need to be defined.
3. No - don't merge
    1. The existence of a different dedicated Commissions’ should enable each one of them

to look into specific complaints and areas thereby ensuring speedy action.

2. Merger in larger States and at the national level is impracticable and would fail to adequately address the special problems of different disadvantaged groups. However, such a merger may be possible in case of some of the smaller States.

Limited Capacity of the Commissions

1. These institutions are handicapped because they receive a very large number of complaints while their capacity to deal with them is very limited.
2. These commissions have to depend upon the government to provide them with staff and funds. The secretariat of these commissions is not under their control but under the executive's.
3. These commissions do not have adequate field staff, and mainly depends on temporary hires on contract basis for their work.

Lack of Institutionalization

1. The chairperson's role has been crucial in deciding the focus of each successive commission. Their functioning reflects the perception of the chairperson about their role.
2. No mechanisms have been developed to institutionalise the body and each successive commission seems to be working more or less independent of the previous one.
    1. For example, in NCW the work on the Domestic Violence Bill was started in 1992-93; nothing was heard of it till the Annual Report of 1999-2000, which demanded a comprehensive legislation on domestic violence without reference to earlier processes.
3. Their recommendations have been more protective and rehabilitative in nature with little emphasis on the structural aspects. Any analysis of budgetary allocations has been sadly lacking.

Process of Appointment

1. Clear and objective criteria are not laid down for the appointments to these commissions. Also the appointments are solely the prerogative of the executive (except for NHRC and CVC where a selection committee is there but it is dominated by the executive) with nobody outside knowing on what basis such appointments were made.
2. Over time, it has been observed that most of the appointments are politically motivated. There have also been issues like appointments of people with serious corruption allegations against them. Activists with long track record of social work are not appointed while active politicians are. This compromises on the autonomy.

Lack of Adequate Followup Mechanism on Recommendations

1. <u>Lack of implementation powers</u>
    1. These Commissions can only make recommendations in their reports which are to be laid before Parliament.
    2. Naturally their effectiveness depends on the action taken on such recommendations.
2. <u>Long delays in laying down the reports in the parliament</u>
    1. The recommendations of the report are circulated to the concerned offices by the nodal ministry of the commission.

2. The comments furnished by them are included in the Action Taken Report, which is placed before the Parliament indicating whether the recommendation is accepted or not accepted and, if accepted, what action is being taken. If no final decision has been taken on a particular recommendation, the comment inserted is that it is under consideration.
3. Thus there is time lag between submission of the reports by the Commissions and their placement before the Parliament and quite sometime is taken in collecting comments of concerned government agencies. The time lag in case of National Commission for SCs and STs is as long as three years.

3. Government apathy towards the recommendations
    1. Usually on the recommendations radically divergent from status quo, the bureaucratic tendency is to deflect or reject it. They don't even mention the grounds for rejection in detail.
4. Parliamentary apathy towards the reports
    1. By getting the reports laid down in the parliament, the idea was that during the discussion on the report, some MPs may raise the question of non-acceptance of important recommendations. The matter may even be picked up by the Media or civil society which may also build up public opinion for its acceptance.
    2. But the reality is that reports do not come up for discussion at all. This is partly because by the time reports are submitted with ATRs, they are dated and at times lose their contextual relevance.
    3. There is need for creating a separate Parliamentary Standing Committee for deliberating on the reports of these Commissions.

The National Human Rights Commission

Powers & Functions

1. Inquiry powers
    1. To inquire, suo motu or on the basis of a petition or on a direction of a court, into a complaint of human rights violation.
    2. With regard to inquiries into complaints, it has similar powers of a civil court i.e. summon attendance, require production of any document and ask for oaths. Proceedings before it are deemed to be judicial proceedings.
    3. Additionally, it can require any person to furnish information in relation to the inquiry.
    4. It has search and seizure powers.
    5. It can take aid of any government agency for its investigations upon their concurrence.
    6. As an outcome of its investigation, it can recommend to the concerned government to pay compensation to the victim and/or to initiate prosecution proceedings against the offender.

2. To intervene in any human rights case pending before a court. It may also approach the SC and the HCs for relief.
3. To visit any jail or any other state institutions to see the living conditions of the inmates and make recommendations.
4. To review the constitutional and legal safeguards for human rights and make recommendations.
5. To review the factors that inhibit human rights and make recommendations.
6. To study international treaties on human rights and make recommendations.
7. To promote human rights research.
8. To spread human rights awareness.
9. To encourage NGOs working for human rights.

Composition

1. The members are selected by a selection committee comprising of PM, speaker and deputy chairman, home minister, leaders of opposition in HoP and CoS.
2. It consists of a retired CJI as chairman, a serving or retired judge of SC as member, one serving or retired chief justice of a high court, 2 eminent people having knowledge and experience in human rights, chairpersons of minorities commission, SC commission, ST commission and women commission.
3. A NHRC chairman or a member can't be removed unless the president dismisses them on grounds of proved misbehavior ascertained by SC after the president asks it to conduct an enquiry.

Positive Points of NHRC

1. Easy accessibility to the Commission. Anyone can approach NHRC through telephone, letter, application, mobile phone or internet. All the documents, reports, newsletters, speeches, etc. of the Commission are also available on this website.
2. NHRC has worked immensely to create awareness among public through seminars, workshops, lectures, literature, NGOs. The rising number of complaints on human rights violations only proves the fact that awareness is growing about NHRC.
3. The Commission has succeeded in getting the human rights education included in the curriculum.
4. Many recommendations made by NHRC have been implemented by the public authorities. These include bonded and child labor, narco analysis, mental health, manual scavenging, endosulfan, rights of physically challenged etc.
5. The Commission has been instrumental in persuading states to set up Human Rights Commissions and twenty states have set up the State Human Rights Commissions.

Negative Points of NHRC (UN Panel)

1. <u>The lack of pluralism in its composition:</u> There is dominance of the judiciary in its composition. The UN panel rejected the suggestion that such restrictions were justified because of the quasi judicial functions performed by the NHRC. Pointing out that this is "but one of the 10 functions" enumerated in the NHRC law.

2. Lack of independent investigation: 2 key posts in the NHRC — secretary general and director general of investigations — would have to be filled by those who come on deputation from within the government. Complaints given to the NHRC were entrusted to the police which either didn't investigate at all or investigated after substantial delay and in a biased manner.
3. Little engagement with human rights defenders.
4. Lack of independence: The NHRC is currently required to report to the Ministry of Home Affairs. There are serious question marks over the selection process.

The National Minorities Commission

Composition

1. It consists of a Chairperson, a Vice Chairperson and five Members to be nominated by the Central Government from amongst persons of eminence; provided that five Members including the Chairperson shall be from amongst the minority communities.

Powers and Functions

1. To review the constitutional and legal safeguards for minorities and make recommendations.
2. Inquiry powers
    1. To inquire, suo motu or on the basis of a petition or on a direction of a court, into a complaint of human rights violation.
    2. With regard to inquiries into complaints, it has similar powers of a civil court i.e. summon attendance, require production of any document and ask for oaths. Proceedings before it are deemed to be judicial proceedings.
    3. Additionally, it can require any person to furnish information in relation to the inquiry.
    4. It has search and seizure powers.
    5. It can take aid of any government agency for its investigations upon their concurrence.
    6. As an outcome of its investigation, it can recommend to the concerned government to pay compensation to the victim and/or to initiate prosecution proceedings against the offender.

Specific Constitutional Safeguards for Minorities

1. Art 29 (1): Right of any section of the citizens to conserve its distinct language, script or culture.
2. Art 29 (2): Restriction on denial of admission to any citizen, to any educational institution maintained or aided by the State, on grounds only of religion, race, caste, language or any of them.
3. Art 30 (1): Right of all minorities, whether based on religion or language, to establish and administer educational institutions of their choice.
    1. They are exempted from the admission policies of the state even if aided.
    2. They are exempted from RTE.

4. Art 30 (2): Freedom from discrimination on the ground that any educational institution is under the management of a minority, in the matter of receiving aid from the State.
5. Art 31: If any land is taken from a minority institution, then full compensation is payable.
6. Art 347: Special provision relating to the language spoken by a section of the population of any State.
7. Art 350 A: Provision for facilities for instruction in the mother-tongue at primary stage.
8. Art 350 B: Special Officer for Linguistic Minorities.

National Commission for Women

Composition

1. It consists of a chairperson and 5 members of eminence (all appointed by government) and at least one will be from SC and one from ST.

Powers & Functions

1. It monitors working of safeguards and laws for women and make recommendations.
2. It investigates complaints (including suo moto). While investigating it has all the powers of a civil court i.e. summoning presence, requiring production of evidence, ask for oaths and affidavits.
3. It inspects jail and other state institutions to see the condition of women inmates and make recommendations.
4. It funds litigation in issues involving large number of women.
5. Its reports are laid down before parliament (state legislature if a state is concerned) along with explanation on action taken and reasons of non-acceptance.
6. To promote awareness on women issues.
7. To promote research on women issues.
8. To encourage NGOs working on women issues.
9. The NCW is to be consulted by the government on all important policy issues concerning women. It is to participate and advise in the planning process on issues concerning women.

Report Card of NCW Functioning (apart from the common issues)

1. The denial of the scale and nature of sexual violence in Gujarat 2002.
2. The statement of a member of the commission on the Mangalore pub attack case.
3. The statement that being called “sexy” should be taken as a compliment.
4. The statement asking girls not to ape the west blindly after a girl was publicly molested in Guwahati.
5. On AFSPA and police violence, all commissions have been sadly silent.

CIC

SC ON APPOINTMENT IN CIC

- The Supreme Court has recalled its judgment on the Right to Information Act holding that judges or those having law qualification could be appointed as Information Commissioners at Information Commission and at the State level commissions.
- Earlier, the Bench had held that for effectively performing the functions and exercising the po Information Commission, "there is a requirement of a judicial mind and, therefore, persons appointment should preferably have judicial background and possess judicial acumen and experi
- In its recent judgment, SC said that it is for Parliament to consider whether appointment members in the Information Commissions will improve their functioning and as Sections 12(5) the RTI Act do not provide for appointment of judicial members in the Information Comm direction was an apparent error. Sections 12(5) and 15(5) of the Act, however, provide for app persons with wide knowledge and experience in law.
- The Bench said: "While deciding whether a citizen should or should not get a particular informa is held by or under the control of any public authority,' the Information Commission does n dispute between two or more parties concerning their legal rights but their right to get inform possession of a public authority. This function obviously is not a judicial function, but an ad function conferred by the Act on the Information Commissions."
- The Bench gave the following declarations and directions. "We declare that Sections 12(5) and Act are not ultra vires the Constitution. We declare that Sections 12(6) and 15(6) do not debar a Parliament or Member of the Legislature of any State or Union Territory, as the case may be, holding any other office of profit or connected with any political party or carrying on any pursuing any profession from being considered for appointment as Chief Information Comm Information Commissioners, but after such appointment, he has to discontinue as MP
- The Bench said: "We further direct that persons of eminence in public life with wide kno experience in all the fields mentioned in Sections 12(5) and 15(5) of the Act, namely, law, technology, social service, management, journalism, mass media or administration and gov considered by the Committees under Sections 12(3) and 15(3) of the Act for such appointment."
- The Bench said, "The committees concerned while making recommendations to the Preside Governor, as the case may be, for appointment of the Chief Information Commissioner and Commissioners must mention against the name of each candidate recommended the facts to eminence in public life and his knowledge and experience in the particular field. These fa accessible to the citizens as part of their right to information under the Act after the appointme

ANALYSIS

- By recalling its directions and declarations issued a year ago on the appointment of Commissioners under the Right to Information Act, the Supreme Court has ensured that the frustrating complications in the working of this path-breaking law.
- The court's determination in a review petition that Information Commissions do not exe powers and in fact discharge administrative functions confirms what the RTI community has en along — that the elegant law is designed to minimise discretionary interpretation and exempts list of subjects from disclosure.
- Moreover, the Commissions are not tribunals or bodies to which judicial powers have been tran

- The only test to be met in such circumstances is that of public interest, and Commiss distinguished record in the social sector would find no difficulty in arriving at a decision.
- Regrettably, the Centre and the States have not been neutral about choosing people for t court has pointed out, people from various disciplines such as law, science, social service, jo administration with undisputed eminence must be selected.
- Naturally, this means widening the gene pool beyond former bureaucrats and establishment the process must be open to scrutiny has been reiterated by the Supreme Court and it wil closely monitored by a rights-conscious citizenry.

Issues with CIC

1. A high number of cases are pending before the CIC. Information sought through RTI applications is often most relevant at a particular time. If an appeal before the CIC routinely takes more than a year to be heard, citizens may not find it imperative to turn to it.
2. Another problem is the CIC's inability to ensure compliance with its orders. The CIC does not have contempt powers and the only way in which it can ensure compliance is to use its power to impose a penalty.

Bringing Political Parties Under RTI

The Order

1. It ruled that political parties are public authorities under RTI.
2. The national parties should appoint mandatory information authorities.
3. They should also disclose information under relevant sections of RTI.
4. The decision would definitely have been encouraged by the trust deficit the general public has with politicians and the political parties.

The Rationale Behind the Order

1. Political parties perform public duty.
2. Public funding
    1. The act states that a non-government organisation substantially financed, directly or indirectly by funds provided by the appropriate government, is also included in the definition of a public authority.
    2. They receive substantial public funding in the form of subsidised land and building, income tax exemptions, free airtime on radio and TV.
3. Established by Election Commission
    1. The Act of states that any institution can be declared a public authority if it is established through the Constitution, legislative action or by notification by an "appropriate government".
    2. CIC interpreted the term appropriate government as the Election Commission whose registration is needed for a political party to be recognized as such.

Order is Good

1. Transparency will increase the confidence of the people in public institutions. Citizens

should have a right to know about the political parties which run their government.

2. It will also strengthen intra party democracy.
3. It has been argued that political parties will now have to be accountable to the commission. The RTI is a citizen empowerment tool, not a commission empowerment one.

Order is Bad

1. Issues in enforcement
    1. There is limited scope for the enforcement of the penalty clauses.
    2. The person who would be appointed as PIO would hardly be dependent upon monthly salary and his work as PIO will not determine his career progression in politics.
    3. Therefore, a maximum penalty of Rs 25,000 would hardly act as a deterrent. Nor will there be any fear of jeopardising his career in politics.
    4. If persons with criminal records are appointed PIOs, who will dare approach them for accessing information.
2. Counter action by parliament
    1. Parties may bring an ordinance or pass an act to overturn this order.
3. Impractical
    1. RTI makes extensive demands on public authorities for not just financial transparency but also transparency of decision-making and exercise of authority. In the case of political parties, financial transparency must be separated from decision-making and other processes of a political party.
    2. RTI, without accompanying electoral reforms, will adversely affect cash contributions or will further discourage parties from reporting them.

RTI Ruling as a Window of Opportunity for Electoral Reforms

1. RTI, without accompanying electoral reforms, will adversely affect cash contributions or will further discourage parties from reporting them.
2. If political parties are so vital to India's democratic functioning that they can be considered public authorities, then it is only logical that the state should fund them in a befitting manner.
3. State funding will strengthen less wealthy but more worthy activists when they demand party tickets.
4. With regards to costs, state funding cost estimates have ranged from only Rs. 5,000 crores to Rs. 10,000 crores.
5. Further, parties should only be able to receive state funding if they meet some criteria of transparency and accountability — this will spur them to improve their internal processes including record-keeping and disclosure.
6. Germany provides parties matching grants, to the extent of the amount they raise from private sources. It does not limit contributions or expenditure, and requires disclosure of only large donors. Over time, this has resulted in parties raising private funds mostly through small contributions and membership dues.

National Commission for Protection of Child Rights (2007)

Functions and Powers

1. To review the safeguards for protection of children and make recommendations.
2. To inquire into complaints (suo moto also) and make recommendations.
3. To visit any juvenile home or other state / NGO institutions meant for children to see the condition of inmates and make recommendations.
4. Its other powers are same as NCW.

National Consumer Disputes Redressal Commission

CVC

Appointment

1. The selection committee consists of the Prime Minister, the Home Minister and the Leader of the Opposition in the Lok Sabha.

Power, Functions and Responsibilities

1. The CVC advises the union government on all matters pertaining to the maintenance of integrity in administration.
2. It exercises superintendence over the working of the CBI in cases referred to it.

Regulatory Bodies

Indian Medical Council

Appointment

Power, Functions and Responsibilities

Quasi-Judicial Bodies

The Press Council of India functions under
the Press Council Act, 1978. It is a statutory, quasi-judicial body

Appointment

Power, Functions and Responsibilities

Important Aspects of Governance

Transparency and Accountability

Citizen Charters

E-Governance

m-Governance

Main measures laid down by Department of Information Technology (DoIT)

- Web sites of all Government Departments and Agencies shall be made mobile-compliant, using the "One Web" approach.
- Open standards shall be adopted for mobile applications for ensuring the inter operability of applications across various operating systems and devices as per the Government Policy on Open Standards for e-Governance.
- Uniform/ single pre-designated numbers (long and short codes) shall be used for mobile-based services to ensure convenience.
- All Government Departments and Agencies shall develop and deploy mobile applications for providing all their public services through mobile devices to the extent feasible on the mobile platform. They shall also specify the service levels for such services.

To ensure adoption and implementation of the framework in time bound manner the government will develop Mobile Service Delivery Gateway (MSDG) that is the core infrastructure for enabling the availability of public services in through mobile devices.

Issues with mGovernment

- Wireless and mobile networks and related infrastructure, as well as software, must be developed
- To increase citizen participation and provide citizen-oriented services, governments need to offer easy access to mGovernment information in alternative forms
- Mobile phone numbers and mobile devices are relatively easily hacked and wireless networks are vulnerable because they use public airwaves to send signals
- Adopted legislation for data and information practices that spell out the rights of citizens and the responsibilities of the data holders (government)

Suggestions for mGovernment Development

- Perfecting mGovernment relevant laws, regulations and standards
- Establishing the information security system of mGovernment
- Rebuilding and optimizing the administrative business processes
- Strengthening the evaluation of eGovernment

Applications

E-Governance is Not About 'e', its About Governance

Computerisation of Land Records

Land Records

This issue is back on the agenda now because of two main reasons. First, land markets in several parts of the country have exploded. Land prices in these regional markets — all of urban India and large rural areas like Punjab and Haryana — are the highest in the world. Generating revenue from this market is now a serious concern again. Second, the old process of land acquisition has broken down. The state has been forced to develop a new land acquisition bill (circulating for two years now). Private sector players are demanding ever larger quantities of land for purchase or acquisition. The entire process of land conversion — from agricultural to other use — is held up if land titles are unclear or disputed.

There is a real possibility that a process that tries to formalise land title claims may unleash

disputes and litigation on a massive scale. Many conflicting claims of land ownership remain simmering. Rivals often work out informal arrangements, avoiding full-scale legal disputes. But if the situation changes — if the claims have to be settled one way or another because they have to be inscribed for good on maps and cadastres that represent finality, a permanent settlement so to speak, then every simmering and "adjusted" dispute has to come out in the open. Because anyone who does not stake a claim then will for ever lose her claim.

1. Project
    1. Torrens system is based on 4 principles:
        1. Principle of a single window to handle land records.
        2. The “mirror” principle, which states that, at any given time, land records mirror the ground reality.
        3. The “curtain” principle, which refers to the fact that the record of title is a true depiction of the ownership status, mutation is automatic following registration and title is a conclusive proof of ownership.
        4. Principle of title insurance - the title is guaranteed for its correctness and the party concerned is indemnified against any loss arising because of inaccuracy in this regard.
    2. The aim was complete digitization with extensive surveys by the end of 12th FYP and Torrens system by the end of 13th FYP.
2. 2 major problems remain. Firstly, the maps in use are totally outdated and secondly, the titles indicated in relation to the land are not up-to-date.
3. Several departments are involved in managing land records in most of the States, and the citizen has to approach more than one agency for complete land records, e.g., Revenue Department for textual records and mutations; Survey & Settlement (or Consolidation) Department for the maps; Registration Department for verification of encumbrances and registration of transfer, mortgage, etc. These departments work in a stand-alone manner, and updating of records by any one of them makes the records of the others outdated.
4. The programme includes two CSS:
    1. Strengthening of Revenue Administration & Updating of Land Records
    2. Computerization of Land Records.
    3. The major components of the programme are computerization of all land records including textual and spatial records and mutations, survey/re-survey and updation of all survey & settlement records.

- Status
    1. In most States, land record computerization has been limited to the issue of Records of Rights (RoR). Mutation, which is a more complex process, has been computerized in only a handful of states. No State in India has reached a stage which integrates the functioning of the 3 departments.

2. Outdated records were being computerized and scanned.
3. Even basic computerized delivery has not reached the entire population. It is restricted to taluka level and many districts continue in manual mode.

- Analysis of failure
  1. The scheme failed to address the main problem in case of land records i.e. the land records do not reflect the factual ground reality.
  2. The most important activity for updation of land records, i.e., survey was neglected by most of the States.
  3. Modern technology can be of assistance in quickly carrying out the measurements of land. But, unless mechanisms are put in place to ensure that any change in titles is quickly captured by the land records, any amount of ICT would not provide optimal solutions. Therefore, the existing mechanism for updating land records which includes multiplicity of departments and obsolete processes would need to be reformed.
  4. There are bound to be disputes where land titles are concerned. All state land records laws provide for a dispute resolution mechanism – the revenue courts. Over time, the functioning of this mechanism has left much to be desired. There is urgent need to build the capability of this mechanism.
  5. In many cases, even basic process reforms like simplification and rationalizing of forms, and putting in place an appointment and queue management system have not been undertaken.
  6. Computerisation of existing land records without corroborating it with the actual field position only led to perpetuation of existing loopholes and errors and hence more litigation. So the scheme failed to even take off.
  7. Funds were thinly spread.
  8. There was no time frame to finish the scheme.
  9. System of monitoring and evaluation was not provided for.
  10. In case of urban lands, the situation is graver as records are virtually non-existent. The NLRMP does not cover urban lands. Growth in urbanization would result in continuous conversion of rural land into urban land. Thus, there cannot be two systems for management of rural and urban lands.
- *Passport & Visa MMP*
  1. In the case of passports, the reduction in the waiting time is very marginal as only submission of application was partially computerized leaving most of the back-end process in their old inefficient form.
  2. Passport Seva Project: It contracts private service providers for digitisation of the entire passport services. It is expected that the process for issue of a new passport would be expedited to three working days subject to police verification. Passports applied under the '*tatkal*' scheme would be dispatched the same day, subject to address and police verification. While the Ministry of External Affairs (MEA) would continue to perform the sovereign function such as verification and grant of passport,

all peripheral activities would be done by the private service provider.

National E-Governance Plan

3. Role of local governments
    1. There is no role for the local governments in the implementation of the plan and not even at kiosk level.
    2. Monitoring bodies of elected local body representatives should be set up to monitor the implementation of the plan.
    3. PRIs should also spread awareness among the people about the services being offered and encourage them to utilize them.
4. Business process restructuring and capacity building issues
    1. The MMPs have the potential of creating a direct impact on citizens since they provide high volume G2C services. Unfortunately, these are the very sectors where progress in implementation is lagging.
    2. The most critical bottleneck is delay in business process restructuring and insufficient capacity building.
    3. The large scale of the transactions involved, prevalence of outdated and cumbersome procedures, inertia and resistance to change, the overhang of old and outdated records are other issues.
5. Project management issues
    1. There is lack of clear demarcation of responsibility among the project authorities
    2. Most of the State level e-Governance projects are still at the conceptual stage.
        1. Many of the projects have pre-maturely gone ahead with the ICT component without first prioritizing the governance reforms that are a pre-requisite. This would result in automation of the existing inefficiencies in the system .

Core Principles for a Successful E-Governance Project

1. Public trust
    1. Clarity of Purpose
        - It should be based on what citizens need rather than what the technology can achieve.
    2. It must deliver substantial visible benefits, specially single window grievance redressal as in LokVani in UP, Gyandoot in MP or single window facility to pay taxes and bills, to the end users.
    3. Benchmarks for service delivery need to be created and communicated to the users.
    4. It must have mechanisms to win public trust like giving them a chance to review the computerized records, having a screen facing them, use of local language.

