Commission on Centre-State Relations

Task Force Reports

ANNEXURE I
THE COMMISSION

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Dr. Amaresh Bagchi was a Member of the Commission from 04.07.2007 to 20.02.2008, the date
he unfortunately passed away. The Commission expresses its deep gratitude to late Dr. Bagchi for his
signal contribution during his tenure as a Member.

SECRETARIES

Shri Amitabha Pande (17.07.2007 - 31.05.2008)
Shri Ravi Dhingra (25.06.2008 - 31.03.2009)
Shri Mukul Joshi (01.04.2009 - 31.03.2010)
The Commission on Centre-State Relations presents its Report to the
Government of India.

Justice Madan Mohan Punchhi
Chairman

Dhirendra Singh
Member

Vinod Kumar Duggal
Member

Dr. N.R. Madhava Menon
Member

Vijay Shanker
Member

New Delhi
31 March, 2010
TASK FORCE REPORT

CONSTITUTIONAL SCHEME OF CENTRE-STATE RELATIONS
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Local Governments and Decentralized Governance

One of the mandates of the Task Force on ‘Constitutional Scheme of Centre State Relations’ was the consideration of ‘Local Governments and Decentralized Governance’.

During deliberations of the Task Force discussions revolved around the steps to be taken to make the devolution of powers and functions to the Panchayats and Municipalities and their implementation more effective, and to effectively promote the concept and practice of independent and decentralized planning and budgeting at district and metropolitan levels in the light of the provisions made for the District Planning Committees (DPCs) and Metropolitan Planning Committees (MPCs) under Articles 243ZD and 243ZE.

The conclusions on these two issues are summarized as below:

✓ There is a close linkage between good governance i.e. efficacy of service delivery to the people, and decentralization and devolution of powers and its resultant impact on Centre-State relations.

✓ The subject of good governance is closely linked with electoral reforms, one such area being the definition of “National Party”, which merits a reassessment with the objective of securing political stability at the centre.

✓ The need for rationalizing the number of Centrally-sponsored schemes.

✓ The need for the development of Governance Index (GI), Human Development Index (HDI) and Credibility Index (CI) for NGOs: the last one in view of the increasing role envisaged for NGOs.

✓ The overarching responsibility to improve the quality of life of the country’s citizens vests with the Central Government; a situation supported by the entries in List III and by entries in the Concurrent List e.g. Entry 20 Economic and Social Planning and Entry 25 Education.
The devolution of funds must be linked with performance in specified parameters including level of tax collection.

There is need for empowerment of Gram Sabhas vis-à-vis Gram Panchayats; and need for strengthening of inter-tier organic ties between para-state organizations and Community-based organizations on one hand and the PRIs on the other.

There are various options available for the mode of release of funds i.e. direct release, direct electronic release by the Centre, or direct electronic release from Centre to State and from State to the third tier.

The subject of Local Governance must be brought into List III. It is presently in the State list – List II, Entry 5.

Strengthening the role of DPCs (District Panchayat Councils) and MPCs (Municipal Councils).

In the first meeting of the Task Force a growing concern was expressed at the diminishing level of accountability in the Government Sector. While the private sector’s performance was relatively positive, the Government and the public sector left much to be desired. One of the reasons ascribed for this was the low ranking of the nation in the achievement of Millennium Development Goals (MDGs): the country’s position had slid even below some of the smaller economies of the world such as Bhutan and Vietnam!

It was further noted that even though the Commission’s mandate was predominantly concentrated on the Centre-State relations, there is an overlap between the governance related issues and Centre-State relations. An important point that emerged from the deliberations was that there is a close linkage between good governance and decentralization and devolution of powers and the resultant impact on Centre-State relations. The increasing flow of funds under the Centre-sponsored schemes, the shrinking quantum of funds under the Gadgil formula to the States, and the direct transfer of funds to Panchayats and other entities such as the District Rural Development Agencies (DRDAs), Fish Farmers Development Agencies (FDAs), Drinking Water Supply (DWS), and the Sarva Shiksha Abhiyaan (SSA) were noted. When viewed in the context of the scheme of relations between the Centre and the States within the framework of the Constitution, the above stated position was not (it was felt) strictly in conformity with the arrangements envisaged by the Founding Fathers.

The reasons behind this were the decline in governance and lack of professionalism in some of the States which saw the diversion of plan funds meant for development purposes.
Constitutional Scheme of Centre-State Relations

for unproductive and non-plan use. It was the view both of the Central Ministries/Departments and State Administrative Departments that a direct release of funds to Panchayats and other autonomous entities was best suited to attain the objective of achieving better outputs and outcomes and greater accountability of the agencies closer to the common man. The adoption of the subsidiarity principle (prevalent in Europe) was another favoured view. The subsidiarity principle is one of the central principles in the European Union context, laying down that political decisions in the EU must always be taken at the lowest possible administrative and political level, and as close to the citizens as possible. Other than the areas where the EU has exclusive competence, this means that the EU can only act if it would be better to implement the legislation in question at EU rather than at national, regional or local level. Subsidiarity is an organizing principle that matters ought to be handled by the smallest, lowest or least centralized competent authority; in the sense that a central authority should have a subsidiary function, performing only those tasks which cannot be performed effectively at a more immediate or local level.

Another observation that emerged was that with the emergence of regional parties and their increasing role in the formation of governments at the Centre, the States have become politically strong, and yet the States’ dependence on the Centre in financial and economic terms has been on the rise primarily because of much greater buoyancy in the collection of Central taxes such as the corporate tax and other direct taxes – this coupled with the decline in governance and lack of professionalism has unfortunately helped retard the process of devolution.

It was noted that though the Constitution provides for a clear distribution of legislative powers between the Centre and the States, the State’s financial and economic empowerment has not been commensurate with its legislative demands. In the field of fiscal federalism a prominent issue that needs consideration is fund-flow to the extent of $2/3$rd of the Central transfers by the Finance Commission and $1/3$rd by the Planning Commission; 25-30% of the latter flowing through the Central Ministries/Departments and around 5% directly by the Planning Commission. The overall picture revealed that some of the constitutional practices needed to be remodelled to reflect ground realities. Some of the desired changes were already being implemented such as the Jawaharlal Nehru National Urban Renewal Mission (JNNURM) by the Ministry of Urban Development which has introduced a number of conditionalities whose compliance is a pre-requisite for release of funds.
Central Transfers to States, Centrally Sponsored Schemes And Governance

One of the prominent developments in recent times has been the steep increase in the number of schemes sponsored by the Centre – there were only 45 in 1969-1974 and in 1985 there were 201, and now there are more. The volume of Central funds devolving on the States has become quite substantial over time: these amounts being higher than the total tax revenues of the States and constituting almost 40% of the States’ public expenditure it is imperative to rationalize the number of centrally sponsored schemes.

The Task Force noted that the concept and design of JNNURM are a welcome development insofar as the States and Urban Local Bodies are enabled to play a proactive role in the formulation of projects with funds flowing from the Centre with a set of performance-linked conditionalities. It was also noted that the extent of decentralization and devolution gets determined by the quality of governance indicated through the delivery of services to the people. It was concluded (by the Task Force) that there is a close co-relation between the nature of Centre State relations and quality and efficacy of service delivery to the people. For this to become meaningful there was a felt need (i) for a minimal fixed tenure for key functionaries such as Chief Secretaries of State Governments and of Director Generals of Police; (ii) for independent monitoring of programmes; evaluation of programmes, especially flagship programmes with large outlays, by academicians and professional experts; (iii) for greater transparency - by the result of evaluations being exhibited on the websites; (iv) for stronger audit mechanisms; and (v) for development of a Governance Index (GI) along the lines of Human Development Index (HDI). The Task Force would also emphasize the need for introducing grading for performance by way of incentivization, grading of NGOs, and utilization (and programming) of websites with a view to promoting transparency.
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Administrative Relations

The basic premise governing the discussion on Administration Relations was that autonomy and authority are neither rights nor gifts – they are only means to desired ends, and hence the imperative and immediate need for bureaucratic reform.

Instead of adhering to theoretical concepts like ‘true federalism’ vague or political concepts like ‘utmost autonomy’, the Task Force was of the view that it was necessary to examine as to how the present arrangements hamper good governance and citizen welfare at the State level and how any change would help enhance the same. After a careful perusal of the analysis and recommendations of Sarkaria Commission, Administrative Reforms Commission and Estimates Committee, some members of the Task Force believe that there should be an increase in the number of All India Services to cover Engineering, Education and Health. However other members expressed apprehension about this in view of the limited opportunities available for members of the States at the Centre. It was opined that the existing All India Services such as Indian Police Service and the Indian Forest Service had become subordinate to services at State levels – they had substantially shed their All India character due to severely limited rotation between the Centre and the States; for that reason there appeared to be no justification for bringing more services within the fold of All India Services. However the Task Force was unanimous that there is need to reinvigorate the existing All India Services.

The Task Force believes (1) that there is a strong case for taking greater care and caution in the constitution and composition of the Union and State Public Service Commissions with the objective that these Commissions ensure much greater professionalism and objectivity in recruitment to key public services; (2) that there is an urgent need for deliberations and discussions on the ways to integrate the North Eastern region into the national mainstream. Given its utility and relevance, attention is invited to the recent publication of Vision 2020 for the North Eastern region which has been endorsed by the Governors and Chief Ministers of all the North Eastern States.

In discussing Administrative Relations in general, the following points were made and the focus was on the increasingly diminishing role of institutions vis-à-vis individuals:
✓ Focus on the desirable structures for improving the quality of governance thereby incorporating the responses received from the State Governments in that respect.

✓ Creation of a Credibility Index in relation to a large number of NGOs who on proper scrutiny are found to be having questionable credentials.

✓ Enlarged role of credible civil society representatives and NGOs in Programme Implementation.

✓ Neutrality and impartiality amongst civil servants could be promoted by the requirement of taking an oath of allegiance to the Constitution at the time of entry into service. The act of administering such an oath by the State Chief Ministers concerned and its prominent coverage in the electronic and print media would help in ensuring that civil servants behave responsibly as servants of the people, and not as mere bureaucrats.

✓ The abovementioned oath should contain specific reference to parts III, IV and IVA of the Constitution relating to Fundamental Rights, Directive Principles of State Policy, as well as Fundamental Duties. Special emphasis needs to be placed on Article 37 of the Constitution which states that the Directive Principles of State Policy shall be fundamental in the governance of the country and it shall be the duty of the State (and consequently of all officials) to apply these principles in the making of laws.

✓ Safeguards to provide against victimization of rule abiding and upright civil servants were considered to be absolutely necessary. It was necessary that the Cabinet Secretary be declared Head of Civil Services and act as the final level of redress in cases of alleged victimization: it is recommended that this should be done by a Cabinet decision so that the role of the Cabinet Secretary becomes institutionalized.

✓ Need for strengthening the institution of UPSC was also felt, particularly in terms of having clear defined conditions of eligibility for the offices of Chairmen and Members of the Union and State Public Service Commissions under Article 316. It was remarked that UPSC should not limit its role to only recruitments, appointments and advising on cases of disciplinary proceedings but should be required to publish an annual report with an analytical chapter on State wise Cadre Management and remedial measures proposed.

✓ It was highlighted that the core of the 73rd and 74th Amendments was devolution of powers to local bodies and in pursuance of that suggestions were made to strengthen
the local level entities of governance in terms of greater freedom, flexibility and autonomy. It is however paradoxical that the number of schemes in the Centrally Sponsored Schemes (CSS) is on the increase. The Directive Principles of State Policy enjoin the State to act in social and economic spheres which are largely in the State List. This makes out a case for the Union Government to retain income from revenues to the extent needed for the subjects assigned to the Union under the Seventh Schedule and pass on the balance to the States.

✓ The issues of Central Government not giving any financial assistance to the State governments for implementation of the laws made by Parliament, and the need for a provision for consultation by the Central Government with the State Governments in matters falling in the State List, e.g. agriculture, while signing international treaties merit serious consideration at the Centre. After prolonged discussions the Task Force suggests that the Union Government should consult the State Governments on subjects falling in the State List before entering into an international treaty, e.g., international treaties on water disputes are invariably preceded by consultations between Ministry of External Affairs (MEA) and Ministry of Water Resources (MOWR) and have participation of Chief Secretaries and Secretaries of the respective State governments were cited.

✓ It was realized that there was indeed a close link between the extent of devolution and the quality of service delivery. Many of the activities envisaged in the Directive Principles of State Policy also figure in the Union List and in the Concurrent List. The Centre in any case has the overarching responsibility to improve the quality of life of its citizens. As for direct release of funds, it is pointed out that in the USA, money is released directly to the implementing agencies including local bodies. Strengthening the capabilities of the local bodies is a prerequisite for greater devolution of functions.

✓ Given the fact that the subject of good governance is linked with the need for electoral reforms, an appropriate definition of ‘National Party’ is a must – its objective being that of securing political stability at the Centre.

✓ While the CSS are necessary in national interest for promoting development in areas of national priority, there is a strong case for reduction in their numbers and their outlays. There is a divergence in the quality of governance, and accordingly in the devolution of functions, funds and functionaries in different States. There is urgent need to carry the 73rd and 74th constitutional amendments to their logical conclusion
by recommending appropriate measures based on the contents of these constitutional amendments.

- When considering the proposal as to why the entire devolution of central funds cannot be through the Finance Commission, the Task Force clarifies that a certain amount of funds need to be canalized through the Planning Commission and Ministries of Central Government to ensure that resources are spent in areas of national priorities.

- Another recommendation is that the devolution of funds should be linked with the performance in specified parameters which may also include level of tax collection; the extent of untied funds should increase; specific powers should be assigned to Gram Sabhas vis-à-vis Gram Panchayats; there needs to be a strengthening of inter-tier organic ties; there must be an augmentation of audit functions at various levels; and delineation of the clear role of CBOs (Community Based Organizations), e.g., School Committees and Joint Forest Management Committees, etc.

Another problem that has plagued the sphere of administrative relations has been ensuring an effective voice to the hilly regions and border States with limited population and how to offset the consequential low representation at the Centre. Presently, several territorially large States with sensitive borders do not have adequate representation in the Centre. Examples of North Eastern States which have very poor representation in the Central Government were mentioned. It was opined that there is merit in giving more voice to states with lesser population and hence in such cases a minimum number of Members of Parliament should be provided for every State. Under the Constitution nine States in India have only one member each in the Rajya Sabha: which is considered by the Task Force as a hopelessly inadequate representation. It was suggested that for States with less than five members there needs to be observed the principle of equality of State representation for these States in the Council of States.

In the light of the fact that coalition governments at the Centre are leading to the growth of regionalism and sub-regionalism, the Task Force considers it imperative to suggest ways for generating greater consensus on national issues. The Inter State Council was one such platform, but it has to be better empowered to be more effective – besides it requires to meet far more frequently. It was further suggested that specific consensus building committees should function under the umbrella of the Cabinet and all coordinating councils must function under the Inter State Council. The Secretaries of different departments of
States should be ex officio members of the Inter State Council for improving coordination among the States. It was further opined that the coordinating body should be non political and non governmental and should be headed by some eminent person. It was argued that if persons of repute are selected for generating national consensus, the consensus building process would be easy and the Prime Minister should not be made a part of this consensus building body so as to avoid any embarrassment to the Government, if decisions taken by this body cannot be implemented. Such a forum would have moral authority and would be binding morally rather than legally. It was further stated that even the courts could, when required send cases pending in Court for adjudication or recommendation (and report) to such co-ordinating body.
Realizing the Potential of Panchayati Raj in India

The first thing that was pointed out in this regard was the neglect of the implementation of the Panchayats (Extension to the Scheduled Areas) Act, 1996 in the Fifth Schedule areas of the Constitution; lack of empowerment of Gram Sabha as against the Gram Panchayat; non-existent audit; the weak accountability at the Block and District Level Panchayats where representatives are not directly elected; and have very limited powers for resource mobilization. Further a need for greater accountability and transparency on the part of Panchayat Raj Institutions (PRIs) was felt. The basis for devolution of funds to the State Governments and local bodies may be considered by assigning specific weightage to the severity of the problem and performance indices. In the event of non-performing local bodies, the funds for infrastructural development may flow to parasitical organizations till such time as the local bodies acquire the capability to deliver.

Other recommendations made in this regard were empowerment of Panchayats to levy and collect taxes; performance linked devolution; increased use of IT through a network of ICT booths, along the lines of STD booths, through PPP; inter linkage between CVOs and PRIs; empowerment of Gram Sabhas; and association of MLAs as President of Block/Taluk Panchayats.
Emergency Provisions in the Constitution of India

The Task Force noted that the Constitution, in dealing with Emergencies is unique to the extent that it contains a complete scheme for dealing with crisis situations along with speedy readjustment to peace time governmental machinery after such crisis is over. The National Emergencies are now – by and large – a matter of the past and the now sparing use of Article 356 inspires the hope that these provisions are used only as safety-valves during really emergent times for the preservation and the protection of the Constitution. No amendment in these provisions is recommended, though the Task Force feels that there should be utmost care in their use; only as matters of last resort to deal with those rare situations that could exceptionally arise and could not be dealt with in the ordinary course of constitutional governance. Subversion of Article 356 to suit narrow political ends is to be deplored.

There was broad concurrence that there is no need for reconsideration of the provisions relating to Financial Emergency in Article 360.

As regards Article 352 it was felt that as the constraints imposed for its invocation have been taken care of by the 44th Amendment of the Constitution, no further change need be envisaged and should be retained. Article 356 is a necessary device for the protection of the constitutional order. However, adequate safeguards need to be observed against its misuse. It was noted that the frequency of the use of this Article has considerably reduced since the Supreme Court’s judgment in *S.R.Bommai v Union of India*, (1994) 3 SCC 1 which enclosed the Sarkaria Commission’s recommendations as the essential guidelines for its use. It was in the background of this judgment that the Supreme Court (by majority) invalidated recourse to Article 356 in the case of *Rameshwar Prasad v Union of India*, (2006) 2 SCC 1.

A suggestion was made by some members of the Task Force that Article 355 required to be remodeled through an appropriate amendment to provide for the Centre deputing its forces in stated and specified instances which go far beyond the normal law and order
disturbances e.g. situation which gravely imperils the lives of people and assets of national interest. The increasingly pro-active role played by the media sometimes tends to give undue emphasis to certain incidents which results in a serious cascading effect on the entire society.

The Task Force suggests that it will not be inappropriate to invoke Article 356 for a limited and specified part of a State and for a limited period in the event of internal disturbance of a magnitude and intensity that transcends the normal law and order situation. Another viewpoint that was advanced was that since Article 352 relating to proclamation of emergency in the event of the country or a part of its territory being threatened by war or external aggression or armed rebellion envisages declaration of Emergency in the whole of the country or such part of the territory as may be specified, and since the circumstance of ‘external aggression’ is common to both Articles 352 and 355, the Centre’s intervention in a specified part of the territory of the country will be in order under Article 355 also. The majority of the members found this viewpoint untenable.

After a detailed analysis of the phraseology of Article 355, it was concluded that the Article is not just ornamental or a mere expression of sentiment. It is a constitutional power that needs to be exercised where circumstances warrant. Accordingly, it was suggested by the Task Force that a specimen executive order needs to be drafted for under Article 355. The discussion centered on as to which authority should be vested with magisterial powers in the specified area for which Article 355 was invoked. It was agreed that the provisions of Section 20 of the CrPC would require to be amended to provide for vesting powers of a District Magistrate in the functionary designated by the Central Government in the event of invocation of Article 355 in a specified area of a State/District for a limited period. After detailed discussions on all aspects, the consensus was in favour of amendment of Article 355 to enable the Central Government to deal with disturbed conditions in a part of the State warranting immediate action which the State Government concerned is unable or unwilling to take. The amendment could be in the form of an explanation to Article 355.

There was broad consensus that an executive order maybe sufficient for the purpose of laying down the situations that may warrant the invocation of Article 355. As regards the process and procedure to be followed it was observed that the same procedure may be followed for invocation of Article 355 as is prescribed for the invocation for Article 356, namely, satisfaction of the President on receipt of a report from the Governor of a State or otherwise that the internal disturbance of the kind of magnitude and intensity as laid
down in the Order has arisen. The Draft Order will need to bring out the detailed rationale for the invocation of Article 355. It was decided that the Commission Member, Professor N.R. Madhava Menon, will oversee the drafting of the proposed Executive Order for invocation of Article 355.

A suggestion was made as to whether a proclamation under Article 356 needs to be preceded by issue of show cause notice to the concerned State Government. It could be by way of an indirect/concealed communication under Article 355. The suggestion was found to be impractical. A suggestion was also made about the use of Article 356 only in a part or parts of a State instead of the whole State. Again, it was not found in consonance with the spirit and object of Article 356.
Inter State Water Disputes

It was felt that Article 262 of the Constitution which provides for adjudication of disputes relating to waters of interstate rivers or river valleys and under which the Inter States Water Disputes Act, 1956 (ISWD Act) is enacted, has failed to serve the purpose envisaged by the framers of the Constitution. Although Article 262(2) provides that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint, yet recourse to Article 131 dealing with the Original Jurisdiction of the Supreme Court has made substantial contribution in some of the cases of Inter-State water disputes.

It was suggested that Inter-State River Disputes should be within the original jurisdiction of the Supreme Court as in the USA, as was also the case in our country till the enactment of Inter States Water Disputes Act in 1956 and that Rules could be framed under Article 145 of the Constitution for better adjudication of such water disputes on the American Pattern.

There were certain suggestions concerning the need to dispense with Article 262(2) of the Constitution observing that there have been instances where the Central Government by virtue of its strong position has succeeded in the resolution of Inter State River Water Dispute as had happened in the case of sharing of the waters of river Narmada among Maharashtra, Karnataka and Rajasthan.

Another suggestion was that while keeping Article 262, as it is, the Inter States Water Disputes Act, 1956 needs to be repealed by Parliament – at least as an experimental measure. It will imply that all Inter State Water disputes will be adjudicated only by the Supreme Court under the provisions of Article 131 of the Constitution – as in the United States of America. The Supreme Court of India can make rules under Article 145 of the Constitution which may provide for adjudication of water disputes on the American pattern which provides for appointment of a Special Master if an original case raises factual questions. Importance has to be given to the selection of the right person as the
Special Master and not to follow dilatory process of law nor to follow the adversarial method of recording evidence. It was opined that the subject calls for an entirely different process which should be truly investigatory and should also take recourse to ‘caucusing’ which is a term used in arbitration and implies that the Arbitrator initially acts as an Arbitrator or a Conciliator who may caucus with the parties individually or collectively, keeping political considerations away from the merits of the case. Mr. F.S. Nariman has strongly advocated this cause. His views which merit serious consideration are set out in the Annexure-I to this report.

Yet another view was that as the repeal of the ISWD Act will amount to rendering Article 262 redundant on adjudication of disputes relating to waters of Inter State Rivers or River Valleys, the Act can be amended firstly prescribing a time limit, say one year, for the issue of clarificatory or supplementary order to be given by the Tribunal in case of a reference back to it that the Act provides for; and secondly by specifying a period of 10-15 days for the Government of India to notify the Orders of the Tribunal. It was realized that vesting the Supreme Court with original jurisdiction of such cases will not speed up matters both due to the magnitude of work in the Apex Court and the non permissibility of prescribing time limits for that Court. Moreover, the style of the functioning of the Tribunals needed to be less Court like and they should function more like a Committee, adopting a conciliatory and problem solving approach instead of resorting to adjudication. It was proposed that the concept of locus standi also merits to be redefined so that in addition to the Governments concerned, farmers, other water users and civil society institutions may also approach and appear before the Tribunal.

A point was raised about Article 263(a) which provides for inquiry and advice upon inter state disputes by the Inter State Council, but it was noted that the notification of 1990 setting up the Council does not provide for discharge of this function.

Finally, it was agreed by majority that Amendment of ISWD Act may be a better proposition as compared to its repeal. It was feared that if the Act is repealed the Supreme Court may get inundated with the litigation on River Water disputes. The need for having the Tribunals manned by incumbents with outstanding competence, sagacity and statesmanship was underlined. In order that the Tribunals in our country show a better performance, the Act should itself provide for appointment of men and women of high calibre, competence and professionalism as Members of the Tribunals.
Distribution of Functional Responsibilities in Federal Polity

It was argued that the plurality of the Indian society calls for greater decentralization. Over a period of time the powers of the Centre have become exclusive and those of the States are becoming increasingly shared. The recent anti-terror initiatives taken by the Centre are indicative of the Centre taking action in matters that lie within the competence of the States. A merger of the State Council and the National Development Council was advocated. It was put forth that the Planning Commission had been politicized and funds were being allocated on a discretionary basis. The Centre was increasingly exercising influence. A paradigm shift and nurturing of cooperative federalism was suggested.

It was further acknowledged that globally there are different patterns of federal governance. While the Canadian Constitution does not declare Canada to be federal country, in practice, Canada represents an advanced version of federal practices. As against this, though federalism is said to be one of the basic features of the Indian Constitution the federal practices are less pronounced as compared to Canada. In recent years, there have been positive developments insofar as devolution of funds to the States by the Finance Commission is concerned as it has been following relatively normative parameters rather than political ones. As for the desirability of the Centre shedding its powers in favour of the States, the magnitude and intensity of not only inter-state but also intra-state diversity, the imperative of protection to minorities and the desirability of reducing the inter state disparities in economic development underline the need for a strong Centre.