2. Accountability
    1. People must be held accountable for their actions.
    2. Proper security mechanisms, including digital signature, biometrics as in the Bhoomi Project in Karnataka, should be there at each layer so as to fix accountability.
3. Scope of the project
    1. Fearing that new systems may not deliver, managers tend to continue manual systems in parallel, and thus there is no incentive for staff to switch over to the new system. But it must not run as a secondary system, along with the paper based system. Rather focus must be to make it the only system as soon as possible.
    2. Scaling up should be attempted only after the success of pilot projects. Systems should have the flexibility to incorporate changes mid-way
    3. The user charges should not be high so as to deter the users. Still self-sustainable projects have a higher chance of success.
4. Project management
    1. Implementation
        - The project management team must have an empowered leader with a dedicated team. Such a team must be given sufficient time to finish its work.
    2. Planning
        - E-preparedness of the organization must be kept in mind while planning for projects and fixing time frames.
        - Reinventing the wheel should be prevented. Projects must learn from the success and failures of the previous e-governance processes.
        - At present various projects are ad hoc and unrelated to each other. Many are vendor driven and not scalable. So common standards and platforms should be evolved.
    3. Evaluation
        - There should be a precise definition of the parameters against which any future evaluation would be done.
        - Periodic evaluations against such parameters should be conducted.
5. Process re-engineering
    1. Environment building
        - Assessment of changes to be made in the legal framework needs to be done in advance.
        - As the task involves redesigning of governmental processes at various levels, it would require strong political support at all levels.
        - Government personnel would have to be incentivised to change old habits and acquire new skills. Ownership by the staff is essential and adequate stress should be laid on generating interest among the staff members.
        - Organizational capacity building is absolutely essential. It includes reforms in

recruitment and personnel policies, out-sourcing, re-engineering internal processes, delegation of authority, creation of enabling legal framework, developing MIS and proper incentive systems.
    - In the public, awareness needs to be created so that there is a constant demand for reforms.
    - Effective grievance redressal mechanism needs to be built in the process.
2. There should be end to end computerization. But in projects such as payment of bills, filing of returns, e-procurement, waiting for computerization in government departments is not needed to start the project.
3. G2B projects
    - Entire e-procurement processes must be designed to avoid human interface i.e., supplier and buyer interaction.
    - They must provide anonymity and level playing field to all vendors.
    - There should be automatic bid evaluation based on the evaluation parameters given to the system to eliminate subjectivity.
    - Tender documents containing all details are hosted on the website and be freely downloadable by all.
    - They don't require extensive back end computerization and hence can be easily taken up.

6. Supporting infrastructure
    1. Power supply, literacy, connectivity, and backend support are the essential pre-requisites.
    2. Adequate redundancy and backups should be provided specially to meet with disaster challenges.

Personnel Issues in Implementation of E-Governance Projects

1. Threats of job losses increase resistance.
2. Employees resist retraining.
3. Government staff may resent external staff. It helps a great deal if external staff have the time and patience to talk to employees.
4. High level support doesn't ensure staff buy in. Staff can come in only when they see benefits from moving to a new system.
5. Staff are unenthusiastic when credit is not shared: A common perception is that an e-government project is an IT department project and if the project is successful, the IT department will get all the credit.
6. Fearing that new systems may not deliver, managers tend to continue manual systems in parallel, and thus there is no incentive for staff to switch over to the new system.

E-Mitra Project in Rajasthan

1. There are two major components – ‘back office processing’ and ‘service counters’. Back office processing includes computerization of participating departments and establishing a mini data centre at the district level. Private partners (Local Service Providers) run the kiosks/ service counters.
2. It is in PPP mode. In case of collection of bills, the Local Service Provider does not charge the citizen, but gets reimbursement from the concerned organization.

National e-Governance Plan

Project

1. It comprises of 31 Mission Mode Projects (MMPs) and 10 components. Various MMPs are owned and spearheaded by the concerned ministries.
2. Physical Architecture
    1. Data Centers
    2. NoFN - 2Mbps network connectivity to each Panchayat.
    3. Kiosks at the front end. 1 for each 6 village cluster following honey comb structure. Kiosks to have a PC along with basic support equipment like printer, scanner and UPS.
3. G2C Services to be Offered
    1. Land records
    2. Registration of vehicles
    3. Issue of certificates
    4. Employment exchange
    5. Ration cards
    6. Electoral services
    7. Pension schemes
    8. Issue of licenses
    9. Public grievance
    10. Payment of bills

Mission Mode Projects

1. MCA 21: The MMP is in its post-implementation stage and is providing electronic services to the Companies for their related activities such as allocation and change of name, incorporation, online payment of registration charges, change in address of registered office, viewing of public records and other related services. It also makes public the company related data.
2. Pension: A website provides updated information on government pension rules and regulations; helps facilitating registration of grievances; enables monitoring timely sanction of pension; maintains a database of pensioners.

3. Income Tax: It offers services including facility for downloading of various forms, online submission of applications for PAN, tracking the applications, e-filing of Income Tax Returns, e-filing of TDS returns, online payment of taxes, issue of refunds.
4. Passport, Visa and Immigration: The e-services being offered under the MMP include re-issue of Passport, issue of duplicate Passport, issue of Tatkal Passport, change in name, address, ECNR/ ECR suspensions, passport status enquiry etc.
5. Central Excise: The important e-services being offered include e-filing of Import and Export documentation, electronic processing of declarations, facilities for e-filing of Central Excise and Service Tax returns, e-registration services, digital signatures, e-payment of Customs Duties.
6. Banking: It includes Electronic Central Registry and One India One Account for Public Sector Banks.
7. UID.
8. e-Office: The functioning of government offices would be computerized.
9. Insurance: The MMP is an industry initiative (by public sector insurance companies). The MMP aims at facilitating customer services, automating grievance redressal mechanism and, creating a database.

Integrated MMPs

1. e-Courts: The first phase includes building computer infrastructure in the lower courts and upgrading it at High Courts and the Supreme Court. The second phase of the MMP includes providing services like availability of copies of judgments, e-filing of cases, video conferencing of outstation witnesses, issue of notices to clients through e-mail.
2. Electronic Data Interchange/e-Trade (EDI): It aims at facilitating electronic data interchange amongst various agencies involved in the process of imports and exports. It offers services like electronic filing and clearance of EXIM documents and e-Payments of duties.
3. India Portal: It provides a single window access to information about governments at all levels, in a multilingual form.
4. e-Procurement: This MMP of the Ministry of Commerce aims at rolling-out IT-enabled procurement by government departments.
5. Road Transport: This MMP proposes to offer many e-Services like vehicle registration, driving licenses and Smart Card based registration certificates to citizens.
6. Agriculture: The MMP aims at providing information regarding farm practices, market trends, agricultural and technical know-how. It has two components i.e. AGRISNET and AGMARKNET. AGMARKNET aims at creating an information network which will capture/update information at various mandis. AGRISNET aims at back-end computerization of State Agriculture departments
7. e-District: This MMP aims at delivery of high volume, citizen-centric services through kiosks. These would primarily be services not covered by other specific MMPs. A minimum of 7 services will be delivered in every State.

Analysis of NeGP

1. The Institutional Structure
    1. It has become essential to ensure that the numerous projects being implemented by the different governments and departments are consistent with a broad policy and adhere to common standards.
    2. This requires empowered institutional arrangements to oversee the projects.
2. Role of local governments
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    2. Monitoring bodies of elected local body representatives should be set up to monitor the implementation of the plan.
    3. PRIs should also spread awareness among the people about the services being offered and encourage them to utilize them.
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Status of Implementation

1. Status of MMPs: Out of the 31 MMPs, 14 MMPs are delivering the full range of services while 9 have started delivering some services to the citizens.
2. e-TAAL: It is a web portal which aggregates and analyses the statistics of e-governance projects including MMPs on a real time basis. It is expected to enhance the outcome focus of e-Governance programs.
3. Mobile Seva: It is a unique countrywide initiative on mobile governance to provide public services to the citizens through mobile phones. As on date, 444 departments are on it offering over 200 services. A mobile AppStore has also been launched with 153 applications.
4. NoFN: Pilot has been conducted and rollout is in progress.
5. e-Gov AppStore: It will host successful e-governance applications which can be replicated by all government departments intending to implement e-Gov initiatives, thereby saving

immense time and costs.

6. e-Procurement: All departments have been directed to switch over to it.
7. Meghraj: This is the new Government of India cloud (GI Cloud) computing environment to be created at the national level. It will bring the benefits of cloud computing.
8. National e-Governance Academy: To promote research, documentation, training, this academy will be opened.

SC ON AADHAR

- The Supreme Court issued an interim order on a public interest litigation challenging certain as UID Aadhaar project. The interim order brings out two main points:
  - (1) Aadhaar enrolment of immigrants living in India without proper papers should n and
  - (2) Central and State governments must not deny essential services and benefits s basis of non-enrolment in the project.
- The first point concerns the Aadhaar system itself. An Aadhaar applicant needs to provide proo (including age) and address using one of several approved documents, such as an electoral ph card or passport, before his/her biometrics are captured. But very poor people, for exampl dwellers, may have no identity document with proof of age, and certainly no address. H Aadhaar system caters to such people with the Registrar (State government) notifying a traine who, in effect, contacts the enrolment centre staff, vouching for the person who states that h so-and-so address is indeed Mr. X of that address.
- Thus, the biometrics captured are shown to belong to Mr. X with those details. In practice, th may know only a fraction of the people without such documents who apply for the Aadhaar car acquaintance, and he/she could unwittingly introduce an immigrant without proper documenta the introducer knows Mr. X by sight or acquaintance, he has really no means to know whether h or a legal resident.
- The apex court's order that immigrants without proper documentation must not be enrolled eff introducers "out-of-business," and thus the poor who have no documents cannot be enrolled.

Models

Successes, Potential and Limitations

Civil Services

Role in a Democracy

1. FIXED TENURE FOR BUREAUCRATS: SC

- The Supreme Court directed the Centre and the States to set up a **Civil Services Board (CSB)** for the management of transfers, postings, inquiries, process of promotion, reward, punishment and disciplinary matters.
- This measure is to insulate the bureaucracy from political interference and to put an end to frequent transfers of civil servants by political bosses.
- The Bench asked Parliament to enact a **Civil Services Act under Article 309** of the Constitution setting up a CSB, "which can guide and advise the political executive transfer and postings, disciplinary action, etc."
- The Bench directed the Centre, State governments and the Union Territories to constitute such Boards "within three months, if not already constituted, till the Parliament brings in a proper Legislation in setting up CSB.
- Deprecating repeated transfers, the Bench said minimum assured tenure ensures efficient service delivery and also increased efficiency.
- The Bench directed the Centre, States and Union Territories to issue appropriate directions to secure providing of minimum tenure of service to various civil servants, within three months.

Civil services Board

- It consists of high ranking service officers, who are experts in their respective fields, with the Cabinet Secretary at the Centre and Chief Secretary at the State level, could be a better alternative to guide and advise the State government on all service matters, especially on transfers, postings and disciplinary action, etc., though their views also could be overruled, by the political executive, but by recording reasons, which would ensure good governance, transparency and accountability in governmental functions.

Cases: **T.S.R. Subramanian vs. Union of India.**

- This case was brought by 80 retired bureaucrats who asked the Court to order the government to implement three specific recommendations that had been put forward by a number of expert committees over the years that were aimed at reforming the civil service:
    - Create an independent civil service board at the centre and in the states for promotions and transfers of bureaucrats;
    - Provide fixed tenure in postings to civil servants (to give them some protection against indiscriminate or biased transfer by politicians);
    - Require all civil servants to record all directions they receive from their administrative superiors, and also from political authorities or business interests.

PRAKASH SINGH CASE

- The **seven directions** were:

1. Constitute a State Security Commission to ensure that the State government does not exercise unwarranted influence or pressure on the police
    - Lay down broad policy guidelines
    - Evaluate the performance of the State police.

2. Ensure that the DGP is appointed through a merit-based, transparent process and secure a minimum tenure of two years.

3. Ensure that other officers on operational duties (including SPs and Station House officers) are also provided a minimum two-year tenure.
4. Separate investigation, and law and order functions.
5. Set up a Police Establishment Board to decide transfers, postings, promotions and other service related matters of officers of and below the rank of Deputy Superintendent of Police and make recommendations on postings and transfers above the rank of DSP.
6. Set up a Police Complaints Authority at the State level to inquire into public complaints against officers of and above the rank of DSP in cases of serious misconduct including custodial death, grievous hurt, or rape in police custody, and at district levels to inquire into complaints against personnel below the rank of DSP in cases of serious misconduct.
7. Set up a National Security Commission at the Union level to prepare a panel for selection and placement of chiefs of the central police organisations with a minimum tenure of two years.

Relationship with the Political Leadership

Constitutionally Envisioned Scheme

1. The secretary has to advise the minister impartially and fearlessly and tell him about the legality of his orders and suggest that either such orders not be given or that they be suitably modified.
2. The minister may have the mandate of the people to govern, but the secretary has an equivalent constitutional mandate to advise the Minister.
3. Once his advice has been suitably considered, unless the minister passes an illegal order, the secretary is bound to implement it without bias and fear or favor. The minister, on his part, is required to support the secretary who is implementing his order.

Status

1. Loss of political neutrality
    1. In the initial years after Independence, relations between Ministers and civil servants were characterized by mutual respect and understanding of each other's respective roles, with neither encroaching upon the other's domain.

2. However, in subsequent years, matters started changing for the worse. While some civil servants did not render objective and impartial advice to their Ministers, often some Ministers began to resent advice that did not fit in with short-term political interests.
3. There was also a tendency for some Ministers to focus more on routine administrative matters such as transfers in preference to policy making.
4. As a result, 'political neutrality' which was the hallmark of the civil service in the pre-Independence era as well as in the period right after Independence, was gradually eroded.

2. Discharge of delegated functions
    1. There is an increasing tendency in government departments to centralize authority and also after having first delegated authority downwards, to interfere in decision making of the subordinate functionaries.
    2. There is a perception that downward delegation of responsibilities will lead to abuse and more corruption. But the correct way is to institute mechanisms to prevent that.

Challenges

1. Defining accountability
    1. Civil servants in India are accountable to the ministers, but in practice, the accountability is vague and of a generalised nature. Since there is no system of ex ante specification of accountability, the relationship between the minister and the civil servants is essentially issue-sensitive and civil servants deal with the ministers as the issues present themselves.
    2. The accountability relationship can be anything from all pervasive to minimalistic and it is left to the incumbent minister to interpret it in a manner that is most convenient to him/her. This leads to either collusive relationship or to discord, both of which can adversely affect the administration.
    3. Thus there is an urgent need to codify this relationship preferably by enacting a law.
    4. Accountability can be defined in the relationship only in an output - outcome framework. Outputs are specific services that the civil servants deliver, and therefore, the civil servants should be held accountable for the delivery of key results, which becomes the basis for evaluation of their performance. This can be achieved through agreements with the minister specifying the performance targets. These performance agreements should be put in the public domain. They should have clearly spelt out objective and measurable goals.
    5. Outcome is the success in achieving social goals and the political executive decides what outputs should be included so that the desired outcomes can be achieved. In such a scheme, the political executive becomes accountable to the people for the outcome.
2. Transfers and postings
    1. Arbitrary transfers and postings of civil servants by the ministers in utter disregard of the tenure policies, concern about disruption of public services delivery, concern about implementation of developmental programmes. Such transfers are made on the basis of caste, religion, money, favoritism. This leads to splitting up of bureaucracy and its

demoralization.

2. Transfer and tenure policies must be developed in an independent manner and any premature transfer should be based on publicly disclosed sound administrative grounds which should be spelt out in the transfer order itself.
3. An officer should be given a fixed tenure of at least three years and given annual performance targets.
4. Civil Services Authorities should be made statutory and autonomous. If the government does not agree with the recommendations of the Authority, he will have to record his reasons in writing.
5. An officer transferred before his normal tenure can agitate the matter before an Ombudsman.

3. Ministerial interference in operations

1.

1. Ministers issue instructions, formal or informal, to influence the decisions of the bureaucracy often intruding in their domains.
2. It has also been observed that officers, instead of taking decisions on their own, look up to the ministers for informal instructions.
3. Several states have created an institution of 'District Incharge Minister' to review the development activities in the district who routinely exceed their mandate intrude in the officer's domain. These practices are unhealthy.

2. Appointments/Recruitment to the Civil Services
    1. While the UPSC enjoys an untarnished reputation for having developed a fair and transparent recruitment system, the same cannot be said for most of the SPSCs.
    2. In addition, large number of recruitments is done by departments under their control of the government directly. It is essential to lay down certain principles/norms for such recruitments.

Advantages of a Permanent Civil Service

1. The spoils system has the propensity to degenerate into a system of patronage, nepotism and corruption.
2. Public policy is a complex exercise requiring in-depth knowledge and expertise in public affairs. A permanent civil service develops expertise as well as institutional memory for effective policy making.
3. A permanent and impartial civil service is more likely to assess the long-term social payoffs of any policy.
4. A permanent civil service helps to ensure uniformity in public administration and also acts as a unifying force particularly in vast and culturally diverse nations.

Prosecution of Civil Servants

Article 311

1. No civil servant shall be dismissed by an authority subordinate to that by which he was appointed.
2. No such person shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard.
3. Provided further that this clause shall not apply
    1. where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or
    2. where the authority empowered is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or
    3. where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry.

Art 309 and Art 310

1. Article 309: Legislature may regulate the recruitment and conditions of service of civil services.
2. Article 310: Civil servants hold office during the pleasure of the President / Governor.

Other Protections

1. CBI can not conduct any investigation except with the previous approval of the Central Government where such allegation relates to the employees of the Central Government of the level of Joint Secretary and above or equivalent position in CPSUs.
2. Sanction for prosecution of a public servant is required from an authority not lower than that competent to remove him.
3. A case under the PoCA can only be registered by the CBI or the anti-corruption agency of a state and not by the civil police.
4. Only a special judge is competent to take cognizance of an offence of corruption.

Debate - Remove Art 311

1. Complicated procedures have arisen out of this article which have in practice shielded the guilty. These complicated safeguards also lead to inordinate delays and render even most well meant legislations and institutions like CVC ineffective.
2. Judicial decisions too have crowded out the real intent of Article 311 and shielded the guilty. Procedure has become more important than the substance. Removing the article would render such judgments void.
3. Such a provision is not available in any of the democratic countries including the UK.
4. This article was drafted at a time when due to post-colonial administrative upheavals, it was felt necessary to prescribe certain guarantees to the bureaucracy. In the present scenario, this is not necessary. Government is no longer the only significant source of employment. Indeed, in the present debate of even providing outcome oriented contractual appointments puts a question mark on the desirability of the permanency in the civil services. The role of

Government as a model employer cannot override public good.

5. When Sardar Patel argued for protection of civil servants, the intention was clearly to embolden senior civil servants to render impartial and frank advice to the political executive without fear of retribution. But the compulsions of equal treatment of all public servants and judicial pronouncements have made such a protection applicable to everybody and this has crated a climate of excessive security hampering efficiency and work culture.

Debate - Do not Remove Art 311

1. It subjects the doctrine of pleasure contained in the preceding Article 310 to certain safeguards and checks arbitrary action on executive's part. India doesn't have a spoils system.
2. Safeguard of an opportunity of being heard has been held to be a fundamental principle of natural justice. It is argued that even if Art 311 is not there, natural justice cannot be compromised and the aggrieved party can get relief from the courts. But experience of past 6 decades shows that executive has scant regard for the spirit of the law and inordinate delays and large number of cases may arise out of the confusing situation.
3. The requirement that only an authority which is the appointing authority or superior can impose a punishment also appears reasonable as the government follows a hierarchical structure.
4. It is the rules governing disciplinary enquiries, and not Article 311 itself, that are responsible for the delays.

The Balanced Approach

1. Article 311 of the Constitution should be repealed. Simultaneously, Article 310 of the Constitution should also be repealed. Suitable legislation to protect civil servants from arbitrary actions of the executive should be provided under Article 309.

Debate - Need for Sanctions

1. Officers at senior levels have important decision making roles. While taking these decisions they should be able to do so without any fear. Exposing them could have a demoralizing effect and encourage them most of the time to be risk averse.
2. It can be argued that if at all the sanction protection is to be given, the power should vest with an independent body like the CVC, which can take an objective stand. So the government has decided to create a committee of secretaries involving the CVC to grant sanctions within 90 days beyond which the sanction would be deemed to have been granted.

Removal from Service: Criminality vs Incompetence

1. The standard for probity in public life should be not only conviction in a criminal court but propriety as determined by suitable independent institutions specifically constituted for the purpose .
2. It may not always be possible to establish the criminal offence in a court (for lowering service delivery standards in return of personal favors) but the government servant can still

be removed from service on grounds of incompetence.

Removal from Service: Criminality vs Administrative Action

1. Criminal conviction requires "beyond reasonable doubt". Administrative action does not require 'beyond reasonable doubt'. It requires "the preponderance of probability." (A fair probability of corruption by the official is sufficient.)

Disciplinary Proceedings

1. Issues
    1. "Inquiry" as prescribed under Article 311 which often tends to become like a full fledged court proceeding should be replaced by a “meeting” or interview to discuss the charges made out against him.
    2. Minor penalty can be imposed after calling for and considering the explanation of the accused employee. Major Penalties can be imposed only after a detailed inquiry.
2. Recommendations
    1. The new Civil Services Law should set out only the minimum statutary disciplinary and dismissal procedures required to satisfy the criteria of natural justice leaving the details of the procedure to be followed to the respective departments.
    2. The penalty of dismissal or removal of a public servant should only be imposed by an authority three levels higher than the present post held by that public servant whereas all other penalties may be imposed by an authority who is two levels higher.
    3. The charges against the government servant should be communicated to him in writing.
    4. The inquiry process should be based to the maximum extent possible on documentary rather than oral evidence.
    5. Fixed and brief time limits should be prescribed for admission and denial of documents from both sides followed by a meeting / interview to give the government servant a chance to respond to the charges.
    6. Preponderance of probabilities rather than beyond reasonable doubt would be the standard of evidence required for the inquiry authority to reach his/her conclusions.
    7. Imposition of major penalties should be recommended by a committee in order to ensure objectivity.

<u>Issues in Civil Services Reforms</u>

Attitudinal Issues

1. Issues
    1. Civil servants still believe in the Hegelian prescription that they represent the universal interest of the society. Hegel argued that the most important institution in the state was the

bureaucracy which represented the absolutely universal interests of the state. The exercise of power by the bureaucracy was a mission sanctioned by God.

2. It believes that its authority is derived not from the mandate of the people but from an immutable corpus of rules that it has prescribed for itself. It has no need to give due regards to the aspirations of the people and rule of law.
3. With reforms, the role of private sector and civil society has increased immensely. So the civil servants need to view them as partners instead of asserting their own pre-eminence.

Result Orientation

1. Issues
    1. Civil Service in India is more concerned with the internal processes than with results.
    2. There is too much focus on amount of inputs used - whether the full budget is used or not. As a result outcomes get neglected and civil servants are not held accountable for the results.
    3. The structures are based on hierarchies and there are a large number of veto points.
    4. To compound it, the size and the number of ministries and departments have proliferated and diminished the capacities of the individual civil servants to fulfill their responsibilities.
2. Recommendations
    1. Devolution: Achievement of results would require substantial devolution of managerial authority to the implementing levels. This would require giving civil servants in the implementing agencies greater flexibility and incentives to achieve results as well as relaxing the existing central controls.
    2. Accountability: The counterpart of devolution should be more accountability. This can be achieved through agreements with the minister specifying the performance targets. These performance agreements should be put in the public domain. They should have clearly spelt out objective and measurable goals.

Resistance to Change

1. Issues
    1. The perception is that they resist change as they are wedded to their privileges and prospects. Thus they have prevented us from realizing the full benefits of the 73rd and 74th Amendments since it clashes with their own authority.
    2. They also resist simplification of procedures which is a pre-requisite for introduction of e-governance since it would undermine their importance.

Accountability

1. Accountability mechanisms can be horizontal which refer to those located within the government and vertical which are those outside it and include the media, civil society and citizens.
2. Disciplinary action against non performing officers is a rarity and is a long process.
3. The life-long job security further leads to distorted incentive structure.
4. While the performance of government organizations and their sub-units are periodically subjected to in-depth reviews, seldom are efforts made to link organizational performance to the performance of an individual civil servant.

Exit Mechanisms

1. Issues
    1. At present, rarely does a civil servant get dismissed from service or is punished on grounds of incompetence.
2. Recommendations
    1. It is necessary that all civil servants undergo a rigorous assessment of performance, at regular intervals, and on the basis of such evaluation a civil servant can be retired compulsorily. The compulsory retirement can happen say after 20 years.
    2. New appointments should be made only for a fixed period, say 20 years, after which if the performance is not satisfactory, he can be removed. Such provisions are there in armed forces.

Separation of Policy Making and Implementation Tasks

1. Issues
    1. The policy formulation function of senior civil servants needs to be distinguished from the policy implementation function. Currently due to diverse workload, their most important function, of tendering policy advice to the ministers, often gets neglected.
2. Recommendations
    1. There is a need for a separation of policy formulation and implementation responsibilities by extensive restructuring.
    2. Flatter structures and outcome oriented agencies need to be created and powers delegated downwards.

Field Postings of Officers during the Initial Part of Their Career

1. There have been instances where state governments have posted the officers during his early career to the Secretariat instead of the field. This is not in the public interest since it is necessary for an officer to have adequate experience in the field. So no secretariat postings should be given for first 10 years at least.

Domain Competency

1. Issues
    1. The increasingly complexity of challenges today demand higher levels of knowledge and deeper insights from public servants. This would mean that civil servants - especially in policy making positions - should possesses in-depth knowledge of the sector.
    2. Domain competence is distinct from specialised technical knowledge in that it refers to a broad understanding of the relevant field and more importantly managerial abilities derived from practical experience in that field.
    3. There is considerable confusion about the concept of domain competence. It is generally discussed in the context of the ministry an officer may be best suited for. Domain competence actually refers to functions and not Ministries.
2. Recommendations
    1. Assigning specific domains to civil servants early in their career and retaining them in the assigned domain is an important reform.

2. Steps need to be taken to assign civil servants at the start of their mid-career to specific domains. Domain assignment at this stage of the career would also be appropriate because when the officer is eligible to be at the level of Joint Secretary he/she would have had at least three to four years exposure to a domain.
3. These domains should strike a right balance between flexibility and needs for specialized expertise and need to be defined suitably. Some domains could be: general administration, urban development, rural development, security, financial management, infrastructure, human resource development, natural resource management.

Deputation of Public Servants Into Private Sector

1. Conflict of interest possible even after retirement.
2. Quid pro quo assignments in private sector mean only a small number of civil servants holding assignments in certain 'sought after' sectors will benefit. A vast majority of civil servants, especially those working in the social sector and sectors like rural development, will perhaps not be affected by such a policy. This could result in an increasing reluctance by government servants to work in these crucial social sectors.
3. In India, civil servants have created a number of post-retirement jobs, including those in regulators, which they can conveniently latch on to once they retire from their jobs. This seems preferable to civil servants moving into the private sector.

Motivating Civil Servants

1. Issues
    1. Civil servants today adopt a 'minimalist' approach in their functioning, and confine their work to disposing of files making no special effort at resolving problems. They rarely walk that 'extra mile'.
    2. There is hardly any performance for pay incentive available to them. Natural increases in salary are very much guaranteed to government employees. This leads to a situation where employees do not exert themselves.
    3. There is no external motivation for risk-taking and delivering a higher level of performance, because though the risk-taking is punished if things go wrong, it is not rewarded if things improve.
    4. Poor working conditions.
    5. Unfair personnel policies.
    6. Excess supervision.
    7. Absence of fair-play and transparency in the government system.
    8. Lack of opportunity for self-expression.
    9. Political interference into officers' jurisdiction.
2. Recommendations
    1. Performance based monetary incentives.
    2. Recognition: Though national awards are given to those civil servants who have made outstanding contributions to public service but the criteria and process are opaque and frequently misused. Padma awards should be given more frequently to serving civil

servants. Selection for such awards is made through an objective and transparent mechanism because the value of such awards should not get compromised by either subjectivity or lack of transparency. Other awards should be instituted.

3. Job enrichment: Delegation should be made a part of the performance appraisal at each suitable level.
4. Linking career prospects with performance: Arbitrary political actions must stop.

Civil Services Bill

Draft Public Services Bill, 2007

1. Appointment to public services to be based on the principle of merit.
2. Transfers before the specified tenure should be for valid reasons to be recorded in writing. The normal tenure of all public servants shall not be less than two years.
3. It proposes the constitution of a Civil Services Authority.
    1. It shall aid and advise the Central Government in all matters concerning the management of civil servants.
    2. Review the adoption, adherence to and implementation of the Civil Service Values and send reports to the Central Government.
    3. Assign domains to all officers of the All India Services and the Central Civil Services on completion of 13 years of service.
    4. Formulate norms and guidelines for appointments at 'Senior Management Level' in Government of India.
    5. Evaluate and recommend names of officers for posting at the 'Senior Management Level' in Government of India.
    6. Identify the posts at 'Senior Management Level' in Government of India which could be thrown open for recruitment from all sources.
    7. Fix the tenure for posts at the 'Senior Management Level' in Government of India.
    8. Submit an annual report to Parliament.
4. It includes public service values and the Code of Ethics.
5. The Bill enjoins government to prepare a Public Service Management Code with the aim to develop civil services into a professional, merit-based institution, maintain high levels of excellence. It provides for ACRs to be made public. It provides for periodic pay and incentives review, training, guidelines for promotions.
6. It enjoins the government to define the relationship between the political executive and civil services.

Desired Qualities of a Civil Services Bill

1. It acts as a legal basis for the legislature to express the important values and culture it wants in the civil service.
2. It has a mechanism by which government decisions can be implemented.
3. It has a framework for setting out the role and powers of the heads of the agencies

and departments.

4. It spells out the relationship between civil services and political leadership in a clear and transparent way.
5. It lets civil servants know clearly what is expected of them.
6. It deals with important aspects like transfers, performance management, civil services authority, postings, entry to senior executive service.
7. It contains public service standards and ethical values and how they should be applied.

Analysis of the Draft Public Services Bill, 2007

1. Name: The term public servant has a much wider connotation. So the name of the Bill should be changed to Civil Services Bill.
2. Appointment to Public Services: It makes the principle of merit (subject to reservations), fair and transparent competition as the guiding principles for appointments. It would be better to prescribe that all appointments including in PSUs, various boards, whether permanent or short-term or contractual should be made on this basis.
3. Public service values and Code: The Bill can list down an exhaustive set of values clearly, currently it doesn't.
4. Performance management system: The Bill can lay down the guidelines and principles to be followed while devising performance management systems.
5. Functions of the Central Civil Services Authority: Its recommendations should be made binding. If the government rejects it, written reasons should be given and made public.
6. Creation of executive agencies in government: Government should be authorized to create executive agencies. The role of the ministries should primarily be on policy formulation while implementation should be left to the executive agencies.

Civil Services Authority

1. There should be an independent authority to deal with matters of assignment of domains, empanelment of officers, fixing tenures for various posts, appointments and transfers, deciding on posts which could be advertised for lateral entry.
2. It should be given a statutory backing and clear objective criterion should be laid down for its membership. Serving government servants or politicians should not be appointed to it.
3. The members should be appointed by a collegium in a transparent manner.
4. The authority should be given personnel and financial autonomy as well.

Placement at the Top Management Level

Senior Executive Service

1. It comprises of a group of civil servants who are appointed to top-level positions across ministries, departments and agencies.
2. It usually occupies policy-making positions or heads major operating agencies or line

departments.

3. It works closely with the political executive.
4. It constitutes a very small fraction of the civil service.
5. It is bound by a distinctive set of ethical standards such as values and code of conduct.

Position Based SES

1. The position-based SES as in Australia, New Zealand, UK is more open because appointments to senior positions are made from a wider pool comprising all civil servants as well as those applicants from the private sector. Its openness is its basic strength.

SES in India

1. <u>Present system</u>
    1. India has a career-based SES system where SES consists solely of civil servants. At the early middle stage of their careers, the appointments to the level of Joint Secretary in GoI are made based on the process of empanelment.
2. <u>Weaknesses in the present system</u>
    1. It depends solely on the ACRs of the officers. It is widely known that there is a tendency for the reporting officers to adopt a 'soft' approach in their assessments with the deficiencies often going unreported.
    2. By relying only on the ACRs, it overlooks the future potential of an officer.
    3. Selection is made without either interviewing the officers or testing them formally.
    4. Those who are not empanelled are not given any reasons and have no right of formal appeal.
    5. An officer not empanelled as Joint Secretary normally spends the rest of his/her career in the state government and is not usually empanelled later for Additional Secretary or a Secretary in the Government of India. By implication, the process suggests that officers who are not considered suitable for working in senior positions in Government of India are considered good enough to work in the state governments. Promotions to senior positions in the state governments are largely on the basis of seniority, and there is often insufficient consideration of merit or performance.
3. <u>Advantages of a career based system in general</u>
    1. Its closed nature develops a common value system and camaraderie which facilitates excellent communication across the governmental spectrum.
    2. Senior positions require a unique mix of specialized knowledge, general administration and field level experience in implementation. While making policies, their implementation issues must be kept in mind. Career based SES provides this unique mix.
4. <u>Weaknesses of a career based system in general</u>
    1. The assurance of a secure career path has been held to be the career-based system's biggest lacuna.
    2. It has discouraged initiative by reducing competition in the higher echelons of government.

5. Reforms suggested
    1. It has been argued that lateral entry from the market should also be encouraged at the higher management levels as this would bring in corporate exposure as well as specialized knowledge which may not always be available with career civil servants.
    2. Domain competence should also be considered for postings at the joint secretary level.
6. Weaknesses of a progress based SES in general
    1. Lack of sufficient and suitable talent in the private sector.
    2. Operational difficulties of fresh recruitment for SES and consequent demoralization of the civil services.
    3. Potential conflict of interest between the private sector and the public sector.

Performance Management System

Present System of Performance Management in Government

1. Focus on inputs
    1. Systems in government are oriented towards input usage- how much resources, staff and facilities are deployed and whether such deployment is in accordance with rules and regulations. The main performance measure thus is the amount of money spent and the success of the schemes, programmes and projects is generally evaluated in terms of the inputs consumed.
    2. This fails to take into account the results obtained. Civil servants are rarely held accountable for the outcomes.
2. Conventional closed system of ACR
    1. The significant feature of this method is the complete secrecy of the exercise, both in process and results and only adverse remarks are communicated to the officer.
    2. It lacks in quantification of targets and evaluation against achievement of targets.
    3. Unclear performance standards, possible bias, political influence mean a state of confusion. Performance appraisal forms are generic.
    4. It becomes meaningless in cases where postings are decided on other factors and there are frequent transfers.
    5. No attempt is made to align personal goals with the departmental goals.
    6. Large span of supervision of government officers means writing the ACRs of so many officers who they may not even personally recognize.
    7. Since the present system shares only an adverse grading, a civil servant remains unaware about how he/she is rated in his/her work.
    8. Many reporting officers pay little attention to distinguish good and average workers while grading them. Consequently, most Government officials end up getting very good/outstanding grading which is considered “good for promotion” and hence there is

no motivation for real performers.

9. The system of deciding on representations against an adverse entry sometimes take so long that reporting officers avoid giving an adverse entry. Many a time, for want of evidence against the reported civil servant, the reporting officer is in a defensive position and thus unable to justify his/her adverse remarks.

Reforming the Existing Personnel Performance Appraisal System

1. Making appraisal more consultative and transparent.
    1. Consultations while goal setting in the beginning of the year.
    2. Quarterly / mid year reviews and path correction.
    3. Full annual performance appraisal report including the overall grade and assessment of integrity should be disclosed.
2. Performance appraisal formats to be job specific
    1. The performance appraisal format should have three sections - (i) a generic section that meets the requirements of a particular service to which the officer belongs, (ii) another section based on the requirements of the department in which he is working, and (iii) a final section which captures the specific requirements and targets relating to the post that the officer is holding.
3. Formulating guidelines for assigning numerical rating
    1. The present system follows a grading system that rated officers in categories ranging from 'average', 'good' and 'very good' to 'outstanding'.
    2. The new PAR format for All India Service Officers replaces this with an improved rating system wherein officers are assigned a numerical grade from 0 to 10 for different parameters.
    3. While this is an improvement on the old system, the numerical gradings secured by the officers still depend on the subjective evaluation made by the reporting and reviewing officers. It is quite possible that officers of similar competence and performance may be assigned different numerical grades depending on the reporting officer.
    4. DoPT should formulate detailed guidelines to guide assigning numerical ratings process. Necessary training should be given to the reporting officers.
4. 360 degree evaluation
    1. This should be incorporated in the performance management system.

<u>District Administration</u>

Current Mandate

1. Head of Land and Revenue Administration, including responsibility for district finance.
2. Overall supervision of law and order and security and some say in the police matters.
3. Licensing and Regulatory Authority in respect of the various special laws such as Arms in the district.

4. Conduct of elections – for Parliament, State Legislature and Local Bodies.
5. Officer-in-charge of Disaster Management.
6. Chief Information and Grievance Redressal Officer of the district.
7. Guardian of public lands with the responsibility to prevent and remove encroachments.
8. Public service delivery by acting as Chairman for parastatals and various standing and inter-departmental committees.
9. Facilitation of interaction between civil society and the State Government;
10. Handling issues of local cadre management such as recruitment, in-service training and promotion.
11. Institution used by the state governments to control the PRIs.

View: Restrict the Role of Collector

1. With the establishment of PRIs and Municipal bodies it is imperative that the devolution of decision making to local levels should be carried out in true spirit. The collector should be ultimately made responsible to the local bodies.
2. Strong traditions linked with this institution and its recognition in the public mind as the prime mover of governance at the district level would tend to impede growth of any other authority at that level.
3. The office currently has widespread functions without well defined roles. This results in lack of clarity and diffusion of the Collector's responsibilities.
4. There is no need to assign any role to the Collector in respect of activities which are transferred to the PRIs.

View: Preserving the Role of Collector

1. It is equally imperative that the unique administrative experience, expertise and credibility of the office of the District Collector built up over a period of two hundred years is properly utilized.

Recommendations

1. There is a need to redefine clearly his job. It should consist of:
    1. A well defined set of exclusive activities as a functionary of the State Government.
    2. The general work of coordination with various departments / agencies of the State and the Union Governments at the district level.
    3. In the interim period till the time the local elected Institutions mature - as the CEO of the proposed District Council. Each district would ultimately have a District Council comprising of representatives of both rural and urban bodies. The District Collector-cum-Chief Officer would have dual responsibility and would be fully accountable to the elected District Government on all local matters, and to the State Government on all regulatory matters not delegated to the District Government.
2. Grievance redressal, vigilance and implementation of citizen charters should be his responsibility. He should be given strong MIS and IT based tools for monitoring various programmes.
3. E-governance initiatives in the district should be his responsibility.
4. Tour inspection notes and district gazetteers should be his responsibility.

5. Interaction with the civil society groups should be his responsibility.
6. Disaster response should be his responsibility.
7. Line departments which don't fall under the domain of PRIs should be his responsibility.

Public Order in a Democracy

Established Order vs Public Order

1. In a liberal democracy every citizen has a right to dissent and the expression of such dissent need not in itself breach public order.
2. In a democratic society, a situation viewed as a public disorder by one stakeholder may not be disorder for another stakeholder. For example, if a dominant section of society indulges in degrading forms of exploitation of the underprivileged sections, the resultant protests by the latter are often perceived by law enforcement agencies as public disorder.
3. This brings us to the distinction between 'established order' and 'public order'. Established order may not always be as per the tenets of the rule of law. Perpetuating established order does not necessarily constitute public order in a society governed by democratic norms and the rule of law.
4. The law enforcement machinery often tends to concentrate on maintaining status quo, since, for them, public order means 'absence of any disturbance'.

Law and Order vs Public Order vs Security of State Issues

1. Every situation in which the security of the State is threatened is a public order problem. Similarly, all situations which lead to public disorder, are necessarily law and order problems also. But all law and order problems are not public order problems.
2. Thus, petty clashes between two individual are minor in nature with no impact on public order. But widespread violent clashes between two or more groups, such as communal riots, would pose grave threats to public order. A major terrorist activity could be classified as a public order problem impinging on the security of the State.

Tolerance to Breach of Laws

1. When it comes to ending a practice such as, say, animal sacrifice, persuasion and education and not use of force against strong public sentiment, are called for.
2. The problem in such cases is where to draw the line. If a law is violated with impunity, even if it is a minor law, should the State remain a mute spectator and condone violations promoting a culture of lawlessness? Or, should the State risk triggering a major public order crisis in its effort to enforce a law whose gains are minimal and risks are huge?
3. The answer lies in two broad approaches.
    1. First, the State should resist the temptation to over-legislate except in crucial areas which constitute the essence of constitutional values or prevent significant public loss or promote vital public good. Persuasion, public education and social movements are the desirable

routes to social change in such cases.

2. Second, if such laws do exist, effective enforcement on case-to-case basis through prosecution of offenders is the better route and not the thoughtless precipitation of a public confrontation. If indeed a confrontation is called for, there must be adequate preparation, sufficient deployment of security forces, massive public campaign and preventive action in order to avert major rioting and loss of life.

History of IPS

1. IPS was earlier called Indian Imperial Police.

Box 3.3 :Some Recommendations of the Indian Police Commission 1902

a. The police force should consist of a European Service, a Provincial Service, an Upper Subordinate Service and a Lower Subordinate Service.
b. Large provinces should be divided into ranges and a DIG to be placed in charge of each range.
c. A Criminal Investigation Department should be constituted in each province.
d. The recruitment to the European Service should be by competitive exam to be held in England.
e. It is of paramount importance to develop and foster the existing village police.
f. Detention of suspects without formal arrest is illegal and must be rigorously suppressed.
g. For every district a police inspector should be appointed as Public Prosecutor.
h. There should be a single Police Act for the whole of India.
i. District Magistrate should not interfere in the matters of discipline.

Issues in implementing Prakash Singh Reforms

1. Appointment of DGP
    1. Implementation of the Directive to involve UPSC in the empanelment process (for the post of DGP) is beyond the scope and authority of the state governments.
2. Fixed tenor for DGP
    1. Regarding the direction to provide a minimum tenure of two years to DGP, irrespective of the date of superannuation, the state governments projected their inability in its implementation on the ground that the said subject belongs to the domain of the All India Service Rules, which are framed by the Union Government.
3. Police Complaints Authority

1. Practical difficulties were expressed by some of the states of smaller size for establishing separate district level Police Complaints Authorities.
2. Some States, particularly Uttar Pradesh, put forward the view that the existing multiplicity of authorities for Police accountability (such as National Human Rights Commission, State Human Rights Commission, SC/ST Commission, Women's Commission and Minorities Commission etc.) obviates the necessity of having one more separate mechanism for police accountability, in the form of Police Complaints Authority.
3. The civil society representatives, on the other hand, expressed the view that all those multiple authorities did not have binding powers and also that there was need to have a body solely focusing on police misconduct, as envisaged in the Supreme Court directive.

State	**State Security Commission**	**DGP Selection and Tenure**	**Tenure of Other Officers**	**Separation of Law and Order and Investigation**	**Police Establishment Board**	**Police Complaint Authority**
Supreme Court Guidelines	1. Binding. 2. Headed by CM/HM, DGP secretary, other members independent. 3. Lay down broad guidelines.	1. From amongst 3 senior most officers empaneled by UPSC. 2. Min tenor of 2 years irrespective of retirement.	1. Minimum 2 years tenor.	Separation of the two.	1. PEB to decide on transfers / postings / service matters of DySP and below. 2. Recommend for SP and above. 3. Departmental	1. Setup at district level and state level. 2. Headed by judges whose name would be forwarded by CJ.

	4. Evaluate police performance. 5. Prepare report to be laid down in Legass. 5. Idea is to prevent unwarranted political interference.	3. To be removed before period only upon consultation with SSC and on certain clearly defined grounds only.			body only with DGP and four other seniormost officers. 4. Govt. to normally accept recos. else explain in writing. 5. To act as appeal against arbitrary transfers. 6. Review police functioning.	
Rajasthan (Act)	Constituted, but only advisory.	Done, but 1. No UPSC. 2. No need to consult SSC before removing.	Done.	Special Investigation units to be created at PS level.	Constitued, but 1. Can only form guidelines for DySP and below. 2. Nothing for SP and	Created, but no independence.

					above. 3. No appeals.	

2nd ARC Police Recommendations

1. Too many functions assigned
    1. One of the major problems is clubbing a variety of disparate functions in a single police force and concentrating all authority at one level. A single, monolithic force now discharges several functions.
    2. As a result, the core functions are often neglected. Second, accountability is greatly diluted. Third, the skills and resources required for each function are unique and a combination of often unrelated functions undermines both morale and professional competence.
2. Self-esteem of Policemen
    1. A constable can generally expect only one promotion in a life time and normally retires as a head constable. Constables have become 'machines' carrying out the directions of their superiors with little application of mind or initiative. Constant political interference in transfers, placements and crime investigation, long and difficult working hours, the menial duties they are often forced to perform as orderlies to senior officers.
    2. Recruitment in most states is at several levels – constabulary, sub-inspector, deputy superintendent of police, and the Indian Police Service. Several tiers of recruitment have diminished opportunities for promotion.
    3. Further, the removal of the orderly system would also help the constabulary focus on their prime duty, policing. The orderly system should also be immediately abolished.
3. State Security Commission
    1. Constitution of a statutory Commission in each state to be called the State Security Commission. This Commission was to lay down broad policy guidelines, evaluate performance of state police and function as a forum for appeal from police officers and also review the functioning of the police in the state

Local Governance

Evolution of Local Governance

Before the Amendments

1. Second Five Year Plan
    1. It recommended that the Village Panchayats should be organically linked with popular organisations at higher levels and in stages the democratic body should take over the entire general administration.
2. Balwant Rai Mehta Committee
    1. To operationalize this initiative, Government appointed a committee under the Mehta Committee in 1957.
    2. It offered two broad directional thrusts:
        1. There should be administrative decentralisation for effective implementation of the development programmes and the decentralised administrative system should be placed under the control of local bodies.
        2. It recommended that the CD blocks should be designed as administrative units with an elected Panchayat.
    3. This Panchayat would need guidance of technical personnel in many matters; hence it should have line department officers of suitable competence under its control.
    4. The Panchayat Samiti was also to be equipped with sources of income.
    5. Certain powers of control were retained by the government; like supersession of Panchayat Samiti in public interest, suspension of a resolution of a Panchayat Samiti by the Collector.
    6. The recommendations also suggested reservation for SC/ST and women.
    7. It also recommended formation of a Zila Parishad at the district level consisting of all the Presidents of the Panchayat Samitis, MLAs and MP with district level officers of some line departments as members and the Collector as the chairman. It should just as an advisory body for the Panchayats.
3. Followup to Mehta Committee
    1. Although a number of Panchayats were set up in different States, they had limited powers and resources and the essential idea that all developmental activity should flow only through the Panchayat Samitis lost ground.
    2. Subsequently Panchayati Raj elections were postponed indefinitely and flow of funds for Block Development were reduced to a trickle. By the 1970s, these bodies remained in existence without adequate functions and authority.
    3. The position of these institutions was further weakened due to the creation of a large number of parastatals, which were assigned many of the functions legitimately envisaged in the domain of PRIs, for example water supply, slum improvement boards, etc. on the perception that these functions were too complex and resource dependent to be handled by local governments.
4. 1st ARC
    1. It recommended that the main executive organ of the Panchayati Raj system should

be located at the district level in the form of “Zila Parishad” and not at the Block level as Panchayat Samiti. It was of the view that the Zila Parishad would be in a better position to take a composite view and be able to formulate a plan for the area.

2. It also believed that due to paucity of resources, it was difficult to sustain a well equipped administrative and development machinery at the level of a Block.