It was further observed that the acute inter State socio–economic disparities and the weak capacity of states to mobilize revenues call for a more emphatic and dynamic role of the Centre. A less active role by the Centre may imply retrenchment of the staff and winding up/shrinking of facilities in critical sectors like health or education and also in the creation of infrastructure. The inadequacy of good governance and professionalism resulting in ineffective delivery of services to the people is another factor that provides the rationale for a more robust role by the Centre. However the Task Force concluded that no Constitutional Amendment was called for in respect of distribution of functional responsibilities in federal polity.
While addressing the issue concerning the provision for consultation by the Central Government with the State governments in respect of matters figuring in the State List while signing any international treaty/agreement - Reference was made to Article 253 of the Constitution which relates to legislation for giving effect to international agreements. Attention was drawn to the sense of dissatisfaction and deprivation on the part of the State governments due to the Central Government entering into treaties/agreements/conventions without any laid down mechanism for consultation with States on subjects figuring in the State List read with Article 246 of the Constitution. It was also informed that the American and Australian systems require ratification of signing of treaties and agreements by Parliament whereas in the case of UK and India there is no requirement of parliamentary ratification. It was further remarked that Justice Jeevan Reddy Committee also referred to the need for consultation with the States before entering into a treaty or agreement on the subjects figuring in the State List. Moreover, attention was drawn to the genesis of the incorporation of Article 253 in its present form. The framers of the Constitution had the Canadian experience in mind where the treaty making powers were subordinate to the States’ powers to make laws. Resultantly, Canada could not pass the law to meet the ILO obligations cast upon it and hence Article 253 in its present form was, therefore, intended to give overarching powers to the Union Government. It was further pointed out that more recently when the provisions of the treaties to be entered into among various countries of the European Union came in conflict with the provisions in the German Constitution, Germany had amended its Constitution to vest wider powers in this regard in the Centre.

Furthermore it was also mentioned that Article 246(1) read with Entries 13 and 14 in List I (relating to participation in international conferences, and entering into treaties and agreements and their implementation) vests sweeping powers with the Parliament to make laws on the subject of implementation of treaties and agreements. In addition to this it was also noted that the Report of the National Commission to Review the Working of the Constitution (NCRWC) chaired by Justice M.N. Venkatachaliah had recommended prior consultation by the Union Government with the Inter State Council before signing any treaty vitally affecting the interests of States regarding matters in the State List. However, this recommendation has not been implemented.

Reference was also made to the provisions of Article 3, relating to formation of new States and alteration of areas, boundaries or names of existing States, which require the President to obtain the views of the State legislature before introduction of a Bill on the
given subject in either House of Parliament. It was thought by some members that a similar provision may be considered before signing of a treaty or agreement under Article 253. But it was remarked by others that in view of the large number of international agreements and treaties signed by the country even in respect of matters in the State List, the requirement of legislative consultation will be tedious, cumbersome and time consuming. Therefore, provision for executive consultation would be enough.

Thus taking all relevant factors into account, it will be appropriate to recommend that prior executive consultation with the States through the forum of Inter State Council be established as a practice in all cases before making any law for implementing any treaty, agreement or convention with any other country or countries, or implementing any decision made at any international conference, association or any other body.

When addressing the issue of ‘Central Assistance to the State Governments for Implementation of Laws passed by the Parliament’, attention was drawn to the provisions of Article 247 which state that the Parliament may by law provide for the establishment of any additional Courts for the better administration of laws made by Parliament or any existing laws with respect to a matter enumerated in the Union List. It was observed that the laws passed by Parliament for setting up of Special Courts and Fast Track Courts do not provide for grant of Central assistance to States for the functioning of such Courts. It was noted that such a provision has been made in the Anti Terror law for setting up of a National Investigation Agency. The need for broadening the scope of the recommendation about Central assistance for administration of justice to include the effective functioning of the already established courts was underlined. It was also highlighted that at present the States are expected to meet the expenditure on District and Moffussil Courts from State revenues following the recommendations made in this regard by the Shetty Commission.

On the issue of the Centre bearing the expenditure for the administration of justice, it was further observed that the resources spent by the States on the administration of justice are miniscule of their budgetary allocations with some States spending as low as 0.7% of their budget. Provision for Central assistance for administration of justice for implementation of laws will go a long way in expediting the disposal of cases and will be cost effective.

In conclusion it was decided to recommend 100% grant of Central assistance for administration of justice in the light of Entry 11A in List III read with Article 246 of the Constitution. Further suggestions for transfer of certain legislative entries such as Entry
17 relating to water from the State List to the Concurrent List were also discussed. But on careful consideration of all aspects of distribution of legislative powers between the Centre and the States and their interpretation by the courts, no recommendation for any such amendment was considered necessary.
Office of Governor

In the light of the controversies surrounding the office of the Governor during and ever since the making of the Constitution, a further reassessment was undertaken on each and every aspect of the office of the Governor from the choice of the person, his tenure, his powers and their exercise up to his removal. After a careful and thorough examination of all the provisions of the Constitution and practices under it, it was found that no improvement could be made over and above the recommendations made by Sarkaria Commission in this regard. Therefore, the recommendations made by Sarkaria Commission were unanimously endorsed and recommendation was made for observance and implementation of all the suggestions made by that Commission in respect of all aspects of the office of the Governor from the choice of a suitable person for the office to his removal from office and the exercise of various powers by the Governor while in office. Even on the issue of his powers under Articles 200 and 201 relating respectively to assent to Bills and reservation of Bills for the consideration of the President, after due deliberation on several alternatives, it was decided to leave them in their present form in the expectation that the Governors will act judiciously and the President will dispose of pending Bills more expeditiously; time-frames do not require to be specified for such high ranking constitutional dignitaries. As to the powers of Governors to act on their own where question of sanctioning prosecution of ministers or former ministers are concerned there is sufficient case law dealing with the same – and no constitutional amendment is recommended.

The Task Force did not find any major flaws in the Constitution to be remedied by its amendment. Its overall impression was that if the Centre-State relations were not working well in any respect, it was not because of flaws in the Constitution but because of its flawed operation in given cases. Instances of misuse of power by the Central Government vis-à-vis the States and corruption and inefficiency in the States were noted frequently. It was generally felt that while maximum decentralization of powers and functions on similar lines as suggested by Sarkaria Commission must be pursued and maximum responsibility for development and welfare must be assigned to the States and local bodies, central schemes for corruption-free efficient governance could be thought of and drawn up.
Good governance is the crying need of the country in the creation of which the existing constitutional arrangements impose no hurdles. The political representatives and bosses as well as the civil servants must realize that a corruption free efficient governance benefits everyone and must, therefore, be realized by whatever administrative and legislative arrangements that the Constitution so liberally provides.
Summary of Recommendations

1. The existing provisions of the Constitution on the Centre-State relations entrusted to TF-1 do not require amendment or modification except Article 355, which needs a clarificatory amendment.

2. While for the unity of the nation a strong Centre is required for the efficient operation of the polity, decentralization of functions and their execution is also necessary. Therefore, while the constitutional provisions may be left undisturbed, ensuring responsible decision making at the State, Municipal and Panchayat levels must be encouraged pursued and realized. Accordingly, more and more responsibilities must be entrusted to local bodies with a view to achieving better results and democratization of process up to grassroots levels envisaged by the 73rd and 74th amendments of the Constitution.

3. In a globalised economy, while major decisions may have to be taken by the Centre, the subsidiarity principle (as developed in Europe) could be adopted in the execution of such policies, i.e., the Centre performing only those tasks which cannot be performed effectively at the State or local level.

4. The Centre may sponsor its own schemes to be executed by local bodies, but it must provide for suitable and adequate supervision for appropriate utilization of funds, and make provision in the scheme for ensuring efficient performance.

5. For efficient and coordinated administration and governance within the country there is no need of adding to the existing All India Services. However, the existing services need to be improved through improvement in the selection process, and the process of selecting members of the Union Public Service Commission (UPSC) need to be revamped. Better governance is the need of the hour and it must be provided by all means. A paper on the short-comings of the working of the UPSC and how it could be improved – preferably by a retired Chairman of UPSC would be very useful.
6. Emergency provisions as they stand after 44th Amendment of the Constitution do not require any change except insertion of an explanation under Article 355 as mentioned above. Controversies continue to arise in respect of the use (misuse) of Article 356 but they are less. In this regard the Sarkaria Commission recommendations as endorsed by decisions of the Supreme Court must be observed. Article 355 provides justification not only for the use of Article 356 but also independent of it for the purpose of protecting a State from external aggression and internal disturbance as well as in defence of the Constitution. If need be the Centre can take any appropriate action in this regard unilaterally. Provisions need to be made for invoking Article 355 even as regards a part of the territory of a State as mentioned above: suggestions for a draft executive order (specimen) are recommended: for adoption in individual cases when they arise.

7. Inter State River Water Disputes have become a contentious issue among the States. Suitable amendments to the Inter State Water Disputes Act ensuring expediency and effectiveness in the adjudication process are required.

8. The existing distribution of legislative powers does not require any constitutional change except that in matters of international treaties requiring laws to be made by Parliament on subjects included in the State List, a practice should be evolved of consulting the States either directly or through the Inter-State Council.

9. Office of the Governor remains a contentious issue in Centre-State relations. The solution for all these contentious issues lies in the observance and evolution of suitable practices and conventions as recommended by the Sarkaria Commission. These recommendations need to be adhered to in letter and spirit by all the concerned parties, including the person holding the office of Governor.
I submit that the experience of the working (often “non-working”) of a succession of Water Disputes Tribunals, makes it imperative that the Inter State Water Disputes Act, 1956, be repealed: and just as all other disputes between States are left to be decided only by Original Suit filed in India’s Supreme Court (Article 131) so also inter-state water disputes should be left to be decided directly by the country’s highest Court. Recording of evidence and of findings on fact and law may well be delegated to a senior retired Judge of the Supreme Court, aided and assisted by assessors – but the “investigation” into the water dispute by such a retired Supreme Court Judge ought not to be fettered by legal arguments and stratagems of lawyers representing the States: Of course lawyers may represent the States before the Special Judge (or Master) but their contribution should be limited to strictly legal questions which may arise at the end but not at the beginning: the doctrine of “equitable apportionment” is a doctrine of equity – it entails a host of factors to be taken into account:¹ the data and its interpretation is a matter to be left to experts and engineers but the application of the equitable doctrine is always the subject of legal argument – and legal decision. The technicalities of the actual allocation of the waters of a river are better left to the province of the scientist, the engineer and the economist who possess necessary specialized knowledge, which the lawyer lacks: the lawyer is useful in the formulation of principles and their application to the case at hand.

My own experience in the Cauvery Water Disputes Tribunal has been that if the Chief Engineers of Karnataka, Kerala and Tamil Nadu had been assembled to sit across the table with the Chairman (and members) of the Tribunal it would have been possible to narrow differences, and save a great deal of time. The decision as to how the differences were to be narrowed (of course) would have had to be left to the good sense of the Tribunal and not to the Engineers. The Engineers had to be put at ease so that they did

¹ Equitable share of a State is to be determined in the light of all the relevant factors in each particular case, which should include (but not limited to) the following: (i) Geography, Population, Hydrology and Climate; (ii) Past or existing utilisations and agreements; (iii) Proposed or planned utilisations; (iv) Socio-economic needs or each basin State; (v) Alternate resources, conservation, avoidance or unnecessary wastage; and (vi) Degree to which the needs of a riparian State may be satisfied without causing substantial injury to a co-riparian State.

The weight to be given to each factor is to be determined by its importance in comparison with that of other relevant factors, and in determining what is a reasonable and equitable share, all factors are to be considered together and an informed conclusion reached on the basis of the whole.
Constitutional Scheme of Centre-State Relations

not have to keep looking over their shoulders (to their masters, the State) when explaining technical aspects; lawyers of the party states being kept on hold to be heard at the end on legal points that arose: but not on how wastages or on much or how little water was actually required by each State, nor on how the cropping patterns in one State or the other should be altered having regard to advances in modern technology etc.

The advantage of relegating all disputes including water disputes to the mechanism of Article 131 would enable a non-elected but Supreme non-political body (India’s Apex Court) to decide in a fair and non-partisan manner – all contentious water disputes between States, just as it is entrusted with the task of deciding all other disputes between States including land boundary disputes etc.: if for no other reason than that a decision of the highest Court of India is constitutionally final.

I have some suggestions to offer – for the long term and the short term

(1) **In the long term** – I would suggest, whilst not disturbing the provisions of Article 262, which are only enabling, the Inter-State Water Disputes Act 1956 should be repealed by Parliament – at least as an experimental measure. As a consequence all disputes between States – including Water Disputes – would have to be adjudicated only by the Supreme Court of India under the provisions of Article 131 of the Constitution. Under its rule-making power under Article 145 of the Constitution the Supreme Court could then make rules for the better adjudication of such water disputes, on the American pattern.²

² See American Jurisprudence – Volume 32A (1982) para 572 wherein it is stated: “if an original case raises factual questions which require an evidentiary hearing for their resolution, the Supreme Court may refer it to a Special Master. Such a reference is not required, however, if no issues of fact are raised, no evidence need be taken, and the parties desire an expedited ruling on a question of law. It should also be noted that while the Supreme Court may call on the aid of a master to hold evidentiary hearings, this may not fully relieve the Court of the burdens presented by a complex case, since the Court still retains the ultimate responsibility to approve or reject the master’s findings and fashion appropriate relief.

Accordingly, if a District Court also has jurisdiction over a matter, the Supreme Court may refer it to a district judge, who may be in a better position to fashion a decree which can then be reviewed by the Supreme Court in the exercise of its appellate jurisdiction. A typical order of reference (to the Special Master) may provide that the special master has authority to fix the time and conditions for the filing of additional pleadings and to direct subsequent proceedings, with authority to summon witnesses, issue subpoenas, take evidence, and submit such reports as he may deem appropriate. Motions to intervene may also be referred to a master. The master then takes evidence and files a report. The master may also refer questions of law to the court and propose conclusions of law. Exceptions may then be filed to the master’s report and such exceptions are then considered by the court. The court may then enter a decree, or direct the parties to prepare and file decree. If the parties cannot agree on a decree, the matter may be referred back to the master for appropriate proceedings and further recommendations.”
A senior retired Justice of the Supreme Court or a senior Chief Justice of a High Court having experience of pushing cases to speedy and successful conclusions should be appointed Special Master or a Special Judge: the choice of the right person is extremely important: it helps to achieve the end result without much delay. The Special Judge or Special Master, after taking on board all the documents filed by the party-States and after ascertaining from the technical experts and engineers the salient features must then call in the lawyers for a week to discuss the legal questions that arise: the attempt to arrive at the resolution of the dispute or even a decision on the matters at issue must not resemble a proceeding in a Court of law – an adversarial proceeding – but an investigative proceeding. A useful precedent was that devised by the Bachawat Tribunal, (the Krishna Water Disputes Tribunal: KWDT:I) when its members directly discussed the technical aspects involved with the engineers of the respective parties without at first seeking any assistance from legal representatives of the Party States.

(2) In the short term (or alternatively, if the Inter-State Water Dispute Act, 1956, is to remain where it is and as it is with prescribed time-limits as mentioned in the 2002 amendment) I would recommend the following:

(a) The Tribunal must sit at the same level as all other persons appearing before it including counsel and engineers: the raised rostrum for the Water Disputes Tribunal gives the impression to one and all (including particularly its Members) of an adversarial Court proceeding, which is psychologically inappropriate: the mind set of Tribunal members, lawyers, engineers and participants must be so conditioned as to gather all necessary information with as little formality as possible – so that the Tribunal reaches an informed decision on the points required to be decided.

(b) The Chairman of the Tribunal along with the Members must, on an almost continuous basis, caucus with the engineers and technical experts on each side – preferably keeping lawyers in the background so that the Tribunal acquaints itself with all the finer technical points at issue in the case. Of course this would be after presentations are made by the technical experts on each side.

(c) Adversarial form of recording of evidence (as in a Court of Law) must be avoided – viz. the rigmarole of examination-in-chief (or its poor substitute an affidavit in support) of every witness, the cross-examination of that witness

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3 Caucusing is a term used in Arbitration – where the Arbitrator initially acts as a mediator or conciliator. He (or she) “caucuses” with the parties – individually and (or collectively).
and his (her) re-examination, as in a proceeding in a Court of law – this is not the recommended mode of proceeding under the 1956 Act.\(^4\) There should be a presentation by the experts on each side with the right to any person or party to question that expert on any given point: the Tribunal retaining a close control over the questioning and the range of permissible questions.

(d) After the presentations are made the lawyers could usefully sum up and give an analysis of the documentation on record and point to relevant conclusions.

(e) This change in the modus operandi of the functioning of Inter State Water Disputes Tribunals can only be achieved by a change in the mind-set of members of the Tribunal – who must not sit like umpires in a cricket match; rather they should emulate the referee in a football match: running with the “players”, all along participating, in “the game” though in a supervisory capacity! The Act envisages an “investigation” by the Tribunal, not an adversarial proceeding like an adjudication in a court of law – yet successive tribunals have conducted proceedings under the 1956 Act invariably sitting on a raised dais as if they were deciding a case in a Court of Law. The manner in which the Bachawat Tribunal (1969-1978)\(^5\) conducted its proceedings (in the First Krishna Water Disputes Tribunal - KWDT-I) – was exemplary and worthy of emulation. Having appointed no assessors to assist it, the members of this Tribunal (all Judges), sat across the table with experts and engineers understanding the technical points and discussing with them the problems and the difficulties, making their own notes as they went along. Then when they

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\(^4\) Cross-examination of witnesses before the Cauvery Water Disputes Tribunal — a cross examination – permitted without any intervention by the Tribunal – was exhausting. Witnesses on each side were cross-examined by Counsels representing party-States. Since the Cauvery Water Disputes Tribunal did not sit on an average for more than seven days a month, the cross-examination of witnesses dragged on and on for four long years! much of the oral evidence turned out to be not very useful – documentary evidence was of paramount importance.

\(^5\) Justice R.S. Bachawat was a Judge of the Supreme Court of India and Chairman of the Krishna Water Disputes Tribunal (KWDT-I): I recall that when on the Court he encouraged Counsel to be brief – and to present arguments “in capsule form” (as he always used to put it).
came to certain tentative conclusions on certain points they called upon advocates for the States to agree on relevant factual matters, and made a note for the record that parties had agreed to such and such: this considerably shortened the need for an “adjudication” save an except on the most material points.\textsuperscript{6}

One last word on this subject: Whilst discounting the pre-dominance of the role of lawyers in Inter-State Water Dispute adjudication I must however emphasise the paramount importance of legal training: it is of great use in whatever activity that a lawyer or a Judge is propelled into. He or she (being so trained) is able to differentiate between and to separate the “wheat” from the “chaff”: a facility not readily found in individuals, howsoever intelligent, who have no legal training. In Inter-State Water disputes the views of experts (scientists, qualified technical persons, economists) have to be listened to and heard: but what they propound does not necessarily have to be accepted. In the end, the accumulated wisdom of an experienced legal mind – wisdom gathered over the years – enables a “good” Tribunal to see through the presentation and form its own conclusions. As the world–famous nuclear physicist Niels Bohr (himself an “expert”) always used to say: “an expert is a man who has made all the mistakes which can be made in a very narrow field”\textsuperscript{7}.

\textsuperscript{6} I am indebted for this useful piece of information to Senior Advocate Mr. Sharad S. Javali who had appeared as Counsel before the Bachawat Tribunal.

\textsuperscript{7} Brainy Quotes – (http://www.brainyquote.com/quotes/quotes/n/nielsbohr385596.html)
Dear Shri K.P. Mishra,

I am forwarding herewith e-mail dated November 9, 2009 received from Shri Ramaswamy R. Iyer. I appreciate his point of view. Kindly make the said e-mail a part of the report of Task Force No.1 as Annexure-II. Kindly acknowledge receipt of this e-mail and intimate the action taken.

With kind regards,

Yours sincerely,

P.P. Rao

—— Original Message ——

From: Ramaswamy R. Iyer
To: Commission on state centre relations ; pprao
Cc: Mukul Joshi ; Ravi Dhingra ; Prof Madhava Menon ; sdpradhan@sify.com ; rriyer@airmail.in ; ramaswamy@vsnl.com ; onlyfordeepak@rediffmail.com ; udayon.misra@gmail.com ; udayon_misra@yahoo.com ; akhtar.majeed@rediffmail.com ; p.k.Doraiswamy ; nc Saxena ; mpiitholi@gmail.com ; falinariman@yahoo.com ; Fali Nariman

Sent: Monday, November 09, 2009 5:39 PM
Subject: Re: Final Report of Task Force I

Dear Shri Rao,

I am somewhat disappointed. At the request of TF I, I (as Chairman of TF 6) attended one of your meetings, made a presentation and circulated a detailed note of comments on Fali Nariman's proposals. There is no reference to this in your report.

The suggestion to amend the ISWD Act to modify the bar on the jurisdiction of the courts and provide for an appeal to the Supreme Court is entirely mine; I have been making it since 1999. No one else to my knowledge has made this suggestion. An acknowledgement of the origin of the suggestion might have been appropriate. Your report might give the impression to the Commission on Centre-State Relations that the recommendation to amend the Act emanated from the discussions in the TF. A more correct statement would be that the TF, after a discussion, accepted my suggestion. Besides, your report does not specifically refer to the jurisdictional bar problem or spell out the nature of the amendment proposed in response.
The recommendations for an outside limit for a supplementary or clarificatory report, and for a ten-day or 15-day limit for the Central Government to notify the Tribunal’s Order in the gazette, were also mine. (Incidentally, there is already a limit of one year for the supplementary report in the 2002 amendment, but this can be extended, and there is no time-limit for the extension. I am suggesting a six-month limit for the extension. This needs to be made clear.)

May I add that I hold my friend Fali Nariman in the highest regard. One does not lightly disagree with a person of such eminence. One’s reasoning is therefore important. I wish you had appended the note which I had taken the trouble of writing for your TF.

(By the way, FN contributed a valuable paper on this subject to the book ‘Water and the Laws in India’ edited by me, and I have stated my own views in the final chapter of the book.)

The subject also figures in the report of TF 6.

I am copying this to Shri Ravi Dhingra and Shri Mukul Joshi for their information.

Best wishes.

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TASK FORCE REPORT

ECONOMIC AND FINANCIAL RELATIONS
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1.0 Introduction

1.1 Terms of Reference of the Commission

1. The Government of India constituted the Commission on Centre - State Relations by a resolution of 27th April 2007 with Justice M.M. Punchhi, a former Chief Justice of India as Chairman, and four other members. The terms of reference (TOR) of the Commission were notified earlier in the Gazette of India: Extraordinary dated 30th September 2005 and are given in Annexure I.

1.2 Constitution of the Task Force and its Mandate

2. The Commission decided to constitute a Task Force on Economic and Financial Relations to act and function as a knowledge partner in this area with Shri T.N. Srivastava as Chairman, and Shri J.L. Bajaj as Co-Chairman and six other members as given in Annexure II. The specific role assigned to the Task Force is given in Annexure III.

3. Specific areas identified for action and report for the task Force are mentioned below:

i. Impact of economic reforms, liberalization and globalization on the policy making role and function of the States in relation to their economic development.

ii. Progress and spread of the economic reforms process in the States and its impact on development.

iii. Impact of Central schemes on the ability of the State to determine their own priorities.

iv. Continued role and relevance of Centralized planning practices through the agencies of the National Development Council (NDC), and the Planning Commission in the context of economic liberalization.

v. Existing system of inter-Governmental transfer of funds with specific reference to the role of Finance Commission, Planning Commission, and Central Ministries.

vi. Impact and implications of conditionalities and introduction of outcomes budgeting vis-a-vis transfer of funds from the Centre to the States.

vii. Impact and implications of direct transfer of funds to panchayats, municipalities and other agencies.

ix. Review of the scheme of assignment of tax powers among Centre, State and Local Governments.

x. Implications of the introduction of Goods and Services Tax (GST).

The Commission floated a Questionnaire which more or less contained the same issues in the form of questions. These were taken to be the mandate for Report by the task force.

1.3 Methodology of Work

4. In the first couple of meetings, the Task Force had extensive discussions on the methodology to be adopted for completing the task assigned to it. The work of the Task Force required academic support, especially for chronicling the developments that have taken place after the Report of the Sarkaria Commission. The Secretariat of the Commission informed the Task Force that three studies have already been assigned to two eminent institutions. These studies related to ‘Fiscal Federalism’ given to National Institute of Public Finance and Fiscal Policy (NIPFP), ‘Impact of Recommendations of VIII to XII Finance Commissions on Fiscal Relations between Centre and States’, and ‘Taxation of Goods and Services in India’, entrusted to Madras School of Economics, Chennai. Drafts of the two studies conducted by the Madras School of Economics were made available to the Task Force.

5. The Task Force decided to pool the resource of the members, who agreed to write the papers for discussion and formulation of views on various issues. The papers written by the various members of the task force are given in Annexure IV. These were discussed in the meetings of the Task Force.

6. The Task Force also received copies of the responses received on the Questionnaire issued by it, compiled by the Secretariat of the Commission. These have been considered by the Task Force in the Report. It may be pointed out here that comments of only a few State Governments have been received. Large States like UP, Bihar, Maharashtra, Gujarat and many smaller States have not responded to the Questionnaire of the Commission. Also no suggestions or comments have been sent by important organs of the Central Government like Ministries of Finance, Home or the Planning Commission. Large political parties like the Indian National Congress have also not responded so far. In the absence
of the views of political parties with large representation in the Parliament and State
Assemblies, States that are home to the majority of population in the country, and important
organs of the Central Government, the report of the Task Force can only be tentative and
incomplete.

1.4 Meetings and Deliberations

7. The Commission had convened a Plenary Meeting of all the Task Forces on 30th
June 2008 in Delhi. The Meeting took place in the forenoon where the Chairpersons and
the members of the Task Forces expressed their views on the subjects assigned to them.
It was followed by the first Meeting of the Task Forces in the afternoon of the same day.
The Task Force on Economic and Financial Relations held in all nine Meetings to deliberate
on the issues.

8. In view of the fact, that members of the Task Force were busy with their regular
assignments and no secretarial assistance was available from the Commission, it was
decided to entrust the task of preparation of the report to Giri Institute of Development
Studies, Lucknow.

9. Many of the issues in fiscal and economic relations between the Centre and the States
refer to matters which are in the jurisdiction of the Finance Commission. It is expected
that the Thirteenth Finance Commission will be addressing these issues while presenting
their recommendations later this year.