5. Ashok Mehta Committee
    1. It chose the district as the first point of decentralisation below the State level.
    2. The next level was the Mandal Panchayat which was to cover a population of around 10,000 to 15,000.
    3. As an ad hoc arrangement, the Committee recommended continuation of the Panchayat Samiti at the Block level, not as a unit of self government but as a nominated middle level support body working as an executing arm of the Zila Parishad.
    4. Similarly, at the village level it thought of a nominated village level committee consisting of local member elected to Mandal Panchayat, local member elected to the Zila Parishad and a representative of small and marginal farmers.
    5. The Zila Parishad was recommended to take up planning for the district and to coordinate and guide the lower PRI tiers.
    6. It also called for creation of a body of professionally qualified experts for drawing up the district plan. The plan thus prepared had to be placed before the Zila Parishad.
    7. It called for transfer of all development functions and related government staff to the control of the Zila Parishad.
    8. To assist the Zila Parishad, it recommended creating a senior post known as the CEO manned by an officer senior in rank to the Collector.
    9. It recommended a constitutional backing for PRIs.

Core Principles for Local Governance Reforms

Democratic Decentralisation

1. Local democracy vs decentralization
    1. Local democracy is sometimes treated as synonymous with ‘decentralisation’, but the two are in fact quite distinct. Sometimes decentralisation may not be conducive to local democracy.
    2. In situations of sharp local inequalities, decentralisation sometimes heightens the concentration of power, and discourages rather than fosters participation among the underprivileged. To illustrate, in some tribal areas where upper caste landlords and traders dominate village affairs, the devolution of power associated has consolidated

their hold.

2. Advantages
    1. Decentralisation tends to promote fiscal responsibility when there is a clear link between resource generation and outcomes. People will be encouraged to raise more resources only when there is a greater link between the taxes and user fees levied and the services that are delivered to them.
    2. In centralised structures, citizen participation and ownership are illusory despite national citizen sovereignty.

Principle of Subsidiarity

1. Definition
    1. It means that what can best be done at the lower levels of government should not be centralised at higher levels. It is based on the idea that citizens are sovereigns and the final decision makers.
    2. The citizen must exercise as much authority as practicable, and delegate upward the rest of the functions which require economies of scale and can be done more efficiently at a higher level only.
2. Advantages
    1. Local decision-making improves efficiency, promotes self-reliance, encourages competition and nurtures innovation.
    2. There will also be greater ownership by the local communities.
    3. Democracy is based on the fundamental assumptions that citizen is the ultimate sovereign and has the capacity to decide what is in his best interest. Subsidiarity is the concrete expression of this assumption.
    4. Once decision-making is delegated lower, people can better appreciate that hard choices need to be made.

Clear Delineation of Functions vis-a-vis State Governments and Among Different Tiers of Local Governments

1. <u>PRIs vs State Governments</u>
    1. Since all local government subjects by definition are also state subjects, there should be clear delineation of roles of the two otherwise needless confusion and undue interference by the state will be inevitable.
    2. An activity mapping must be done. For instance, while managing local schools should be a subject of PRIs, the framing of the curriculum, setting of standards and conduct of common examinations should fall within the state's purview. Similarly, in healthcare, development of protocol, accreditation of hospitals and enforcing professional standards should necessarily fall within the State's purview.
2. <u>Intra-PRI Delineation</u>
    1. Within the local governments there is a need for clear functional delineation amongst the various tiers. Here again an activity mapping is essential.
    2. For example, while school management can be entrusted to the Panchayat, most

academic matters would fall within the purview of the higher tiers of local government. Similarly, while a health sub-centre may be looked after by the Village Panchayat, the Primary Health Centre should be managed by the Intermediate Panchayat, and the Community Health Centres and hospitals by the District Panchayat.

Effective Devolution in Financial and Personnel Terms Accompanied by Capacity Building and Accountability

1. Even legislated empowerment remains illusory unless public servants entrusted with the discharge of responsibilities under the local governments sphere are fully under local government control.
2. The principles behind fiscal devolution should be:
    1. PRIs must be able to effectively fulfill its obligation.
    2. There must be sufficient room for flexibility through untied resources.
    3. There must be both opportunity and incentive to mobilize local resources.
3. The Upper House functions as the voice of constituent states. On similar grounds, Legislative Councils should be created in all states to be elected by the PRIs exclusively.
4. Equally important is the building of capacity. Revision of all laws impeding their functioning, bringing all institutions like parastatals and line department which are necessary for their functioning under their control, strengthening management capacity, training, ability to attract expertise available outside government are needed.

Integrated View of Local Services and Development Through Convergence of Programmes and Agencies

1. <u>Rural-Urban Divide</u>
    1. The rural urban divide in the higher tiers of local governments is a colonial legacy.
    2. At the primary level the needs of the rural population and the approaches required are different from those of urban people. So it makes sense to have Panchayats for rural areas and municipal bodies for urban areas at the lowest level.
    3. However, with rapid urbanisation and peri-urban areas, such a distinction at higher level is artificial. Instead of a Zila Parishad, we should have a District Council for the integrated development of the district.
2. <u>Integrating parastatals</u>
    1. The local functions of all the parastatals need to devolve on local governments, even as institutional mechanisms need to be devised to benefit from expert guidance.
3. <u>Stakeholders vs Local Bodies</u>
    1. Wherever a group of stake-holders can be clearly identified, for instance, the parents of children of a school, they should be directly empowered to the extent possible.
    2. However, stake-holder empowerment should not be seen as antithetical to local government empowerment. Just as the tiers of local government have to function in close coordination, local government and empowered stake-holders' groups should work in concert.

Citizen Centric Governance

1. The citizen must be enabled to interact with all service providers through a single window.
2. Mechanisms should be there to measure citizens' satisfaction. Citizen report cards, feedback at delivery and service counters, call centres needs to be institutionalised.
3. In addition, social audit and strong grievance redressal system should be there.

Structure of PRIs

Number of Tiers

1. Article 243 B makes it mandatory for every State with a population exceeding 20 lakhs to have three tiers of Panchayats at the Village, Intermediate and District levels.
2. In a vast and complex country, it is not feasible to prescribe nationally any specific pattern of local governments. In Kerala, there are only about 999 Village Panchayats in 14 districts. Clearly a mandatory intermediate tier Panchayat would be redundant in Kerala. Even larger States, with generally smaller habitats mostly want to treat a group of villages as the unit of local government. In such a case again, Intermediate Panchayats may be redundant.
3. Also, the states should have freedom to experiment and improve the design from time to time.
4. If the States wish to have three tiers, they should be free to adopt them. So the tiers of local government should be left for the State legislature to decide.

Inclusion of MPs and MLAs in Local Bodies

1. Article 243 C stipulates that the State Legislature may by law provide for the representation of the MPs and MLAs at local government levels other than the village level.
2. But the imposing presence of MPs and MLAs in the Panchayats would subdue the emergence of local leadership. So they should not become members of local bodies.

District Council

1. The sheer accident of elected urban local governments coming into being first during the colonial era led to parallel and disjointed development of panchayats and municipalities.
2. Its negatives are as follows:
    1. There is an artificial divide between the rural and urban populations even in matters relating to common needs and aspirations. For instance, health care and education. A district hospital does not cater to only the urban population in the district town.
    2. In a rapidly urbanising society, the boundaries between rural and urban territories keep shifting. It is absurd in an expanding city to have the peripheral areas managed by Panchayats. The need for coordination between rural and urban local governments at the district level gave rise to institutions like DPCs. But they have proved to be too weak and non-starters in many states.
    3. Finally, in the public eye there is no single, undivided local government at the district

level. Not surprisingly, the office of collector continues to remain the real symbol of authority in the district. But this is not healthy for the growth of local self government bodies.

3. Planning is an essential function of government. Creating a separate authority in the form of DPC with no governmental authority has no logic.
4. So there must be a single elected District Council with representatives from all rural and urban areas, that will function as a true local government for the entire district.

Size of the Gram Panchayat

1. The Constitution does not stipulate any size for Panchayats, either in terms of population or in area. Larger panchayats mean greater efficiency of scale in delivery of services. Their negative is lower citizen participation in the Gram Sabhas.
2. There is a historical idealised notion that there should be one Panchayat for each village. But this leaves many Gram Panchayats too small to function meaningfully.
3. Option of ward sabhas can be explored.

Ward Sabha in Rural Areas

1. Larger panchayats mean lower citizen participation. Hence the creation of an intermediate body-Ward Sabha - is desirable as it would facilitate greater people participation and at the same time ensure administrative viability of the Gram Panchayat. It already exists in Karnataka.
2. A Ward Sabha should articulate the needs of the ward as a whole. They should be assigned the function of identification of beneficiaries. The list thus prepared should be placed before the Gram Sabha for its approval. They should also be given a role in prioritisation of schemes pertaining to their area.

Structure of Urban Bodies

Ward Sabhas in Urban Areas

1. Issues
    1. In rural areas, the proximity and small size of the Village Panchayat facilitates greater participation by the citizens, whereas in urban areas, such participation becomes difficult.
    2. The Constitution makes creation of such Ward Committees mandatory in all cities exceeding a population of 3 lakhs. Still they have not yet been constituted in some States.
    3. In most States, the membership of the Ward Committee is by nomination. This is partly because of the propensity of the State Government to gain partisan advantage in nomination, and partly because of the genuine difficulty in identifying legitimate citizen representatives within the ward.
    4. They have an ambiguous mandate. No clear activities have been devolved on them. This further limits citizen participation.
    5. In many large cities, there are Ward Committees combining several wards leading to

each ward sabha covering a large population exceeding 5 lakhs in some cases. This undermines the very intent behind creating the Ward Committees.

2. Recommendations
    1. The three tiers of urban local body governance should be as follows:
        1. Municipal Council/Corporation (by whatever name it is called).
        2. Ward Committees.
        3. Area Committees or Sabhas.
    2. Ward Sabhas should be constituted by the chairpersons of the Area Sabhas. There should be direct election of the Ward Councilor who would be the Chairperson of the Ward Committee who would represent the ward in the municipal body.
    3. In smaller towns also, with populations of less than 3 lakhs, we should have the above structure of Area Sabhas and Ward Sabhas.
    4. Ward Sabhas must be given legitimate functions in clear terms like street lighting, sanitation, water supply, drainage, road maintenance, maintenance of school buildings, maintenance of local hospitals/dispensaries, local markets, parks, playgrounds.
    5. It should have supervision over the employees involved in the functions entrusted to it. It should be able to determine the salaries of all such people on the basis of their performance.
    6. It should have separate funds allocated to it. Its budget should be taken into account while formulating the overall municipal budget.
    7. Meetings of Ward Sabhas must be regular.
    8. Because non residential stakeholders like business are also interested in an area, they should be given some representation in the Ward Sabha preferably through their business associations.

Area Sabhas

1. An Area Sabha would preferably not cover more than, say, 2500 voters.
2. Role of the Area Sabhas: It should be the functional equivalent of the Gram Sabha in villages. It should not be merely a political space for opinion formation. It should be a formal space, and given explicitly defined functions like prioritising developmental activities and identifying beneficiaries under various schemes. It should have separate budget for the discharge of its functions and meet regularly.
3. Members of the Area Sabha: Each Area Sabha should elect a small Committee of Representatives. The Committee of Representatives would elect one person who would chair the meetings of the Area Sabha and would represent the Area Sabha in the relevant Ward Committee. The election of the Committee of Representatives should be held by the SEC.

Office of the Mayor

1. Mayor vs state government
    1. In most states, the Commissioner, appointed by the State Government, has all the

executive powers. This leads to a dilution in the role of the elected Mayor and is violative of the spirit of self-governance and local empowerment.

2. Directly elected mayor
    1. One concern in such a case is that abuse of authority by the Mayor with a fixed tenure cannot be easily checked. However, in such a case, the council, public opinion and media will act as a check. An independent local body Ombudsman will always act as an effective check against abuse of authority at all levels.
    2. When a Mayor is elected by popular vote and the Council members are elected by a separate ballot, it is possible that the Mayor and a majority in the Council may belong to two different parties. This may lead to problems. However a clean separation of powers will prevent such tensions. On the other hand, it may improve accountability as each acts as a check against the other, but cannot stop legitimate exercise of power.
    3. When a Councillor elected to represent a ward is elected as the Mayor indirectly, often it is difficult to enlarge his/her vision for the whole city.
    4. Also, the direct popular mandate gives the Mayor the legitimacy to represent and speak for the whole city.
    5. If the Mayor is directly elected, the party will have to put up its best candidate in the city from that category and there is likely to be better leadership that emerges.
    6. Role of the Mayor
        1. Should there be a separate Chairperson to chair the meetings of the Council and a Mayor to head the executive branch of the city government?
            - This is in keeping with separation of powers and is somewhat similar to the way our National and State Legislatures have their own presiding officers, while the executive government is headed by the Prime Minister/ Chief Minister.
            - However, such separation of the functions of Chairperson and Mayor at the local level is unnecessary and cumbersome. In all rural local governments, the Chairperson is also the executive authority.
        2. Who should be the Chief Executive - the elected Mayor or the appointed Commissioner?
            - Clearly the elected Mayor because basic democratic legitimacy demands that power is exercised by the elected executive.
        3. In large cities, how should the Mayor's executive authority be exercised?
            - As cities grow larger, the Mayor needs the support and help of a group of persons to exercise executive authority under his overall control and direction. Therefore, some form of cabinet system is desirable.
            - In systems where the chief executive is directly elected, and separation of powers is practised, the cabinet is often drawn from outside the legislature.
            - But in a city government, the imperatives of separation of powers should be tempered by the need for greater harmony between the elected council and

the Mayor. It is therefore desirable to draw the Mayor's cabinet or committee to discharge executive functions from the elected council.

Other Issues with PRIs

Revision of 11th and 12th Schedules

1. Subjects like non-conventional energy, poverty alleviation programmes, education including primary and secondary education, adult education, technical training and vocational education, women and child welfare, family welfare, the public distribution system, libraries, cultural activities which figure in the 11th schedule but not in the 12th can surely be functions for municipalities too.
2. Maybe the two schedules need not be revised, but that the fact that they are not exhaustive and are only illustrative should be recognised.

Strengthening the Voice of Local Bodies

1. Apart from constituting Legislative Councils (where they do not exist), the existing Legislative Councils may be recast as a council for local governments.

Growth of parastatals

1. They are the development authorities, housing boards, slum development agencies and water and sanitation boards. This has also led to a fragmented approach, with a large number of bodies working in isolation.
2. For example,
    1. The most important parastatal at the district level is the District Rural Development Authority (DRDA). The funds for most of the CSS are routed through it. There is no justification for having DRDA.
    2. A district also has a District Health Society (DHS) to look after the programmes of the NRHM. DHS has to be responsible to the PRIs. However, management of district hospitals and regulation of private nursing homes are some of the functions which need high level professional and technical competence. To that extent, the DHS will need functional autonomy.

Capacity Building in Local Bodies

1. Capacity building doesn't mean only training. It also includes organizational development. It means development of supportive institutional and legal framework. It also includes designing appropriate structures, re-engineering internal processes, developing MIS, developing suitable incentive systems and adopting sound HR practices.
2. There is a strong case to indicate separate training funds in various schemes to be implemented by the PRIs.

Accountability and Transparency in PRIs

1. Audit is essential for accountability but it is not sufficient because of the large time lag between the decision making and its scrutiny by audit. Also a large number of audit observations remain unattended due to lack of proper monitoring and follow up.
2. PRIs should be accountable to the state legislature and a separate Committee on Local Bodies can be formed just like the PAC.
3. There should be a local body Ombudsman (independent etc.) functioning under the overall guidance and superintendence of the Lokayukta.
4. Other usual methods are citizen report cards, grievance redressal mechanism, social audits.

Space Technology in PRIs

1. Creating resource centres.
2. Tele-education.
3. Tele-medicine.
4. Single window delivery mechanism for a variety of space-enabled services and products, such as education, vocational training, skill development.
5. Weather and Climate.
6. Disaster management: During the period of natural disasters, it facilitates video-conferencing and real-time information exchange. Space technology is also utilised in flood mapping and damage assessment.
7. Natural resources management: The areas of importance are rural land management, rural infrastructure, conservation of water bodies, groundwater mapping and providing drinking water, wasteland mapping, watershed development.
8. Urban land use data: Remote sensing has provided an important source of data for urban land use mapping. ISRO's CARTOSAT-2 satellite has the capacity to provide imagery with one metre spatial resolution.
9. National Urban Information System: The Ministry of Urban Development (MUD) has taken initiative to establish a 'National Urban Information System' (NUIS). The major objectives of NUIS are to: (a) develop attribute as well as spatial information database for urban planning; (b) develop standards; (c) develop urban indices to determine and monitor the health of the towns and cities.

Resource Centre at the Village Level

1. It will contain information about local resources and local traditional knowledge and will be ICT and Space technology based.
2. It should utilize the potential of educated local youths in documenting and mapping local resources; soil types; drainage pattern; cropping and animal husbandry practices; water resources; land and farm holding; susceptibility to natural disasters, infrastructure. Then it could be suitably incorporated in the national plans.
3. They should also document local traditional knowledge, especially about medicine, natural

resource management and agricultural practices; local arts and crafts; folk memories.

Issues With Local Body Elections

Delimitation of Constituencies

1. Article 243 C of the Constitution provides that "the ratio between the population of the territorial area of a Panchayat at any level and the number of seats in such Panchayat to be filled by election shall be the same throughout the State".
2. While such an explicit provision has not been made in respect of municipalities, basic principles of equity and democratic participation demand that a similar practice should be followed in urban local governments.
3. But in many States, the powers of delimitation of local government constituencies have been retained by the Governments.
4. As a result, in many cases, particularly in urban areas, the SECs have to wait until a delimitation exercise is completed by the State Governments. He is helpless when the delimitation exercise is not completed in time and so the elections are delayed.

Rotation of Reserved Constituencies

1. Rotation Necessary
    1. Given the complexity of reservations in local government and the high proportion of seats reserved (70% and more in certain states), periodic rotation of seats becomes necessary.
2. Rotation not Necessary
    1. Frequent rotation denies to the elected representatives, an opportunity to gain experience and grow in stature.
    2. This is particularly damaging for disadvantaged sections of voters. As a result, while reservations lead to numerical representation, empowerment is sometimes illusory because very often, entrenched local elites tend to nominate proxy candidates in reserved seats in anticipation of its rotation after a term.
3. Balanced Approach
    1. The rotation can be after at least two terms of five years so that there is possibility of longevity of leadership and nurturing of constituencies. However, with multiple reservations this may lead to large sections being denied the opportunity of reservation for a long time.
    2. Second, instead of single-member constituencies, elections can be held to multi-member constituencies. Several seats can be combined in a territorial constituency in a manner that the number of seats allocation for each disadvantaged section remains the same in each election in that constituency.
4. Delays in Reservation Exercise

1. Many States undertake the exercise of enumeration of OBCs in the eleventh hour, delaying reservation and therefore the conduct of elections. So the reservation of constituencies should also be entrusted to SECs.

Separate Electoral Rolls for PRI Elections

1. Preparation of separate electoral rolls for local governments is redundant and can only lead to confusion.
2. Electoral rolls prepared by the Election Commission of India should be adopted for elections to local governments also.

Bringing SECs under ECI

1. Yes - Bring It
    1. Bringing SEC under the control of ECI will give it the required independence from state governments.
    2. This would also ensure a commonality of approach in the electoral process.
2. No - Repeal Art 243K and Amend Art 324
    1. However, one independent constitutional authority cannot function under another constitutional authority.
    2. The only alternative would be to repeal Article 243K and amend Article 324 entrusting local elections to the Election Commission of India.
    3. Article 324 provides for appointment of Regional Election Commissioners. A Regional Commissioner could then be appointed for each State under this provision and it could function as the SEC for local elections.
3. No - Only Strengthen SEC
    1. Against this it has also been argued that, as the number of local bodies is so large, the ECI would hardly have the time to attend to election related matters in respect of local governments.
    2. Now that every State has constituted its SEC, repealing Article 243K and abolishing these offices would be impractical.
    3. So the focus should be on strengthening the independence of the SEC.
        - SEC should be appointed by a collegium comprising the Chief Minister, the Chief Justice of the High Court and the Leader of Opposition.
        - Serving officers should not be appointed. Uniform criteria need to be evolved and institutionalised regarding the qualifications, tenure and age of retirement. Post retirement jobs should not be allowed.
        - SECs should be accorded the status of a Judge of a High Court in the same manner as ECs in the Election Commission of India are accorded the status of Judge of the Supreme Court.

Devolution of Powers

Constitutional Scheme for Devolution

1. The Constitution provides for devolution for the twin purposes of:
    1. Making plans for economic development and social justice.
    2. Implementing programmes of economic development and social justice.

Current Issues in Devolution

1. Constitution and elections
    1. Despite the mandatory constitutional injunctions, it took years, and in some cases a decade, to even constitute local governments and hold elections.
    2. Even when local governments are constituted and elections are held, states often postponed or distorted the subsequent elections on some pretext or other. Recent West Bengal issue is there.
2. Devolution of functions
    1. State governments and civil servants are in general reluctant to effectively empower local governments. Only the bare minimum required to implement the strict letter of the Constitution prevails in many States and the spirit is ignored.
    2. Only minor civic functions have been exclusively assigned to the local self government bodies. All the other so-called development functions assigned to the different tiers of Panchayats are actually dealt with by the line departments of State Governments or parastatals.
    3. Resources as well as staff also remain under the control of the State Government.
    4. Even mandatory provisions like the constitution of DPCs and MPCs have been ignored in many States.
    5. Progress in delineation of functions of the different tiers of local governments in a given subject matter has been very slow.
    6. The exercise of activity mapping continues to be partial and delayed. State governments have generally not approved the activity mapping lists.
    7. Even where activity mapping has been approved, parallel action to enable local governments to exercise the functions has not been taken.
    8. The existing government departments and parastatals prevent the local governments from exercising the so called transferred functions.
    9. All laws which are “inconsistent” with the provisions of PRIs have to be suitably amended to bring them in conformity with the PRI system or repealed or will expire after one year from the 73rd and 74th Amendments. Despite the passage of 15 years since then, most States have not even identified such laws.
3. Interference of state governments
    1. State governments retain their right to supersede a PRI or to veto its resolutions.
    2. Almost all the States have chosen to assign functions to the PRI not through statute, but by delegated legislation in the form of rules or executive orders.

3. Political interference in intervening in transfers, sanctioning of local bodies' contracts and tenders.

Recommendations for Devolution

1. While devolution must eventually comprise the entire range of subjects, States may plan their own devolution programme keeping in mind the ground realities.
2. Identification of activities via activity mapping is essential and each activity needs to be assigned at appropriate level in the PRI system.
3. Principle of subsidiarity should be strictly followed in the activity mapping process.
4. Devolution must be by legislative action and not statutory.

Devolving Regulatory Functions to the Panchayats

1. There are many areas where the rationale for devolving regulatory powers to the local governments is very strong. To begin with tasks like issuing birth, death, caste and residence certificates, enforcing building regulations, issuing of voter identity cards would be better performed by local governments.
2. The Gram Panchayats can play an effective role in community policing. In most of the developed countries, policing is a municipal job and there is no reason why it should not be so in India.

PRIs and the State Government

1. In most states, the state governments retain significant control over PRIs. This includes:
    1. power to suspend a resolution.
    2. Power to inquire into the affairs of the Panchayat.
    3. Power to remove elected Panchayat representatives.
    4. Power to inspect and issue directives.
    5. Withdrawal of powers from the Panchayat.
    6. Approval of the budget of a Panchayat.
2. In some States the higher tier of Panchayat is given the authority to exercise control over the lower tier. This is inappropriate because all the tiers of Panchayats are institutions of self government and there cannot be any hierarchic relationship between them.
3. Maladministration, irregularities, abuse of power are some of the situations which may warrant action against the PRIs. The state government needs such powers in these cases to ensure PRI administration is carried out within the contours of the law. But it is also necessary to ensure that this 'responsibility' does not translate into micromanagement of PRIs.
4. So to prevent actions motivated by narrow political considerations, the State Government should place the case before the local bodies Ombudsman and take action based on his recommendations only. If it decides otherwise, all the reasons must be given in writing and made public.
5. The provisions in some State Acts regarding approval of the budget of a Panchayat by the higher tier or any other State authority should be abolished.
6. Election related complaints should only be decided upon by the SEC.