2.0 Constitutional Provisions

2.1 Evolution of Centre-State Relations

10. The Constitution of India clearly defines the revenue raising powers of the Union
and the State Governments. The system of financial resource sharing laid down in the
Indian Constitution is the reflection of a long process of evolution of thinking and practice
going back to 1858 when the administration of areas under the control of the East India
Company was brought under the direct control of the British crown. Under the system
that came into existence at that time the Governor-General-in-Council had the complete
control over resources and expenditure and the Provincial Governments remained
dependent upon it for maintenance of their administration. It was soon realised that the
highly Centralised system which came into being was not suitable for governing such a
large and diverse country like India. A gradual process of devolution of powers to the
Provinces started from 1870 with the passing of the Mayo Resolution.
11. Government of India Act, 1919 based on the Montagu-Chelmsford Report was a major landmark in the evolution of Centre-State financial relations as it demarcated the separate resource domain of the two levels of Government. In the scheme devised under the Act customs, non-alcoholic excises, general stamp duties, income tax and receipts from railways and post and telegraphs were assigned to the Government of India, while land revenue, irrigation charges, alcoholic excises, forest receipts, court fees, stamp duties, registration fees and certain minor sources of revenue were assigned to the Provinces. This scheme laid the foundation of the resource sharing between the Centre and the Provinces in the later years to come.

12. Since the inception of the federal structure through the Mayo Resolution of 1870 India had a financially sound Centre/ Imperial Govt. and financially dependent States/provinces. However, for a brief period in the 1920s a system of ‘inverted grants’ from the provinces to the Imperial Govt. was in practice due to deficit with the Centre and Surplus with the States arising out of Govt. of India Act, 1919.

13. The next major event in the history of Centre-State relations was the Government of India Act, 1935. In addition to the revenue sources earmarked exclusively to Federal and exclusively to Provincial Governments the new Act also created a third category of resources, namely, (a) taxes levied by the Federal Government but shared with the Provinces or assigned to them and (b) taxes levied by the Federal Government but collected and retained by the provinces. The scheme of resource sharing also provided for grant-in-aid from the Centre to the provinces in need of assistance as approved by the former.

2.2 The Constitutional Provisions

14. The system of financial relations between the Centre and the States devised by the constitution makers broadly followed the division of resources laid down by the Government of India Act, 1935. The Indian Constitution has clearly demarcated the exclusive fiscal domain for the Union and the State Governments with no overlapping taxation powers.

15. The Constitution also assigned the subjects of legislative and executive competence to the Centre and States, which contained therein the expenditure assignment scheme. With most of the developmental and service delivery functions being assigned to the States, there was an in-built imbalance between the expenditure responsibilities and
revenue raising capacities between the Union and the States. Recognizing this asymmetry, the Constitution provided for devolution of Central tax revenues to the States as recommended by the Finance Commission. Article 280 requires the constitution of a Finance Commission every five years or earlier. Clause (3) of the article sets out the duties of the Finance Commission. Article 281 requires the recommendations of the Finance Commission together with an explanatory memorandum about the action taken thereon, to be placed before Parliament.

2.2.1 Expenditure Responsibilities

16. The Seventh Schedule of the Constitution lists the different functions which are divided into Union List, State List and Concurrent List. Expenditure responsibilities have not been specifically mentioned or listed in the Seventh Schedule. Article 246 empowers Parliament and State Legislatures and defines their authority to make laws with respect to ‘matters’ enumerated in the three lists of Schedule VII. Executive power of the Union extends to all matters with respect to which Parliament has powers to make law and also with respect to rights exercisable by any treaty or agreement (Article 73). Therefore, expenditure responsibilities may be considered to belong to Union or States depending upon allocation of matters in the List I (Union) and List II (States), with overlapping jurisdiction with respect to List III matters (Concurrent List).

2.2.2 Taxation Powers

17. Articles 246, 248 and 265 define the separate heads of taxation for the Union and the States. There are 13 heads of taxation comprised in the entries 82 to 92b in the Union List and 19 taxation items comprised in entries 45 to 63 of the State List. There is no taxation entry in the Concurrent List. Division of taxation powers has been intended and structured to be mutually exclusive to the Centre and the States. The residuary power of taxation rests with the union.

18. Chapter I and II of Part XII of the Constitution contain the main provisions governing the Union-State financial arrangements. Articles 268 to 274 deal with the distribution of revenues between the Centre and the States. Articles 268, 269, 270 and 272 deal with taxes levied by the Union, the proceeds of which are either assignable to the States, or compulsorily or optionally shareable with the States.
19. Article 268 lays down that certain stamp duties and duties of excise on medicinal and toilet preparations mentioned in the Union List are to be levied by the Union but collected by the States and the proceeds shall not form part of the Consolidated Fund of India but assigned to the States in which these are collected.

20. Taxes mentioned in Article 269 (1) are to be levied and collected by the Union but assigned to the States, within which they are levied, as laid down in Article 269 (2).

21. Articles 270 and 272 specified, before the 88th Amendment to the Constitution, the taxes which shall be levied as well as collected by the Union, but their proceeds shall be divided between the Union and the States in a certain proportion recommended by the Finance Commission. Article 270, after this Amendment is the omnibus Article, which provides for sharing of taxation revenues of all taxes, other than those excluded by the said Article itself, to be shared between Centre and the States.

2.2.3 Grants

22. Article 275 of the Constitution provides for the payment by the Union of such sums as Parliament may by law provide for each year as grant-in-aid of the revenues of such States as Parliament may determine to be in need of assistance and for the welfare of Schedule Tribes and for the raising of administration in the Schedule Areas. Article 282 authorises the Union or a State to give grants for any public purpose. Article 275(1) is subject to the law passed by the Parliament, and in absence thereof, subject to recommendations of the Finance Commissions, whereas both the provisos do not require recommendation of the Finance Commissions.

2.2.4 Borrowing Powers

23. Article 292 and 293 define the borrowing powers of the Union and the States. The Government of India is empowered to borrow within such limits, if any, as may from time to time be fixed by the Parliament by law. The States are also empowered to borrow upon the security of the Consolidated Fund of the State within such limits, if any, as may from time to time be so fixed. The States can, however, borrow only within the territory of India and cannot incur external loans unlike the Centre. The borrowing power of the States are further subject to the control of the Union Government in as much as any State may not raise any loan without the consent of Government of India if any part of a loan which has been made to the State by the Government of India there remains outstanding. Consent under Article 293(4) may be granted by the Government of India subject to such conditions, if any, as it may think fit to impose.
3.0  Sarkaria Commission Report

24. A number of commissions and committees appointed by the Union and State Governments have gone into the relations between the Centre and the States. In the 1960s the First Administrative Reforms Commission (ARC) headed by Shri Morarji Desai reviewed the issues in Centre State relations. The Commission felt that a new balance needed to be struck between National and State level requirements in the light of the experience since Independence. In matters of planning and finance the report stressed the greater scope for State freedom and recommended plan grants to the States. It also recommended a new relationship between the Planning Commission and the Finance Commission and favoured a larger role to the latter. The ARC recommended the setting up of an inter-State council under Article 263 for resolution of conflicts between the Centre and the States. But most of the recommendations have remained unimplemented.

25. The Tamil Nadu Government appointed the Rajamannar Committee in 1969 to identify the areas of friction between the Centre and the States. The Committee endorsed the views of the ARC with regard to planning and finance. The Committee recommended far reaching changes in the legislative and political provisions of the constitution to tilt the balance in favour of the States. The Committee did help in articulating viewpoint of the States and highlighted areas of tension between the Centre and the States, but its recommendations had no practical force.

26. In view of the mounting demand for greater autonomy to the States, the Government of India headed by Smt. Indira Gandhi constituted a Commission under the chairmanship of Justice R.S. Sarkaria in June 1983 “to examine and review the existing arrangements between the Union and States in regard to powers, functions and responsibilities in all spheres and recommend such changes or other measures for promoting welfare of the people.” The Sarkaria Commission gave its report in 1987. The Commission was the first national level commission to look at the whole gamut of the Centre State relations and their working since the adoption of the Indian Constitution. Its report evoked an intense debate in the academic and political circles. A brief reference to the issues related to financial relations between the Centre and the States identified by the Sarkaria Commission and their major recommendations about the same would therefore be appropriate before we proceed with our analysis and recommendations.

3.1  Identification of Issues

27. The major issues related to financial relations between the Centre and the States identified by the Sarkaria Commission in its report have been briefly highlighted below:
There is a common feeling that the resources available to the States are not enough to discharge their responsibility. The States have argued that in order to enable them to discharge their responsibilities properly, there is need for ensuring correspondence between their obligations and resources. Thus, it is argued by them that a more rational system of savings and credit allocation should be evolved and the powers of Finance Commission, Planning Commission and the National Development Council should be suitably redefined.

It has been pointed out that the heavy dependence of the States on the union for financial resources has resulted in progressive erosion of the jurisdiction, authority and initiative of the States in their own constitutionally defined spheres.

Some State Governments have suggested that proceeds of Corporation Tax, surcharge on income tax and additional excise duties which are out of the divisible pool should be shareable with the States.

Increase in the administered prices, e.g., of petroleum and coal, is unilaterally made by the union instead of increasing excise duties, which would have been shareable between them.

The enactment of Central Sales Tax Act, 1956 has led to changes in Article 269 and 286. This has adversely affected the yield from States’ Sales Tax, which is the most important source of revenue to the States.

States which have resources of petroleum and natural gas, have demanded revision of royalty corresponding to the increase in the prices of these items.

Union Governments’ decision on pay revision, terminal benefits, granting instalments of dearness allowance, etc., are said to cast a corresponding burden on the States. A few States have stated that this additional burden should be shared by the union.

Some States have pointed out that the failure of the Union Government to mobilize sufficient revenue under Article 268 and 269 have adversely affected their interests.
It has been pointed out that the resource transfers outside the Finance Commission have increased year after year and now overshadow the statutory transfers.

A suggestion has been made by some that the States should have access to the capital resources “as a matter of right”. The limitations imposed on the States for borrowing under Article 293 are also objected to by many State Governments as restricting their freedom to borrow.

Some States have complained that the present pattern of union transfers, with preponderance of loans, is completely out of line with their pattern of expenditure and repayment capacity, and have demanded a review as it leads to heavy indebtedness on the part of States.

Another grievance of the States is that the Union Government obtains external assistance on concessional terms, but the benefit of the same is not correspondingly passed on to the States.

There are complaints of delays, inadequacy and even discrimination in providing relief for natural calamities which need to be dealt with as a matter of national concern.

It has been pointed out by some of the States that the Union Government incurs substantial expenditure on several State List subjects (e.g., agriculture, rural development, health and irrigation) through the Centrally Sponsored Schemes and by maintaining large establishments. This has distorted the States’ priorities by requiring them to find matching funds for the schemes sponsored by the Union Government.

### 3.2 Major Recommendations of the Sarkaria Commission

28. The major recommendations of the Sarkaria Commission on financial relations are summarised below:

**Resource Sharing**

- The Union Govt. should, in consultation with the State Government, periodically consider and explore the revision or imposition of the duties covered under Article 268.
• The monetary limit of Rs. 250 per annum fixed 37 years ago on taxes that can be levied on professions, trades, callings and employments should be revised upwards and reviewed periodically in consultation with States.

• Taxation of agricultural income is a sensitive matter. Nonetheless, in view of its potential, the question of raising resources from this source would require an in-depth and comprehensive consideration in the National Economic and Development Council.

• The net proceeds of Corporation Tax may be made shareable with the States, if and as Parliament may so provide.

• The surcharge on Income Tax should not be levied by the Union Government except for a specific purpose and for a strictly limited period only.

• An expert Committee may be appointed by the Union Government to recommend desirable directions of reforms in taxation and inter alia, consider the potential for resource mobilisation by the Union and the States.

• The Union Government should bring out a suitable legislation regarding levying of consignment tax.

• Levying of special cesses on Union Excise duties should be for limited period and for specific purposes only.

• An expert Committee should be constituted to enquire into and review from time to time, in consultation with the States, the operational feasibility of the scope for levying taxes and duties included in Article 269 and the complementary measures the State Governments would be required to take.

• The review of the royalty rates on minerals, petroleum and natural gas should be made every two years and well in time, as and when they fall due.

**Expenditure Reform**

• Substantial expenditure is incurred by both the union and the State Governments on schemes which have come to be known as populist measures. It will be in the best interest of the concerned Government to take explicitly into account the high opportunity cost of such schemes.
It is necessary that a comprehensive paper on direct, indirect and cross subsidies, covering both Union and State Governments is prepared by the Planning Commission every year and brought up before National Economic Development Council (NEDC) for discussion, since the increasing burden of subsidies has a direct relevance to the availability of resources for the execution of the Plan.

**Role of Finance Commission and Planning Commission**

- The present division of labour which has developed over the years between the Finance Commission and the Planning Commission is that the former advises on the non-plan revenue requirements and non-plan capital gap. The present division of responsibilities between the two bodies, which has come to be evolved with mutual understanding of their comparative advantage in dealing with various matters in their respective spheres, may continue.

- The Finance Commission Cell/Division, proposed to be located in the Planning Commission, should continuously monitor the behaviour of States’ finances.

- Consideration of adequate flow of funds to the backward regions in the States would necessitate creation of expert bodies, like the Finance Commission, at State level also. Without such an organization at the State level to effect regional distribution, skewness will persist in large pockets even in advanced States. State Planning and Finance Boards may be set up at State level to take an objective view of resources to be devolved to the districts.

- The Finance Commissions should take into account the expenditure liabilities of the States with respect to dearness allowance, etc., and make a provision for the same.

- A sub-committee of Finance of the Standing Committee of the National Economic Development Council (NEDC) may be constituted consisting of Union Finance Secretary and the Finance Secretaries of various States and UTs to consider all such matters calling for coordination of economic policies as may be entrusted to it by the NEDC or its Standing Committee.
Assistance for Natural Calamities

- The distinction made by the Seventh and the Eighth Finance Commissions in providing a more favourable flow of Central assistance for floods, cyclones, etc., vis-a-vis a drought situation may continue.

- In the event of a natural calamity, relief must be given immediately. Formulation of standard formats for submission of memorandum by the States will greatly help the Union in dealing with requests of various States urgently and on a uniform basis.

- In a calamitous situation, the States should have a reasonable discretion to make inter-district or inter-sectoral adjustments.

Borrowing by States

- The Rationality of transfers from the Union to the States would involve more of revenue transfers to the less-developed States with lower repayment capacity and weak financial base. In contrast, keeping in view the needs of development in the advanced States, a suitable mix of budgetary and non-budgetary access to capital resources may be allowed to them.

- The flow of capital fund from various sources to the States and their allocation among them should form part of an integrated plan. This task may be attended to by the Planning Commission in consultation with the Ministry of Finance and the RBI and got approved by the NEDC as part of Plan financing.

- The Union Government should give its consent freely to States for borrowing from banks and financial institutions for periods less than one year under clause (4) of Article 293.

- The system of tax free municipal bonds should be introduced in this country.

- The treatment of small savings loan is a matter of judgement by the Finance Commission in relation to the overall debt burden of the States.

- Any problems in the working of the arrangements concerning flow of development finance from the financial institutions should be looked into by the sub-committee on finance of the NEDC.
• The seasonal range of weekly Ways and Means “demand” compared to the prescribed limits should be carefully studied every year re-fixing quarterly Ways and Means Limits for the State. The period for overdrafts should be extended from 7 to 14 days.

4.0 Developments Since Sarkaria Commission

29. Since the mid 1980s when the Sarkaria Commission looked at the Centre State relations, momentous changes have taken place in the polity and economy of the country, which have a strong bearing on the financial and economic relations between the Centre and the States. Some of the issues raised by the States before the Sarkaria Commission are no longer valid, e.g., inclusion of corporate tax in the divisible pool. However, many of the issue raised at that time still remain vexatious, while some new issues have emerged, such as, sharing of service tax, direct transfers of Central funds to local bodies. The policy regime in existence during that period has undergone a sea change with the initiation of economic reforms in 1991. In this section, we have identified major changes in the economic environment which have a bearing on Centre State financial relations.

4.1 Emergence of Coalition Governments and Regional Parties

30. Among the political changes that have taken place, the most significant is the fact that the era of coalition Government has set in with no single political party in a position to form the Government. There has been a decline in the hold of all India parties with the emergence of several regional parties in different States of the country. This development has given a say in the policy making to the regional parties which are part of the ruling coalition. At the same time it has led to an increased tension in Centre and State relations and charges of neglect on part of some of the State Government.

4.2 Market Oriented Economic Reforms

31. With the initiation of the process of economic reforms introduced in the wake of the deep foreign exchange crisis of 1990-91, the economic policy regime which guided the policies since the beginning of economic planning in 1951 has undergone a paradigm change. The earlier emphasis on planned growth with public investment playing a key role and the regulatory mechanism has given place to a more market driven process of economic development. Many of the important regulatory controls were fully or partially removed. Liberalization and globalization became the key words in the economic reform process. The shift in economic policy toward greater reliance on the market for resource allocation, including greater openness to the global economy, has been an important factor
in raising India on a higher growth trajectory from its previous low levels. However, the process of economic reforms and the associated macro stabilization policies followed by the Central Government had important repercussions on the Centre State economic relations in many ways. Some of these are discussed below.

### 4.3 Increased Role of State Level Policies

32. With the dismantling of various regulatory mechanisms and removal of fiscal incentives for investment to backward areas and the declining role of public investment, the importance of State level policies affecting investment climate has increased manifold. In the Eleventh Five Year Plan nearly 80 per cent of investment is envisaged to come from the private sector. The States which have better infrastructure and where the Governments are playing a more proactive role to create an investment friendly policy environment are in a position to attract private investment on a larger scale. The domestic institutional and policy reforms play a crucial role in determining whether a country or region benefits from or is harmed by liberalization. This brings the spotlight to the governance issues and institutional reforms as determinants of the impact of liberalization reforms on economic outcomes.

33. It needs to be added in this regard that the process of economic reforms has not proceeded uniformly across the different States. Some States like Andhra Pradesh, Gujarat and Karnataka have reoriented their policies and taken steps to attract more private investment. On the other hand, some other states have lagged behind in introducing the economic reform process and consequently failed to attract substantial private investment. This has adversely impacted their economic growth. In the present case, there is a need to accelerate the process of economic reforms at the state level. Central Ministries and institutions like the Planning Commission can play an important role in this context through dialogue with the State Governments.

### 4.4 Changes in the State Tax Regime

34. There have been some major developments in recent years in the State tax regime. The Constitutional scheme of exclusive tax jurisdiction to Centre and States has also got altered notably. In particular, we may note the following developments in this regard:

a) The introduction of a system of Value Added Tax with commonly agreed tax rates and less number of slabs has restricted the power of the States to raise more resources from the taxes assigned to them. Thus, the decision making
of States’ sales tax on goods, which has been the primary tax source of the States, has got shifted to the Empowered Committee of Finance Ministers’ formed by the Government of India.

b) Tax on Services was primarily envisaged in the jurisdiction of States. Almost all services which were conceivable at the time of framing of Constitution – entertainment tax, luxury tax, taxes on professions, calling etc., were all placed in the domain of States. There was hardly any service related taxation powers with the Union at the time of framing of Constitution. However, first by interpretation of residual powers (Entry 97, list I) and later by Constitutional Amendment almost entire sphere of services tax has been taken over by the Central Government. Even principles for sharing of collection and appropriation of service tax revenues will be decided by the Parliament and not by the Finance Commissions.

c) Quite a few taxes, which would have been quite relevant today, like estate duty and the revenues of which would have accrued to the States only have been abolished.

d) With Goods and Service Tax (GST), likely to become a reality soon, States’ primary source of taxation revenue would also get weaned away from States to most probably a Central/collective mechanism.

e) In the interest of smooth flow of traffic most of the States have abolished Octroi. Thus, a major source of local tax revenue has all but disappeared in most of the States. However, some States like Maharashtra and Gujarat are still continuing to levy Octroi in selected areas.

f) There are attempts to introduce uniformity in excise policy, reduce and make stamp duties uniform and also to reduce transport taxes, with conditional ties in programme like JNURM forcing States’ hands.

35. These developments are pointer to the fact that tax revenues in the country are headed towards becoming a national pool of tax revenues thereby reducing the role of the States matters of their tax powers. It needs, however, to be mentioned in this context that any scheme of distribution of taxes requires agreement on various aspects of a tax. The Value Added Tax system was adopted by the States through mutual consultation through the Empowered Committee of Ministers. Similar approach is being followed in case of introduction of GST. These developments are perceived to be advantageous for
the States as well as the requirements of a national integrated market. In this process some give and take is required by the parties involved. This in fact is an achievement as decisions have not been imposed on the States by the Central Government, Parliament or any other authority. These developments are indicative of the resilience of the Indian federal system and its ability to adapt itself to changing economic environment.

4.5 Macro-Economic Management Impacting States’ Resource Position

36. The macro economic stabilisation programme followed by the Central Government adopted in the earlier years of economic reforms impacted upon the States’ resource position adversely. Important changes in the direct and indirect tax system guided by the philosophy of reduction of tax rates to ensure better compliance led to a decline in Tax-GDP ratio by many percentage points during the nineties. Transfers to States declined markedly both as a proportion to Centre’s gross revenue receipts as well as GDP at market prices as can be seen from Table 3. This led to a lower flow of resources to the States, further adding to their fiscal problems. Financial sector reforms during the nineties and liberalisation of the interest regime resulted in higher interest rates in the decade of nineties adding to the interest burden of the States. The major impact of reduced fiscal expenditure at the Central and the State level was on social sector, and on capital expenditure.

37. It may, however, be pointed out that in recent years the Tax-GDP ratio has improved, which coupled with the favourable recommendations of the Twelfth Finance Commission have resulted in higher transfers to the States and helped them in improving their fiscal situation. Interest levels have also come down in the recent years.

4.6 Changes in the System of Revenue Sharing through Finance Commission

38. The system of tax sharing has undergone a fundamental change following the recommendations of the Tenth Finance Commission. Thus, the system of revenue sharing from specific taxes at varying rates which was followed from the beginning was replaced by a system of global sharing in the net tax revenue of the Central Government.

4.7 Changes in the Pattern of Plan transfers

39. The system of plan transfers has also gone important changes in recent years. Earlier, the general category States were given Central plan assistance in the form of 30 per cent grants and 70 per cent as loans to States. In case of special category States, the
share of grants was as high as 90 per cent. However, the Twelfth Finance Commission recommended that the Central Government should not act as a financial intermediary for lending to the States. The Central Government accepted the recommendation and discontinued the practice of providing plan assistance as 70% loan to non-special category states and 10% loan to special category states.

40. Another recommendation of the Twelfth Finance Commission was to transfer externally aided proceeds on back to back basis by creating a mechanism in the Public Account. This recommendation was not fully followed by the Central Government. EAP proceeds are now being transferred on back to back basis, but only through Consolidated Fund of India. This shows up EAP loans as plan loans to the States. With these changes, the share of plan loans to total plan transfers consequently came down to around 12% after 2004-05 as compared to around 42 per cent earlier.

4.8 Growing Importance of Services Sector

41. The composition of the GDP has undergone important structural changes in the last three decades. The share of the primary sector has declined to less than 20 per cent of the GDP, whereas service sector contributes more than half of the GDP. The coverage of service tax has been expanding and it is emerging as a dynamic and important source of revenue of the Central Government. By constitutional amendment the Central Government has assumed the exclusive right of taxing the services. The system of sharing of revenue from service tax has been kept out of the purview of the Finance Commission. This has led to complaints by the State Governments regarding the power of taxing services and sharing revenue from them.

4.9 Introduction of VAT

42. Another important development on the fiscal front has been the replacement of system of multiple rates and classification based Sales Tax system to Value Added Tax from April 1, 2005. By 2007, all states had shifted to VAT regime. This has replaced earlier complicated system of sales tax with cascading effect of taxation, by an input tax credit based simpler and no tax cascading system. Prior to adoption of VAT regime, State Governments agreed to replace multiple tax slabs and rates and tax deferral based competition amongst States which led to the race to the bottom with a system of adoption of minimum tax rates for each commodity and phasing out of tax completion schemes, which led to greater uniformity in the tax structure of the States.
4.10 FRBM and Its Impact on Centre-State Fiscal Relations

43. Since the late 1980s, both the Central and the State Governments resorted to heavy borrowings to meet their mounting expenditure. This led to increasing revenue and fiscal deficit in their budgets and mounting burden of debt. The combined gross fiscal deficit of the Centre and the States touched the figure of 11 per cent by 1990-91. The ratio of gross fiscal deficit to GDP came down in the early nineties due to the fiscal restructuring programme of the Central Government. However, the ratio again climbed up in later years. It was realised that this level of borrowing is not sustainable in the long run. To check the tendency of heavy borrowing and bring down the level of fiscal deficit to reasonable levels, the Centre passed the Fiscal Reform and Budget Management Act in 2003. Some State Governments also came out with their own FRBM Acts between 2002 and 2005.

44. The Twelfth Finance Commission recommended that all the State Governments should pass their FRBM Acts to avail the package of debt consolidation recommended by it. Following this recommendation, all State Governments with the exception of West Bengal and Sikkim have legislated FRBM Acts. Twelfth Finance Commission also recommended that if the states are able to bring about phased elimination of the revenue deficit and bring down fiscal deficits to 3% of their Gross State Domestic Product (GSDP) by 2008-09, the consolidated debt instalments for the years 2005-10 would also be waived. Most State Governments have been able to achieve the fiscal consolidation and claim the debt waiver during this period. Central Government relaxed the condition of fiscal deficit to GSDP ratio for the financial year 2008-09 by 0.5%. Most State Governments are expected to adhere to this revised milestone and claim debt relief in the final year 2009-10 of the TFC period.

45. The fiscal consolidation by restrained borrowing and debt write-off has led to an improvement in the deficit indicators of the State Governments in recent years. However, there has been some debate about the efficacy of the FRBM legislation in controlling public borrowing and also about the desirable level of gross fiscal deficit in the light of the development requirements of States.

4.11 73rd and 74th Constitutional Amendments

46. A major development of far reaching consequences was the 73rd and 74th Constitutional Amendment Acts passed in 1994 which have given a Constitutional status
to the local bodies for the first time. The State Governments amended their respective Panchayat Raj and Municipal Acts in the light of the Constitutional requirements. This has been rightly held as a major step in the direction of democratic decentralisation in the country.

47. The Central Finance Commissions, since the time of the Tenth Finance Commissions have been recommending grants for the local bodies. The State Finance Commissions are constituted under the State legislation by the respective State Government to recommend the sharing and assignment of State taxes, tolls, duties and fees with the local bodies.

4.12 Growing Inter-State Inequalities

49. Another important issue which needs to be flagged in the context of the Centre State relations is that of the growing economic disparities among the States over the last two decades. It is a well known fact that most of the new investment has gone to a few

<table>
<thead>
<tr>
<th>Year</th>
<th>State with lowest per capita GSDP</th>
<th>State with highest* per capita GSDP</th>
<th>Ratio of Minimum to Maximum per capita GSDP (%)</th>
<th>Coefficient of variation</th>
<th>Gini Coefficient $</th>
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<tr>
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5.0 **Review of Financial Transfers to States Since Mid Eighties**

51. In this Section, we look at the trends in the resource transfers from Centre to the States since the mid 1980s and examine whether the dependence of States on devolution of funds from the Centre has increased over time. To analyse these trends we have taken five yearly averages so that the year to year fluctuations are avoided and the underlying trend is noted.

5.1 **Vertical Transfers**

52. Transfers from the Centre take place through three channels, *viz.* Finance Commission, Planning Commission, and various Central Ministries. These need to be put together in order to see the extent of vertical transfers. Table 2 shows the composition of the combined revenue receipts of the Centre and the States, and the share of the Centre and States in these combined revenue receipts prior to transfers and after transfers. The share of States in combined revenue receipts of Centre and States has fluctuated between 35 to 39 per cent, while that of the Centre has fluctuated between 61 to 65 percent. Thus, there has been no significant change in the share of States in combined revenue over the period studied. However, there has been some year to year volatility.

<table>
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<tr>
<th>Years</th>
<th>Share Before Transfers</th>
<th>Share After Transfers</th>
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</thead>
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<tr>
<td></td>
<td>Centre (percent)</td>
<td>States (percent)</td>
</tr>
<tr>
<td>1984-89</td>
<td>64.9</td>
<td>35.1</td>
</tr>
<tr>
<td>1989-95</td>
<td>62.1</td>
<td>37.9</td>
</tr>
<tr>
<td>1995-00</td>
<td>61.3</td>
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<tr>
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<td>60.9</td>
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<tr>
<td>2005-08</td>
<td>62.9</td>
<td>37.1</td>
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</table>

Source: Ministry of Finance, Indian Public Finance, Various Years

53. The relative shares become just the reverse after transfers with States share going up from around 37 per cent to around 63 per cent and that of the Centre coming down from around 63 per cent to around 37 per cent. The share of the States in the combined revenue receipts after transfers shows only small variations between 61-65 percent. In fact, the dependence of States on transfers was the highest during the first half of the nineties but since then it has remained stable.
54. In short, the vertical imbalance in revenue shares which is found before the transfers get substantially transformed after the transfer of resources to the States.

5.2 Composition of Transfers

55. Table 3 shows the composition of transfers consisting of States’ share in Central taxes and total grants. The share of taxes in total transfers fluctuated in the narrow range of 53 to 55 per cent between 1984-85 and 1994-95 except in 1989-90 when it was above 60 percent. The ratio went up to 63.3 per cent in 1997-98, but after that gradually came down to around 54 per cent, that is, the level which prevailed during the mid-1980s.

<table>
<thead>
<tr>
<th>Years</th>
<th>States’ Share in Central Taxes</th>
<th>Statutory Grants</th>
<th>Other Grants</th>
<th>Total Grants</th>
<th>Total Transfers</th>
</tr>
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<tbody>
<tr>
<td>1984-85</td>
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<td>4.99</td>
<td>41.67</td>
<td>46.66</td>
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<tr>
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<td>39.05</td>
<td>46.67</td>
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<tr>
<td>1986-87</td>
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<td>6.21</td>
<td>39.17</td>
<td>45.38</td>
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<tr>
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<td>32.01</td>
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<tr>
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<td>36.12</td>
<td>46.22</td>
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</tr>
<tr>
<td>1993-94</td>
<td>51.17</td>
<td>9.28</td>
<td>39.55</td>
<td>48.83</td>
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<td>1994-95</td>
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<td>44.84</td>
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<td>1995-96</td>
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<td>10.57</td>
<td>30.90</td>
<td>41.46</td>
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<tr>
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<td>8.99</td>
<td>30.30</td>
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<td>32.12</td>
<td>36.62</td>
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</tr>
<tr>
<td>1998-99</td>
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<td>5.35</td>
<td>32.87</td>
<td>38.22</td>
<td>100.00</td>
</tr>
<tr>
<td>1999-00</td>
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<td>5.08</td>
<td>36.56</td>
<td>41.64</td>
<td>100.00</td>
</tr>
<tr>
<td>2000-01</td>
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<td>12.96</td>
<td>28.93</td>
<td>41.88</td>
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</tr>
<tr>
<td>2001-02</td>
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<td>13.38</td>
<td>31.19</td>
<td>44.57</td>
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<td>57.03</td>
<td>10.85</td>
<td>32.20</td>
<td>42.97</td>
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</tr>
<tr>
<td>2003-04</td>
<td>57.41</td>
<td>9.38</td>
<td>33.21</td>
<td>42.59</td>
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</tr>
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<td>2004-05</td>
<td>58.37</td>
<td>8.82</td>
<td>32.81</td>
<td>41.63</td>
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</tr>
<tr>
<td>2005-06</td>
<td>55.31</td>
<td>14.51</td>
<td>30.19</td>
<td>44.69</td>
<td>100.00</td>
</tr>
<tr>
<td>2006-07</td>
<td>53.83</td>
<td>12.73</td>
<td>33.44</td>
<td>46.17</td>
<td>100.00</td>
</tr>
<tr>
<td>2007-08</td>
<td>54.59</td>
<td>11.40</td>
<td>34.02</td>
<td>45.41</td>
<td>100.00</td>
</tr>
</tbody>
</table>

Source: Ministry of Finance, Indian Public Finance, various years.
5.3 Transfers Relative to Centres’ Gross Revenue Receipts

56. In Table 4 the aggregate transfer to the States through all channels has been indicated as percentage of the gross revenue receipts of the Centre. Transfers as percentage of Centre’s gross revenue receipts during the period 1984-85 to 2007-08 have ranged from a minimum of 33.2 percent to a maximum of 44.3 percent. In the period covered by the Ninth Finance Commission, the transfers were on an average close to 39.5 percent and this percentage came down in the two subsequent Finance Commissions to a little above 35 percent. Beginning with the Twelfth Finance Commission, the share of transfers in the Centre’s gross revenue receipts has again come back to a level close to 40 percent or above on an average. Similarly, transfers with respect to Gross Domestic Product at Market Prices showed a decline in the 1990s, but show a clear rise during the recommendation period of the Eleventh and the Twelfth Finance Commission.

<table>
<thead>
<tr>
<th>Finance Commissions</th>
<th>Period</th>
<th>Transfers as % of Centre’s Gross Revenue Receipts</th>
<th>GDP at Market Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eighth</td>
<td>1984-89</td>
<td>38.13</td>
<td>4.85</td>
</tr>
<tr>
<td>Ninth</td>
<td>1989-95</td>
<td>39.46</td>
<td>4.78</td>
</tr>
<tr>
<td>Tenth</td>
<td>1995-00</td>
<td>35.43</td>
<td>4.05</td>
</tr>
<tr>
<td>Eleventh</td>
<td>2001-05</td>
<td>35.83</td>
<td>4.24</td>
</tr>
<tr>
<td>Twelfth</td>
<td>2005-07</td>
<td>40.43</td>
<td>5.17</td>
</tr>
</tbody>
</table>

Source: Report of the Finance Commissions, GOI.

5.4 Dependence of States on Central Transfers

57. The dependence of States on devolution of funds from the Centre can be analysed in terms of the relative share of such devolution in State’s total revenue receipts. Table 5 shows the dependence of States in the Central taxes. States’ share in the Central taxes has remained around 23 percent of the States’ gross revenue receipts during the last two decades, indicating that the dependence of the States on Central tax devolution has not gone up. States share in Central taxes as percentage of Centre’s gross tax revenues has also remained around 26 per cent during this period. However, there was a distinct decline in gross Central tax revenue as per cent of GDP during the nineties due to the tax reforms. But the ratio has picked up in recent years.
Table 5: Dependence of States on Central Tax Transfers

<table>
<thead>
<tr>
<th>Finance Commission Period</th>
<th>Share in Central Taxes as % of States’ Revenue Receipts</th>
<th>Share in Central Taxes in Gross Central Tax Revenue</th>
<th>Gross Central Tax Revenues as % of GDP</th>
<th>States’ Revenues Receipts as % of GDP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eighth</td>
<td>22.83</td>
<td>25.20</td>
<td>10.21</td>
<td>11.26</td>
</tr>
<tr>
<td>Ninth</td>
<td>22.74</td>
<td>26.70</td>
<td>9.79</td>
<td>11.47</td>
</tr>
<tr>
<td>Tenth</td>
<td>23.52</td>
<td>27.59</td>
<td>8.97</td>
<td>10.53</td>
</tr>
<tr>
<td>Eleventh</td>
<td>22.08</td>
<td>27.00</td>
<td>8.98</td>
<td>10.97</td>
</tr>
<tr>
<td>Twelfth</td>
<td>22.77</td>
<td>26.19</td>
<td>11.04</td>
<td>12.69</td>
</tr>
</tbody>
</table>

Source: Ministry of Finance, Indian Public Finance, Various years.

Table 6 shows the share of total transfer of funds received by the State Governments as percentage of their total revenue receipts including the transfers.

Table 6: Transfers as Percentage of States’ Revenue Receipts

<table>
<thead>
<tr>
<th>Finance Commissions Period</th>
<th>States’ Share in Central Taxes</th>
<th>Statutory Grants</th>
<th>Other Grants</th>
<th>Total Grants</th>
<th>Total Transfers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eighth</td>
<td>22.83</td>
<td>2.80</td>
<td>17.24</td>
<td>20.04</td>
<td>42.87</td>
</tr>
<tr>
<td>Ninth</td>
<td>22.74</td>
<td>3.77</td>
<td>15.16</td>
<td>18.93</td>
<td>41.67</td>
</tr>
<tr>
<td>Tenth</td>
<td>23.52</td>
<td>2.68</td>
<td>12.60</td>
<td>15.28</td>
<td>38.80</td>
</tr>
<tr>
<td>Eleventh</td>
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<td>4.28</td>
<td>12.19</td>
<td>16.47</td>
<td>38.55</td>
</tr>
<tr>
<td>Twelfth</td>
<td>22.77</td>
<td>5.36</td>
<td>13.61</td>
<td>18.97</td>
<td>41.74</td>
</tr>
</tbody>
</table>

Source: Ministry of Finance, Indian Public Finance, Various years

Table 6 shows the share of total transfer of funds received by the State Governments as percentage of their total revenue receipts including the transfers.

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<th>Other Grants</th>
<th>Total Grants</th>
<th>Total Transfers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eighth</td>
<td>22.83</td>
<td>2.80</td>
<td>17.24</td>
<td>20.04</td>
<td>42.87</td>
</tr>
<tr>
<td>Ninth</td>
<td>22.74</td>
<td>3.77</td>
<td>15.16</td>
<td>18.93</td>
<td>41.67</td>
</tr>
<tr>
<td>Tenth</td>
<td>23.52</td>
<td>2.68</td>
<td>12.60</td>
<td>15.28</td>
<td>38.80</td>
</tr>
<tr>
<td>Eleventh</td>
<td>22.08</td>
<td>4.28</td>
<td>12.19</td>
<td>16.47</td>
<td>38.55</td>
</tr>
<tr>
<td>Twelfth</td>
<td>22.77</td>
<td>5.36</td>
<td>13.61</td>
<td>18.97</td>
<td>41.74</td>
</tr>
</tbody>
</table>

Source: Ministry of Finance, Indian Public Finance, Various years

The broad pattern indicates relative stability in the profile of dependence of the States on devolution of funds from the Centre. Total transfers as percentage of States revenue receipts came down from a level of 43 percent for the Eighth Finance Commission period to about 38.6 percent for the Eleventh Finance Commission period but since then this share has gone up to 42 percent. Within the overall transfers, the share of Central taxes has remained stable as percentage of States revenue receipts being in the range of 22-23 percent over the period. The share of total grants has also remained almost the
same. However, the share of statutory grants has gone up whereas that of other grants has gone down by a few percentage points. The pattern of dependence differs from State to State. There are some States where the dependence is extremely large. At the same time, there are other States where the dependence is very limited. Table 7 indicates the pattern of change in dependence of these States considered as averages over the periods covered by Ninth to Twelfth Finance Commissions. In the high income States, Central transfers constitute from one sixth to one fourth of their total revenue receipts. The ratio is a little higher in case of middle income States except Chhattisgarh (40%) and West Bengal (50%). In low income States, the dependence on Central transfers is much higher varying from 42 per cent in Rajasthan to almost 80 per cent in Bihar. The special category States are also very highly dependent on Central transfers. These differences reflect the

Table 7: Total Transfers from the Centre as Percentage of Revenue Receipts of the States

<table>
<thead>
<tr>
<th>HIGH INCOME STATES</th>
<th>Period</th>
<th>Goa</th>
<th>Gujarat</th>
<th>Haryana</th>
<th>Maharashtra</th>
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<td>Punjab</td>
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<td>35.84</td>
<td>19.36</td>
<td>15.91</td>
<td>20.66</td>
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<tr>
<td></td>
<td>1995-00</td>
<td>15.03</td>
<td>19.91</td>
<td>14.73</td>
<td>16.24</td>
</tr>
<tr>
<td></td>
<td>2005-08</td>
<td>15.72</td>
<td>25.01</td>
<td>15.66</td>
<td>22.39</td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>MIDDLE INCOME STATES</th>
<th>Period</th>
<th>Andhra Pradesh</th>
<th>Karnataka</th>
<th>Kerala</th>
<th>Tamil Nadu</th>
<th>West Bengal</th>
<th>Chhattisgarh</th>
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<tr>
<td></td>
<td>1990-95</td>
<td>36.03</td>
<td>27.10</td>
<td>33.37</td>
<td>30.30</td>
<td>43.36</td>
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<td></td>
<td>1995-00</td>
<td>36.53</td>
<td>26.04</td>
<td>28.11</td>
<td>25.46</td>
<td>43.40</td>
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<td></td>
<td>2001-05</td>
<td>31.25</td>
<td>26.35</td>
<td>26.20</td>
<td>22.59</td>
<td>46.21</td>
<td>40.64</td>
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<td>27.21</td>
<td>30.53</td>
<td>23.73</td>
<td>50.21</td>
<td>40.17</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>LOW INCOME STATES</th>
<th>Period</th>
<th>Bihar Pradesh</th>
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<th>Orissa</th>
<th>Rajasthan</th>
<th>Uttar Pradesh</th>
<th>Jharkhand</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>1990-95</td>
<td>59.47</td>
<td>41.79</td>
<td>59.80</td>
<td>43.99</td>
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<td>56.79</td>
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<td>49.92</td>
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<tr>
<td></td>
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<td>55.00</td>
<td>40.98</td>
<td>49.70</td>
<td>52.70</td>
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<tr>
<td></td>
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<td>48.07</td>
<td>56.14</td>
<td>41.82</td>
<td>51.85</td>
<td>52.84</td>
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</table>
6. Issues in Financial Relations

60. In this section we have identified some of the contentious issues regarding Centre State financial relations raised by various State Governments, political parties and experts.

6.1 Constitution of the Finance Commission

61. The Finance Commissions are appointed and their Terms of Reference are fixed by the Central Government. It has been argued by State Governments that there is no consultation with the State Governments and the terms of reference are loaded in favour of the Centre. Finance Commissions have been subjected to considerable conditions by the Central Government in terms of matters they need to take into consideration while making their recommendations and also under the broad mandate of ‘measures for sound finance’. This has required the Finance Commissions into making recommendations, which the Commission is in no position to ensure acceptance. One political party has demanded that the States and the Central Government should jointly constitute the Finance Commission and select its Members through the Inter State Council (ISC) and the TORs must be drawn up jointly by both parties through consultation and ratification by the ISC in line with the mandate already provided by the Constitution.

6.2 Reduced Role of the Finance Commission in Resource Transfers

62. There has been indeed substantial metamorphosis of the system of transfer of funds as envisaged in the Constitution and what operates today. Finance Commission,
which was envisaged as the only medium of transfer of funds to the States that too as States’ share in Central taxes, no longer deals with more than two thirds of the total transfers taking place from Centre to State (see Table 2 above). With responsibilities relating to plan expenditure being assigned to the Planning Commission, Finance Commissions’ jurisdiction got curtailed. Since Second Finance Commission onwards, Finance Commissions have limited themselves to non-plan expenditure only. Adoption of plan assistance for States plans and later on gargantuan expansion of Centrally Sponsored Schemes required Central Government to appropriate more resources. Transfer to the States through these mechanisms bypass the Finance Commissions. With the non-finance Commission transfers growing at much higher rate than the transfers through Finance Commission, the diminution in the role of Finance Commission is quite perceptible. The general view is that the Finance Commission needs to be provided the Centrality of role in transfer of resources to the States.

6.3 Vertical Imbalances in Resource Sharing

63. The States have nursed a grievance that the transfer of resources to them has not been adequate to enable them to meet their requirements. It is felt by States that given the greater burden of responsibilities of development expenditure of the States on the one hand, and more powers of revenue mobilisation in the Centre on the other, there has not been any matching transfer of resources from the Centre to the States in terms of devolution of Central taxes and grants. It has been argued by one political party that given the fact the States have been meeting over half of the combined expenditure of the Central and State Government sector in keeping with their constitutional obligations and functions, the States must receive at least 50 per cent share in taxes (including cesses, surcharges and excise).

64. It has also been pointed out by some State Governments and political parties that regardless of the fixation of the share of States in total Central taxes at 29.5 per cent by the Tenth and Eleventh Finance Commission, the proportion was achieved only once in 1997-98 during the relevant ten year period. Furthermore, the divergence between the actual and the fixed ratio has only grown.

65. The States have also been demanding that “gross proceeds” and not the “net proceeds” should be distributed between the Centre and the States through necessary Amendment of the Constitution.

66. Many State Governments and Political Parties have raised objection to the practice of the Centre to resort to frequent and prolonged imposition of Cesses and Surcharges to
raise revenue as their exclusion from the shareable pool of Central taxes causes a substantive denial of resources to the States.

6.4 Use of Article 268 and 269

67. The States have a complaint that the Union Government has also not fully used Article 268 and 269, which could have allowed the States to augment their resources.

6.5 Growing Central Expenditure on Functions in the State List

68. Over time the Central Government has made substantial inroads into the expenditure jurisdiction of the State Governments. This has been done by using several methods:

a) Discretionary grants from the Centre (not based on recommendations of the Finance Commission) have outgrown grants based on recommendations of the Finance Commission by many times. These discretionary grants assume several forms and flow to the States with different kind of conditionalities.

b) Central Government instituted the mechanism of Planning Commission and subjected the States’ expenditure plans to the approval of Planning Commission and introduced linked grants to States’ plan. These linked grants are used to influence expenditure priorities of the States.

c) Over the years, plan assistance grants have been turned into schematic grants largely and introduced element of States’ counterpart funding for implementing these schemes.

d) Centrally Sponsored Schemes (CSS) have been launched into almost all spheres of the expenditure jurisdiction of the States. These CSS have grown so much, that their size today is almost equal to the entire State plans of the State Governments (minus States’ contribution to the CSS).

e) There are two channels of grants to the States which are purely at the discretion of Government of India. Special Plan Assistance is at the discretion of Deputy Chairman of the Planning Commission and Special Central Assistance is at the discretion of Ministry of Finance, both given to only select States.

f) Some of the Finance Commission grants have also been subjected to additional conditions. These conditions have resulted into many of these grants not being released to the States and lapsing to the Centre.
69. There are several other ways in which expenditure jurisdiction of the States has been affected. To list some:

a) Several laws have been passed by the Parliament, which subject the States with expenditure liabilities. For example, National Rural Employment Guarantee Act (NREGA) and Compulsory Elementary Education Act are the legislations which mandate expenditures for the State Governments.

b) Central Pay Commission have become pay setting mechanisms for States payroll expenditure as well.

c) States have been made to form administrative structure and organisations under Central laws which have subjected the States to expenditure liabilities. Consumer Courts, Human Rights Commissions, Juvenile Courts and Homes etc. are such examples.

70. Consequence of all these interventions is that States’ expenditure domain has been substantially affected. This has seriously undermined the constitutional mandate of separation of the functions of the Centre and the States and curtailed the autonomy of the States to undertake development responsibilities which belong to their jurisdiction. The States have to earmark large funds to provide the matching grants for the Central schemes according to the priorities set up by the Central Government. Thus, availability of funds of the States to take up schemes according to their own priority is severely constrained. The Constitutional edifice which was designed more as federal has turned more unitary now. This is an unhealthy trend which needs to be reversed.

6.6 Impact of Pay Commissions on State Finance

71. The State Governments have been pleading that the Central Government revises the pay of its employees periodically, which leads to demand for higher salaries by the State Government employees which is difficult to resist. Unfortunately, the Central Pay Commission cannot and does not take into account functional structure of Central and States services and difference in their service conditions as its scope is officially limited to only Central Government employees. But, the State Governments fail to resist the demands to adopt the Central Pay scales for their employees without modifying them to suit their functional requirements and service conditions. This has led to heavy burden on State exchequer and also introduces functional and inter-services distortions. Some State Governments have demanded that the Central Government should share at least part of the increased expenditure on salaries of the State Governments. It is hoped that the
Thirteenth Finance Commission would take into account the increased expenditure liabilities of the States on account of the Sixth Pay Commission.

6.7 Growing Special Purpose Transfers over General Purpose Grants

72. Bulk of the resource transfers recommended by the Finance Commissions in the past has been in the form of general purpose grants with only a minor proportion transferred as specific purpose grants. The Tenth Finance Commission award consisted of 91 per cent as share in taxes and 9 per cent as grants. The general purpose transfers recommended by the Eleventh Finance Commission amounted to 87 per cent of total transfers recommended by the Commission. This proportion was reduced by the Twelfth Finance Commission to 81 per cent. There is a demand that bulk of resources be brought into the shareable pool and be transferred to States on the basis of recommendations of the Finance Commission without attaching conditionalities that erode the autonomy of the States.

73. The same is true of the plan assistance to States. The Central assistance to State plans introduced in late sixties was envisaged to be objectively disbursed in terms of Gadgil formula. The grant was also not tied to any condition other than overall plan performance. The objectivity and unconditional nature of plan assistance has got substantially deformed over the years in various ways. For instance, grants in form of ‘Additional Central Assistance (ACA) Schemes’ have been introduced in Central assistance to States plans in the eighties. These ACA grants are schematic and are no different than Centrally Sponsored Schemes, except that these are transferred through Finance Ministry generally. Furthermore, non-schematic discretionary grants like Special Central Assistance and Special Plan Assistance have been introduced in the Central Assistance. These programmes include Accelerated Power Development Programme (APDP), Prime Minister’s Gramodaya Yojana (PMGY), Accelerated Irrigation Benefit Programme (AIBP), Development and Reforms Facility (DRF), Rural Electrification, National Social Assistance Programme (NSAP), MP Local Area Development Fund (MPLAD), Border Area Development Programme (BADP), Tribal Sub Plan Hill Area Development Programme (HADP, etc.

74. Table 8 shows the ratio of sub-components of grants to total grants. It will be observed from the table that in recent years the ratio of grants for State plan schemes has declined. It is now about 40 per cent of total grants. The ratio of Central plan schemes has come down to almost half as compared to 1980-81, where as the share of Centrally sponsored schemes has gone up from about 15 per cent to over 25 per cent. The share of other grants which are generally conditional and discretionary in nature has also gone up sharply in more recent years.
By now, ACAs, SCAs, and SPAs far exceed the untied Central assistance, referred to as Normal Central Assistance (NCA). In the Union Budget 2003-04 out of the total Central Assistance for State Plan of Rs. 47,458.40 crore, Normal Central Assistance constituted Rs. 22,484.16 crore (47.3%), Additional Central Assistance for Externally Aided Projects comprised Rs. 6,728 crore (14.2%) and balance of Rs. 18,246.24 crore (38.4%) was budgeted for various special and other Programmes. According to the revised figures for 2007-08 Budget, out of the total Central assistance for State Plan of Rs. 55,917 crore formula based NCA was only Rs. 15,358 crore (27.5%). Other major components of total Central Assistance were: ACA for Externally Aided Projects (Rs. 9,190 crore), AIBP (Rs. 5,580 crore, JNNURM (Rs. 5,488 crore and BRGF (Rs. 4,730 crore).

These developments have not only introduced unnecessary complications, but the conditional and schematic nature of ACA schemes constitute uncalled for intrusion.