Need for a Constitutional Directive for Effective Empowerment of PRIs

1. Needed
    1. When it comes to actual devolution, most states have been reluctant. Given this backdrop a strong constitutional provision seems necessary.
    2. The use of the phrase “shall by law vest” as against the existing “may by law endow” by a constitution amendment.
2. Not Needed
    1. The autonomy of states must be respected.
    2. The situation varies from state to state and the uniform approach [one size fits all] could be detrimental.
    3. The matters listed in the Eleventh and Twelfth Schedules could not be fully handled by the local governments and activity mapping is needed because there are several activities in these subjects which are more appropriately done at the state level than the local level. Such detailed prescription is not possible in the Constitution and the states must have the freedom in devolving specific functions to local governments.
3. Balanced Approach
    1. While the constitutional provisions need to be strengthened, it is desirable to lay down general principles of empowerment without unduly restricting the states’ freedom of action.
    2. These principles can be principle of subsidiarity and activity mapping.

Devolution or Delegation?

1. Delegation is the transfer of power for specifically defined functions, without ceding the authority and responsibility in respect of that function. There is discretion on the part of the transferor government in deciding whether or not to delegate power, which powers to delegate, to curtail or withdraw it later. Devolution is the full and permanent transfer of power.
2. If Art 243G and 243W are read to mean delegation, there would be no difference between the pre-amendment and post-amendment position. Such an interpretation defeats the whole purpose of the constitutional amendments.
3. PRIs are defined as 'institutions of self-government', and their constitution is made mandatory. A self government must derive powers from its own authority and the principle of subsidiarity.
4. 'Self Government' and Art 243G and 243W
    1. The term 'self-government' is not defined or explained in the Constitution. States have exploited this constitutional silence, and the use of the word 'may' in Articles 243G and 243W to grant themselves discretion.
    2. These articles are made "subject to the provisions of the Constitution", which could be read to imply that
        1. It cannot be used to curtail the authority of the State to legislate on matters within its competence. But it also means states cannot use their power to erode the purpose of Article 243G/ 243W, namely devolution.
    3. One possible way could be to use the expression "as may be necessary to enable

them [Panchayats/Municipalities] to function as institutions of self-government".

Union Oversight Over PRIs

1. Increase Union Oversight
    1. Many activities of a large municipal body today impact the nation as a whole and may even have international ramifications, such as with international airports.
    2. Funding for district development comes largely from the Centre due to states' lack of resources. CSS have made PRIs even more dependent upon center.
    3. One approach could be that the subject of local governments or certain functions which are directly relevant to all three tiers of government be placed in the Concurrent List.
    4. Indian Constitution vs SAF Constitution on Local Bodies in Concurrent List:
        1. In South Africa, functions listed for concurrent legislation include a vast part of municipal governance matters whereas in the Indian Constitution, this is specifically a State "subject".
        2. The South African Parliament can pass a framework law in any matter to provide for structures and institutions of local government system.
2. Don't Place Local Bodies Under Concurrent List
    1. Constitution places all activities related to PRIs within states' domain. The governance of local bodies cannot be controlled by the Union.
    2. A Framework Law may be passed by Parliament under Article 252 *(power of Parliament to legislate for two or more States by consent and adoption of such legislation by other States)*.
    3. The remaining States may then be persuaded to adopt this law.
    4. This Law should lay down the broad principles of devolution of powers, responsibilities and functions to the local governments and communities, based on the following:
        1. Principle of Subsidiarity.
        2. Democratic Decentralisation.
        3. Delineation of Functions.
        4. Devolution in Real Terms.
        5. Convergence.
        6. Citizen Centricity.

Issues With Local Body Finances

FC 13 on Local Bodies

1. As the Constitutional provisions do not permit sharing of the divisible pool with the local bodies, FC-XIII recommended grants equivalent to a percentage share of the divisible pool (under Art

275). It has supported local bodies through a predictable and buoyant source of revenue by giving them a share in the divisible pool. The Commission has recommended grants equivalent to 2.28% of the divisible pool or Rs. 87, 500 crore. For the first time, FC-XIII has linked grants to local bodies to the divisible pool of Central taxes.

2. The grant recommended by FC-XIII has two components - a basic component and a performance based component.
    1. The basic grant which is equivalent to 1.50% of the pool is available to all the States put together without any conditions.
    2. The performance grant effective from 2011-12 will be 0.50% of the divisible pool for the year 2011-12 and 1% thereafter. The main stipulations are, putting in place a supplement to budget documents listing out the budget allocations separately for local bodies, audit system for local bodies, appointment of an independent ombudsman for local bodies, prescribing through an Act qualification of persons eligible for appointment to SFCs and enabling all local bodies to levy property tax.

Table : Weights Allotted to Criteria to Local Bodies

Criterion	Weights Allotted (%)	
	Panchayati Raj Institutions	Urban Local Bodies
Population	50	50
Area	10	10
Distance from highest per capita sectoral income	10	20
Index of devolution	15	15
SC/ST proportion in the 2001 population	10	—
FC-XII local body grants utilization	5	5
Total	100	100

Tax Base

1. Issues
    1. PRIs lack elastic revenue sources and their taxation bases are meager.
    2. So they are heavily dependent on grants from Union and State Governments. A major portion of the grants both from Union as well as the State Governments is scheme specific.
    3. In view of their own tight fiscal position, State Governments are not keen to devolve funds to Panchayats.
2. Recommendations
    1. In recent years, PPP infrastructure projects have gone up significantly. PRIs should be given a share out of the collections from such projects.
    2. They should also get a share in the minerals royalty. Because in both the cases, local communities are the ones who contribute the most.
    3. CFC and SFC grants should be based on their own revenue generation efforts so that PRIs are incentivised to generate their own revenue.

State's Control over PRI Funding

1. Issues
    1. States retain discretionary control over PRI budgets and often ignore SFC recommendations.
    2. Transfer of funds to PRIs is made under a number of budget heads, often in packets of small allotments. Such a complicated procedure for allocation leads to delays and makes the accounting confusing. This should be simplified.
    3. The state governments do not adhere to a time frame for release of funds to PRIs. Often the allotment is released towards the close of the financial year, leaving very little time to the local bodies to carry out actual work. As a result, often the funds remain undrawn which leads to smaller allocations in subsequent years.
2. Recommendations
    1. The approximate quantum of funds to be transferred for a block of five years should be indicated to the local bodies in advance so that the Panchayats plan accordingly. States should follow SFC recommendations. Funding should be made as rule based as possible.
    2. PRIs should also be allowed to borrow funds.

The State Finance Commission (SFC)

1. Issues
    1. Lack of clarity on SFC's part in respect of role of the local bodies.
    2. Absence of uniform standards and format in various SFC reports.
    3. Absence of a time frame within which the state governments are required to take action on the recommendations of the SFCs.
    4. State governments cherry pick from the SFC's recommendations and don't accept the inconvenient ones.

5. While estimating the resource gap, SFCs normally just make forecasts based on the historical trends.
6. Serious issues with SFC composition.

2. Recommendations
    1. SFCs should be constituted at least 2 years before the required date of submission of their recommendations, and the deadline should be so decided as to allow the State Government at least 6 months time for tabling the ATR. SFC reports should be readily available to the CFC when the latter is constituted so that an assessment of the State's need could be made.
    2. The healthy precedent established by the Union Government in generally accepting the devolution proposals made by the CFC should also be followed by the State Government.
    3. The SFCs follow the procedures and guidelines adopted by the CFC.
    4. SFCs should follow a normative approach in estimating resource gaps. They should link the devolution of funds to the level/quality of civic amenities that the citizens could expect consistent with some uniform standards of service delivery.
    5. SFCs should have people of eminence and competence.They should follow the requirements as for the CFC. Serving bureaucrats should not be appointed.
    6. There should be a permanent SFC cell in the finance department.

Backward Regions Grant Fund

1. It covers 250 backward districts. The fund is intended to provide financial resources for (i) filling of critical gaps as identified by local bodies, (ii) capacity building of PRIs, and (iii) for enlisting professional support by the local bodies.
2. The Panchayats have flexibility in selection of programmes, identification of beneficiaries and monitoring. In all these activities, the Gram Sabha has to be fully involved.

Urban Finances

Property Tax Reforms

1. Issues in Coverage: Only a fraction of the properties in urban areas are assessed for this tax.
    1. The main reason is that the boundaries of municipal bodies are not expanded to keep pace with the urban sprawl.
    2. State laws often provide for exemption to a number of categories of buildings.
    3. Unauthorised settlements are not normally taxed by the municipal authorities for fear that levy of property tax would strengthen the demand for regularisation.
    4. A large number of properties belonging to the Union and State Governments are not taxed. Local Governments provide services to the occupants of such properties and there are costs. Therefore, they should be empowered to collect 'service charges' from such properties.
    5. Similarly, properties belonging to the municipal government which have been given on

lease are not taxed.

6. Records of title of property lead to poor tax collection.

2. Issues in Assessment
    1. Collusion between the assessing authorities and property owners.
    2. Annual Rental Value (ARV) method was used for this tax. It had many drawbacks – the manner of assessment was opaque and gave a lot of discretion to assessing officials.
    3. Another major drawback of ARV was that it was non-buoyant. The tax fixed for a property would remain unchanged till such time an overall revision in the property tax was undertaken. Such revisions did not take place for decades.
    4. Now the municipal bodies are switching over from the traditional ARV based assessment to the 'Unit area' or the 'Capital value' methods. The Unit Area Method overcomes buoyancy problem to some extent as the various parameters for assessment can be changed periodically.
    5. Property tax based on 'capital value' are supposed to overcome this problem totally, as taxes are self-assessed by the property owner every year and while doing so the market value prescribed for that year are taken into account. This is a fraud in India for obvious reasons.

User Charges

1. Issues
    1. There has been a tendency to charge for various services at rates that are much lower than the actual cost. This is because of the reluctance to charge fair rates for fear of becoming unpopular.
    2. Lack of availability of required expertise at the local level prevents them from arriving at correct rates for the utilities.
    3. The power to impose fines is not given to the municipal authorities and proceedings in the court have to be instituted. Thus even for imposition of a small fine, prosecution has to be launched in a criminal court.
    4. Another reason for poor compliance of civic laws is the relatively non-deterrent nature of penalties prescribed.
2. Recommendations
    1. State Finance Commissions should link the grants to the user charges efforts of the municipal bodies. They can also lay down guidelines to arrive at the optimum tariff rates.
    2. Technology must be used to avoid theft and pilferage. Bill payments must be enabled online.

Leveraging Land as a Resource

1. Sale of public urban land is dominated by development authorities. Proceeds from the sale of such land must be given to the municipal bodies as done in Rajasthan where 15% share is given to the municipal bodies.

2. But proceeds from land sales must not be used for covering their recurring costs (and delaying politically difficult decisions on users' charges). They must use the proceeds of land sales mainly to finance investment and capital works.
3. Most municipal bodies have a large number of properties given on rents or lease. However, the earnings out of these properties are quite low due to obvious reasons.

Issues in Decentralised Planning

1. Issues
    1. Decentralised planning has not been institutionalized yet.
        1. A big reason is that many state acts do not contain provisions for preparing development plans at the panchayat level.
    2. Even in States which have such provision, the task is not taken seriously because of the following reasons:
        1. Real devolution of functions has not taken place. In the absence of meaningful devolution, the local bodies cannot be expected to be motivated to take up planning seriously for they would not have control over the implementation.
        2. Lack of untied funds means panchayats have very little money left for their own activities which they may want to include in the plan.
        3. Even the PC had not taken much interest in PRI level planning. The State Planning Boards also failed to encourage it.
    3. Currently, separate 'district plans' are required to be prepared for each of the major CSS.
2. Recommendations
    1. Effective devolution.
    2. Increasing untied funds and reducing tied funds in CSS.
    3. Some CSS are sector specific, such as health or education. It should be made mandatory to include sectoral plans into overall development planning at the local level.

Role of the District Planning Committee

1. Issues
    1. One type of confusion relates to its nature: is it a collection of the Panchayat and Municipal plans? Or a macro-view for realizing synergies is needed? What are the activities which require a macro perspective?
    2. The other type of confusion relates to the domain of planning. Will the district plans consist of only those functions which have been devolved to the local bodies? How should planning be made for the CSS encroaching upon their domain?
    3. Planning is an essential function of government. Creating a separate authority with no

governmental authority has no logic.

4. DPC has up to one-fifth of the total members can be nominated. A nominated member can also be the Chairperson of the DPC. Nomination could be used as a convenient tool available to the ruling party for narrow political considerations. Some States have the system of nominating a minister as head of the Committee, thus converting the DPC into a power centre. This renders DPC weak.

2. Recommendations
    1. Currently, separate 'district plans' are required to be prepared for each of the major CSS. CSS guidelines that entrust the task of district level of planning to parastatals need to be modified to include DPC.
    2. The PC should inform the states that the DPC will be the sole body to plan at the district level. A time frame must be specified for this transition.
    3. Professional support from parastatals, line departments, expert support from outside should be provided to the DPC.
    4. System of nomination in DPCs should be done away with.

MPC vs DPC

1. Metro areas are under MPCs but also include many areas under DPCs. The peri-urban areas under the DPCs are all likely to be urbanised in few years and become closely integrated with the metro area.
2. There are also issues of externalities. Some of the urban facilities have a larger clientele outside its area or a source which is outside its jurisdiction. For example, transportation, source of water supply, areas of landfills.
3. One solution could be that all urban / peri-urban regions falling within metro area would come under one MPC and no DPC for such districts/portions of districts would be constituted. It may also be necessary to have Chairpersons of Panchayats and of the local bodies in the MPCs.

Urban Planning

Specific Issues in Urban Planning

1. Outdated laws: Laws should not be static and must be updated keeping in mind the current realities. So the restrictive laws need to be done away with so that new lands can come on the market at rates commensurate with demand. Currently, outdated and complex laws restrict rather than encourage new land to come under development. This leads to prolification of unauthorized colonies and illegal construction.
2. Issue of parastatals: Parastatals should be merged into local governments eliminating the present conflict between them and local bodies.
3. Lack of plan enforcement: Town Planning is a holistic concept. But in most cities town planning ends with preparation of zoning regulations. The enforcement of these regulations is ignored completely.
4. Corruption: Changes to and waivers from the city development plan are rampant due to

corruption. Once the plan is finalised, no authority should have any discretion to grant any exemption or waiver. It should have a thirty-year perspective to be revised after every ten years through a participative and transparent process.

Peri-urban Areas

1. They are the outskirts of a large urban area, more accurately areas which are outside urban jurisdiction but are in the process of urbanisation and have certain characteristics of urban areas.
2. Such areas are created partly by the influx from the deeper countryside, but also from those in the cities seeking to move out – some migrating from congested areas to larger residences or new industries and some shifting away from expensive city living.
3. Their issues are:
    1. Land use change, from agricultural to residential or industrial.
    2. Changes in the use of natural resources such as water and forestry.
    3. New forms of pollution and waste management.
    4. Creation of infrastructure.
    5. Managing a new cultural ethos.
4. Further, to be able to control untidy sprawls, it is necessary to ensure, that the planning laws applicable to a present city area are also applicable to future areas of the city. It cannot be that a village Panchayat gives permission for a certain type of land use which a few years later would go against the city's land use when that area is absorbed into the city.

Regional Planning Focussing on Corridors and not Cities

1. Corridor based development should be followed to improve access to arterial transport systems, and promote balanced urbanisation and development. DMIC is an example.

Federalism

NAGALAND

- Nagas are agitated over what they perceive as the Centre's "threat" to override the exceptional status they enjoy under Article 371A of the Constitution.
- Earlier, Veerappa Moily, the Union Minister of Petroleum and Natural Gas, asked the Nagaland Legislative Assembly (NLA) to withdraw the Nagaland Petroleum and Natural Gas Regulation, 2012 (NPNGR) that it framed within the ambit of Article 371A.
- Taking a serious note of Mr. Moily's request, the Nagaland government held a consultative meeting with various sections of civil society. The meeting resolved to not only reject Mr. Moily's request but also demand that the GoI implement the unfulfilled clauses of the Sixteen Point Agreement, 1960, and place Nagaland under the Ministry of External Affairs. This may set up a new confrontation with the Central government.
- Mr. Moily's request and the earlier stand taken by Minister of State for Home Affairs, in a response to an unstarred question in the Lok Sabha— that "any resolution" passed by the NLA "seeking to revoke/remove the applicability of a law, the enactment of which lies within the sole domain of Parliament, is *ultra vires*" — was seen by many in Nagaland as a move to betray a negotiated agreement which entrenched Naga exceptionalism in India's federal polity.

BACKGROUND

- The 1960 Agreement laid the basis for the creation of Nagaland in December 1963. Article 371A, which was incorporated as a partial fulfilment of this agreement, facilitated negotiated sovereignty of the Nagas on matters pertaining to their religious and social practices, customary laws and procedure, administration of civil and criminal justice, ownership and transfer of land and resources, as the NLA can make any law of Parliament inapplicable by passing a resolution.
- After obtaining the opinion of legal luminaries, all of whom concurred that "land and its resources" as used in Article 371 A(1)(a)(iv) includes mines and minerals, the NLA passed a resolution in 2010 to the effect that laws made by Parliament on petroleum and natural gas would be inapplicable in Nagaland with retrospective effect.
- Drawing upon its special status, and after extensive legal consultation and advice, the NLA bypassed Entry 53 of List I of the Seventh Schedule and the Mines and Minerals (Regulation and Development) Act, 1957 (MMRDA), which exclusively invests mines and minerals as the "occupied field" of the Union, while framing NPNGR in December 2012.
- It has since suspended all oil operations in the State. Subsequently, it invited "Expressions of Interest" (EoI) from companies to explore and exploit the 11 oil and gas fields it identified across 11 districts of the State early this year.

- What is interesting is the timing of Mr. Moily's request and Mr. Ramachandran's stand which came only after the Ministerial Group, the apex decision making body headed by the Nagaland Chief Minister, reportedly shortlisted seven of the 23 companies which expressed their interest. This is seen by some as an indirect outcome of pressure mounted on GoI by disgruntled oil lobbies which are losing out in the bidding process.

PROCEDURAL ISSUES

- Yet, NPNGR raises a host of procedural issues which need immediate attention. Among the many, four may be identified.
- Firstly, NPNGR and the NLA's July 2010 resolution did not expressly state their intent to take away the rights vested in oil companies while suspending their operations in the State.
- Secondly, by requiring that only prospective companies "which have faith in the Naga customs and culture" could be granted land lease, a procedural complexity is embedded into the system because Naga customs and culture are not always neatly defined, and differ widely across tribes.
- Thirdly, by simultaneously recognising that land and its resources belong to three types of Naga landholders in perpetuity, viz., individuals, village bodies and the State, it may set apace a complicated lease negotiation process.
- Lastly, even though the State wields *de jure* power to make law and regulate "ownership and transfer of land and its resources," the emerging political process shows that *de facto* power is wielded by a melange of tribal bodies and Naga civil society. The inclusion of the presidents of Naga *hoho* and ENPO (Eastern Naga People's Organisation) as permanent invitees in the apex decision-making body clearly indicates this. Even as the State gives in to societal pressure, its "infrastructural power" would considerably get compromised.

WAY FORWARD

- These procedural problems are not insurmountable and need not subvert the substantive rights that the Nagas enjoy under Article 371A. However, given that the Article stems from a Centralist federal framework, there is a pertinent fear that the Central government may erode these rights in ways it did to the autonomy of Jammu and Kashmir.
- Although the creation of Nagaland was considered "outlandish" and spawned the creation of perpetually dependent homeland States in the northeast in the 1970s and 1980s, large-scale discovery of petroleum and natural gas would fundamentally redefine the politics of redistribution between the Union and Nagaland, on the one hand, and individuals and tribal groups in the State, on the other.
- This would also offset the preferential funding regime that Nagaland currently enjoys. Given the sensitivity of the Naga issue, political prudence demands that future engagement need not always be driven by legal correctness as the Sarkaria Commission report had already noted in a different context.
- A political willingness to accommodate and entrench this Naga exceptionalism not as an anomaly but as a model of accommodating deep differences would hold the future key. This would inevitably take Article 371A to new constitutional waters.

Federalism and Innovation

1. Culturally, India was always one country through all of history. Politically however, we were, more often than not, divided. And that political division was our competitive strength, for it encouraged innovation.
2. Our political divisions allowed our innovators and free thinkers to have options. If the Palas didn't like your ideas, you could go to the Cholas. If the Tuluvas of Vijaynagar didn't like your thoughts, you could go to the Bahmani Sultans. Since we were culturally one country, travel was easy.
3. So can we argue the opposite? Does centralisation harm innovation? More often than not, yes, it does. A Chinese emperor, who ruled all of China with an iron hand, banned maritime

activities. Nobody in China dared to rebel against the anti-innovation decision of the emperor. The long-term impact was that it wasn't Chinese ships that colonised the world, but European ones. Rejection of the Gutenberg press by Emperor Akbar is another example.

4. But decentralization brings about wars and chaos. Thankfully due to our democratic model today, we have learnt to manage it. Hence decentralization is the direction we should move in.

Cooperative Federalism in India

Different Concepts of Federalism

1. Unilateral Federalism: Federal government, by and large directs provincial policy, usually through conditional funding. Thus, the model's major weakness is that it infringes upon jurisdictional autonomy. On the other hand, the model is considered the most effective for national programs, better coordination, minimum overlap between policies, and advantages of economies of scale.
2. Collaborative Federalism: Here the federal and provincial governments work collaboratively to attain policy goals, and there is no coercion on part of the federal government.
3. Cooperative Federalism: It describes a system of federalism where there needs to be cooperation between levels of government to get things done in the system. The Federal Government does not deliver health services but does provide the regulatory framework within which the regional governments provide health care.

Concept

1. It is "the practice of administrative co-operation between general and regional governments, the partial dependence of regional governments upon payments from the general governments, and the fact that general governments, by the use of conditional grants, frequently promote developments in matters which are constitutionally assigned to the regions." It is characterized by increasing interdependence of federal and regional governments, a development that does not destroy the federal principle.
2. Center state balance: Article 3 of the Constitution, the exclusive power to form federal units. However, any legislative proposal in this regard cannot be introduced without obtaining prior Presidential (i.e., Central Government) sanction, which, in turn, must ascertain the views of the affected States before approving the introduction of such a bill in the Parliament. In practice it is rarely possible for the Parliament to ignore the views of the States.

Constitutional Provisions

1. Intergovernmental delegation of powers (Articles 258, 258A).
2. Directives given by the Centre to the States (Articles 256, 257).
3. All India Services (Article 312).
4. Inter-State Council (Article 263

Evolution in India

1. It was expected that, over a period, cooperative federalism will take roots in India given our constitutional machinery setup. However, political developments, particularly in the post-1967 period somewhat belied these expectations. States allege that systematic maneuvers were being put to practice by the Union Government for centralization, which caused political distortions and federal tensions.
2. With the Congress obtaining near two-thirds majority in the 1972 Parliamentary Elections, reaping on the success of the Bangladesh liberation war, the federal government started arguing the case for a 'strong centre' not only to serve the interests of balanced development but also to safeguard the unity and integrity of the country. The Central government adopted increasingly interventionist practices in the States. Office of the Governor and Emergency provisions provided in the Constitution, particularly those of Article 356, were used to keep and maintain Union's pre-eminence.
3. The imposition of emergency and the passage of 42nd Amendment only added to the demand by the States for greater devolution of powers. There were, therefore, concerted efforts during this period by non Congress parties to demand for State autonomy vigorously.

Present Situation

1. <u>Security</u>
    1. There is a clear need to further strengthen the Union when it comes to the security question including internal.
    2. However the tilt in favor of the Union has increasingly accentuated over the years even outside the security needs and it is felt in legislative, administrative and financial matters.
2. <u>Administrative</u>
    1. A large number of regulatory bodies (UGC, AICTE, NCERT, ICSSR, ICAR etc.) have in effect restricted state governments' powers on education. They are often justified by the need for co-ordinated and planned development of education, but this claim can apply to practically every field of governance.
    2. In NREGA, the Parliament has prescribed the role to be played by the PRIs and not left it open to the State Governments to determine the nature and scope of that role.
3. <u>Financial</u>
    1. The problem today is significant transfers are taking place through mechanisms not envisaged by the Constitution. Allegations of political considerations have vitiated Centre-State relations.
    2. The available scheme of fiscal transfers, though asymmetric, does provide a just and equitable framework for fiscal federalism. The problem is when distortions occur in fiscal

arrangements due to politics in devolution, particularly through non-Constitutional channels. The challenge of placing fiscal transfers in a transparent and rule-based framework is indeed of great priority.

3. Perhaps there is a case to make the Finance Commission to be a permanent body with a regular Secretariat and allow State participation in its Constitution and in formulation of terms of reference.

Legislative Supremacy of Union

1. Power of Parliament to legislate in national interest under a Resolution of the Upper House (Article 249).
2. Power of Parliament to legislate during operation of Emergency (Article 250).
3. Parliament's power to legislate with the consent of States (Article 252).
4. Legislation for giving effect to international treaties and agreements (Article 253).
5. Power to legislate in case of failure of Constitutional machinery in States(Article 356).
6. Power of Governor to reserve any Bill passed by the State Assembly for consideration of the President, sometimes for an indefinite period!

Executive Supremacy of the Union

1. Article 257(1) says that the executive power of the State shall be so exercised as not to impede the executive power of the Union. The Centre is empowered to give directions to States in this regard. If directions are not complied, emergency provisions may be invoked by the Centre.

Federal Conflict Management Bodies

1. Art 263: The Inter-State Council is supposed to be a body for intergovernmental consultation and co-operation. But it has not been given the powers to inquire and advise on disputes between States. It can only discuss subjects of common interest and make recommendations. It meets rarely and has not been able to work to its full potential.
2. Art 262: It provides for the resolution of inter-state water disputes which also failed to contain many disputes which reached it despite repeated hearings and decisions.

Coalition Politics - Is it a Problem?

1. Coalition politics has emerged as the product of conscious electoral choices made by the people. It would be incorrect to assert that such conscious democratic choices have been entirely without logic or reason.
2. It indicates that the existing political parties must have been perceived to have failed in addressing the unique problems of several regions of the country. These electoral choices actually go some way towards making the Central and State Governments more accountable.
3. Very often these regional parties have been resorting to sectarian identities and appeals as the means of mobilization. This development may appear to be a threat.
    1. But unity in diversity actually calls for the preservation and celebration of diverse identities.
    2. As long as all political parties express full faith in the Constitution of India, the danger of the unity of the nation being called into question does not really exist.
    3. True, at times it may appear that some political parties or forces are stretching the political

fabric a bit too much. This is an inevitable part of the political growth process. The solution to the problems ultimately lies in the political realm, rather than legal or constitutional systems.

Sarkaria Commission

Recommendations

1. Constitution of Inter- State Council (Art 263).
2. Strengthening of the Local-self Governing Bodies.
3. Governor
    1. It laid down guiding principles for the Governors in choosing Chief Ministers.
    2. The Commission recommended that in order to ensure effective consultation with the State Chief Minister in selection of a person to be appointed as Governor, the procedure of consultation should be prescribed in the Constitution itself by suitably amending Article 155. The government has not agreed to it and merely said it can be adopted as a convention.
4. Prior consultation with the States, individually and collectively, in respect of overlapping and concurrent jurisdictions, should be adhered to, except in rare and exceptional cases.
5. Ordinarily, the Union should occupy only that much field of a concurrent subject on which uniformity of policy and action is essential in the larger interest of the Nation, leaving the rest and the details for action by the States within the broader framework of the policy laid down in the Union law.
6. Article 356 should be used very sparingly, in extreme cases and only as a matter of last resort.
7. Net proceeds of corporation tax may be made shareable with the States.

Puncchi Commission

Needs to Review Central - State Relations Since Sarkaria Commission

1. Coalition governments at centre.
2. Economic reforms have changed centre - state relations.
3. Internal security challenges.
4. PRIs.
5. Sarkaria Commission did not consider the issue of international treaties in detail as treaties played a minimal role in law making at that time. Subsequently, however, with the advent of the World Trade Organization, and Indo-US Nuclear Deal, questions arise as to whether the power to enter into treaties and create international law should vest entirely with the Union without any necessary approval from either Parliament or the States.

Inter State Council (Art 263)

Composition

1. It consists of 6 union ministers (PM + HM + law + roadways + railways + agriculture + finance) and CMs of all states/UTs.

Important Recommendations of the Council

1. Transfer of 'residuary powers' from the Union to the Concurrent List (Not Accepted).
2. Prior consultation with States, except in cases of urgency, for legislations under List-III. (Accepted in principle).
3. Enactment of a central legislation to allow urban local bodies to tax Union Government properties. (Under consideration).
4. Articles 200 and 201 of the Constitution should be amended laying down time limits of 1 month for Governor and 4 months for the President respectively for assenting to Bills, failing which the Bill would be deemed to have been passed. (Not accepted).
5. Obligatory consultations with State Chief Ministers before appointing Governors. (Not accepted).
6. Governors not returning to active politics except seeking election as President or Vice President. (Not accepted).
7. While choosing a Chief Minister, the leader of the party having an absolute majority in the Assembly should automatically be asked to become the Chief Minister and if there is no such party, the Governor must select a Chief Minister from among the parties or groups in the following order of preference:
    1. An alliance of parties that was formed prior to the elections.
    2. The largest single party staking its claim with the support of others, including "independents".
    3. A post-electoral coalition of parties, with the partners joining government.
    4. A post-electoral alliance of parties with some of the alliance-parties joining the government and the remaining parties including "independents" supporting the government from outside. (Accepted).
8. 80th Amendment Act, 2000.
9. Early revision of the royalty rates on coal. (Implemented).

Issues

1. The Council is supposed to be a body for intergovernmental consultation and co-operation. But it has not been given the powers to inquire and advise on disputes between States. It can only discuss subjects of common interest and make recommendations.
2. It meets rarely and has not been able to work to its full potential. It was created in 1988 but

met for the first time in 1996.

Recommendations

1. Centre - state relations
    1. All major non-financial issues involving Centre-State relations must be placed before it.
    2. It should also be given the power to inquire and advise upon the disputes between States.
2. Concurrent / overlapping jurisdictions
    1. It should be given a continuing auditing role in such matters.
    2. Comments of the Inter-State Council should accompany a concurrent list Bill when it is introduced in Parliament.
    3. Any matters of transferring subjects out of List 2 into List 3 should be referred to the Council for its recommendations.
3. Functioning
    1. The Council may use a mechanism like a Committee of State Ministers to thrash out contentious issues.
    2. Meetings must be convened at least twice a year. The agenda of the meetings should be specific instead of general addresses by CMs. The agenda of the meeting should be prepared in consultation with the States and circulated well in advance. Pre-meeting exchange of notes should also take place.
    3. The Secretariat of the council should have better representation from the States.
    4. The Council should have expert advisory bodies and quasi - judicial support.

Importance of Council - Primary Education Issue

1. The conferences of Chief Ministers and Education Ministers were found to be an inadequate mechanism. Even the NDC couldn't work out a cohesive policy acceptable to all states. The strategy of an Empowered Committee of States Ministers was not invoked in this case.
2. The issue was not merely sharing of financial burden, though that was an important one. The main issue was that though the principal actors are to be the state governments, the way the process is perceived gives the impression that it is the Union's baby. This reduces the ownership and willingness of the states.
3. It is in such issues that the Inter-State Council can play a very important role and can lead to make or break of vital national programmes.

Should the decisions of the Inter-State Council be made legally binding?

1. It is not in consonance with the constitutional scheme of the separation of powers. Whatever powers are within the respective domains of the Centre and State Governments are - constitutionally speaking - theirs to exercise as they deem fit.
2. Furthermore, both the Central Government as well as State Governments are elected democratically, and are ultimately responsible for their decisions through the electoral process.
3. Utility of the council
    1. The Council is an extremely useful mechanism for consensus-building and voluntary

settlement of disputes. Co-operative federalism is easily endorsed but difficult to practice without adequate means of consultation at all levels of government.

The Zonal Councils

1. They were established after 1956 to look into:
    1. Any matter of common interest in the field of planning.
    2. Any matter concerning border disputes, linguistic minorities or inter-State transport.
    3. Any matter connected with, or arising out of, the re-organisation of States.
2. These Councils consist of a Union Minister nominated by the President who acts as the Chairman and the Chief Ministers of States in the region along with two Ministers each from the member-States, nominated by the Governor as members.
3. The Council is aided by a number of 'Advisers' i.e Chief Secretary and one Officer of each of the member-States and an official nominated by the Planning Commission.
4. In the years immediately following the States' reorganisation, the Zonal Councils were very active and helped resolve many issues. Over time however, the Zonal Councils met only occasionally. The Secretariats have ceased to be operational.
5. They should be abolished now as they have served the purpose.

NDC and Planning Commission

1. Frequent meetings of NDC should be held (at least two meetings in a year).
2. These bodies have functioned almost as an extension of the Union Government or its agencies. They are created through an executive or administrative order of the Union Government and therefore perceive themselves as Union appointees.
3. At present the Members and Experts of the Planning Commission are all nominated by the Union Government. Representation needs to be given to states in the Planning Commission.

Legislative Issues in Centre - State Relations

Transfer More Subjects to State List

1. The case for centralization which existed at the time of framing the Constitution does not exist anymore and what is needed now is a conscious policy for strengthening the States by enriching the State List and following the principle of "Subsidiarity".
2. Sarkaria Commission recommended
    1. In matters of concurrent or overlapping jurisdiction, a process of mutual consultation should be followed. It must be evolved as a convention.
    2. Ordinarily, the Union should occupy only that much field of a concurrent subject on which uniformity of policy and action is essential in the larger interest of the nation leaving the rest for State action within the broad framework of the policy laid down by

the Union Law.

3. Whenever the Union proposes to legislate on a matter in the Concurrent List, there should be prior consultation. A summary of the views of the State Governments and the comments of the Inter-State Council should accompany the Bill when it is introduced in Parliament.
4. Residuary powers excepting matters relating to taxation, should be placed in the Concurrent List.

Transfer of Subjects from States List to Concurrent List

1. Once a subject has been transferred so, there should be a joint institutional mechanism to review its administration under the Central law to see whether it has achieved its objectives and whether it is desirable to continue the arrangement.
2. If the findings are not positive it should be restored to its original position in State List.

Equal Representation of States in the Rajya Sabha

1. Yes
    1. Since the Lok Sabha is directly linked to the population, delinking the relation between population and number of seats in the Rajya Sabha would only create a balance of power between states.
    2. A Resolution under Article 249 which lacks the support of almost two-thirds of the total number of states can possibly get passed with the support of nominated members if it is pushed by the larger states. This seems more so in the case of growing regional parties and coalition politics. A coalition of parties ruling the major states can dominate RS.
2. No
    1. The Sarkaria Commission was not in favor as:
        1. The Rajya Sabha doesn't exclusively represent the federal principle except when exercising the special powers under Articles 249 and 312.
        2. The purpose of having nominated members also made it clear that the Rajya Sabha was not envisaged to function like a federal chamber only.
        3. It also has legislative function to prevent hasty legislation.
        4. It also has the function to bring elders who would not be interested in active politics. The object of RS as envisaged was to hold dignified debates and to share the experience of seasoned persons.
    2. The greatest opponents of such a change would be those states that enjoy larger number of representatives in the Rajya Sabha. This would defeat the amendment bill.
    3. States of the Indian Union were not independent entities having pre-existing rights or powers anterior to or apart from the Constitution like in US.
    4. The 2/3rd majority argument seems weak in practice because members in RS vote along party lines. Second Chambers are increasingly becoming 'national' institutions rather than representing states. However, this is weakened by the growing regional parties and coalition politics.

Domicile Requirement in Rajya Sabha

1. The law as it stood before The Representation of People (Amendment) Act, 2003, had prescribed that one of the qualifications to become the representative of a particular state in the Rajya Sabha was being an elector of a Parliamentary constituency in that State.
2. However, the court observed that the Upper House already includes nominated members who have no state linkages.
3. The object of RS as envisaged was to hold dignified debates and to share the experience of seasoned persons. From this premise the Court concluded that residence was never a constitutional requirement.

Bills Reserved for President's Consideration (Art 200, Art 201)

1. The Governor is supposed to act as soon as possible after a bill is presented to him. In case he refers it to the president, however, the president is under no compulsion to "act as soon as possible after presentation". This means that a state bill can be blocked indefinitely.
2. Allowing the democratic will of the State Legislature to be thwarted by Executive fiat is questionable in the context of 'basic features' of the Constitution. Therefore the President should be given 6 months to decide and Art 201 needs to be amended.
3. If the President, for any reason, is unable to give his assent, it may be desirable for the President to make a reference to the Supreme Court under Article 143 for an opinion before finally making up his mind on the issue.

Treaty Making Power of the Union

Should Parliament's Ratification be Made Mandatory?

1. Constitutional position
    1. Art 73 allows the executive to enter into international treaties.
    2. Art 253 provides that notwithstanding any distribution of legislative power, the Parliament has the power to enact legislations to give effect to treaties and international agreements.
    3. Though the Parliament is vested with the power to enact laws in relation to the entering into and negotiation of treaties, no law in this regard has been enacted till date. Therefore, Parliamentary approval for every treaty is not the norm.
2. Court judgments
    1. The power to enter into treaties and implement them is comprehensive and unqualified, but courts can impose restrictions on this power. A treaty, for instance, cannot make provisions which would, in effect, amend the basic features of the Constitution, for it could not have been intended that a power conferred by the Constitution would, without an amendment to the Constitution, destroy the

Constitution.

2. Supreme Court declared in Vishakha that citizens can seek relief in courts on the basis of international treaties if the country has ratified them and they are not inconsistent with the law and constitutional provisions.

3. No, not needed
    1. Where parliamentary approval is required, it has led to certain complications. e.g. US Senate and Treaty of Versailles. In Indian case, treaties between India and Nepal on harnessing water resources of Mahakali and other rivers and the other with Bangladesh on sharing of the Ganga waters would not have been possible had these agreements been submitted to Parliament for ratification - particularly the treaty with Bangladesh as it would have been extremely difficult to obtain such ratification. One of the reasons for the success of European Union and ASEAN is that the decision makers were by and large free to take decisions.
    2. At the same time, the Parliament should not be kept in dark or that the authority of the Parliament should be denied. Thus any WTO Agreements, signed and ratified by the GoI can be implemented only by Parliament by making a law.
    3. In view of the fact that treaties may relate to all types of issues within or outside the States' concern, there cannot be a uniform procedure for exercise of the power. Furthermore, since treaty making involves complex, prolonged, multi-level negotiations wherein adjustments, compromises and give and take arrangements, it is not possible to bind down the negotiating team with all the details.
    4. Under our system of parliamentary government, executive has to render continuous accountability to Parliament anyways.
4. Yes, needed
    1. It is well within the competence of parliament to regulate treaty making power of GoI.
    2. In a democracy like ours, there is no room for non-accountability.
    3. Fundamentals of democracy
        1. Article 73 states that,'---the executive power of the Union shall extend to the matters with respect to which Parliament has powers to make laws.
        2. It also means that the Union Government cannot exercise its executive powers beyond the legislative powers of the Union.
        3. Under this Art, there is an underlying assumption that, before the Union Government exercises its executive power, there is a law enacted by Parliament on the subject concerned.
        4. Some argue that the provisions of Article 73 give power to the Executive to act on subjects within the jurisdiction of Parliament, even if Parliament does not make a law on those subjects.
        5. But this is a distortion of Parliament's supreme control over the Executive. If this interpretation is accepted then the Union Executive can act on all subjects on which Parliament has to make law, without there being any law made by Parliament. You

can thus do away with Parliament and Parliament's duties to make laws. We will then have an autocratic government.

6. Democracy presumes there should be a rule of law and all Executive actions will be supported by law and that there shall be no arbitrary action by any authority, including the Union Executive.

5. Recommendations
    1. Parliament should make a law to regulate the treaty-making power of the GoI.
        1. The law must clearly delineate the exercise of this power. In particular, it must provide for clear and meaningful involvement of Parliament in treaty-making.
        2. There can be a committee of parliament which must decide within 4 weeks whether the treaty should be allowed to be signed by the Executive without referring the matter for consideration to Parliament or whether it should be referred to Parliament for consideration.
        3. It should categorize the treaties into: (a) those that the executive can negotiate and conclude on its own and then place before Parliament by way of information. In this category may be included simple bilateral treaties and agreements which do not affect the economy or the rights of the citizens. (b) those treaties which the executive can negotiate and sign but shall not ratify until they are approved by the Parliament. (c) important, multi-lateral treaties concerning trade, services, investment, etc. (e.g. WTO, Indo-US nuclear deal), where the Parliament must be involved even at the stage of negotiation.
        4. If necessary, a time frame could be prescribed for Parliament to take a decision on the treaties, failing which it would be deemed to have been ratified.

Should States be Consulted in Treaties Which Affect Them?

1. Present mechanisms
    1. The States can consult through the Inter-State Council on all issues including treaties as it has a mandate which includes investigating and discussing subjects in which some or all of the States or the Union and one or more of the States, have a common interest.
    2. With regard to WTO negotiations, presently the Department of Commerce does have periodic meetings with state governments both to sensitize them on the progress of the negotiations and the issues under consideration as also to take on board their suggestions. These meetings have to be made more explicit and formal.
2. Issues
    1. The area of legislative competence of States is being eroded indirectly by the centre entering into treaties with other countries. Hence effective consultation with states is needed before adopting an international convention in respect of matters in the State List.
    2. If a treaty entered into by the Union Government casts obligations on the State

Government, then under such circumstances, the Union Government should provide the necessary funds and other assistance to implement the treaty.

3. Recommendations
    1. Treaties which affect the rights and obligations of citizens as well as affect subjects in State List should be negotiated with greater involvement of States. This can assume a twofold procedure. Firstly, a note on the subject of the proposed treaty and the national interests involved may be prepared by the concerned Union Ministry and circulated to States for their views and suggestions to brief the negotiating team. Secondly, an "Empowered Committee" of concerned Ministers of States and the Centre be asked to study the provisions of the agreement and recommend to Government to ratify the treaty in whole or conditionally with reservations on certain provisions.
    2. There may be treaties or agreements which, when implemented, put obligations on particular States affecting its financial and administrative capacities. In such situations, the Centre should compensate the states. Financial implications on State finances arising out of treaties should be a permanent term of reference to the Finance Commissions.

Governor and Centre - State Relations

Governor's Immunity

1. Article 361 states that neither the President nor the Governor can be sued for executive actions. Even where the Governor's bonafide is in question while exercising his discretionary powers, he cannot be called to enter upon defense. This should be done away with in discretionary cases.

Politicization of Governors - Appointment and Removal

1. The Union Government's stand however is that if a party came to power with a social and economic agenda and if it was found that the Governor was not in sync with it but would rather be antithetical to its policies, then the Governor could be removed. This is the basis of the 'pleasure doctrine'.
2. The Sarkaria Commission recommended that a person to be appointed as a Governor should satisfy the following criteria:-
    1. He should be eminent in some walk of life.
    2. He should be a person from outside the State.
    3. He should be a person who has not taken too great a part in politics generally and particularly in the recent past
3. The words and phrases like "eminent", "detached figure", "not taken active part in politics" are susceptible to varying interpretations and parties in power at the Centre seem to have given

scant attention to such criteria. The result has been politicization of Governorship and sometimes people unworthy of holding such high Constitutional positions are getting appointed.

4. The Centre should adopt strict guidelines as recommended in the Sarkaria report and follow its mandate in letter and spirit. Appointment of the Governor should be entrusted to a committee.
5. The Governor, on demitting his office, should not be eligible for any other appointment except for a second term as Governor, or Vice-President or President. Such a convention should also require that after quitting or laying down his office, the Governor shall not return to active partisan politics.

Should Governor be Impeached like Judges?

1. No. Because the Governor's role has a heavy political content and discretion and it is not possible to lay down a set of concrete standards and norms with reference to which a specific charge against a Governor may be examined.
2. Governors should be given a fixed tenure of 5 years and their removal should not be at the sweet will of the centre. Only in exceptional circumstances, he may be removed after being given a reasonable opportunity.
3. In case of such termination or resignation, the Government should lay before Parliament a statement explaining the circumstances leading to the removal.

Discretionary Powers of the Governor - Consideration of a Bill

1. Prescribe a time-limit - say a period of 3 months - within which the Governor should take a decision whether to grant assent or to reserve it for the consideration of the President.
2. Delete the words "or that he withholds assent therefrom". In other words, the power to withhold assent, conferred upon the Governor, by Article 200 should be done away with.
3. If the Bill is reserved for the consideration of the President, there should be a time-limit, say of three months, within which the President should take a decision whether to accord his assent or to direct the Governor to return it to the State Legislature or to seek the opinion of the Supreme Court regarding the constitutionality of the Act under Article 143.
4. When the State Legislature reconsiders and passes the Bill (with or without amendments) after it is returned by the Governor pursuant to the direction of the President, the President should be bound to grant his assent.
5. To provide that a "Money Bill" cannot be reserved by the Governor for the consideration of the President.
6. It may be more advisable to delete altogether the words in Article 200 empowering the Governor to reserve a Bill for the consideration of the President except in the case where the Constitution requires him to do so.

Coalition Government and Defections of Parties

1. A pre-election coalition should be treated as one political party for the purpose of the Tenth Schedule to the Constitution of India (law relating to defections).

Sanction of the Governor for Prosecution of Ministers

1. The question which arises is whether a Governor can act in his discretion and against the advice of the Council of Ministers in a matter of grant of sanction for prosecution of

Ministers for offences under the Prevention of Corruption Act.

2. In such situation there bias is inherent in the advice of the Council of Ministers. If the Governor doesn't act in his own discretion there would be a complete breakdown of the rule of law.

Ad Hoc Reports from the Governor to the President

1. Fortnightly report
    1. Each Governor sends to the President every fortnight a report on important developments that have taken place in the administration of the State.
    2. The practice generally followed is to send a copy of this report to the Chief Minister. These reports should create mutual trust between the Governor and the Chief Minister. It should therefore be made obligatory for the Governor to make a copy of the fortnightly report available to the Chief Minister.
2. Ad Hoc Reports
    1. The Governor may be obliged to report to the President some important developments together with his own assessment of them.
    2. He may consider it inadvisable to endorse a copy of such a report to the Chief Minister. For the same reason above, while sending these ah-hoc or fortnightly reports the Governor should normally take his Chief Minister into confidence, unless there are over-riding reasons to the contrary.

Emergency Provisions and Centre - State Relations

Art 355

1. Article 355 imposes an obligation upon the Union "to protect every State against external aggression and internal disturbance and to ensure that the government of every State is carried on in accordance with the provisions of this Constitution".
2. The Constitution does not further elaborate on how this duty of the Union is to be discharged. This is left to the discretion and judgment of the Union. Thus Article 355 not only imposes a duty on the Union but also grants it, by necessary implication, the power of doing all such acts and employing such means as are essentially and reasonably necessary for the effective performance of that duty.
3. However, it may be noted that the Constitution does not, under Article 355, permit suspension of fundamental rights or change in the scheme of distribution of mutually exclusive powers with respect to matters in List I and List II. Except to the extent of the use of the forces of the Union in a situation of violent upheaval or disturbance in a State, the other constitutional provisions governing Union-State relationships continue as before.
4. Unless a National Emergency is proclaimed under Article 352, or powers of the State

Government are suspended under Article 356, the Union Government cannot assume sole responsibility for quelling such an internal disturbance in a State to the exclusion of the State authorities charged with the maintenance of public order.

Local Emergency

1. It can be imposed within the territory of a state in cases of widespread violence, or a large scale natural disaster and which, in the opinion of the Union, a) is beyond the means of the State to control and/or; b) the State is unwilling to control or react to.
2. Needed
    1. State Government can continue to function and the Legislative Assembly would not have to be dissolved.
    2. Response of the Central Government would be issue specific and the Central Government would have to exit the moment the situation is back under control. Examples are Gujarat riots, Kosi floods.
    3. It would also reduce the temptation of the Centre to misuse the emergency provisions in Article 352 and Article 356.
    4. Art 355 casts specific duty on the Union. This will simply be codifying how the duty can be discharged. Given the strict parameters now set for invoking the emergency provisions under Articles 352 and 356, exercise of duty under Article 355 should be codified.
3. Not needed
    1. There are other existing provisions like the Disturbed Areas Act.
    2. It will lead to undermining of federal system.