Table 8: Ratio of Sub - Components of Grants to Total Grants

<table>
<thead>
<tr>
<th>Years</th>
<th>State Plan Schemes</th>
<th>Central Plan Schemes</th>
<th>Centrally Sponsored Schemes</th>
<th>NEC / Special Plan Schemes</th>
<th>Other Grants</th>
</tr>
</thead>
<tbody>
<tr>
<td>1980-81</td>
<td>0.46</td>
<td>0.17</td>
<td>0.15</td>
<td>0.00</td>
<td>0.21</td>
</tr>
<tr>
<td>1981-82</td>
<td>0.48</td>
<td>0.16</td>
<td>0.18</td>
<td>0.00</td>
<td>0.18</td>
</tr>
<tr>
<td>1982-83</td>
<td>0.47</td>
<td>0.07</td>
<td>0.23</td>
<td>0.00</td>
<td>0.22</td>
</tr>
<tr>
<td>1983-84</td>
<td>0.45</td>
<td>0.08</td>
<td>0.28</td>
<td>0.00</td>
<td>0.18</td>
</tr>
<tr>
<td>1984-85</td>
<td>0.41</td>
<td>0.15</td>
<td>0.28</td>
<td>0.00</td>
<td>0.17</td>
</tr>
<tr>
<td>1985-86</td>
<td>0.44</td>
<td>0.12</td>
<td>0.20</td>
<td>0.00</td>
<td>0.23</td>
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<tr>
<td>1986-87</td>
<td>0.42</td>
<td>0.09</td>
<td>0.27</td>
<td>0.00</td>
<td>0.22</td>
</tr>
<tr>
<td>1987-88</td>
<td>0.41</td>
<td>0.10</td>
<td>0.28</td>
<td>0.00</td>
<td>0.21</td>
</tr>
<tr>
<td>1988-89</td>
<td>0.37</td>
<td>0.15</td>
<td>0.26</td>
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<tr>
<td>1989-90</td>
<td>0.40</td>
<td>0.08</td>
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<td>0.00</td>
<td>0.26</td>
</tr>
<tr>
<td>1990-91</td>
<td>0.47</td>
<td>0.08</td>
<td>0.24</td>
<td>0.00</td>
<td>0.21</td>
</tr>
<tr>
<td>1991-92</td>
<td>0.43</td>
<td>0.05</td>
<td>0.30</td>
<td>0.00</td>
<td>0.22</td>
</tr>
<tr>
<td>1992-93</td>
<td>0.47</td>
<td>0.08</td>
<td>0.24</td>
<td>0.00</td>
<td>0.21</td>
</tr>
<tr>
<td>1993-94</td>
<td>0.51</td>
<td>0.05</td>
<td>0.30</td>
<td>0.00</td>
<td>0.14</td>
</tr>
<tr>
<td>1994-95</td>
<td>0.54</td>
<td>0.05</td>
<td>0.23</td>
<td>0.05</td>
<td>0.13</td>
</tr>
<tr>
<td>1995-96</td>
<td>0.39</td>
<td>0.08</td>
<td>0.23</td>
<td>0.02</td>
<td>0.28</td>
</tr>
<tr>
<td>1996-97</td>
<td>0.51</td>
<td>0.04</td>
<td>0.23</td>
<td>0.00</td>
<td>0.23</td>
</tr>
<tr>
<td>1997-98</td>
<td>0.50</td>
<td>0.05</td>
<td>0.23</td>
<td>0.00</td>
<td>0.23</td>
</tr>
<tr>
<td>1998-99</td>
<td>0.56</td>
<td>0.05</td>
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<td>0.00</td>
<td>0.15</td>
</tr>
<tr>
<td>1999-00</td>
<td>0.53</td>
<td>0.04</td>
<td>0.23</td>
<td>0.00</td>
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<tr>
<td>2000-01</td>
<td>0.43</td>
<td>0.03</td>
<td>0.19</td>
<td>0.00</td>
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<td>2001-02</td>
<td>0.39</td>
<td>0.07</td>
<td>0.24</td>
<td>0.01</td>
<td>0.29</td>
</tr>
<tr>
<td>2002-03</td>
<td>0.43</td>
<td>0.07</td>
<td>0.26</td>
<td>0.01</td>
<td>0.23</td>
</tr>
</tbody>
</table>

Source: Computed from RBI Reports on State Finances, Various Years.
in States’ domain and purely discretionary nature of SCAs and SPAs are distortionary. Such discretionary grants also introduce political partisanship.

6.8 Growing Conditionality of Transfer

77. Closely related to the issue of special purpose transfers is the growing tendency in the recent years in favour of conditional transfers which is not regarded as desirable. It is argued that the Eleventh Finance Commission began the process of forced fiscal reforms on State Governments, which taken forward by the Twelfth Finance Commission, both of which imposed high and extra-constitutional conditionalities on States. It is felt that under the present regime, grants have become primarily purpose-specific or tied with a host of conditionalities imposed by different Central Ministries, reducing the States and Panchayats to mere agencies of the Central Ministries.

6.9 Increasing Importance of Discretionary and Non-Formulaic Transfers

78. The State Governments feel that the assistance for State plans too must be formula driven in an objective and transparent manner without withdrawals from this pool towards CSS and other specific funds. It has also argued that in some of the CSSs, the share of the States’ financial burden is also being unilaterally increased. For instance, despite repeated objections by all the Chief Ministers, the Centre has taken a decision to increase the share of the States in the Sarva Shiksha Abhiyan Programme from 25% to 35% under the Eleventh Five-year Plan. This will further go up to 50% after Eleventh Plan. Many States are at times unable to provide the matching shares and consequently forego attendant Central transfers which are subsequently reallocated to relatively better-off States as additional allocation, worsening horizontal imbalances. States are, therefore, compelled to commit resources for straight-jacketed schemes that do not reflect their priorities or can be effectively implemented, as they are rigid and out of sync with local realities. Such specific-purpose transfers have tended to reduce the States to mere implementing agencies with rigid guidelines that deny location-specificity and local initiative.

6.10 Controls on Market Borrowings by States

79. Articles 292 and 293 of the Constitution require the State Government to take approval of the Centre for market borrowing if they are indebted to the Centre. These powers of the Centre have been a subject of debate. The States complained in the past that the share of market borrowing of the States has fallen sharply, with more than 80 per cent of the market borrowing being cornered by the Centre. As Table 7 shows that in the last three decades or so the share of Centre in gross market borrowings has ranged between 73 and 90 percent.
80. From 2003-04, Government of India, moved from the system of allocating specific source based borrowing to overall borrowing limits based system. In last two years, the system of overall based borrowings has got fully institutionalised. Now, the states can raise as much market borrowings as is desired by them within the overall borrowing ceiling fixed for them, which also is in line with their own FRBM law commitments and implementation path of Twelfth Finance Commission recommendation. The demand raised by some States earlier that the share of market borrowing of the States should be gradually increased from the low proportion of about 20 per cent to 50 per cent within a period of five years, has also accordingly lost much of its meaning now. States have also demanded that they should be allowed the option to issue tax-free bonds. It has been argued by some States that it would be better to transform the present borrowing system based on SLR subscription into market discipline based bonds issued directly by the States.

Table 9: Gross Market Borrowings of The Central and State Governments

<table>
<thead>
<tr>
<th>Year</th>
<th>Amount in Rs. Crore</th>
<th>Percent Share</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Centre</td>
<td>States</td>
</tr>
<tr>
<td>1980-81</td>
<td>2871</td>
<td>333</td>
</tr>
<tr>
<td>1985-86</td>
<td>5764</td>
<td>1414</td>
</tr>
<tr>
<td>1990-91</td>
<td>8989</td>
<td>2569</td>
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<td>1991-92</td>
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<td>3364</td>
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<tr>
<td>1992-93</td>
<td>13885</td>
<td>3805</td>
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<td>6274</td>
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<td>36152</td>
<td>6536</td>
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<tr>
<td>2000-01</td>
<td>115183</td>
<td>13300</td>
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<tr>
<td>2001-02</td>
<td>133801</td>
<td>18707</td>
</tr>
<tr>
<td>2002-03</td>
<td>151126</td>
<td>30853</td>
</tr>
<tr>
<td>2003-04</td>
<td>147636</td>
<td>50521</td>
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<tr>
<td>2004-05</td>
<td>106501</td>
<td>39101</td>
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</tr>
<tr>
<td>2006-07</td>
<td>179373</td>
<td>20825</td>
</tr>
<tr>
<td>2007-08</td>
<td>188205</td>
<td>67779</td>
</tr>
<tr>
<td>2008-09</td>
<td>175780</td>
<td>59062</td>
</tr>
</tbody>
</table>

Source: Reserve Bank of India, Handbook of Indian Statistics
6.11 Small Saving Schemes

81. The collections through small savings schemes are allocated to the States in the form of Central loans. The rate of interest paid on them is far above the prevailing market rates. This increases the fiscal burden on the States. It is felt that the States should be left free to borrow from the open market. It is demanded by some States that National Small Savings Fund and transfer of ‘small savings collections’ to the States should be disbanded. It has been suggested that it would be far better to evolve one or two major savings bonds kind of schemes, with States being allowed to issue it directly.

6.12 Shrinking Fiscal Space of States

82. As we have observed earlier, there have been several developments which have tended to reduce the autonomy of the State Governments in the economic and financial sphere. There has been a move towards commonly agreed tax rates and less number of slabs for sales tax. Similarly, there are attempts to introduce uniformity in excise policy, reduce and make stamp duties uniform and also to reduce transport taxes. All these developments have severely restricted the resource generating capacity of the States. There have been similar pressures on the side of expenditure of State Governments. The rising expenditure on salaries, pensions and interest payments pre-empts bulk of State resources leaving little leeway for developmental and capital expenditure.

6.13 Share of States in Revenue from Service Tax

83. With the structure of Indian economy undergoing a major shift in favour of the services sector, taxes on services are becoming an important source of earning for the Central Government. However, the sharing of service tax has been kept out of the purview of the Finance Commission. The State Governments are unhappy with this trend and demanding powers to tax services and due share in tax receipts from services of the Central Government. The State Governments have a complaint that the Centre has usurped the entire power of taxation of services through a Constitutional amendment and have excluded it from the shareable pool of taxes. It has also been argued in this connection that the State Governments are in a far better position to maximise revenue from the service tax, due to their proximity and reach. It has also been demanded that at least some services may be earmarked for taxation by the State Government.
6.14 **Royalty Rates**

The States have a standing complaint that the royalty rates on mineral resources like coal are unilaterally decided by the Centre. These revisions have also not been done regularly when they become due as per law. The States have demanded that it is necessary to revise the royalty rates on coal and other minerals and natural resources more frequently and to fix them on *ad valorem* basis.

6.15 **Direct Funding of Local Bodies and Other Agencies**

Over the years, a number of district level organisations have been created for implementation of Centrally Sponsored Schemes like the IRDP, NRHM, SSA, etc. Funds from the Central Ministries are directly transferred to the district level organisations set up under the schemes. Similarly, the Central Government is transferring funds directly to the local bodies to implement the CSS. The practice of transferring Central funds under various schemes directly to the local bodies by the Central Ministries has been criticised by many State Governments. There is a feeling among States that they must not be bypassed in this regard as the allocation of funds directly from the Centre to local bodies is a case of excessive Centralisation. It has been argued that the State Governments know the local conditions best. Under-cutting the State Government is not conducive to proper implementation and monitoring of the programmes in the States. It has also pointed out that there will also be no ownership of the various programmes by the States if everything is decided by the Centre and the States are by-passed in these matters.

The Task Force has examined these issues in the following sections and given its recommendations.

7.0 **The Role of Finance Commission**

The Finance Commission was envisaged in the Constitution as the sole mechanism of deciding about the transfer of resources from the Centre to the States and to address the issue of horizontal and vertical imbalances. Over a period of time, transfers from the Planning Commission and the Central Ministries have come to occupy a position of substantial importance in total resource transfers thereby eroding the original role assigned to the Finance Commissions. A number of issues have emerged with regard to the role of the Finance Commissions and the considerations which the Commissions are required to keep in mind while making their recommendations. These issues are examined in this section.
7.1 Constitution of the Finance Commission and Its TORs

88. The Finance Commissions are appointed and their Terms of Reference (TORs) are fixed by the Central Government. Determination of the Terms of Reference of the Finance Commissions has been a matter of dispute for long. It is argued that the TORs are decided unilaterally and are loaded in favour of the Centre. TORs also put a number of limitations on the process and approach of the Finance Commissions. An important reason for the Finance Commissions for following the kind of methodology emanates from the considerations listed in the TORs. The TOR of the Finance Commissions makes reference to the resources of the Central Government and the demands on those resources. The TORs generally provide that resources of the Central Government have to be assessed on the basis of levels of taxation and non-tax revenues likely to be reached at the end of a specific base year. A reference of this nature has been made to successive Finance Commissions since the Fifth Finance Commission. A similar reference to a base year is made in the case of the States.

89. The Thirteenth Finance Commission has also been asked to take into consideration the expenditure of the Centre on plan schemes, which actually belong to the States’ domain. The TORs also left an asymmetry between the way the needs to the Central and State Governments were referred to. For example, in the TORs for the Twelfth Finance Commissions it was stated in para 6:

“In making its recommendations, the Commission shall have regard, among other considerations, to:

(i) the resources, of the Central Government for five years commencing on 1st April 2005, on the basis of levels of taxation and non-tax revenues likely to be reached at the end of 2003-04;

(ii) the demands on the resources of the Central Government, in particular, on account of expenditure on civil administration, defence, internal and border security, debt-servicing and other committed expenditure and liabilities;

(iii) the resources of the State Governments, for the five years commencing on 1st April 2005, on the basis of levels of taxation and non-tax revenues likely to be reached at the end of 2003-04.
90. Similarly, Para 3 of the TOR for the Thirteenth Finance Commission: reads as follows:

“In making its recommendations, the Commission shall have regard, among other considerations, to -

(i) the resources of the Central Government, for five years commencing on 1st April 2010, on the basis of levels of taxation and non-tax revenues likely to be reached at the end of 2008-09;

(ii) the demands on the resources of the Central Government, in particular, on account of the projected Gross Budgetary Support to the Central and State Plan, expenditure on civil administration, defence, internal and border security, debt-servicing and other committed expenditure and liabilities;

(iii) the resources of the State Governments, for the five years commencing on 1st April 2010, on the basis of levels of taxation and non-tax revenues likely to be reached at the end of 2008-09.

91. In both cases, there is a reference to a base year and the need to restrict the Finance Commission to consider ‘levels’ of taxation and non-tax revenues reached up to base years (leaving a growth in revenue during the assessment period based on ‘additional resource mobilization’ for the Planning Commission, presumably). Furthermore, while there is some mention of preemptive needs of the Central Government, there is no corresponding mention of the needs of the State Governments.

92. Another important and related issue is the mandatory provision in the TORs of successive Finance Commissions to use 1971 Census population as the basis whenever population is taken as a consideration for devolution of resources. By the time the recommendations of the Thirteenth Finance Commission become effective, this figure will be out of date by more than 40 years. It is difficult to see the relevance of 1971 population census data when population of all States was about 54 crore, whereas 2001 census puts the all-India population at more than 100 crore. Even if the implicit objective is to penalize States, which have done less well in comparative terms in controlling population growth, the determination of the suitable incentives should be left to the Finance Commission.

93. Keeping the requirements of a healthy federal system in mind, the Task Force is of the following view:-
(1) There should be a formal process of consultation between the Centre and States before finalising the TORs of the Finance Commissions.

(2) There is no need for the Central Government to put forward extremely detailed TORs. The Finance Commission should be free to determine its approach with reference to provisions of Article 280.

(3) The TORs mention that wherever population is taken as a basis for resource transfers the figures of 1971 population census must be used. It is felt that these figures are now too outdated. The matter related to the reference year of the population should therefore be reconsidered at the appropriate level.

(4) The TORs if the Finance Commissions should not be loaded with additional items related to economic or financial matters which can be examined by other institutions or committees constituted for specific purposes, as it becomes difficult for the Commission to address all the issues in the time frame given to it.

7.2 Restoring Primacy of Finance Commission in Transfers

94. The perusal of the debates of the Constituent Assembly and the Constitution as it was framed leads to the conclusion that the Finance Commission was visualised as the principal if not the sole channel for recommending financial transfers to the States including those which were meant for development purposes. However, gradually the transfers from Planning Commission and the Central Ministries rapidly grew in amount substantially eroding the primacy of the Finance Commissions in resource transfers. Presently, the share of Finance Commission transfers in the total transfers from the Centre to the States is around two-third of the total transfers, while the remaining one-third transfer is through plan and non-plan grants. The other transfers are mostly discretionary and come with many conditionalities. Moreover, the Finance Commission transfers show a high degree of equity, while other transfers are much less equitous. These developments, in our opinion, are against the spirit of the Constitution and impact the fiscal federalism. For long a demand has been raised by fiscal experts that one body should take a holistic view of total transfers whether on plan or non-plan side.

95. Having considered all these aspects, the Task Force is of the view that the Centrality of the role of Finance Commission on devolution of funds from the Centre to
the States should be restored as originally envisioned in the Constitution and the Finance Commissions should be entrusted to consider the totality of transfers including both plan and non-plan requirements of the Centre and the States.

7.3 Expanding the Shareable Pool

96. The Eightieth Amendment provided for the sharing of all Central taxes with the States except for taxes leviable under Articles 268 and 269, cesses and surcharges. The switch over to the scheme of tax wise sharing to global sharing in Central tax revenue removed many of the anomalies in the system of fiscal transfers and met substantially the demand of the States that the shareable pool should be expanded by including corporate tax, etc. in the shareable pool. However, some contentious issues still remain.

(i) Cess and Surcharges

97. The Central Government has attempted to create additional fiscal space for itself by relying relatively more on cesses and surcharges and by placing the service tax under Article 268. Both of these are the exceptions to the provision of globalised sharing under Article 270. There is a demand that the shareable pool should be enhanced by including cess and surcharges, which show a big jump in recent years from Rs. 7,048.95 crore in 2003-04 to Rs. 69,651.87 crore in 2007-08 RE. As a per cent of Central tax revenue also the proportion of cess and surcharges has gone up from 2.77 per cent to 11.90 per cent. Although in the Eightieth Amendment to the Constitution cesses and surcharges were kept out of the purview of Article 270, this exception was made only to accommodate Centre’s need for resources in extraordinary situations. Particularly, surcharges are not meant to serve as a vehicle to avoid sharing certain portions of tax revenue with the States on a continuing basis.

98. On this issue The Task Force would like to reiterate the view of the Sarkaria Commission that the surcharge on Income Tax and special cesses on Union Excise duties should not be levied by the Union Government except for a specific purpose and for a strictly limited period only. Not only these surcharges and cesses are distortionary in nature they also deprive the States of their legitimate share in Central revenues. The States have also to bear part of the expenditure on these schemes. This mechanism should not be used for financing schemes of education and health on a continuing basis. If required basic tax rates should be increased. The Task Force is of the opinion that the power to impose cess and surcharges should be utilised only to meet only exceptional and unforeseen expenditure needs and not for meeting normal expenditure on a regular basis.
(ii) Taxes on Services

99. Tax on services is gradually becoming an important source of earning for the Central Government. However, the sharing of service taxes has been kept out of the purview of the Finance Commission. The Eighty-eighth Amendment to the Constitution placed taxation of services under Article 268 by inserting a new Article 268A. As part of article 268, as provided in the Eightieth Amendment to the Constitution, service tax was taken out of the scope of Article 270. It is, therefore, not subject to the mandatory sharing under the recommendation of the Finance Commission although the Central Government at its own discretion can allocate a share to the States and this share can be the same as for other Central taxes under the recommendations of the Finance Commission. But qualitatively, the sharing of the service tax revenue is on a different footing as compared to the other Central taxes. The principles for sharing of collection and appropriation of service tax revenues are to be decided by the Parliament and not by the Finance Commissions.

100. The Task Force is of the view that the jurisdiction of taxation of services between the Centre and the States should be clearly demarcated. States should be empowered to tax services which are of local nature. Moreover, there is no logical basis for keeping the receipts from service tax of the Central Government outside the shareable pool, when the principle of global sharing has been adopted. Constitution may be suitably amended to introduce these changes.

7.4 Conditional Versus General Transfers

101. It is an accepted principle of federal finance that as far as possible the transfer should be in the nature of general transfers without conditionalities. However, the last two Finance Commissions have recommended grants and debt relief along with a number of conditionalities imposed upon the States. Sometimes the States are unable to meet these conditionalities and are deprived of their share in the grants. The Task Force is of the opinion that while there is a case for specific purpose grants as in the case of social sector grants recommended by the Twelfth Finance Commission, the tendency of the Ministry of finance to impose conditions over and above the conditions imposed by the Finance Commission for release of grants needs to be kept under check.
7.5 Finance Commissions and Vertical and Horizontal Imbalances

102. The institution of Finance Commission was created by the Constitution makers to basically address the issue of vertical imbalance inherent in the scheme of revenue raising powers of the States and their expenditure responsibilities. Finance Commissions, as they have functioned in the past have been able to recommend a judicious balance in the revenue sharing between the Centre and the States. A healthy tradition has also developed in as much as the Central Government has honoured the recommendations of the Finance Commissions. Finance Commissions have rightly come to be regarded as pillar of Indian fiscal federal system.

103. Over a time there has been stability in the Central transfers to the States both as a proportion of gross tax revenue of the Centre and as a proportion of the revenue receipts of the States as shown above.

104. On the whole the recommendations of the Finance Commissions have struck a judicious balance between the fiscal needs of the Centre and the States. The Finance Commissions have been perceived as fair with respect to vertical imbalance, albeit within the constraints imposed on Finance Commission beyond constitutional requirements.

105. The task of Finance Commission to address an asymmetric assignment of financial powers between Centre and States in the Constitution - the vertical imbalance - has been complicated by the assumption of huge responsibilities by the Centre which are in the domain of the States. So much so, that the terms of reference of the Thirteenth Finance Commission mandates the Commission to take into account Centre's requirement of funds for providing plan assistance and running Centrally sponsored schemes. The expenditure requirements which should have been the basis for States to resources from the Centre have become Centre's basis for retaining resources.

106. Turning to the issue of horizontal equity in resource transfers it may be observed that in the early years this issue did not figure prominently in the recommendations of the Finance Commissions, which recommended tax sharing largely on population and collection criteria. However, from the time of the Fifth Finance Commission the Finance
Commissions have paid increasing attention to the needs of the backward States. The Eleventh Finance Commission distributed 62.5 per cent of tax revenue on the basis of inverse of per capita income. This weight was reduced to 50 per cent by the Twelfth Finance Commission, a recommendation which was widely criticised.

107. Analysis in terms of per capita devolution reveals significant anomalies across States. Till the Eighth Finance Commission differences in per capita devolution across States were not marked and many States in the high or middle per capita category received as much or even more in per capita terms as compared to some of the poor States as can be seen from Table 8. In case of the Tenth Finance Commission recommendations richer States received lower per capita transfers, but anomalies persisted between middle and low income States.

108. The picture significantly improved in case of the Eleventh and the Twelfth Finance Commission. The Twelfth Finance Commission per capita transfers come to Rs. 8,406, Rs. 6,230 and Rs. 4,291 for low, middle and high income States respectively. Thus, per capita transfers to low income States are almost double and that to middle income States about 50 per cent higher as compared to the per capita transfers to the high income States.

109. But when we look at the per capita devolution to individual States there still appears to be a scope for further fine tuning. Among the three main categories of high, medium and low income States there is a fairly large difference in the devolution among States within the category. Thus, in case of Twelfth Finance Commission it is found that per capita devolution among the poor States varied from Rs. 6914 in Rajasthan to Rs. 10039 in Orissa.
Table 10: Per Capita Transfers to General Category States by Finance Commissions (in Rs.)

<table>
<thead>
<tr>
<th>STATES</th>
<th>VI FC</th>
<th>VII FC</th>
<th>VIII FC</th>
<th>IX FC</th>
<th>X FC</th>
<th>XI FC</th>
<th>XII FC</th>
</tr>
</thead>
<tbody>
<tr>
<td>High Income States</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gujarat</td>
<td>138</td>
<td>362</td>
<td>416</td>
<td>1120</td>
<td>1940</td>
<td>2906</td>
<td>5061</td>
</tr>
<tr>
<td>Haryana</td>
<td>120</td>
<td>307</td>
<td>331</td>
<td>981</td>
<td>1552</td>
<td>2564</td>
<td>3812</td>
</tr>
<tr>
<td>Maharashtra</td>
<td>141</td>
<td>340</td>
<td>417</td>
<td>1099</td>
<td>1629</td>
<td>2457</td>
<td>3739</td>
</tr>
<tr>
<td>Punjab</td>
<td>125</td>
<td>310</td>
<td>364</td>
<td>1012</td>
<td>1558</td>
<td>2687</td>
<td>5302</td>
</tr>
<tr>
<td>Middle Income States</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Andhra Pradesh</td>
<td>179</td>
<td>346</td>
<td>514</td>
<td>1386</td>
<td>2558</td>
<td>4664</td>
<td>6608</td>
</tr>
<tr>
<td>Karnataka</td>
<td>131</td>
<td>343</td>
<td>461</td>
<td>1218</td>
<td>2231</td>
<td>4664</td>
<td>5950</td>
</tr>
<tr>
<td>Kerala</td>
<td>225</td>
<td>359</td>
<td>495</td>
<td>1306</td>
<td>2480</td>
<td>4386</td>
<td>6166</td>
</tr>
<tr>
<td>Tamil Nadu</td>
<td>131</td>
<td>358</td>
<td>505</td>
<td>1414</td>
<td>2260</td>
<td>3871</td>
<td>5880</td>
</tr>
<tr>
<td>West Bengal</td>
<td>186</td>
<td>355</td>
<td>560</td>
<td>1303</td>
<td>2072</td>
<td>5179</td>
<td>6352</td>
</tr>
<tr>
<td>Low Income States</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bihar</td>
<td>131</td>
<td>382</td>
<td>573</td>
<td>1579</td>
<td>2737</td>
<td>6574</td>
<td>9044</td>
</tr>
<tr>
<td>Madhya Pradesh</td>
<td>131</td>
<td>368</td>
<td>534</td>
<td>1426</td>
<td>2308</td>
<td>5295</td>
<td>7965</td>
</tr>
<tr>
<td>Orissa</td>
<td>263</td>
<td>434</td>
<td>635</td>
<td>2033</td>
<td>2892</td>
<td>3568</td>
<td>10039</td>
</tr>
<tr>
<td>Rajasthan</td>
<td>219</td>
<td>343</td>
<td>452</td>
<td>668</td>
<td>2338</td>
<td>5361</td>
<td>6914</td>
</tr>
<tr>
<td>Uttar Pradesh</td>
<td>153</td>
<td>363</td>
<td>534</td>
<td>1468</td>
<td>2481</td>
<td>5432</td>
<td>8348</td>
</tr>
<tr>
<td>All States’ Average</td>
<td>160</td>
<td>281</td>
<td>540</td>
<td>1388</td>
<td>2287</td>
<td>4472</td>
<td></td>
</tr>
<tr>
<td>R with Per Capita GSDP 1999-2001</td>
<td>-0.24</td>
<td>-0.60</td>
<td>-0.68</td>
<td>-0.51</td>
<td>-0.71</td>
<td>-0.87</td>
<td>-0.85</td>
</tr>
</tbody>
</table>

Source: Figures up to Tenth Finance Commission have been taken from Vithal, B.P.R. & M. L. Sastry (2001), Fiscal Federalism in India, Oxford University Press, New Delhi. Figures for the Eleventh and the Twelfth Finance Commission period have been calculated from their Reports.