Framework Law for Exercise of Power Under Article 355

1. Parameters which constitute 'internal disturbance' should be objectively defined.
2. Paramount Responsibility with the State: It must entrust the first and paramount responsibility of tackling any such situation to the State Government.
3. Situations in which the Union can Intervene: The Union can intervene only when the crisis is occurring to an extent that the State is incapable of or unwilling to tackle the situation. Parliamentary approval must be sought.
4. Other usual safeguards should apply.

Power of Union to give Direction to States

Constitutional Provisions

1. Art 256: The executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and the executive power of the Union shall extend to the giving of

such directions to a State as necessary for that purpose.

2. Art 257(1): The executive power of every State shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union, and the executive power of the Union shall extend to the giving of such directions to a State as necessary for that purpose.

Issues

1. It is axiomatic that the power to enact legislation would be entirely meaningless without the power to enforce such valid law, and that is the mandate of Article 256. As such, it is difficult to accept the argument of states that Article 256 is destructive of the principles of federalism.

Judiciary and Centre - State Relations

Do we need an All-India Judicial Service?

1. India has a unified judiciary. Central and State laws are enforced and interpreted by the same set of Courts. This makes the constitution of an All India Judicial Service, as envisaged under Article 312 itself, a very natural phenomenon.
2. The judicial responsibilities that would be performed by a Judge in one State would be substantially the same as in any other State. There would, evidently, be laws enacted in a given State that do not exist in other States, and it is possible that certain types of legal disputes tend to arise more in one State than another for historical, geographical or cultural reasons. Nevertheless, the bulk of the civil and criminal litigation that would be adjudicated would be very similar in any part of the country.
3. Creation of such an All India judicial service, if accompanied by at least reasonably good remuneration being offered to recruits, would go at least some way towards attracting the best legal talent in the country to the Judiciary, at a young age.

Subordinate Courts

1. In 1976, the subject of subordinate courts was brought into the Concurrent List. But practically, nothing has been done by the Union Government by way of financial support to the Subordinate Courts.
2. Art 247 provides that Parliament may by law, provide for the establishment of any additional courts. The parliament has not made any law so far on it.
3. Art 73 states that the Executive power of the Union will not extend to a subject in the Concurrent List unless such executive power is conferred by the Constitution or by law made by the Parliament. And the parliament has not made any law on the matter so far.
4. So the States blame the Centre for not providing adequate funds and the Centre seem to think it is not part of its responsibility to support the subordinate courts.
    1. The Central Government has not established sufficient number of courts for administering Central Laws and the entire burden of administering the central laws has been thrown

upon the courts established by the State Governments.
    2. The present practice on the part of Union Ministries while presenting any Bills is to say that the expenditure on the Courts will be borne by the State Governments.
5. If the scheme of division of powers is analyzed, it becomes obvious that the expenditure on the Subordinate Courts where Parliament legislates on subjects in List I should be borne by the Union Government, whereas for laws made by the State Legislature on subjects in List II, such expenditure should be borne by the State Government. On legislation in respect of subjects in List III is concerned the natural conclusion would be that if the legislation is brought in by the Parliament such expenditure must be borne by the Union Government and where such legislation is brought in by the State legislature, such expenditure must be borne by the State Governments.
6. As a general principle, it is argued, that under the doctrine of separation of powers, it is not open to any one of the three branches to underestimate the legitimate needs of the other branches so as to make it difficult for those branches to discharge their Constitutional obligations satisfactorily.

Financial Issues and Centre - State Relations

Constitutional Provisions

1. All the taxes in the Union List for a part of the sharable pool with the exception of:
    1. Those referred to in Articles 268 and 269. Article 268 refers to duties levied by the Union but collected and appropriated by the States. Under Article 269, taxes on the sale of goods and taxes on the consignment of goods shall be collected by the Government of India but shall be assigned to States.
    2. Surcharges referred to in Article 271.
    3. Any cesses levied for specific purposes.
2. Article 275 (1) provides for grants-in-aid as Parliament may determine. These grants can be dispense only on the recommendations of the FC.
3. Under Article 282, the Union can make any grants. Unlike the grants under Article 275 which need FC recommendation, grants under Article 282 can be made with no such restriction.
4. Clause (2) of Article 293 imposes the condition that a State may not raise any loan if any part of the loan extended by the Government of India remains outstanding. In such cases, the permission of the Government of India is required for a State to raise a loan.

Sarkaria Commission / NCRWC / Puncchi Commission Recommendations

1. Revenues
    1. Art 268 and Art 269 should be periodically revised jointly by centre and states.
    2. The monetary limit on tax on professions should be revised. Parliament may be vested with powers to do so instead of amending the constitution each time.

3. Surcharges and cesses should not be levied by the Union Government except for a specific purpose and for a strictly limited period.
4. The review of royalty rates on major minerals, petroleum and natural gas should be done every two years.
5. 'Interstate Trade and Commerce Commission' under Article 307 should be established to ensure removal of barriers to inter-State trade and commerce;

2. Expenditure Reforms
    1. Central and State governments should take into account the high opportunity cost of populist measures.
    2. It is necessary that an annual paper on subsidies is prepared by the PC.
3. Planning
    1. State Planning Boards should be strengthened.
    2. Close and full involvement of the States at all stages of plan formulation is very essential.
    3. The practice of States submitting inflated plan proposals should be firmly discouraged.
    4. Besides the general reviews contained in the States' Annual Plan and the mid-term appraisal, a quinquennial review should be done which should help in the next Five-Year Plan.
    5. Consultation with District Planning Boards should be made obligatory for formulating plans at higher levels.
4. CSS
    1. The number of CSS should be kept to the minimum.
    2. The need for the Union Government initiating pilot projects even in regard to subjects in the States' sphere carrying high national priority is recognized. But these should be formulated in prior consultation with the States. Once a programme has passed the pilot stage and has been accepted as desirable for implementation on a larger scale, it should appropriately form part of the State Plan.
    3. State Governments should be fully involved in determining the contents and coverage of the CSS so that local variations are taken care of.
5. State Borrowings
    1. The Union Government should give its consent freely to States for borrowing for periods less than one year.
    2. The system of tax-free municipal bonds should be introduced in the country.

Issues in Centre - State Financial Relations in Past 2 Decades

1. <u>Changes due to economic reforms</u>
    1. States have a greater role now in economic development. They can now differentiate themselves by creating necessary enabling conditions.
    2. Increasing inequalities and imbalances across States.
        - The strategy consisting of area specific programmes and the area specific tax exemptions have so far failed. So there should be higher central transfers to

backward States.

- Poor governance in such backward states acts as deterrents to private investments. So there should be greater focus on the issues of governance in such states and additional grants should be made conditional on administrative reforms.

3. Large scale migration from poorer States to richer States and a faster pace of urban growth stretching the already inadequate civic amenities in urban areas.

2. Changes due to 73rd and 74th Constitutional Amendments
    1. States now have to allocate resources to PRIs.
3. Changes due to Tax Reforms
    1. 80th Amendment. Growing importance of Service tax after 80th Amendment which has been placed under Art 268.
    2. Need to revise the ceiling of Rs. 2500 on profession tax and assign it to local bodies.
    3. Growing importance of cesses and surcharges. The share of cesses and surcharges witnessed a sharp increase from 4.9% of the gross tax revenue of the Centre in FC-8 to 11.34% in the award period of FC-12. In the years 2008-09 and 2009-10, the share of cesses and surcharges increased further to over 13 per cent of the gross tax revenue.
    4. The proposal to include aviation turbine fuel in the list of declared goods.
    5. GST.
4. Changes due to FRBMA
    1. 12th FC recommended a Debt Consolidation and Relief Facility with debt write-offs linked to the enactment of state FRBMAs, elimination of revenue deficit and containment of fiscal deficit. West Bengal and Sikkim are yet to enact the legislation.
    2. One of the methods of circumventing the FRBM targets is through off-budget liabilities. The Government of India has been issuing bonds to oil marketing and fertilizer companies which are off-budget and do not add to the fiscal deficit. But these are nevertheless liabilities of the Central Government. It is therefore necessary to bring all the off-budget liabilities of both the Central and State Governments into fiscal accounting.
    3. Some of the State fiscal responsibility legislations provide for an independent evaluation of adherence to the legislation. In most cases this has not been operationalised. The Central Legislation does not provide for an independent evaluation.
5. Changes in central lending to states
    1. Prior to 2005-06, the Centre was dispensing normal plan assistance in the grant-loan ratio of 30:70 in the case of General Category States and in the ratio of 90:10 in the case of Special Category States.
    2. 12th FC recommended termination of direct central lending to States on account Central Plan assistance. States are now allocated additional market borrowings in lieu of loan component of normal Central assistance.
    3. This has cast a burden on the States in terms shorter duration and higher costs of the

market borrowings. The Central loans had a repayment period spread over 25 years with a moratorium of five years in repayment. In contrast, the market loans have a repayment period of 10 years with a bullet repayment at the end of the tenth year.

6. Changes in loans against small savings
    1. Till 1998-99, small saving collections were being credited to the CFI and the Centre was extending loans to a State against small saving collections in that State.
    2. In April 1999, the National Small Savings Fund (NSSF) was created with Central guarantee.
    3. The collections under NSSF are invested in state government securities (100% till 2007 and 80% since then).
    4. States' borrowings against net small saving collections are no more treated as loans from the Centre following the setting up of NSSF.
    5. So FC has been excluding small saving loans from the purview of DCRF. Besides, loans from the NSSF carry a high interest rate of 9.5% per annum.
7. Changing Pattern of Plan Assistance to States
    1. First change is the reduced central budgetary support to the State Plan. Centre's GBS to the Central Plan and the State Plans used to be 1:2 earlier. Now it has become more than 2:1.
    2. Second is the significant change in the pattern of plan assistance. The share of normal plan assistance in the total budgetary support to the State Plan has come down drastically and that of CSS and special plan assistance has gone up considerably.
8. Vertical Imbalance
    1. The share of Central transfers in the aggregate revenue receipts of States has remained stable at around 40% of their own revenue receipts. For the high-income States, it varies from 16 - 25% of their revenue receipts. In respect of the middle-income States, it varies from 25 - 33%. The dependence of low income States is much higher and that of SCS is almost 90%.
    2. The states are anyways not compensated for the compliance and enforcement costs of many central legislations like EPA, FCA.
9. Changes due to Inclusive Growth
    1. As most areas contributing to inclusive growth like agriculture, education, skill development, provision of health services, welfare of weaker sections, etc., are in the realm of States, there is a clear need to realign the resources in favor of States.
10. Mining and environment protection
    1. Extraction of minerals involves huge costs in terms of environmental protection and rehabilitation of people. At present these costs are borne mainly by the States and only partly by the leaseholders. As the extraction of mineral wealth serves national interests, states should be compensated by the Union. Centre also derives substantial revenue from export duties on minerals.
    2. The power to fix royalty on major minerals is vested with the Central Government. Under

the provisions of the MMRDA, royalty can't be revised more than once in 3 years. One of the main grievances of the States is that there are undue delays even beyond 3 years. Another issue is the conversion of specific rates of royalties into ad valorem rates based on mineral prices.

3. Currently proceeds from off shore oil and gas production and sale of spectrum don't form a part of the sharable pool.

11. Non-Plan and Plan Conundrum
    1. Finance Commissions have been criticised often for restricting their assessment to the non-plan accounts only. In the Constitution, there is no distinction between the plan and non-plan accounts.
    2. There are a number of linkages between the plan and non-plan expenditure.
        1. Firstly, the expenditure on completed plan schemes becomes committed expenditure on the non-plan account.
        2. Secondly, borrowings for financing the plan give rise to debt servicing burden which adds to the non-plan expenditure.
        3. Thirdly, personnel employed for the implementation of plan schemes are transferred to non-plan.

CSS (Art 282) Issues and Recommendations

1. Both the central government and the state governments share the responsibility towards fulfillment of DPSP. But the capacities of central government are vastly more than those of state governments. So the Central Government cannot disown its responsibility to provide funds for healthcare (a DPSP) on the pretext that “healthcare” falls within the domain of the States. The enactment of legislation and the implementation of the same might primarily fall within the domain of the States, but the constitutional responsibility of all levels of government remains joint and several.
2. With the introduction of new CSS, central transfers to states under CSS have gone up considerably while those under normal central assistance have fallen. Growing discretionary transfers from the Centre have severely constrained the States in drawing and implementing schemes according to their priorities.
3. The resources for CSS are acquired through taxes which should be a part of the common pool and not left to the sole discretion and use by the Centre.
4. The compliance and implementation cost of these CSS are also borne by the States. The RTE model should be followed there i.e. the additional cost imposed on states due to such schemes and central legislations should be made a part of the FC ToRs.
5. The centre also increases the states' share arbitrarily without consulting them as in the case of SSA.
6. Over the years, a number of district level agencies have been created for the implementation of CSS. The Central Ministries are directly transferring substantial amounts of money to these implementing agencies bypassing the State Governments.

    1. This system put in place to address the problem of delays in releasing funds.
    2. But it has eroded accountability. Implementing agencies are part of the State Government but are not accountable to it.
    3. Large sums are reportedly lying unspent in the bank accounts maintained by the implementing agencies.
    4. There is no proper accounting of these funds.
    5. It should be ensured that the State Governments pay interest in case of delays in the transfer of funds beyond 15 days of their receipt from the Central Ministries.
7. One size fit all approach.
8. Growth of parastatals.
9. The conditionalities frequently encroach upon the legislative autonomy of the States. A case in point is the JNNURM, which requires the State to reduce Stamp Duty rates to at most 5%, a rate which can only be prescribed by the Legislative Assembly.

Bypassing States in Transfer of Funds to Local Bodies

1. Many of the areas in respect of which funds are allocated are actually the domain of States.
2. Additionally, it may so happen that the Central Government allocates funds for a certain period of time, but it afterwards unable or unwilling to continue disbursing funds. In such a situation, unless State Governments and the Central Government are in close coordination, certain welfare programmes could languish altogether, with grave consequences for general public interest.
3. Such funds are invariably carved out of the sharable pool which was going to states.

Finance Commission Issues and Recommendations

1. Attempts must be made to synchronize the periods of FC and FYP, CFC and SFCs.
2. <u>Strengthening FC</u>
    1. One of the criticisms against the working of the FC is that the transfers recommended by them are based on past indicators and not on forward indicators. Undoubtedly, forward indicators are preferable.
    2. Permanent FC division should be setup. It will ensure proper monitoring of the recommendations of the Commissions and even pave the way for the adoption of forward looking indicators.
3. <u>Strengthening ToRs</u>
    1. Liability of states arising out on account of DA and Pay commission recommendations should be a part of its ToR.
    2. Additional liabilities of states arising out of compliance and enforcement of central laws, their share in CSS, compensation for mining and environment protection should be a part of FC ToRs.
4. <u>Reports of FC</u>
    1. Information gathered by the FC as well as the detailed methodology followed should be published within six months of the publication of the Report.
    2. It will be a healthy practice if the observations and suggestions made by the FC on

matters other than the ToR are also considered by the Government and a statement placed in Parliament.

5. Tax devolution vs Grants
    1. States have been seeking predominance of tax devolution because of its inherent buoyancy as compared with the grants which are fixed in nature.
    2. Another issue is the conditionalities attached to grants.
    3. Compared with tax devolution, grants have a greater redistributive role.
    4. The proportion of grants in total Finance Commission increased from 9% in the award period of FC-X to 19% in the period of FC-12. This is a welcome development.
    5. Recent FCs have recommended grants to address special problems and to bridge the gap in the provision of services like education and health. This is a welcome development.
    6. Performance - linked incentive grants are should be more effective in addressing the problems of backward States and hence adopted by FC.

Planning Commission Issues and Recommendations

1. PC micromanagement
    1. PC insists on Central Ministries seeking its approval for any changes in the approved projects. This needs to be dispensed with so long as sectoral allocations are adhered to. That will achieve the desired macro coordination goals of PC instead of micro managing.
    2. Planning commission has encroached upon the autonomy of the states as it can accept, modify or reject the states' proposals for development programmes, for which central assistance is sought and which can be granted only on the acceptance of PC. Such detailed exercise of approving States' annual plans may not be necessary. The States should be given freedom to plan according to their own needs and priorities within the framework of nationally accepted priorities.
    3. Over the years, the share of Gadgil formula normal plan assistance has fallen to just 19% of the total PC assistance while those through CSS and special plans have increased. An issue with the adgil formula is that it gives higher weightage to population and hence is not as progressive as FC transfers.
2. Issues in states' annual plans
    1. Annual Plans are decided several months after the presentation of the State Budget. This reduces the efficacy and sincerity in the planning effort.
    2. The mismatch between the Annual Plans and the Five-Year Plans remains a problem. A case for multi-year budgeting with a firm budget for the first year and provisional for the second and third years assumes importance in this context.
    3. There is a tendency on the part of States to seek higher plan outlays and the PC approving them based on unrealisable estimates of own resources. When the estimated resources do not materialise, non-plan expenditure takes the cut. Thus, the very purpose of a higher plan outlay is not served.

4. The share of State Plan outlays in total Plan outlays has witnessed a steep decline from 60% in 1st FYP to 40% now. This was mainly due to the reduced budgetary support to the State Plan.

Table 4.10: Components of Gadgil Formula

Criteria	Weightage in Perc
1. Population (1971)	60.0
2. Per capita income	25.0
Of which	
i) Deviation method covering only States with per capita income below the national average	20.0
ii) Distance method covering all the general category States	5.00
3. Performance	7.5
Of which	
i) Tax effort	2.5
ii) Fiscal management	2.5
iii) National objectives	2.5
4. Special problems	7.5
Total	**100.0**

Unified and Integrated Market

Part 13 of © (Art 301 - 307) - Inter-state (+ Intra-state) Trade and Commerce

1. Art 301: Subject to other provisions in this part, trade throughout the territory of India shall be free.
2. Art 302: Non discriminatory restrictions may be imposed by the parliament in public interest. ESMA, 1955 was enacted according to this exception.
3. Art 303: (a) Art 303(1): Neither the parliament nor any state legislature may make any law giving preference to any state over any other in trade and commerce within India (e.g. states can't resort to domestic treatment). (b) Art 303(2): But in times of scarcity in any part of India, parliament may make discriminatory provisions.
4. Art 304: (a) Art 304(a): Non-discriminatory taxes may be imposed by states on goods imported from other states. This means a state can only impose those taxes on goods coming from other states as it imposes on goods produced within the state. (b) Art 304(b): However in "public interest", a state may impose reasonable restrictions.

Current Situation

1. Essential Commodities Act (ECA), 1955 imposes a number of restrictions on storage, movement and pricing of goods.
2. APMC Acts enacted by States empower State governments to notify commodities and designate markets and market areas where the regulated trade should take place. They do not allow direct buying of agricultural produce by processing industries or exporters thus preventing the farmers from realizing better prices for their produce which was the main purpose of such legislation.
3. Major tax impediments
    1. CST: The CST is levied on inter state movement of goods. It is an origin based tax and this allows states of origin to shift the tax burden to the residents of other States. CST also denies input credit on inter-State sales creating distortions.
    2. The system of VAT is segmented between CENVAT, State VAT, Central Service Tax and a number of levies by the States and local bodies and the Central sales tax.
    3. Octroi/entry tax. While inter-State sales tax is on the export of goods, Octroi is similar to import duty. These lead to inordinate delays and harassment at the numerous check posts.

Recent Reforms

1. ECA
    1. The number of commodities coming under the purview of ECA has been substantially brought down.
    2. But most of the agricultural commodities still continue to remain under the purview of the Act.
    3. ECA should be amended to provide for restrictions only during exceptional situations.
2. APMC
    1. The Central Government brought out a model APMC Act in 2003 allowing private agents to set up a market or buy products directly from the market.
    2. But the adoption of the Act by the States is voluntary.
    3. Only a few states, and none of the major states, have amended their APMC Acts allowing direct marketing, contract farming and markets in private and cooperative sectors.
    4. Even among these, many are yet to notify the relevant rules to make the amendments fully operational.
3. Inter-State Trade and Commerce Commission under Article 307
    1. This Commission should be vested with both advisory and executive roles with decision making powers. As a Constitutional body, the decisions of the Commission should be final and binding on all States as well as the Union of India. Any party aggrieved with the decision of the Commission may prefer an appeal to the Supreme Court.

Inter-State Water Conflicts

Constitutional and Legal Framework

1. 7th Schedule, state list has water in it. But the Union List has regulation and development of inter-state rivers valleys in it. But this has to be regulated by a law made by the parliament.
2. The Constitution contains a specific Article - Article 262 – which deals with adjudication of disputes relating to inter-state river valleys. It reads:
    1. Article 262(1): Parliament may make a law to provide for the adjudication on any dispute regarding any inter-state river valley.
    2. Art 262(2): Parliament in its law may provide that no court, including the SC, will have jurisdiction in respect of any such dispute.
3. The River Boards Act, 1956: It was enacted under the entry 56 of List 1 with the objective of enabling the Union Government to create, in consultation with the State Governments, boards to advise on the integrated development of inter-State basins. These Boards were supposed to prevent conflicts by preparing developmental schemes in consultation with states.
    1. No water board, however, has so far been notified under the Act.
4. The Inter-State Water Disputes Act, 1956: It was enacted under the Art 262 and provides for an aggrieved State to ask the Union Government to refer a dispute to a tribunal. A water disputes tribunal is appointed by the Chief Justice of India and consists of a sitting judge of the Supreme Court and two other judges chosen from the Supreme Court or High Courts. The tribunal, so appointed, can choose assessors and experts to advise it and the Award is beyond the jurisdiction of courts.

Sarkaria Commission Observations and Recommendations

1. Constituting the tribunals
    1. Centre used to take inordinate amount of time to constitute and notify the tribunal even if a complaint was received from a state. So it recommended that once an application under the Inter-State River Water Disputes Act is received from a State, it should be mandatory on the Union Government to constitute a tribunal within a period of 1 year.
    2. Centre should also be empowered to appoint a tribunal, suo-moto, if necessary.
2. Support to the tribunals
    1. There should be a database and an information system at the national level.
    2. States used to refuse sharing data with the tribunals. They should be compelled by law to share all the data as needed by the tribunals.
    3. Adequate staff and machinery should be given to the tribunals.
3. Inordinate delays in working of the tribunals
    1. The commission recommended that the tribunal must pronounce its award and such an award should become effective within 5 years from the date of constitution of the Tribunal.
4. Binding nature of the award

1. The government initially had the flexibility not to accept the award. A tribunal's award should have the same force and sanction behind it as an order or decree of the Supreme Court.

Inter-State Water Disputes (Amendment) Act, 2002

1. Accepting Sarkaria commission's recommendation, the centre would establish a Tribunal within one year on a request by a State Government.
2. The Tribunal would investigate the matters referred to it and give its report within 3 years (Government of India may extend the period by another two years).
3. The decision of the Tribunal, after their notification by the centre, shall have the same force as an order or decree of the Supreme Court.

Ravi Beas Case

1. The matter was referred to the Tribunal in 1986. A report was given in January 1987. Political differences led to further references being made to the Tribunal and the matter is still before it.
2. Meanwhile Punjab has through legislative enactment terminated all agreements. The legality of this action is the subject matter of a Presidential reference to the Supreme Court in 2005. The matter is still awaiting the Court's opinion.

Cauvery Dispute

1. In 1970 TN applied to the Central Government for constituting a Tribunal. No action was taken and only on the directions of the Supreme Court the Centre set up a Tribunal in June 1990.
2. Disputes were raised on whether the Tribunal was endowed with powers to give interim awards.
3. Orders of the Tribunal were nullified by Ordinances promulgated by Karnataka. Advisory opinion was sought by the Centre on the legality of the Karnataka Ordinance.
4. Riots broke out on the publication of the interim award and PILs on compensation issues were filed in the Supreme Court.
5. The final order of the Tribunal was given in 2007 but these have been referred back to the Tribunal through clarificatory petitions and challenged in the Supreme Court through Special Leave Petitions under Article 136.