110. The post devolution surpluses have been modest in amount in per capita terms as can be seen from Table 9. It is a matter of concern that the post-devolution surplus shows a strong positive association with the level of per capita income of the States. Thus, the per capita post devolution surplus as recommended by the Twelfth Finance Commission amounted to as much as Rs. 12,028 in case of rich State like Haryana, while Orissa among the poorest States received only Rs. 701 as shown in Table 9.
It has also been pointed out by scholars that the transfers by the Finance Commissions fail to remove in any substantial measure the disparities in the revenue capacities of the States. As Table 10 shows the assessed per capita revenue of poor States including transfers and grants is estimated at Rs. 3,326 for the period 2005-10 as compared to the average of Rs. 5,365 for better-off States. At the level of individual States the differences are even sharper. Thus, per capita revenue capacity of the richer States like Punjab, Haryana and Maharashtra is almost double that of the poorer States like U.P. and Bihar.

Table 11: Per Capita Surpluses after Devolution (in Rs.)

<table>
<thead>
<tr>
<th>STATES</th>
<th>VI FC</th>
<th>VII FC</th>
<th>VIII FC</th>
<th>IX FC</th>
<th>X FC</th>
<th>XI FC</th>
<th>XII FC</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>High Income States</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gujarat</td>
<td>129</td>
<td>331</td>
<td>719</td>
<td>1086</td>
<td>2488</td>
<td>6682</td>
<td>7043</td>
</tr>
<tr>
<td>Haryana</td>
<td>244</td>
<td>525</td>
<td>1079</td>
<td>1728</td>
<td>3658</td>
<td>6768</td>
<td>12028</td>
</tr>
<tr>
<td>Maharashtra</td>
<td>149</td>
<td>479</td>
<td>1021</td>
<td>1805</td>
<td>3074</td>
<td>6791</td>
<td>5990</td>
</tr>
<tr>
<td>Punjab</td>
<td>262</td>
<td>482</td>
<td>1047</td>
<td>892</td>
<td>875</td>
<td>1316</td>
<td>-574</td>
</tr>
<tr>
<td><strong>Middle Income States</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Andhra Pradesh</td>
<td>12</td>
<td>172</td>
<td>356</td>
<td>705</td>
<td>274</td>
<td>5228</td>
<td>4958</td>
</tr>
<tr>
<td>Karnataka</td>
<td>88</td>
<td>271</td>
<td>556</td>
<td>1270</td>
<td>3129</td>
<td>5886</td>
<td>11157</td>
</tr>
<tr>
<td>Kerala</td>
<td>3</td>
<td>92</td>
<td>245</td>
<td>36</td>
<td>1197</td>
<td>2459</td>
<td>1222</td>
</tr>
<tr>
<td>Tamil Nadu</td>
<td>45</td>
<td>130</td>
<td>665</td>
<td>880</td>
<td>1669</td>
<td>3256</td>
<td>6812</td>
</tr>
<tr>
<td>West Bengal</td>
<td>16</td>
<td>131</td>
<td>4</td>
<td>268</td>
<td>602</td>
<td>-67</td>
<td>1224</td>
</tr>
<tr>
<td><strong>Low Income States</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bihar</td>
<td>11</td>
<td>156</td>
<td>122</td>
<td>436</td>
<td>214</td>
<td>2004</td>
<td>3366</td>
</tr>
<tr>
<td>Madhya Pradesh</td>
<td>39</td>
<td>270</td>
<td>381</td>
<td>239</td>
<td>1248</td>
<td>3313</td>
<td>6024</td>
</tr>
<tr>
<td>Orissa</td>
<td>26</td>
<td>0</td>
<td>4</td>
<td>0</td>
<td>1</td>
<td>47</td>
<td>701</td>
</tr>
<tr>
<td>Rajasthan</td>
<td>10</td>
<td>64</td>
<td>90</td>
<td>0</td>
<td>677</td>
<td>543</td>
<td>2079</td>
</tr>
<tr>
<td>Uttar Pradesh</td>
<td>33</td>
<td>175</td>
<td>34</td>
<td>73</td>
<td>215</td>
<td>987</td>
<td>3202</td>
</tr>
<tr>
<td><strong>All States’ Average</strong></td>
<td>56</td>
<td>216</td>
<td>419</td>
<td>596</td>
<td>1169</td>
<td>3229</td>
<td>4659</td>
</tr>
<tr>
<td>‘R’ with average Per</td>
<td>0.7192</td>
<td>0.6794</td>
<td>0.8461</td>
<td>0.7097</td>
<td>0.6832</td>
<td>0.5581</td>
<td>0.2987</td>
</tr>
</tbody>
</table>

Source: Figures up to Tenth Finance Commission have been taken from Vithal, B.P.R. & M. L. Sastry (2001), Fiscal Federalism in India, Oxford University Press, New Delhi. Figures for the Eleventh and the Twelfth Finance Commission period have been calculated from their Reports.
Table 12: Per Capita Revenue of Non-special Category States (in Rs.)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Better-off States</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Goa</td>
<td>14568</td>
<td>14190</td>
</tr>
<tr>
<td>Punjab</td>
<td>5782</td>
<td>3505</td>
</tr>
<tr>
<td>Maharashtra</td>
<td>5123</td>
<td>3676</td>
</tr>
<tr>
<td>Haryana</td>
<td>6066</td>
<td>3719</td>
</tr>
<tr>
<td>Gujarat</td>
<td>4980</td>
<td>3883</td>
</tr>
<tr>
<td>Kerala</td>
<td>5990</td>
<td>3827</td>
</tr>
<tr>
<td>Tamil Nadu</td>
<td>5832</td>
<td>3901</td>
</tr>
<tr>
<td>Karnataka</td>
<td>5836</td>
<td>3464</td>
</tr>
<tr>
<td>Andhra Pradesh</td>
<td>4907</td>
<td>3137</td>
</tr>
<tr>
<td>West Bengal</td>
<td>3772</td>
<td>2268</td>
</tr>
<tr>
<td>Average (excluding Goa)</td>
<td>5365</td>
<td>3483</td>
</tr>
<tr>
<td>Other States</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rajasthan</td>
<td>3452</td>
<td>2446</td>
</tr>
<tr>
<td>Chattisgarh</td>
<td>4163</td>
<td></td>
</tr>
<tr>
<td>Madhya Pradesh</td>
<td>3462</td>
<td>3126</td>
</tr>
<tr>
<td>Jharkhand</td>
<td>3258</td>
<td></td>
</tr>
<tr>
<td>Orissa</td>
<td>3640</td>
<td>2065</td>
</tr>
<tr>
<td>Uttar Pradesh</td>
<td>2944</td>
<td>1988</td>
</tr>
<tr>
<td>Bihar</td>
<td>2364</td>
<td>2122</td>
</tr>
<tr>
<td>Average Other States</td>
<td>3326</td>
<td>2349</td>
</tr>
<tr>
<td>Coefficient of variation among major States (excluding Goa)</td>
<td>0.28</td>
<td>0.24</td>
</tr>
</tbody>
</table>

Note: Per capita revenue is as assessed by the Finance Commissions plus recommended tax share and grants.


112. Thus, the richer states are in a position to provide better quality and higher level of public services and infrastructure as compared to the poor states. Furthermore, their capacity for capital expenditure is also higher and they are able to to get more funds from the Planning Commission and attract private investment. This situation lies at the root of the persistent and growing inter-regional disparities at the State level in the country.

113. Finance Commissions have also been criticised for not being able to assess fiscal capacity with full objectivity. The continued adoption of non-plan revenue gap grants
has only rewarded fiscally undisciplined and weak States. There is thus lot of resentment amongst States regarding inter-se distribution.

114. The Finance Commissions have also failed to take into account the uneven flow of investment funds across the States through the mechanism of financial institutions and foreign investments, which are gaining increasing importance as the determinants of economic growth in different States. The poor States are the worst suffers in this respect and are lagging behind in the pace of economic growth as compared to the richer States.

115. It needs to be mentioned here that the per capita income in different States cannot be equalised as different States have different resource base and potential. Moreover, financial transfers can play only a limited role in promoting growth rate of a State, as a number of other factors including the availability of infrastructure and investment climate of the State determine the growth rate of a State.

116. The Finance Commissions can, however, play a role in equalisation of basic economic and social services across the different states in the country. This would require the identification of the basic services and the cost of provision of these services in different States. The Finance Commission transfers should take these requirements in mind while making their recommendations for resource transfers. The Twelfth Finance Commission has tried to meet this objective with respect to primary education and health facilities, but only in a partial manner.

117. The Task force is of the view that the Finance Commissions should evolve objective standards of services which the States need to provide and the financial requirements for provision of such standard of services. The finance Commissions should move towards a system of normative transfers on a comprehensive basis.

8.0 Role of Planning Commission Transfers

8.1 Planning in the Market Economy

118. In the early years of planning, public sector investment played a significant role in determining the pace and the pattern of development. Private sector investment was also sought to be directed to specific sectors and locations through various regulatory controls and financial incentives. The nature of planning in India has undergone a drastic change since the adoption of the economic reforms in 1991. Most of the regulatory systems have been disbanded. The direction of public investment has shifted from the manufacturing
sector to infrastructure and social development. In the eleventh Plan the share of the public sector in total investment is envisaged to be hardly 22% of total investment. The development process at the State level is increasingly depending upon the investment climate in the different States. The role of State level policies is assuming greater importance under these circumstances.

119. The planning process in the country has, however, failed to keep pace with these developments. The old practice of annual plan consultations with States and sanction of plan size and proposals is still continuing. Given the large number of States these plan consultations are not completed in time. Often the annual size of a State’s plan is decided when several months of the financial year have passed. This leads to problems in budget making by the States and also affects adversely the realisation of plan objectives.

120. The Task Force feels that the approach to planning needs to be changed drastically in keeping with the changing economic circumstances. The task of the Planning Commission should be mainly concerned with determining the national priorities and developing a suitable policy environment rather than to closely regulate the plans of States in detail. The Five Year Plans should be finalised in close consultation with the States and the civil society. The States’ Five Year Plans may also be finalised in consultation with the Planning Commission in the light of the national level objectives and goals. However, the detailed exercise of approving States’ annual plans should no longer be necessary. The States have to plan according to their own needs and priorities, within the framework of nationally accepted objectives.

8.2 Plan Transfers to States

121. Over the years plan transfers have come to occupy a significant share in total transfers to the State. There is, however, hardly any co-ordination between the Finance Commission and the Planning Commission in recommending transfers. Both the bodies follow their own approaches in a segmented way irrespective of the fact that there is a dynamic linkage between the two major streams of resource transfers.

122. The Plan schemes create financial liabilities for the States beyond the plan period in the form of interest payments on plan loans, expenditure on maintenance of assets created during the Plan and salaries of people employed in Plan schemes who remain in Government employment after the plan has ended. The Finance Commission takes into account the interest payments and committed liabilities of the State Governments in making an assessment of the needs of State Governments on the revenue (non-plan)
account. This process sets a chain reaction. A larger plan is typically linked with a larger borrowing programme and, therefore, leaves relatively larger future liabilities. Given other things, the larger the interest and other committed liabilities, the larger would be the entitlement of a State in the form of tax devolution and grants.

123. A fragmented view of plan and non-plan requirements of the States is taken by the two Commissions. The Finance Commission looks only at the (non-plan) revenue expenditures without paying much attention to the linkage of interest payments with past fiscal deficits and accumulated debt stock. On the other hand, the Planning Commission looks at the scope of borrowing in the Plan period without considering what future liabilities are being created and how they may be financed beyond the Plan period.

124. **Under the present scheme of things**

there is an undue emphasis on taking up new schemes, while uncompleted projects of the past Plans and maintenance of assets acquired in the past get little attention. Poor maintenance reduces the utility of the old assets. Moreover, many old projects remain uncompleted, while new projects are introduced involving wastage of resources. Thus, old assets degenerate fast due to inadequate maintenance, new assets are not ready to contribute to output, the schemes remaining incomplete, thus causing a double blow to the productivity of Government expenditures.

### 8.3 Transfers under the Gadgil-Mukherji Formula

125. The principle of distribution of Central Assistance among the States, popularly known as Gadgil formula after the name of Dr. D.R. Gadgil, the then Deputy Chairman of the Planning Commission, came to be used from the Fourth Five Year Plan. The formula was updated in September 1976 by NDC. It was further modified on 31st August 1980 by NDC. A modified formula, which came to be known as “Gadgil-Mukherji Formula”, was adopted by NDC in its meeting on 23rd and 24th December 1992. Since then the Normal Central Assistance (NCA) is being distributed on the basis of this formula. It does not apply to the distribution of Additional Central Assistance (ACA) under “Others” and “EAP”.

126. At present the Gadgil-Mukherjee formula takes into account population, per capita income, performance and special problems as the criteria for distribution of Central plan assistance. The weights assigned to different criteria under the modified formula are as follows:
### Criteria for Centre-State Relations

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>A. Special Category States (10)</strong></td>
<td>30% share of 10 States excluding North Eastern Council</td>
<td>30% share of 10 States including North Eastern Council</td>
<td>30% share of 10 States excluding North Eastern Council</td>
</tr>
<tr>
<td><strong>B. Non-Special Category States (15)</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(i) Population (1971)</td>
<td>60.0</td>
<td>55.0</td>
<td>60.0</td>
</tr>
<tr>
<td>(ii) Per Capita Income</td>
<td>20.0</td>
<td>25.0</td>
<td>25.0</td>
</tr>
<tr>
<td>Of which</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a. According to the ‘deviation’ method covering only the States with per capita income below the national average</td>
<td>20.0</td>
<td>20.0</td>
<td>20.0</td>
</tr>
<tr>
<td>b. According to the ‘distance’ method covering all the fifteen States</td>
<td>-</td>
<td>5.0</td>
<td>5.0</td>
</tr>
<tr>
<td>(iii) Performance of which</td>
<td>10.0</td>
<td>5.0</td>
<td>7.5</td>
</tr>
<tr>
<td>a. Tax effort</td>
<td>10.0</td>
<td>-</td>
<td>2.5</td>
</tr>
<tr>
<td>b. Fiscal management</td>
<td>-</td>
<td>5.0</td>
<td>2.5</td>
</tr>
<tr>
<td>c. National objectives</td>
<td>-</td>
<td>-</td>
<td>2.5</td>
</tr>
<tr>
<td>(iv) Special problems</td>
<td>10.0</td>
<td>15.0</td>
<td>7.5</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
</tr>
</tbody>
</table>

127. The formula of transfer used by the Planning Commission, gives a much lower weight to equity as compared to the Finance Commission transfers. When the Gadgil formula was adopted initially the issue of horizontal equity among States was not given its due place. However, since the time of the Fifth Finance Commission a much higher priority to horizontal equity has been given. Consequently, the formulae of distribution adopted by the Finance Commission and the Planning Commission for Central transfers have shown increasing divergence.

128. The Eleventh Finance Commission gave a weight of 62.5% to income distance and a weight of only 10% to population. The Twelfth Finance Commission has increased the weight of population to 20%, while reducing the weight of income distance to 50%. As compared to this the modified Gadgil-Mukherji formula gives a weight of 60 per cent to population and only 25 per cent to per capita income. Thus, the plan transfers based on the Gadgil-Mukherji formula clearly fail to meet the important objective of regional equity.
129. A comparison of the share of States as recommended by the Twelfth Finance Commission and their share in the CPA shown in Table 11 would be instructive in this regard. In 2006-07 the special category States get a share of 56.45% in NPA against their share of only 8.15% in TFC tax transfers. On the other hand, the share of the general category States is only 43.55% in NCA against their share of 91.85% in TFC transfers.

Table 13: Percent Share of States in NCA and TFC Tax Transfers

<table>
<thead>
<tr>
<th>State</th>
<th>Grant Component of Percent Share</th>
<th>Percent Share in Total NCA 2006-07</th>
<th>Percent Share in TFC Grant</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>A. Special Category States</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Arunachal Pradesh</td>
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<td>1549.90</td>
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<td>3.24</td>
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<tr>
<td>Himachal Pradesh</td>
<td>766.33</td>
<td>5.45</td>
<td>0.52</td>
</tr>
<tr>
<td>Jammu &amp; Kashmir</td>
<td>1518.32</td>
<td>10.80</td>
<td>1.30</td>
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<tr>
<td>Manipur</td>
<td>463.31</td>
<td>3.30</td>
<td>0.36</td>
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<tr>
<td>Meghalaya</td>
<td>384.93</td>
<td>2.74</td>
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<tr>
<td>Mizoram</td>
<td>443.51</td>
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<td>Nagaland</td>
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<tr>
<td>Sikkim</td>
<td>299.13</td>
<td>2.13</td>
<td>0.23</td>
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<tr>
<td>Tripura</td>
<td>654.08</td>
<td>4.65</td>
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<tr>
<td>Uttaranchal</td>
<td>756.57</td>
<td>5.38</td>
<td>0.94</td>
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<tr>
<td><strong>Total (A)</strong></td>
<td><strong>7934.11</strong></td>
<td><strong>56.45</strong></td>
<td><strong>8.15</strong></td>
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<tr>
<td><strong>B. Non-Special Category States</strong></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Andhra Pradesh</td>
<td>389.13</td>
<td>2.77</td>
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<tr>
<td>Bihar</td>
<td>687.92</td>
<td>4.89</td>
<td>11.03</td>
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<td>Chhattisgarh</td>
<td>182.84</td>
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<td>Goa</td>
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<td>0.23</td>
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<td>Gujarat</td>
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<td>Haryana</td>
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<td>Jharkhand</td>
<td>230.53</td>
<td>1.64</td>
<td>3.36</td>
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<td>Karnataka</td>
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<td>4.46</td>
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<td>198.08</td>
<td>1.41</td>
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<td>436.07</td>
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<td>349.70</td>
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<td>Punjab</td>
<td>132.36</td>
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<td>Rajasthan</td>
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<td>Uttar Pradesh</td>
<td>1234.43</td>
<td>8.78</td>
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<td>West Bengal</td>
<td>483.35</td>
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<td><strong>Total B</strong></td>
<td><strong>6120.91</strong></td>
<td><strong>43.55</strong></td>
<td><strong>91.85</strong></td>
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<tr>
<td><strong>Total A &amp; B</strong></td>
<td><strong>14055.02</strong></td>
<td><strong>100.00</strong></td>
<td><strong>100.00</strong></td>
</tr>
</tbody>
</table>

*Source: Planning Commission, Govt. of India and Report of the Twelfth Finance Commission*
130. It is clear from the table that the TFC shares are more equitous as compared to Plan transfers. Thus, the share of poorer States like U.P., Bihar, M.P. and Rajasthan in NCA is lower as compared to their share in the TFC transfers. On the other hand, the share of richer States like Gujarat, Punjab, Haryana and Maharashtra is higher.

131. One should also take note of the fact that the total transfers under normal plan assistance governed by Gadgil-Mukherji formula have gradually lost their importance. During the first few years of its operation more than 90% of the State Plan assistance was devolved through this formula. Gradually, fund flow through the Centrally Sponsored Schemes (CSS) acquired importance with the introduction of several new schemes including Family Planning, various anti-poverty programmes and the welfare programmes.

132. Grants under Gadgil-Mukherji Formula now constitute a rather small part of total Central Assistance to State for State Plans. Thus, according to the revised figures for 2007-08, out of the total Central assistance for State plan of Rs. 55,917 the formula-based NCA was only Rs. 15,358 crore, i.e. 27.5 percent total Central Assistance. As a proportion of the State plan outlays the NCA is of marginal significance now.

8.4 Grant and Loan Component of Plan Transfers

133. Till the implementation of the Twelfth Finance Commission recommendations, the plan transfers consisted of two parts, namely, grants and loans. The ratio of grants and loans was 30:70 in case of general category States and 90:10 in case of special category States. The ratio of 30 per cent grants in case of general category States was governed by the fact that in the early years the revenue component of plan expenditure was about 30 per cent and capital expenditure about 70 per cent. Subsequently the ratio of plan revenue expenditure to total plan expenditure has gone up to over 50 per cent.

134. In this context one should also take note of the fact that grants and loans need to be governed by entirely different sets of principles. Grants should be given in consideration of resource deficiencies, and for projects with large social benefits but limited direct return like primary education and primary health. On the other hand, loans should be given taking into consideration the capacity of a State to absorb and service the loan, and in respect of projects which can give adequate returns, commensurate with the cost of the loan. By mixing the two together, the Centre burdened the States with debt that they could not service, but could not afford to forego either, because with it the component of grant would also have to be foregone.
135. With the recommendations of the Twelfth Finance Commission to do away with the role of loan mediation to the States, the whole concept of NCA has undergone a fundamental change. As the Central plan assistance will not be given in the form of loans to the States, the States are expected to raise this amount on their own from the market. As a result of the new system of plan assistance loans have been reduced to a negligible percent of total plan size of States as can be seen from Table 12.

Table 14: Share of Grants and Loans in Plan Transfers

<table>
<thead>
<tr>
<th>Years</th>
<th>Plan Transfers(Rs. Crore)</th>
<th>Percent Share in Plan Transfers</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Grants</td>
<td>Loans</td>
</tr>
<tr>
<td>2001-02</td>
<td>35,923.75</td>
<td>21217.67</td>
</tr>
<tr>
<td>2002-03</td>
<td>41,640.11</td>
<td>26429.48</td>
</tr>
<tr>
<td>2003-04</td>
<td>45,792.84</td>
<td>32628.97</td>
</tr>
<tr>
<td>2004-05</td>
<td>47,858.21</td>
<td>23,754.00</td>
</tr>
<tr>
<td>2005-06</td>
<td>57,191.86</td>
<td>8,062.00</td>
</tr>
<tr>
<td>2006-07</td>
<td>60,045.00</td>
<td>6,158.00</td>
</tr>
<tr>
<td>2007-08</td>
<td>89,557.00</td>
<td>11,216.00</td>
</tr>
<tr>
<td>2008-09</td>
<td>105,721.00</td>
<td>14,975.00</td>
</tr>
</tbody>
</table>

Source: RBI, Report on State Finances, various years.

136. With the new on lending policy of the Government of India on the recommendations of Twelfth Finance Commission, the concept of normal Central Assistance based on Gadgil Formula has lost much of its significance. One possible option is to eliminate Normal Central Assistance, which is the only grant based on Gadgil Formula and increase the states share in the share of central taxes by an equal amount. As we have recommended earlier the Finance Commission should take into account the plan needs of the States and the same formula may be used for transferring Finance Commission shares and plan assistance.

8.5 Plan Assistance and Scheme Based Transfer

137. The objectivity and unconditional nature of plan assistance has got substantially deformed over the years. Grants in form of ‘Additional Central Assistance (ACA) Schemes’ have been introduced in Central Assistance to State plans in the eighties. The ACA grants are schematic and are no different than grants for Centrally Sponsored Schemes, except
that these are transferred through Finance Ministry generally. Non-schematic discretionary grants like Special Central Assistance and Special Plan Assistance have been introduced in the Central Assistance. By now, ACAs, SCAs, and SPAs far exceed the untied Central Assistance, referred to as Normal Central Assistance (NCA).

138. These developments have not only introduced unnecessary complications, but the conditional and schematic nature of ACA schemes constitute uncalled for intrusion in States’ domain and purely discretionary nature of SCAs and SPAs are distortionary. Such discretionary grants also introduce political partisanship. ACAs, SCAs and SPAs need to be simply done away with.

139. The Task Force is of the opinion that under the changed circumstances, the amounts being transferred as ACA and other tied types of schemes may also be added to the Finance Commission based transfers. The States should be left free to decide the size of their annual plan on the basis of their assessment of total resources available. The funds retained from transfer as assistance to States’ plans, could as well go to the States as share of States in Central revenues.

9.0 Centrally Sponsored Schemes

140. Over the years there has been a proliferation of Centrally Sponsored Schemes (CSS), which have been launched into almost all spheres of the expenditure jurisdiction of the States. These CSS have grown so much, that their size today is almost equal to the entire State plans of the State Governments excluding States’ contribution to the CSS. The CSS funds come with conditionalities and require matching contribution by State Governments in differing proportions, thereby impacting upon the States resource position as well as priorities. CSSs have come under criticism on various counts and several committees of the Planning Commission have accepted the need of restricting their numbers, but without concrete results in this direction.

141. The major criticism of the CSS can be summed up as follows:

(1) The State Governments are not consulted at the stage of conception, design and rule making. States are, therefore, compelled to commit resources for straight-jacketed schemes that do not reflect their priorities or can be effectively implemented, as they are rigid and out of sync with local realities. Such specific-purpose transfers have tended to reduce the States to mere implementing agencies with rigid guidelines that deny location-specificity and local initiative.
(2) It has also argued that in some of the CSSs, the share of the States’ financial burden is also being unilaterally increased. For instance, despite repeated objections by all the Chief Ministers, the Centre has taken a decision to increase the share of the States in the *Sarva Shiksha Abhiyan* Programme from 25% steadily to 50% under the Eleventh Five-year Plan.

(3) Many States are frequently unable to provide the matching shares and consequently forego attendant Central transfers which are subsequently reallocated to relatively better-off States as additional allocation, worsening horizontal imbalances.

(4) The sizeable funding of CSS to the tune of about 60 per cent of the Central Assistance is resulting in an expanding role of the Centre in the State sector.

(5) Through the CSS the Central Ministries are side stepping the States and placing district functionaries directly under the control of the concerned Central ministries.

(6) There is a great deal of discretion with the concerned Central Ministries in allocations and disbursement of CSS funds.

142. There are widespread instances of CSS funds remaining unutilized for long periods, used for purposes other than the ones for which such funds were meant for, inefficient and unproductive use, leakages and also misappropriations thereof. There are several reasons for this situation. Firstly, CSS funds are delivered to agencies outside the State Governments and their utilisation is accepted only on the basis of utilization certificates issued by such agencies. This encourages financial indiscipline. Secondly, there is considerable interest on the part of Central Ministries to also release CSS funds to show their utilisation and performance. Thirdly, CSSs are usually based on one size fits all approach and are designed on the highest common denominator/averaging basis, making their implementation unsuitable and non-pragmatic in large parts of the country leading to wastefulness and unproductive use of funds. Fourthly, as all CSS schemes are meant for all or most States in the country or at best on regional basis, there is tendency to provide funds to all the States leading to very thin distribution of funds in case of many schemes. Any link to outcomes is certainly good. However, the improper and unproductive utilisation of CSS is hardly on account of lack of prescription of outcomes. Reasons as detailed above are far more responsible. Linking to conditionalities other than outcome will make matters worse and increase the potential for misuse by Centre much more.
143. It needs to be mentioned that CSSs were envisioned as sparing intervention of the Centre for subjects, which were of national or regional importance within the matters assigned to the States. NDC had resolved very categorically at the time of adoption of Gadgil formula based assistance for States’ plans that CSS will not typically exceed 1/6th or 1/7th of the size of transfers as assistance to State plan. However, the position was reversed completely. Today CSS funds outnumber NCA by a factor of 7 to 8. CSS are making States fiscally dependent and subordinate to the Centre.

144. The Task Force feels that there may be some cases of national importance for which CSS may be introduced, e.g., rural employment guarantee scheme. The broad guidelines should be worked out for Central Schemes on the basis of discussions between the Centre and the States, allowing for flexibility in design and implementation. The State Governments should be fully involved in determining the contents and coverage of the centrally sponsored scheme so that local variations and likely difficulties in their implementation are taken care of. An appropriate periodic joint Centre-State review may be worked out. This will not only promote decentralization and uphold federalism, but would also be more cost-efficient and goal fulfilling since it allows location-specificity in design and are better suited to meet their socio-economic objectives.

145. The Task force is strongly of the view that CSS needs to be rolled back and should not exceed 1/6th or 1/7th of the size of transfers as assistance to States plan as was agreed by the NDC. CSS should be restricted to a few schemes which are accepted as having high national priority. Furthermore, CSS should not be conceived and implemented in a tight jacket one-size-to-fit-all manner, but should have an element of flexibility and adaptability in the light of the local considerations. A cafeteria approach would be more suitable when States are left free to pick up a few schemes suitable for their need from a basket of schemes developed by the Planning Commission/Central Ministries.

10.0 Borrowing by States

10.1 Control Over Market Borrowings

146. Our Constitution envisaged an independent borrowing jurisdiction for the States. States were conferred with all authority to borrow by issuing bonds or treasury bills or raise loans. There was only one restriction: States were not to borrow outside the territory of the country. Additionally, in case, State legislature chose to place limits on borrowings, the borrowings were to be subject to such limits. Further, if any State was indebted to the Centre, it was required to obtain consent of the Central Government before making
additional borrowings.

147. In practice, the freedom of the States in the matter of borrowing has become quite restricted:

a) With the introduction of Central Schemes and later on plan grants to States, with a large loan component, States became indebted to the Centre, subjecting their entire borrowing freedom to Central control.

b) Small savings raised by the Central Agencies were also shared with the States, increasing States’ indebtedness to the Centre further.

c) All States entered into agreement with RBI making RBI their bankers and entrusting debt issuance functions to the RBI. RBI debarred States from raising ‘loans’ from Banks. Loans can be raised only from Financial Institutions like LIC, NABARD, PFC, REC, NCDC.

d) System of SLR based bonds issuance for the States was introduced. With banks becoming captive suppliers of funds for these SLR eligible bonds, States’ borrowings have not really been on the basis of their credit-worthiness and financial management.

148. Result of all these developments/institutional interventions has been that States have not developed debt management abilities and debt has become only a source of finance for them. Borrowings were more governed by how much is available than what is sustainable or financially manageable. Introduction of Fiscal Responsibility Laws, on account of structural adjustment loans from multilaterals initially and later on the basis of recommendations of Twelfth Finance Commission has controlled run-away borrowings of the States. The States also realized the ill-effects of excessive borrowings in nineties coupled with uncontrolled increases in expenditure obligations, which led to several States running unsustainable overdrafts and closure of treasuries. Government of India has also linked approval of borrowings with the fiscal deficit targets under fiscal responsibility legislation.

149. Loans from the Central Government formed a large part of the borrowing of the States in the past. A major contributory factor to this was that 70 per cent of plan assistance from the Centre was in the form of loans. The situation in this regard has changed following the recommendation of the Twelfth Finance Commission that the Central Government should stop on lending to the States. The States have to resort to borrowing from the
market to fund their plan expenditure. Thus, the States will be subject to the market discipline for borrowing as the cost of their borrowing will depend upon their credit worthiness. This, in our view, is a move in the right direction.

150. The States have been complaining that their share in market borrowings has declined to hardly 20 per cent and demanding that this share should be restored to 50 per cent. It is also demanded that the States should be given the option to access market borrowing, which is often as the cheapest source of borrowing, and should also be allowed the option to issue tax-free bonds. It is argued by some States that it would be better to transform bond based on SLR subscription and implicit RBI guarantee into fully market discipline based bonds issued directly by the States.

151. The Reserve Bank, based on clear preference of the State Governments, adopted auction based market borrowing mechanism from 2005-06 onwards, which has enabled all the State Governments to raise the required financing gap in the form of market borrowings without any difficulty. In fact, the interest rate differential borrowings between Central Government loans and State Government loans has come down following adoption of auction based borrowing mechanism. Differences in the interest rates of different States has evidenced differential in the creditworthiness amongst states.

152. The Twelfth Finance Commission had recommended the creation of a National Loan Council, which may look at the borrowing needs of the States. Reserve Bank has since then established a Standing Technical Committee with representations from all the States and Centre. This Technical Committee reviews the availability of borrowing resources in the economy and recommendations what kind of borrowings can be raised by the Centre and the States. This arrangement is working satisfactorily and may continue.

153. In the current scheme of transfers, the States would always be indebted to the Union Government and would not be able to raise resources without the approval of the Central Government. This condition seems harsh, especially if rating of a State is to determine the access to market loans. The Task Force recommends that there is need to have a practice that as long as the States remain within the overall borrowing ceilings fixed for them by the Centre government and fiscal deficit targets fixed under their own FRBM laws, they should have access to the market without requiring Central Government’s approval.

10.2 Small Saving Schemes

154. Net of the small savings raised in the States has been provided to the States as
small savings loans by the Centre from the seventies. In 1999, the system was changed and National Small Savings Fund (NSSF) was created in the Public Account of the Government of India. Net Small Savings raised by the States thereafter were routed to the States through NSSF. Small savings turned out to be major financing mechanism for the States after interest rates declined substantially in the economy from 2002-03 onwards. Small savings linked borrowings also made up for the shortfall on account of discontinuance of plan loans by the Central Government in 2005-07. However, the States Government found the small savings based borrowings costlier and increasing interest rate environment from 2007-08 onwards led to virtual disappearance of small savings based borrowings from that year onwards.

155. National Saving Schemes were floated to mobilise funds for financing the plans at a time when the financial institutions were weak and their spread particularly in rural areas was limited. Today with the spread of banking and other financial institutions across the country there is no need to have such mechanism to mobilise small savings. Moreover, the rate of interest paid on these instruments is much higher than the market rate. When these savings are transferred to the States, the Centre charges service charges, thereby increasing their cost to the State Governments. The cost of NSS funds, which are compulsorily transferred to the States, is much above the rate at which the States can borrow from the market. This puts an additional fiscal burden on the States. In view of the changed circumstances mentioned above the Task Force is of the view that it is no longer necessary to use NSS instruments to raise resources. Hence, scope of these schemes should be drastically reduced and their receipts should not be compulsory transferred to the States. The States should have option to borrow out of National Small Savings Fund.

10.3 Channelling of External Assistance

156. A long standing grievance of the States has been that the Union Government obtains external assistance on concessional terms, but the benefit of the same is not correspondingly passed on to the States. It has been demanded by the States that the transfer of external aid loans through Central budget should be discontinued. This issue has lost its force as external assistance is now passed on to the States on the same terms at which it is received from the foreign agencies. It is routed through the Central budget because the assisting agencies give grants of loans to sovereign States. However, the practice leads to unnecessary bloating of fiscal deficit of the Central Government, and keeps up the practice of states remaining indebted to the Centre. Task Force feels that
mechanism should be devised to transfer the proceeds of EAP loans without routing these through Consolidated Fund of India.

10.4 Working of the FRBM Acts and the Way Forward

Initiation of the economic reform and macro stabilization programme in 1991, resulted in improvement in the fiscal position of the Central Government and in the consolidated fiscal position of the States as reflected in the major deficit indicators for the period 1990 to 1995. While the Central Government’s fiscal position showed steady improvement, State finances took a turn for the worse since the mid-nineties. Since 2004, however, there has been a turnaround and the fiscal situation has shown an improvement. To rectify the situation, policy makers chose to operate under a rule based fiscal framework and the Fiscal Responsibility and Budget Management (FRBM) Act, 2003 was passed by the Central Government.

The Fiscal Responsibility and Budget Management (FRBM) Act of the GOI mandates the Centre to reduce the fiscal deficit to 3% of GDP and to completely eliminate the revenue deficit by 2008/09; it required a maximum annual issuance of guarantees to be 0.5% of GDP; it required the increment in total liabilities to be capped at 9% of GDP in 04-05 and this ceiling was to be reduced by 1 percentage point of GDP every subsequent year. To enhance fiscal transparency, it required that three documents be tabled in Parliament with the Annual Budget viz., Macroeconomic Framework Statement, Fiscal Policy Strategy Statement and Medium-term Fiscal Policy Statement. The case for fiscal responsibility, both at the Centre and in the States, was made on the argument that fiscal consolidation is an essential condition for accelerating growth.

A few of the State Governments (Karnataka, Kerala, Punjab, Tamil Nadu and U.P) also passed their own FRBM Acts in the early years of this decade. However, it required the Twelfth Finance Commission to put in place an incentive linked scheme of debt relief for States which passed the Fiscal Responsibility Legislation (FRL). The scheme proved to be a resounding success and presently twenty-six out of twenty-eight States have passed their FRLs. The States of Sikkim and West Bengal are the two exceptions. The State level FRBM Acts laid down their own targets for eliminating revenue deficit and bringing down fiscal deficit to 3% of State GDP.

Clearly, since the passing of the FRBM Act by the Centre in 2003, there has been some reduction in the major deficit indicators as can be seen from the Table 13.
Table 15: Deficit Indicators of Centre and States (Per cent of GDP)

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
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<tr>
<td>Centre</td>
<td>GFD</td>
<td>7.7</td>
<td>6.3</td>
<td>5.5</td>
<td>5.5</td>
<td>3.9</td>
<td>3.1</td>
<td>2.5</td>
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<tr>
<td></td>
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<td>2.2</td>
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<td>0.9</td>
<td>0.1</td>
<td>-0.6</td>
<td>-1.1</td>
</tr>
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<td>States</td>
<td>GFD</td>
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<td>2.8</td>
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<td>0.7</td>
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<tr>
<td></td>
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<td>1.5</td>
<td>0.4</td>
<td>0.1</td>
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</tr>
</tbody>
</table>


161. By 2007-08 the combined deficit of States had declined to below 2% and revenue deficit was fully wiped out. A closer look at the expenditure composition reveals that the share of revenue expenditure in total expenditure has increased and that of capital expenditure have declined. While one is well aware that not all revenue expenditure is ‘bad’ and not all capital expenditure is ‘good’, a falling share of capital expenditure and a rising share of revenue expenditure seems to indicate that the “fiscal consolidation” is of the wrong variety. Table 14 traces the shares of revenue and capital expenditure from 2004/05 onwards.

Table 16: Composition of Expenditures of Central Government (%)

<table>
<thead>
<tr>
<th>Item</th>
<th>2004/05</th>
<th>2005/06</th>
<th>2006/07</th>
<th>2007/08(RE)</th>
<th>2008/09(BE)</th>
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</thead>
<tbody>
<tr>
<td>Revenue Exp/Total Exp (RX/TX)</td>
<td>77.14</td>
<td>86.88</td>
<td>88.21</td>
<td>82.97</td>
<td>87.65</td>
</tr>
<tr>
<td>Capital Exp/Total Exp (KX/TX)</td>
<td>22.86</td>
<td>13.12</td>
<td>11.79</td>
<td>17.03</td>
<td>12.35</td>
</tr>
</tbody>
</table>

Source: Computed from Expenditure Budget, GOI various issues

162. The story that the table tells is that the structure of expenditures has worsened during the two years 2005/06 and 2006/07, with rising share of revenue expenditure and
a falling share of capital expenditure. A look at the share of revenue and capital expenditure in total expenditure at the Central Government level indicates that the share of revenue expenditure in total expenditure has increased from 77 per cent in 2004-05 to 83 per cent in 2007-08 (RE), thus implying that the share of capital expenditure has declined from 23 per cent to 17 per cent. For State Governments, no single year can be considered as the dividing line to take stock of the States fiscal positions post FRBM. A broad picture, however, can be obtained by considering 2006/07 and 2007/08 as post FRBM years as 22 of the 28 States had passed the FRLs by then. The share of revenue expenditure for States has risen from 72 per cent in 2004-05 to 77 per cent in 2007-08 (RE). This implies that the share of capital expenditure has declined from 28 per cent to 23 per cent.

163. There appears to be an improvement in 2007/08 (RE) over the previous two years – it shows a rising share of capital expenditure and falling share of revenue expenditures. The budget estimate for 2008/09 clearly shows a deteriorating structure of expenditure. Thus, with the macro caps, as stipulated under the FRBM, being complied with deterioration in the structure of expenditures, it would appear that the fiscal consolidation is headed in the wrong direction.

164. A look at expenditure composition for States as a whole (revenue + capital) reveals that the expenditure for ‘developmental’ purposes (as defined by the RBI - comprising expenditure on social services, economic services and loans for social and economic services), has shown signs of improvement in the recent years but is still lower than the levels achieved in the early 1990s. The total developmental expenditure (revenue and capital) as a ratio to GDP, which was 10.7 per cent during 1990-91 to 1994-95 on an average has declined to 9.4 per cent during 2000-01 to 2004-05. The developmental expenditure to GDP ratio is at 10.1 per cent in 2006-07 (RE), still marginally lower than that attained in the first half of the 90s. These statistics appear to take away the argument that the growth dividend provides an opportunity for giving a fillip to the lagging social sector. If the pro-growth argument is to be upheld then the additional revenues obtained must be directed towards developmental activities.

165. Much of the fiscal correction and consolidation which has occurred at the Central and State levels can be largely attributed to robust economic growth and macro economic stability coupled with a tax structure based on reasonable rates, fewer exemptions and better compliance. The focus on expenditure restructuring has clearly lagged behind.

166. It may be pointed out that for sustaining and accelerating growth, achieving the
FRBM targets is necessary, but not sufficient. The States need to pay attention not only to achieving the targets in quantitative terms but also to the quality of adjustment. It is this issue of ‘quality of adjustment’ that we believe needs to be the focal point from here on.

167. With four years of experience of the FRAs, some loopholes in the existing FRLs of the States and the Central Government have become visible, which need to be plugged. These have been discussed below:

168. (a) Expenditure Composition: The rising share of revenue expenditure provides a warning signal. International experience suggests that capital expenditure falls disproportionately at times of fiscal stringency. It is also important to address the issue that expenditure on social services is largely revenue expenditure. In the endeavour to attain the target of zero revenue deficit governments generally tend to squeeze social sector spending still further. Thus, expenditure on social sector categories needs to be considered in totality (i.e., revenue + capital) and need to be protected from being drastically cut in the fiscal disciplining exercise.

169. Maintenance expenditure, which falls under the current expenditure category is a vital expenditure component that bears the brunt of any expenditure pruning exercise – thus such expenditures must be given special attention to and protected in our fiscal policy rules.

170. (b) Contingent liabilities: Off-budget borrowings of States have come to the fore since the mid 1990s. Guarantees have become a convenient means for States to circumvent the ceiling on the quantum of their market borrowings. In addition to use of guarantees for large infrastructure projects, some States have used bonds, financed through Special Purpose Vehicles or corporations with little or no credit records, but with borrowing guarantees from State Governments to raise debt financing for direct budgetary support. More recently oil bonds (off-budget) have been floated by the Central Government to lend a helping hand to loss making oil marketing companies.

171. Although contingent liabilities prima facie do not form a part of the debt burden of States, in the event of default by the borrowing agency the debt service obligations will fall on the State Governments. The outstanding guarantees of State Governments showed a rising trend during the 1990s. The outstanding guarantees rose from Rs 40,159 crore (6.1 per cent of GDP) as at end-March 1992 to about Rs.1,84,294 crore (7.5 per cent of GDP) as at end-March 2003. The provisional figures show some improvement on this
count with guarantees placed at 5.5 per cent of GDP as of end-March 2006. The additional contingent liabilities were only 0.07% of GDP and in 2006-07 additional contingent liabilities have not been assumed and actually the amount has declined from 2005-06 levels. The FRBM of Central Government has put a cap on fresh liabilities at 0.5% of GDP p.a., but has not put a cap on total liabilities.

172. One important reason for the upsurge in guarantees is the borrowings of State Public Enterprises, especially State Electricity Boards, which have been incurring losses and show negative returns on capital. Thus, the consolidated deficit to be targeted could also include these power sector deficits.

173. Apart from the magnitude of contingent liabilities, an important dimension, which has implications for the stability of fiscal operations of the State Governments, is the quality of guarantees extended and the element of risk embedded in such guarantees arising from a lack of, or poor risk assessment of guaranteed advances and bonds.

174. When extending fiscal policy rules to cover off-budget liabilities, one should be concerned with off-budget capital expenditure rather than off-budget borrowing *per se*. The rules should clarify if guarantees would be included in off-budget liabilities. Other debt equivalent financing devices such as, leasing should also be covered by Fiscal Policy Rules. In fact, the Model Fiscal Responsibility Legislation of State Finance Secretaries published by RBI (2005), chose to extend the definition of liabilities to include not only the total liabilities under the Consolidated Fund of the State but also all the items under the Public Account of the State.

175. An introduction of the concept of such a ‘consolidated deficit’ to be targeted would take away the incentives for the States to make use of various accounting tactics to push various expenditure items off-budget and also renege on their subsidy obligations in the power sector. It will undoubtedly, require sacrificing the principle of ‘simplicity’ in some measure. We believe that the advantage of targeting a consolidated deficit measure, which reduces the incentive for accounting gimmickry, far outweighs the cost.

176. (c) There is no penal clause in the FRBM for failing to comply with fiscal rules. For fiscal rules to have credibility, credible sanctions are needed against violations. An escape or exclusion clause, in a contract, allows non-performance of the contract if a certain specified condition occurs. In the FRBM Act 2003 of Government of India, it is provided that the revenue deficit and fiscal deficit could exceed the target on grounds of
national security or natural calamity or such other exceptional grounds as the Central Government may specify. In the case of State Governments, these could cover internal disturbance and natural disasters. In case of special category States, the exclusion clause may also cover the shortfall in the current transfers from Centre in excess of certain percentage, say 10% of the trend growth rate of such transfer for the last three years.

177. The escape clause of unforeseen circumstances needs to be tightened and spelt out in detail so that Governments do not misuse this clause as a cover up for their failure. It has been suggested by scholars that there should be explicit incorporation of a contingency fund to take care of natural disasters and specification of the extent to which the missing of targets is permissible. Undoubtedly, no exact amount can be estimated for a natural disaster but some rough estimate is certainly possible.

178. To take away some lesson from European Union – their fiscal rules state that if any country fails to meet this target, it would pay penalties in the form of deposit ranging from 0.2 to 0.5% of GDP, depending on the deficit size. The deposit of the countries that failed to meet this target would be returned if they manage to reduce the budget deficit within the limits, within two years. Otherwise, it would become definite penalty. However, such rule does not apply in “exceptional circumstances” caused by natural disasters or severe recessions. Exceptional circumstances mean that the economic activity of a country declines by more than 2% on annual level. If the decline of GDP is between 0.5% and 2%, the penalties would be paid subject to approval by the Council of Europe. Thus the EU not only imposes a penal clause for missing targets, but also specify in detail what is meant by the “exceptional circumstances” in which all targets are to be set aside.

179. In our opinion, it would be difficult to impose this kind of penal clause. The success of FRBM depends upon the commitment and self discipline of the concerned government. In fact, there may be certain exceptional circumstances, as in case of the present global economic crisis, when sticking to FRBM targets may not be possible or even prudent.

180. (d) As regards reporting requirements, the consensus view of the Model Act Group of Finance Secretaries set up by RBI was that State Governments should have quarterly reviews and corrective measures if required, should, however, be taken only after taking into account the outcome of the trends in receipts and expenditure at the end of the second quarter. This would also be in line with the approach adopted in the fiscal rules framed by the Central Government. This would be demanding on the States, but a binding commitment to spell out in detail the targets and achievements necessarily imposes a discipline.
181. **Budgetary Accounting:** There are anomalies in budgetary accounting regarding the items included in or excluded from public investment. Education is classified as public consumption expenditure whilst the building of new Government offices is considered an investment. However, public spending on education is likely to be far more socially productive than building a new Government building. Such issues are crucial and will need to be addressed by the fiscal policy rules if they are to attain fiscal discipline of the right variety.

182. A recent welcome step towards improvement in accounting practices is the announcement that the Centre has decided to gradually move from cash-based to accrual-basis of accounting, under which revenue and expenditure are shown in the books even when they are realised later. Under the fresh accounting system, the Government will have to account for all the future liabilities such as oil bonds, fertiliser and food bonds in its books of accounts, which could have major implications on the fiscal deficit numbers.

183. With the accrual based accounting system, the decision makers can know the full cost of services they are providing, and this will result in better resource allocation, better management of assets and liabilities. Cash-basis accounting is a method of bookkeeping that records financial events based on cash flows and cash position. Revenue is shown in the books when cash is received and expense is recognised when cash is paid. On the other hand, under accrual accounting, revenue is shown in the balance sheet when it is earned and realised, regardless of when actual payment is received in cash. Accrual accounting will create a desirable measure of the complete financial health of the Government. Development in the information technology and accounting profession will assist the Government in moving towards the new system.

184. Currently, the fiscal deficit does not take into account oil and other bond issues that do not involve any immediate cash outgo. But these are future liabilities that will need to be accounted for under the system. Some experts have argued that their inclusion can push up the fiscal deficit numbers to as high as 7% of GDP, far above the 2.5% mandated by the FRBM Act for this fiscal.

185. However, fiscal rules – despite plugging of the above listed loopholes - would not be of much use, if they are not backed by an enforcement mechanism. In the event of unforeseen circumstances, the task has to be left to competent and dedicated policymakers and politicians who have good judgment and know when to exercise discretion.
and when to press for fiscal discipline. This in turn would require developing institutions, which could provide incentives to act ‘responsibly’. Thus initiating institutional reforms, which provide incentives and strengthen the enforcement of the fiscal rules would make the package for instituting fiscal discipline complete.

186. Some experts are of the view that given the scope for institutional innovation, Independent Fiscal Agencies (IFA) could help inform, analyse, assess and implement fiscal policy. However, in one form or another, their operation would entail some delegation from elected representatives for their administration. Though there is a clear analytical case for IFA, none exist in practice primarily due to conflicts that are sure to arise with the Government. An alternative that is recommended in this regard is the establishment of Fiscal Council, which could help reduce the deficit bias while leaving full discretion to the political representatives. A variety of Fiscal Council have been in operation in a number of countries. They range from organizations essentially mandated to provide independent projections of budgetary variables and general fiscal analysis, to bodies assessing the consistency of a Government’s budgetary policies with its own long-term objectives, or proposing specific fiscal adjustment measures in the context of established fiscal rules.

187. To sum up the discussion, it may be observed that having enacted the Fiscal Responsibility Act, the first step of curbing the Gross Fiscal Deficit to GDP ratio and Revenue deficit to GDP ratio has been taken. However, we find that in the process, the structure of fiscal adjustment seems to have suffered. Hence, one positive step forward would be to plug the loopholes that have become evident in the last four years since the FRBM Act was passed. The FRLs of some of the State Governments are recent, but we can learn our lessons from the Central Government experience which is now four years old.

188. The Task force is of the view that the rules must ensure that expenditure composition is not distorted and essential expenditure categories like maintenance expenditure and social sector expenditure do not suffer. Further, contingent liabilities and power sector deficits need to be incorporated in the consolidated deficit to be targeted. Reporting requirements could be made more stringent so as to impose a sense of discipline and the escape clause should be tightened. It is important to go beyond the basics and make greater use of fiscal policy rules as a tool not only for institutionalizing fiscal balance but for institutionalizing better public expenditure management.
11.0 Fiscal Domain of the Local Bodies and Direct Transfer of Funds to Them

189. In the last couple of decades, decentralisation and local governance have become important issues for development and delivery of services for poverty reduction. Local democracy through the institutions of panchayats in the rural areas, and municipalities in the urban areas, has been considered to be the ideal instruments for the realization of these goals. The Seventy Third and Seventy Fourth amendments to the Constitution were a step in this direction. One needs to consider whether these amendments adequately provide decentralisation and local governance without a system of tiers and for an area without rural and urban distinctions? More important, do these provide for financing of the local bodies directly by the Union Government, bypassing the State Governments on the ground that they are ‘tardy’ in the devolution of funds?

11.1 Constitutional Position

190. We may first consider the constitutional position in this regard. India is a federation with clear delineation of powers and responsibilities. The executive and legislative powers have to be exercised by the Union and the States in accordance with the provisions of Part XI of the Constitution and the Seventh Schedule. Local Government falls exclusively within the area of responsibility of the States. The definition of the local Government is quite wide as Stated in Entry 5 of List II of the Seventh schedule. This Entry reads as follows: “Local Government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purposes of local Government or village administration.”

191. All types of rural and urban local bodies are included in this definition and are under the exclusive jurisdiction of the State Governments. The 73rd and 74th Amendments to the Constitution have not changed this basic position in the Constitution. Only the State legislature may, by law, endow them with such powers and authority as may enable them to function as institutions of self-Government (articles 243G and 243W). Powers and responsibilities may also be devolved on them by law for the implementation of schemes including those in relation to matters included in the Eleventh Schedule and Twelfth Schedule to the conditions with such conditions as it may deem fit. In the case of the municipalities, apart from implementation of schemes, the legislature may also entrust the municipalities with the performance of functions related to matters included in the Twelfth Schedule, a significant omission in regard to the panchayats. States are the sole
authority to determine the extent of decentralisation and devolution to the local bodies. The Union Government has no say in the matter under the Constitution.