Lessons from Tribunal Experience

1. <u>Enforcement issues</u>
    1. Increasingly, States are becoming resistant in complying in spite of express provisions in the Constitution regarding the finality of such awards. States have passed laws in their legislatures canceling water sharing agreements or nullifying tribunal orders. SC is still to rule on the legality of such legislations.
    2. Enforcing the award and ensuring compliance depends on centre's political will which is found to be lacking in most cases. Coalition politics, where regional parties have a major say in the Central Government makes such interventions by the Centre difficult.
    3. Control over water is considered a right which has to be jealously guarded. Compromise is considered a weakness which can prove politically fatal. Although a scientific and dispassionate approach may lead to solutions which could be mutually beneficial, they are

not attempted as it would mean giving up established rights.

2. Challenge in SC
    1. Although awards can't be challenged in the SC as per the Constitution, they are still taken to the court in the name of interpretation and implementation.
    2. Special leave petitions under Art 136 are filed by the parties before the court. Thus the 2002 amendment which explicitly states that the decision of a Tribunal shall have the same force as an order or decree of the Supreme Court has been found to be ineffective.
    3. Interim awards are taken to the court.
    4. Several points involving an interpretation of the Constitution are raised in the Supreme Court.
    5. Activists have raised the issues of environmental damage, rehabilitation and alternate livelihood in front of the court. These are matters which are outside the purview of Water Tribunals.
3. Weaknesses in law
    1. There is no time limit for the centre to notify the tribunal's award. Thus centre can practically veto it for an indefinite period.
    2. The decisions of the tribunal are questioned for errors and omissions.
    3. Parties seek explanation/guidance of the Tribunal on points referred, and even on points not originally referred.
    4. The 2002 Act provides for conclusion of proceedings in 3 years extendable for a further period not exceeding 2 years. However, there is a provision to extend indefinitely time for a clarificatory or supplementary order. This needs to be rectified and time limit for clarificatory / supplementary orders needs to be prescribed.
    5. River boards should be setup. This would encourage resolution of disputes within the Board and in the event the matter does go before a Tribunal then the Tribunal would have before it the records and deliberations before the Board.
4. Weaknesses in procedure
    1. Tribunals should focus mainly on technical issues. Technical and legal issues should be dealt with separately. Issues need to be spelt out on practical considerations and optimal solutions found.
    2. They should deviate from the strict procedures and format of judicial hearings. More participatory and conciliatory approach as adopted in board rooms rather than in court rooms should be followed. The success of the Krishna Water Disputes Tribunal (1969-1978) has been ascribed to adoption of participatory rather than adversarial procedures.
    3. Tribunals should include people from multiple disciplines from all relevant fields and presided over by a judge. This would also bring about the attitudinal change.

Inter State Water Disputes (Amendment) Bill, 2011

1. A National Water Tribunal to be setup merging all individual tribunals.
2. Each case to be decided by a bench of 2 judges.
3. Each dispute to be decided in maximum of 2 years extendable maximum for 1 year under

extreme circumstances.

4. Its orders to have same force as SC orders.

Should Water be Shifted Under Concurrent List or Inter-State Rivers be Nationalised?

1. No need, since constitutional provisions already don't preclude central management.
2. Doing so will lead to similar demands in other subjects like say land.

River Basin Management Bill, 2013

1. It seeks to set up a river basin authority each for the management of 12 major river basins in the country.
2. It seeks to amend the defunct Rivers Board Act of 1956, provides for integrated planning, and development and management of water resources.
3. It proposes a two-tier structure for a River Basin Authority comprising a political Governing Council and an official-level Executive Board.
4. The Council will not only make River Master Plans but will also enable basin states to come to an agreement for implementation of the Plans.
5. If a dispute cannot not be settled, then it will be referred to a tribunal under the Inter State Water Disputes Act, 1956 for adjudication.
6. It also mandates protection of "ecological integrity necessary to sustain ecosystems dependent on water", that may include restrictions on water usage to maintain minimum natural flow in rivers to meet the ecological needs and regulated groundwater use.

National Water Framework Bill, 2013

1. It provides for a minimum quantity of 25 litres per capita per day potable water, preservations of water quality in all rivers and a mechanism for principles for fixation of water prices.
2. It mandates that governments should specify the "quality standards" of water supply for various uses like drinking, livestock, irrigation and industries among others.
3. While noting that the government remains the trustee of water resources, it gives it the flexibility of roping in a "private agency" for "some of the functions of the state". In this context, it stipulates that "allocation and pricing" should be based "on economic principles to ensure its development costs.
4. For this purpose, an independent statutory water regulatory authority shall be established by every state for ensuring equitable access and its fair pricing. It would work on a "principle of differential pricing for water".

Environment and Centre - State Relations

Constitutional Framework

1. The original Constitution had no direct reference to the environment.
2. Art 47, however, commands the State to improve the standard of living and public health and this necessarily includes environment.
3. 42nd Amendment Act
    1. DPSP Article 48 A – 'The State shall endeavor to protect and improve the environment and to safeguard the forest and wildlife of the country".
    2. Fundamental Duty: Article 51-A (g) – "It shall be the duty of every citizen of India to protect and improve the natural environment".
    3. Forests was moved out of state list to the concurrent list. Subjects such as protection of wildlife, population control and family planning were introduced in the concurrent list.
4. 73rd and 74th Amendment Acts
    1. 11th and 12th schedules provide for environmental protection and conservation, soil conservation, water management, social and form forestry, drinking water, fuel and fodder by the PRIs.
5. Article 21 has been repeatedly interpreted by the Court as 'right for clean environment'.
6. Individual subjects having direct impact on environment are scattered along all the 3 lists:
    1. Union list: Industries, oil, mines, inter state river valleys, fishing beyond territorial waters.
    2. State list: Public health and sanitation, agriculture, water, land, fishing, Industries (subject to above), mining (subject to above).
    3. Concurrent list: Forests, wildlife, planing, population control.

Development and Environment – Role of Centre, States and Local Bodies

1. Distribution of powers
    1. Issues relating to conservation; research; earmarking areas as biospheres; and protection of endangered species are best looked after by the Central Government. This is because:
        - Livelihood issues and commercial pressures are more keenly felt in the States and they would be prone to letting 'conservation' issues remain in the background.
        - Parliament can debate somewhat dispassionately keeping an All-India perspective and India's international responsibilities in mind.
    2. Livelihood and social justice concerns are best addressed by the involvement of PRIs. So far there has been this gap and the activist organizations have stepped in.
2. Stronger constitutional statement
    1. Constitutions of Ecuador and Columbia give fundamental rights to nature. Many other constitutions also make such strong statements. We too need to make a strong statement regarding environment in our constitution. This will enable a sharper focus on environmental issues while carrying out any planning.
    2. Scope of Entry 20 (Economic and Social Planning) in the Concurrent List can be extended to include "Environment and Ecological Planning" at all governmental levels.

Wildlife (Protection) Act, 1972

1. It used the term “habitat” which includes land, water or vegetation which is the natural home of any wild animal. This is why “land” under the Act also includes water bodies.
2. It also gave powers to the authorities to declare any area considered necessary as a Protected Area (PA).
3. It limits the right to live inside PAs. The initial Act did not provide for any settlement of the rights of PA inhabitants but this was rectified by a 1992 Amendment. A further amendment in 1993 however again put restriction on the exercise of the rights.

Forest (Conservation) Act, 1980

1. States can notify any land as a Reserved or Protected Forest or a Wild Life Sanctuary or a National Park. But the Act mandates they have to obtain the Centre’s clearance before diverting any forest land for non-forestry use.
2. The FCA envisages equal amount of non–forest land to be mutated in favor of forest department in lieu of the forest area so diverted.
3. In the process, certain good forest area that was diverted was being denuded and the loss could not be compensated. So the SC in 2002 created the CAMPA Funds.
4. It is seen as a restrictive legislation. This has led to a conflict between conservation and some of the developmental programmes.

National Forest Policy, 1988

1. It emphasized that the existing “forest” and “forestland” should be fully protected.
2. The “forestland” or “land with tree” cover should not be treated merely as a resource readily available and therefore to be utilized for various projects but to be viewed as a national asset.
3. Diversion of “forestland” for any non-forest purpose should be subject to the most careful examinations by specialists from the standpoint of social and environmental costs and benefits.

Biological Diversity Act 2002

1. CBD has three goals which are conservation of the biodiversity; the sustainable use of its components and fair and equitable sharing.
2. Prior approval of the National Biodiversity Authority is mandatory for accessing the biological resources.
3. Provision of the Act shall be in addition to, and not in derogation of any law for the time being in force, relating to forests or wildlife.

Livelihood Issues and Legislative Framework

1. India wanted to increase 'forest area'. So vast amounts of land were declared as ‘forest’ without following a due process of law or even ecological rationale. Thus even lands earlier used for common purposes (fuel and fodder) were also declared as forests. Diverse categories of non-private land of ex-princely States were declared without proper survey as forests.
2. SC mandated that the FCA be extended to the dictionary definition of forest irrespective of ownership. Other orders of SC prohibiting removal of dead, diseased, dying or wind fallen trees, drift wood and grasses from the National Parks/Wild Life Sanctuaries has further tightened the Act.
3. The position in the Schedule V and VI Areas is the worst, since they hold most of the forests.

The rights of the tribals were never recorded. All this has deprived the people. The issues with PESA and FRA are well known.

4. Legislations had ignored India's tradition of community conservation. Local users and their institutions, who had the maximum stake in sustainable management of common lands were divested of the authority to manage them. JFMC was a step in right direction, but here too undue influence of the forest department limits its efficacy. Forest dwellers continue to be classed as 'encroachers'.

Compensation for Eco-System Preservation

1. It should cater to:
    1. Price to be paid for maintenance of the eco-system.
    2. For foregoing the opportunities of infrastructure and economic development.
    3. For loss of revenues arising out of non-exploitation of forest resources.
    4. For investment in alternate, sustainable development models.
    5. For appropriate rehabilitation packages for the displaced.
2. Suggestions have been made to include per capita dense forest area in the modified Gadgil formula.
3. Uttarakhand Formula: Uttarakhand gave a valuation of the Eco-System Services (ESS) and compensated accordingly.
4. REDD: The quantity of carbon which is prevented from entering the earth's atmosphere because they have been sequestered by the conserved forests is estimated. These savings are converted into carbon credits and then sold to developed countries. The revenue is then invested back into protecting the forest and improving life of communities.It can also be used internally to compensate States through Centre-State financial transfers.

Mineral Issues and Centre - State Relations

Case for Mining Compensation

1. Mining causes great environmental and livelihood damage.
2. Mining activities involve large machineries, not many jobs were created. Whatever little job opportunities are provided, they are extremely hazardous and low paying.
3. Urbanization cannot take place near mines.
4. Mining leads to displacement of people which has its costs.
5. Centre gains export tax. Minerals are national wealth.

The Constitutional Provisions

1. The constitution confers powers on the States to regulate mines and mineral development subject to the provisions of the Union list.
2. The Union list provides for regulation of mines and mineral development by the centre as per a law made by the parliament. The Parliament made the MMRDA, 1957 which:
    1. Introduces the concept of the major minerals and the minor minerals.
    2. Confers rule making power on the Central Government for the grant of reconnaissance permits, prospecting licences and mining leases. It makes it mandatory for the State

Government to obtain the approval of the Central Government before any reconnaissance permit, prospecting licence or mining lease is given in major minerals.

3. The centre can also specify and revise from time to time the royalty rates from the major minerals.
4. The State Government has the power to make rules for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals.

3. Thus the entire field of minerals development has been occupied by the Central Government.
4. Royalty rate issue
    1. Even after Sarkaria recommendations, the minimum period for revising royalties has been brought down to three years and not two. This too is not followed and their are longer delays.
    2. States feel that this is a denial of their legitimate share of revenue.
    3. The responsibility of fixing royalties should be delegated to States after laying down the floor and ceiling limits and issuing guidelines.
    4. States would also prefer an ad valorem basis for royalty calculations.
    5. Central Government does not share with the States the export duty it receives from mineral exports. Similarly an excise duty is levied on extracted coal is not shared with the States.

Constitution

Historical Underpinnings
Evolution
Features
Amendments
Significant Provisions
Basic Structure
Comparison With Other Countries

Presidential System vs Parliamentary System

1. We opted for parliamentary system because of a very important reason.
    1. The leaders of the INM were in a hurry to ensure quick social transformation and rapid economic development of the whole country and society which had suffered for long at the hand of the British.
    2. And they thought that the cabinet system of government which is responsible to the elected legislature and holds a majority there. So when we want quick legislations passed like say land reforms, the executive can get the bills quickly passed as they possess a majority in the legislature.

3. America didn't want a strong executive, they wanted checks and balance. They had seen the tyranny of a parliamentary form of government and so wanted to secure individual liberty. So they wanted a weak government.

2. The demand for the change is based on the wrong reason. The problem is some of the parliamentary practices, not the parliamentary system itself. It is not the parliamentary system which is weak, our parliamentary system has become weak.
    1. Rules are not followed. We have borrowed certain rules only in letter, not in spirit. Inconvenient conventions and rules have simply not been borrowed.
    2. Titular head: This is a necessary requirement of the parliamentary system. Look at governors in India.

Due Process of Law (Art 21)

1. Due process includes equality, justice, good conscience.
2. We nearly adopted it but then ditched it. In US, in their enthusiasm for preserving individual liberty from majority tyranny, this has virtually given judiciary supremacy. The judiciary has over the time interpreted it to accord themselves primacy in determining the fate of any and every law. So judiciary has become very powerful there. "The US constitution is what the supreme court says what it is." Thus it has surrendered the system to a minority tyranny of judges.

Q. Distortion to British Parliamentary practices has led to the poor state of Indian politics today?

Q. Is a multi party system incompatible with the parliamentary form of government?

1. India follows first past the post system. So a person getting even a minority votes can win and then he will represent the entire constituency. This problem is definitely aggravated in a multi party system - the more the number of parties, the less the number of votes the winner is likely to need to win. Thus even the most crucial decisions in India have been taken by a minority. No government in India has been elected by a majority of popular vote. But this can be overcome by a 2 stage voting.

Q. Utility of Rajya Sabha in comparison to Britain

1. Britain has higher number of nominated members from specialized fields.

Parliament and State Legislatures

Structure

Functioning

Conduct of Business

Powers and Privileges

Constitutional Bodies

CAG

Independence

1. Though he is appointed by president, he can be removed only by parliament (like judges) on grounds of - (a) proven misbehavior, and (b) incapacity.
2. His salary is charged on CFI and is statutory (can't be voted by parliament adversely during his tenure).
3. He can't hold any public office post his retirement (but can join a political party). He submits resignation to president.

Duties

1. Apart from auditing government accounts of states and center, he also audits accounts for any institution substantially funded by public funds. Thus it includes PSUs.
2. His job is to check if all expenditures are as per laid down by the law. This means its his duty to check for corruption in expenditure of public funds. Similarly all taxes have been collected as per law.

CAG's Jurisdiction

1. Art 149 of © states that CAG "shall perform such duties and exercise such powers in relation to the accounts ... as may be prescribed under law."
2. Parliament made a law CAG (Duties, Powers & Control) Act wherein it stated that CAG's duty is to 'audit' all expenditure from the CFI and states.
3. But the word 'audit' has not been defined anywhere. When audit is viewed as a partner in good governance, allegations of trespass into the executive territory lose their relevance. Another way is to look at international experience and conventions.
4. CAG has a responsibility to evaluate whether the collection and allocation of revenue was optimized or if the 'rules and procedures' fail to secure an effective check on the collection and allocation of the revenue. To this extent it can subject the policy to scrutiny but can't make recommendations on its efficacy or implementation. So it can merely highlight the collection and allocation inefficiencies in its report to the parliament (which is exactly what CAG has done i.e. the delays in implementing a competitive bidding has led to a potential loss).
5. CAG can't question policy matters. But if in the making of the policy its financial implications were not considered at all or faulty assumptions were used, there is no record of a considered policy decision, or if the policy benefits some groups or individuals to the exclusion of public, or the implementation of the policy defeats the policy itself then CAG has a mandate to report it under the performance audit.

Shortcoming in CAG Appointment Process

1. The present selection process for the CAG is entirely internal to the Government machinery; no one outside has any knowledge of what criteria are applied, how names are shortlisted and how a final selection is made.
2. In most of the other countries there is no scope for the head of the Supreme Audit Institution to be chosen at the discretion of the Government.

3. Another related issue is that of the appointment of IAS officers as the CAG. This has had a demoralising effect on the IAAS cadre.
4. ICAI Code of Ethics states that an auditor's independence has two aspects- independence in fact and independence in appearance. The appointment of former secretaries as CAG may compromise the independence of this institution because of apparent/perceived conflict of interest.

Issues With CAG

1. Issues with the audit process
    1. CAG's reports are not timely because there is substantial time gap between occurrence of an irregularity and its audit. It reviews programmes after these have run for a few years.
    2. Audit findings are based exclusively on documents and files. The situation on the ground is quite different from what is reflected in the papers. There is practically no verification to validate the audit findings.
    3. CAG reports tend to be unduly negative and their focus is on irregularities and faultfinding. They do not recognize the practical constraints under which the departments function.
    4. They do not give due credit for good performance.
    5. They do not discriminate between errors arising out of bonafide/malafide intentions. Audit as such could act as a dampener against new initiatives and risk taking.
    6. They do not delve into the root causes of the problems and how to address them.
    7. Reporting each year a large number of problems which are already known does not add value. Audit must therefore identify systemic problems.
    8. The relationship between the auditor and auditee is not always harmonious. Generally interaction is confined mainly to the lower levels. Audit is viewed as a policing. There is poor response to external audit which seriously reduces the effectiveness of audit.
    9. There is inadequate coordination between external audit and internal audit.
2. Issues with post audit process
    1. There is hardly any accountability for not taking timely action on audit observations. Thousands of reports containing a huge number of observations are lying unattended in the departments. Audit Committees comprising representatives of audit and government agencies have been set up to review the departmental action taken on inspection reports but their functioning is not satisfactory.
    2. Detailed examination of paras included in the Audit Reports by PAC is barely about 15-20 against the total number of 1000 - 1500 paras in the CAG reports.
    3. The Ministries take only those audit paras seriously which come up for discussions in the PAC.
    4. PAC and CoPU must form sub-committees and consider more paras this way. Other paras should be assigned to the respective Departmental Standing Committees.

5. Ministries are supposed to submit Action Taken Notes on the paras not discussed. But such Action taken Notes are largely formal rather than substantive.
6. In the State Legislatures, there is a huge pendency of Audit Paras to be examined by State PACs. Some of the pending paras are 10 to 20 years old.

National Backward Classes Commission

1. It has been given the mandate of examining requests for inclusion of any class of citizens as a backward class and hear complaints of over-inclusion or under-inclusion in such lists and tender advice to the Government.

National Commission for Scheduled Castes

Mandate

1. To monitor the safeguards provided for the SCs and to evaluate the working of such safeguards.
2. To inquire into specific complaints.
3. To advise on the planning process for SC development and to evaluate the progress of their development.

Powers

1. While investigating into matters, it has the powers of a civil court trying a suit. Such powers include:
    1. Summoning and enforcing the attendance and examine him under oath.
    2. Requiring the discovery and production of any documents.
    3. Receiving evidence on affidavits.
2. The Commission has offices in 12 States/UTs, which enables it to have a wide perspective.
3. The Commission is organized around four wings which look after administration, safeguards, atrocities and rights violations, and economic and social development respectively.

National Commission for Scheduled Tribes

1. The NCST functions through units which look after administration, coordination, socio-economic development, safeguards and atrocities. It has six regional offices which provide it with a regional perspective.

Election Commission

Powers

1. Its powers are plenary i.e. uncontrolled by the executive. But EC's powers apply only where © and laws are silent. EC can't override any law already made.
2. Its actions are subject to judicial review.

Composition

1. The number of ECs may be varied by president from time to time as per the law made by parliament. Currently the limit is CEC + ≤ 4 ECs.
2. CEC and ECs are appointed by the president and while appointing them the president just consults the CoM.
3. CEC and ECs are appointed for ≤ 6 years or 65 years of age. ECs if promoted to CEC can hold office only till there combined tenure as EC + CEC is ≤ 6 years. EC can't be reappointed as EC and CEC can't be reappointed as CEC.
4. ECs can be removed by president only on the recommendation of CEC and the president is not bound by such a recommendation. CEC cannot be removed except in a manner like SC judge.

Reforms suggested by EC

1. While appointing CEC and ECs, the president should consult a high level panel comprising of PM + law minister + leader of opposition in HoP. Such recommendation shall be binding.
2. ECs should be removed only in a manner like SC judge. Upon retirement the CEC and ECs shouldn't be allowed to hold any office of profit under the state (currently they are allowed to) neither be allowed to join any political party for ≥ 10 years from retirement.
3. While appointing CEC seniority principle should be followed.

Regional Election Commissioner

1. He is appointed by the president on recommendation of EC on the eve of an election to HoP or Legass or Legco to assist the EC in discharging its duties. So far none have been appointed and his functions have largely been taken care of by chief electoral officer who is a permanent officer.

Representation of People's Act

Salient Features

Issues in Political Reforms

BILL TO ALLOW PEOPLE IN JAIL TO CONTEST POLLS.

- Representation of the People (Amendment and Validation) Bill, 2013 provides for a change in the Act of 1951. The amendment to sub-clause 5 of section 62 of the RPA, if passed by Parliament, shall come into

Funding Reforms Attempts

1. Dinesh Goswami Committee in 1990 and later Indrajit Gupta Committee recommended limited support in kind while simultaneously recommending a ban on company donations.
2. Subsequent developments include parties being forced to file tax returns.
3. SC decision in 1996 clubbed expenditure by third party(s) as well as by the political party under the expenditure ceiling limits prescribed under the Representation of People Act.
4. Election and Other Related Laws (Amendment) Act
    1. Full tax exemption to individuals and corporates on all contributions to political parties.
    2. Repeal of Explanation I under Section 77 of the RPA. Expenditure by third parties and political parties now comes under ceiling limits, and only travel expenditure of leaders of parties is exempt.
    3. Disclosure of party finances and contributions over Rs. 20,000.
    4. Equitable sharing of time by the recognized political parties on the cable television network and other electronic media.
5. The 2002 amendment to RPA stipulates that every elected candidate shall, within ninety days file the details of his/her assets/liabilities.

Tightening of Anti-Defection law

1. The Election Commission has recommended that the question of disqualification of members on the ground of defection should also be decided by the President/Governor on the advice of the Election Commission. Such an amendment to the law seems to be necessary in the light of the long delays seen in some recent cases of obvious defection.

Disqualification

1. In cases of persons facing grave criminal / corruption charges framed by a trial court after a preliminary enquiry, disallowing them to represent the people in legislatures until they are cleared of charges seems to be a fair and prudent course. As a precaution against motivated cases, it may be provided that only cases filed six months before an election would lead to such disqualification.

False Declarations

1. The Election Commission has recommended that all false declarations before the Election Commission should be made an electoral offence. Government is opposing it in court!

Publication of Accounts by Political Parties:

1. Political parties have a responsibility to maintain proper accounts of their income and expenditure and get them audited annually. The Election Commission has reiterated this proposal. This needs to be acted upon early. The audited accounts should be available for information of the public.

Expediting Disposal of Election Petitions

1. Election petitions in India are at present to be filed in the High Court. Under the Representation of the People Act, such petitions should be disposed of within a period of 6 months. In actual practice however, such petitions remain pending for years.

2. Special election benches should be constituted in the High Courts earmarked exclusively for the disposal of election petitions.
3. Special Election Tribunals should be constituted. Each Tribunal should comprise a High Court Judge and a senior civil servant. Its mandate should be to ensure that all election petitions are decided within a period of six months.

Grounds of Disqualification for Membership

1. Article 102 provides for disqualification for membership of either House of Parliament under certain specific circumstances, which are as follows:
    1. If he holds any office of profit.
    2. If he is of unsound mind declared by a competent court.
    3. If he is an undischarged insolvent.
    4. If he is not a citizen of India.
    5. If he is so disqualified by or under any law made by Parliament. So far, no such law has been enacted.