192. The 73rd and 74th Amendments to the Constitution do not provide any role to the Union Government in the matter of direct funding of local bodies. These amendments, however, do provide for an arrangement which should take care of their needs after due assessment. Article 243 I provides for the setting up of a Finance Commission for the State to review the financial position of the panchayats, and to make recommendations on the principles which should govern the distribution of taxes, fees, tolls and fees between the State and panchayats, and their distribution inter se among panchayats; the assignment or appropriation of taxes, duties, tolls and fees by panchayats; grants-in-aid to panchayats, and any measure to improve the financial position of the panchayats. The Finance Commission set up for the panchayats will also review the finances of the municipalities and make recommendations on similar lines. In the entire Part IX and IXA, there is no mention of the Union Government funding the panchayats or the municipalities. In fact, no role has been envisaged for the Union Government in the local governance.

193. The Finance Commission constituted under article 280 has been given a role through these amendments. It has to recommend measures to augment the resources of panchayats and municipalities to supplement the Consolidated Funds of the States on the basis of recommendations of the Finance Commission of the State. The purport of this provision is to find ways to meet the financial needs of the local bodies without stepping into the shoes of the States. It would be apt here to quote the Tenth Finance Commission which observed:

194. “The responsibility of taxes with panchayats and assigning grants to them has not been transferred from the States to the Centre. The responsibility for providing panchayats with an independent source of revenue as also grants for specified purposes is very much that of the State Governments. The State Finance Commissions are there to ensure proper allocation of resources as between the State and panchayats. If in the process of supplementation of the resources of panchayats a need arises for the augmentation of the State Consolidated Fund, it has to be considered by the Finance Commission.” (Report of the Tenth Finance Commission, page 47)

195. The Commission further Stated: “In terms of the 73rd Amendment to the Constitution, many of the functions and responsibilities of the State would have to be transferred to panchayats. It can be assumed that the transfer of functions and responsibilities
from the State would be accompanied by the transfer of staff already working on these schemes/projects as also the financial allocations budgeted for and envisaged to be spent on the transferred activities. Such a transfer is, therefore, not likely to result in any extra burden on the State.” (Report of the Tenth Finance Commission, page 47)

196. The Eleventh Finance Commission went further in analysing and explaining the provisions contained in sub-clauses (bb) and (c) of article 280. It Stated: “if we were to take into account the additional financial burden that falls on a State on account of the acceptance and implementation of the recommendations of the State Finance Commission, such expenditure has to be built into the expenditure stream of the State. Any devolution made by a State for the panchayats and municipalities over and above the recommendations of the State Finance Commission is outside the purview of our consideration, as would be evident from the Constitutional provisions.” (Report of the Eleventh Finance Commission, page 73)

197. There are no other provisions in the constitution to provide for the direct funding of local bodies by the Union Government. There are only two articles under which grants may be given by the Union Government. Article 275(1) provides for the grants-in-aid to the revenues of the State Government on the authority of Parliament. These are given on the basis of the recommendations of the Finance Commission constituted by the President of India under article 280 of the constitution. The other provision is article 282, under which the Union or the State may make grants for any public purpose, even though that purpose may not be one on which Parliament or the State legislature has powers to make laws. The Union Government has been providing grants to States and other bodies under this article. The exercise of the powers by the Union Government has been widely debated. The note recorded by Justice A. S. Qureshi, a member of the Ninth Finance Commission, succinctly raises the issues and contains his emphatic opinion in the use of article 282 for giving discretionary grants. Article 282, therefore, cannot be the basis for any direct funding of the local bodies, even though it has been used by the Union Government. The Finance Commissions, while earmarking funds for the local bodies have avoided any direct funding; the funds go through the State budgets and the inter se distribution of the funds between rural and urban local bodies have been left to the States.

11.2 Need for Separate Fiscal Domain of Local Bodies

198. Fiscal autonomy is an essential ingredient of any system of decentralisation. At present there is little fiscal space of their own in case of the local bodies particularly the
Panchayati Raj Institutions, who overwhelmingly depend on the transfer of resources from the Centre and the State Governments. At present even the limited powers given to the local bodies for levying taxes, duties, toll fees etc., so that the local bodies are strictly controlled by the State Governments which often prescribe upper limit to fees and tax rates which are totally out of date. Greater autonomy needs to be given to the local bodies in fiscal matters.

199. Articles 243H and 243X of the Constitution are enabling provisions that give authority to the State Legislature to authorise the Panchayats and Municipalities in respect to levy, collection and appropriation of taxes, duties, fees and tolls as well as for the creation of a fund within the Panchayat and Municipal institutions to regularise and control inflow and outflow of financial resources. The said articles do not seem to have served their purpose since some State Governments appear to be reluctant to share their fiscal powers with the local self-Government institutions. In case of local bodies there is an added problem of proximity to tax base, which acts as a constraint in tapping the tax powers given to them.

200. Fiscal autonomy is an essential requirement for any level of Government. Fiscal empowerment of the local bodies will also promote greater accountability on the part of the local bodies. However, what is important is that fiscal powers of the local bodies have to be related to functions that are entrusted to them; it cannot be independent of it. There is a provision of the State Finance Commission under the Constitution, which is required to review the financial position of the local bodies. It has to take into account the tasks entrusted to these bodies and then to assess the resources available to them. These are in the sphere of assignment and sharing of taxes, duties, tolls and fees as also the grants –in-aid.

201. A provision, thus, already exists in the Constitution in the shape of the State Finance Commission with a provision of a review of the financial situation of the local bodies after every five years is just and adequate provision to provide for the financial needs of the local bodies. An incentive system should be put in place to encourage the local bodies to raise more resources on their own. The State Governments should not impose too many restrictions on the rates etc. on local bodies in using their financial powers but may lay down broad guidelines.

11.3 Direct Transfers to Local Governments

202. Of late there has been a tendency on the part of Central Ministries to transfer
funds under various schemes directly to bodies bypassing the State Governments. The practice of transferring Central funds under various schemes directly to the local bodies by the Central Ministries has been criticised by many State Governments. It has been argued by them that the State Government knows local conditions the best. It has also pointed out that there will also be no ownership of the various programmes by the States if everything is decided by the Centre and the States are bypassed in this manner. This is not conducive to proper implementation and monitoring of the programmes to the States.

203. Transfer of funds directly to rural and urban local bodies bypassing the State Governments is an issue closely related to the role of Union Government in local governance. The question arises that does the Constitution envisage any role in this sphere for the Union Government and in case, it does, then how the roles of the Union and the State Governments can be so delineated that there is no scope for conflict. There is a separate Task Force for Local Governments and Decentralised Governance. One of the questions (Question No 4.4) is directly related to issues under consideration here.

204. The following issues need to be considered when examining the trends towards direct funding of local Bodies:

(a) Delay in Release of Funds by States

205. A reason often advanced for direct funding of the local bodies is that considerable delay takes place at the level of Government when funds are routed through it for implementation of programmes and schemes. Often funds are diverted or used for bolstering up the ways and means position of the State Government. The result is that the implementation of the programme suffers as funds are not available in time. There is no doubt that release of funds is often delayed, but this is not always due to the fault of the State Government. Funds released by the Union Government are credited to the Consolidated Fund of the State. Expenditure can be made only after it is authorised by the State legislature. Delay is inevitable even when the intention is to release them immediately for the implementation of the programmes. A way out could be to inform the States, in advance, about the likely availability of funds under a scheme in the next year for making an appropriate provision in the State budget. But since transfer of funds is under a centrally sponsored or central sector scheme, and every proposal requires the approval of the concerned Ministry or Department in the Government of India, it is not possible to indicate the amount that would be available. Further, accounts, progress reports and utilisation certificates are also required before funds are released. However, sometimes, there is a delay in the release of funds because of the financial position.
(b) Reallocation

206. In schemes in which funds are released directly to local bodies, there is no possibility of reallocating to some other local body which is better placed to utilise them. Sometimes, a local body for some reason, temporary in nature, is not in a position to utilise the funds for the implementation of the programme. In such a situation, fund remain parked there, and cannot be transferred to another local body which is also implementing the same programme, but has utilised its allocation and needs more funds. Reallocation is not possible under the present arrangements.

(c) Diffused Responsibility and Accountability

207. State Governments feel less responsible and accountable for proper utilisation of funds, as immediate responsibility and accountability is that of recipients. Supervision and guidance becomes secondary, and depends on the inclination and willingness of the recipient to respond and make use of it. Many programmes require outside support, not available in the local body, but available in the Government sector. It is difficult for a local body to organise, and to that extent implementation is affected.

(d) Adequacy of Staff and Technical Support

208. Funds are transferred to panchayats for implementation of quite a few centrally sponsored schemes, but they do not have any staff to maintain records and supervise implementation. They inevitably depend on the line departments for technical support, which is not always available at the time when it is needed. Many panchayats have only a secretary who has to discharge his normal responsibilities along with the responsibility for maintenance of records and accounts, preparation of reports and returns, and supervise implementation and disburse funds. The size and the resource base of many rural local bodies are so small that they cannot afford to have the staff needed to perform these functions. Further, there is no assured flow of funds on a long term basis to enable them to have regular staff working for them.

(e) Accounts and Audit

209. There are no satisfactory arrangements for maintenance of accounts or their audit in many local bodies.

(f) Decentralisation and Local Bodies

210. Mere transfer of funds directly to local bodies does not by itself lead to their empowerment or decentralised governance. There are three varieties of decentralisation
depending on the extent of decision making power given to the local bodies, deconcentration, delegation and devolution. Deconcentration refers to a system of dispersal of responsibilities by the Central Government to regional and local administrative units. When local bodies act as agents for the implementation of programmes and schemes in accordance with approved guidelines and budgets, they are exercising powers delegated to them by the Central Government. It is delegation variety of decentralisation; the local bodies have no say in the matter of designing the programme or making any modifications to suit local conditions. The third variety is devolution in which local body is given authority, not only to implement the programmes but also the authority to decide and choose the programmes.

211. In India, local bodies are only performing the agency functions in the area of economic and social development. Despite the Seventy Third and Seventy Fourth Amendments, they have little say in the economic and social planning. In the development and poverty alleviation sectors, it is the schemes formulated by the Union Government with their tight guidelines and schematic budget which are implemented by the State Government and the local bodies. Direct funding of local bodies by the Union Government has not altered this situation, nor does this constitute a move towards devolution or strengthening of the local bodies. It can be construed as a move towards a unitary system of governance, bypassing the federalism on which is the basic feature of our Constitution.

212. What has been said above in the context of the PRIs and Urban Local Bodies applies equally to other local organisations created for implementing different CSS, such as DRDA, SSA, SSA, etc. The task force is therefore of the view that direct transfer of funds to local elected bodies and other administrative bodies is not only against the spirit and provisions of the Constitution, nor it leads to better and effective utilisation of resources. All funds intended to be passed to the local bodies have to be channelled through the State budgets. A mechanism needs to be put in place to ensure quick transfer of funds to the local bodies. If the State government delays transfers of the earmarked funds for local bodies or diverts them to other purposes than penalty in terms of interest charges should be imposed on it.

11.4 Tied Vs. Untied Funds

213. It is generally accepted that it is important to provide “untied” funds to the three-tier Panchayats and also to the Municipalities, and not through specific schemes with rigid conditionalities. Constitution Amendment Act has provided for the creation of a State Finance Commission to recommend the share of the three-tier Panchayats and the Municipalities in the revenues of the States through their own resources.
12.0 Assignment of Taxation Powers and Augmenting Resources of the States

214. The Constitution has clearly defined the tax domain of the Centre and the States. The residuary powers have been given to the Centre. There has been a feeling that the revenue sources of the Centre are more elastic as compared to that of the States. However, in practice it has been found that there is little difference in the buoyancy of State taxes. The growth of revenue from State taxes has kept pace with the growth of the Central tax revenue and the share of the two in the combined tax revenue has remained more or less stable. However, it is true that the resources of the States even after Central transfers are inadequate to meet the expenditure requirements of the States at a desirable level.

215. The broad principle governing the division of tax power of different tiers of the Government is: which agency is in a position to collect them efficiently. Broadly, the present division of tax domain meets this criterion. However, some changes in the same are called for. The Task Force would like to make the following recommendations in this regard:

216. Presently, the Centre has acquired the power of taxation of services exclusively through the 80th constitutional Amendment. However, given the fact that services now constitute more than half of the GDP and their share is continuously increasing it is only fair that the States should also have taxation powers in the field of services. We may mention here that originally the Constitution intended to give taxation powers of services like profession tax, entertainment tax, etc. to the States. The Task force is, therefore of the view that the States should have the powers of taxing the services which are of local nature and whose base cannot be shifted across States, while the Centre may tax services which are of inter-State nature. This will also meet the criterion of efficiency of collection also. As we have recommended above the revenue from service taxes should form part of the shareable pool so that the States also benefit from this buoyant source of revenue.

217. The Task force would like to underline the fact that the State Governments have not exploited fully some of their tax powers. Special mention may be made of agricultural income tax and profession tax which are either not levied by them or if levied have been differently implemented in different States. Efforts should be made by the States to fully exploit their existing taxation powers rather than always clamouring from transfer of more resources from the Centre.
218. The State Governments have also not been fully utilising the potential of non-tax revenue sources like user charges for services like electricity, irrigation, medical and educational fees, etc. Rationalisation of user charges and reduction in subsidies can release substantial resources for meeting the developmental requirements of the States.

13.0 Royalty on Minerals

219. Royalty on minerals is an important source of revenue for the mineral rich States. Most of these states belong to the category of backward states. These states have been demanding that the royalty on mineral should be revised more frequently. Section 9(3) of the MMDR Act provides that royalty and dead rent should be fixed not more than once in every three years. The last revision was due in October 2007. Since investment in mining is capital intensive and requires a long term perspective, the Task Force feels that the present provision for revision every three years may continue. However, revision should be carried out well in time.

220. The Report of the High Level Committee of the Planning Commission on National Mineral Policy, 2006 (Hoda Committee) has gone into the issue exhaustively and has made valuable suggestions about the principles of determining the rates of royalty and their share to the states. The Task Force agrees with their major recommendations in this regard. In particular, attention is drawn to the following recommendations:

(1) The method of fixation of rates of royalty should move forward decisively on the basis of *ad valorem* rates. For retaining specific rates for any mineral, a very strong rationale should be required.

(2) The fixation and revision of royalty rates should take into account as a reference point the rates prevailing in other mineral producing countries. The Hoda Committee had recommended aligning the rates with those prevailing in Western Australia.

(3) The Hoda committee had recommended that the royalties on base metals, noble metals, and precious stones need to be at low levels as an incentive for exploration in these minerals in which the country is grossly deficient.

(4) The valuation of the mineral for the purposes of royalty should be based on the transaction value and should include the profit element over and above the unit cost of production.
(5) A conscious decision needs to be taken to encourage physical value addition which improves ore quality and usage at pit mouth such as concentration, beneficiation, calibration, blending, etc. Wherever the miner adds value through these processes, the royalty may be charged on the ore at pit mouth on the cost of extraction before processing. Alternatively, the *ad valorem* rate for beneficiated or concentrated ore should be proportionately lower, as in the case of beneficiated iron ore in Western Australia.

(6) Rates of dead rent should be rationalised, so that they act as an effective deterrent against a mine owner who does not undertake mining as per the approved mining plan and prefers to keep large areas idle and keeps the mineral resources undeveloped. In other words, an escalating scale of dead rent should be worked out.

(7) Transfer fees should be levied on PLs and MLs sought to be transferred.

221. Some states have been levying cess on minerals notably, West Bengal and Orissa. The constitutionality of the issue of whether the states can impose a cess on any mineral for which a royalty has been prescribed is currently under judicial scrutiny.

14.0 Introduction of Tax on Goods & Services

222. The Commission on Centre-State Relations has been asked as part of its Terms of Reference to examine ‘the need and relevance of separate taxes on the production and on the sales of goods and services subsequent to the introduction of value added tax regime.” Before examining this issue the shortcomings of the present system of taxation of goods may be examined.

14.1 Existing System of Taxation of Goods

223. The existing system of taxation of goods and services in India has many deficiencies, although a sound beginning has been made in bringing about the principle of value added taxation of goods and services. At present, the system of taxation of goods and services consists of three disjointed parts: Cenvat (taxation of goods up to manufacturing by the Central Government), State-Vat (taxation of goods up to the retail level by the State Governments), and taxation of services by the Central Government. The taxation space up to the value added in the production of goods (up to manufacturing) is common between the Centre and the States. Different States can have their own variations in terms of rates and classification of goods. In addition to the State-Vat, the levy of a Central sales tax continues on inter-State sales.
224. With different tiers of Government involved in taxation of value added in the case of goods, there is considerable cascading effect, which causes several inefficiencies and distortions. In particular, it favours imports, which are treated as final goods and bear the burden of taxation only once, against the domestic production, which may be taxed several times. It encourages tax evasion and compliance costs.

225. While the system of taxation is thus characterized by fragmentation and overlaps in the case of goods, the taxation of services remains separated and disjointed from that of goods. One has to take note of the fact that the structure of the Indian economy has been rapidly changing in favour of services. The share of services has increased from 33 per cent of GDP to more than 60 percent of GDP at factor cost by 2006-07.

226. The traditional distinction between goods and services (and for other items such as land and property, entertainment and luxuries) has become dated. In modern economies, goods and services are being bundled together and offered to the consumers as a composite bundle. Under the current division of taxation powers, neither the Centre nor the States can apply the tax to such bundles in a seamless manner. Each can tax only parts of the bundle, creating possibility of gaps and/or disputes. The distinction between goods and services is increasingly getting blurred with the advancements in information technology and digitization.

227. In order to resolve these problems, two changes need to be brought about simultaneously: one, extension of all services within the purview of State-Vat, and two, extension of value added up to the retail level in the case of goods to be brought under the purview of the Cenvat. This is what the Kelkar Committee had called the ‘grand bargain”. These changes will have the effect of integrating goods and services for purpose of taxation under the value added system.

228. There are good reasons why services should be extended for taxation along with goods for State VAT. Given that services are growing relatively faster than other sectors, extension of services for taxation by the States will ensure that the States share in the revenue buoyancy with respect to the GDP. Expanding the taxation on services as part of the VAT system will make the sales tax fairer. Taxation of services at the same rate as goods would also improve the allocation of economic resources. Finally, treating services and goods on par will minimize if not altogether eliminate classification disputes as to whether the supply is that of a good or a service. It will reduce both the administration costs and compliance costs enormously.
229. Similar reasons can be cited as grounds for extending the taxation of goods upto retail level for the Centre. First, it will eliminate the need to define ‘manufacturing’. Every supply from one registered dealer of a good or service will then become taxable upto the retail stage. This will also eliminate most of the valuation problems since valuation will be determined by the market. Secondly, this will permit a symmetrical treatment of goods and services. Thirdly, the Centre will be compensated for sharing the taxation of services with the States. Fourthly, taxation of goods all the way up to the retail stage will create a paper record of all goods leaving State boundaries making settlement of inter-State disputes far easier in implementing a destination based principle of taxation.

14.2 Towards a Comprehensive GST

230. GST is regarded as an efficient, effective and tax payer friendly system of taxation of goods and services which would be in line with the international best practices. It is expected that GST would be in the interest of trade and industry, as it would do away with multiplicity of taxes and their cascading impact. It would also help in reducing the cost of administration and improving compliance. GST is also expected to increase tax revenue for the State Governments due to a wider tax base and better compliance.

231. A single GST model is theoretically a preferred model. However, in the present circumstances the option of a dual concurrent GST seems most practicable at the present juncture. The Empowered Committee of the State Finance Ministers has also recommended the concurrent dual GST. Under this model, a concurrent or dual GST is levied by the Centre as well as the States. It would require that States be enabled to tax services and the service tax rate should be the same as that for goods. Alongside, Central Government should be enabled to tax value added in the case of goods upto the retail stage.

232. It would be important to have a fully harmonized dual tax structure of GST with one base and a common set of rules. This can be implemented while maintaining the current pre and post transfer profiles of vertical imbalance. These changes would lead to a comprehensive and unified system of taxation of goods and services. An Amendment to the Constitution would be needed to empower the Centre and States to levy the GST concurrently.

233. The issue of GST is being examined at different levels. The Empowered Committee of the State Finance Ministers is going into the details of the schemes. The Thirteenth Finance Commission has also been asked to look into the implications of the GST system. The Centre State Relations Commission has also given a study on GST to the Madras
School of Economics and the draft report is available with the Commission. The PHD Chamber of Commerce and Industry has also given its detailed opinion on the proposed GST in the form of a note prepared for the Task Force. In view of these developments, we are not going into the details of the GST scheme and issues in its implementation. These details have to be worked out through a process of consultation between the Centre and the States, through the mechanism of the Empowered Committee of State Finance Ministers.

14.3 Sharing of Revenue from Central GST

234. We have argued earlier that revenue from services should be brought under the shareable pool. The Task force is, therefore, of the view that the revenue from Central GST should be part of the shareable pool.

15.0 Unified and Integrated Domestic Market

235. In the context of the liberalisation and globalisation of the Indian economy and to promote its competitiveness and efficiency, a unified and integrated domestic market is the need of the hour. A common Indian market that approaches in size to some of the biggest markets in the world would be the foundation of our political unity. There are at present, a number of obstructions and regulations which stand in the way of an integrated domestic market. Some of these issues are highlighted below.

236. The tourism sector, for instance, is a victim of uncoordinated tax regimes with widely varying rates and patterns of taxes in different States acting against the interest of evolving a unified tourism market. Any attempt to reconcile the differences to bring about uniformity would result in a redistribution of gains and losses in revenue across the States. The challenge would, therefore, be to design an innovative tax schemes that would satisfy the bottom-line of revenue neutrality at the minimum while meeting the requirements of a modern and globalising economy.

237. Similarly, there is wide variation amongst States, not only in terms of rate of taxation but also in respect of basic norms/slabs for motor vehicle taxation. There is an immediate need for having a rationalized motor vehicle taxation pattern in the country. The taxation pattern on motor vehicles may be made like VAT so that the motor vehicle taxation in the country is rationalized.

238. For the freedom of trade and commerce between States, it is essential to have
smooth movement of motor vehicles between States, since road transport is responsible for carriage of around 65% of the goods.

239. The barriers restricting the smooth flow of goods and services need to be removed and a system needs to be put in place which ensures a seamless flow of inter-State trade and commerce. The introduction of comprehensive Goods and Services Tax (GST) on value added principles along with elimination of all other taxes on goods would usher in a common market, which will lead to a free movement of goods and services without any physical or legal barriers and a uniform fiscal regime.

240. A lot of work needs to be done on the positive side to achieve physical market restructuring and development. Massive investments are required in development of widely dispersed warehousing, improved road/rail network and trucking/rail wagons, skilled manpower for grading, and scientific storage and handling. Enactment of the Warehousing (Development & Regulation) Act would enable transfer of goods through transfer of warehouse receipts. This will not only spur investment in scientific warehousing & grading/handling facilities, but also minimize the handling & transportation, thereby reducing the transaction costs and scope for quality deterioration/value erosion. Together with reduced waste, this efficiency in the supply chain will benefit both the producers and consumers without necessarily eroding the margins of the intermediaries.

241. It is suggested that the Parliament should by law establish an authority called the Inter-State Trade and Commerce Commission” under the Ministry of Industry and Commerce under article 307 read with Entry 42 of List-I. Alternatively, the Empowered Committee of State Finance Ministers in the context of Goods and Services Tax, may work with all the States, the concerned Union Ministries and Inter-State Council in working out a balanced solution to the issue of integrated domestic market in the federal structure.

16.0 Summary of Recommendations

16.1 Economic Reforms and Role of State Policies

242. With the initiation of the process of economic reforms introduced in the wake of the deep foreign exchange crisis of 1990-91, the economic policy regime which guided the policies since the beginning of economic planning in 1951 has undergone a paradigm change. The earlier emphasis on planned growth with public investment playing a key role and the regulatory mechanism, has given place to a more market driven process of economic development.

243. With the dismantling of various regulatory mechanisms and removal of fiscal
incentives for investment to backward areas and the declining role of public investment, the importance of State level policies affecting investment climate has increased manifold. The domestic institutional and policy reforms play a crucial role in determining whether a country or region benefits from or is harmed by liberalization. This brings the spotlight to the governance issues and institutional reforms as determinants of the impact of liberalization reforms on economic outcomes.

244. The process of economic reforms has not proceeded uniformly across the different States. In the present circumstances, there is a need to accelerate the process of economic reforms at the state level. Central Ministries and institutions like the Planning Commission can play an important role in this context through dialogue with the state governments.

245. There have been several developments, which have tended to reduce the autonomy of the State Governments in the economic and financial sphere. There has been a move towards commonly agreed tax rates and less number of slabs for sales tax. Similarly, there are attempts to introduce uniformity in excise policy, reduce and make stamp duties uniform and also to reduce transport taxes. All these developments have severely restricted the resource generating capacity of the States. There have been similar pressures on the side of expenditure of State Governments. The rising expenditure on salaries, pensions and interest payments pre-empts bulk of State resources leaving little leeway for developmental and capital expenditure.

246. The inter-State disparities in per capita income have been widening during the reform period. This is not a healthy development for the Indian federation and would lead to political and economic tension if not addressed properly. The role of fiscal transfers in this context assumes a special significance in the present circumstances.

16.2 Pattern of Resource Transfers

247. Study of the trends in the share of total transfer of funds received by the State Governments as percentage of their total revenue receipts, including the transfers indicates relative stability in the profile of dependence of the States on devolution of funds from the Centre. However, the pattern of dependence differs from State to State. In low income States the dependence on Central transfers is much higher. The special category States are also very highly dependent on Central transfers.

248. It is a matter of concern that there has been a growing tendency in the recent years in favour of special purpose transfers and conditional transfers. Such specific-purpose transfers have tended to reduce the States to mere implementing agencies with rigid guidelines that deny location-specificity and local initiative.
16.3 Constitution of the Finance Commission and Its TORs

249. Keeping the requirements of a healthy federal system in mind, the Task Force is of the following view:-

(1) There should be a formal process of consultation between the Centre and States before finalising the TORs of the Finance Commissions.

(2) There is no need for the Central Government to put forward extremely detailed TORs. The Finance Commission should be free to determine its approach with reference to provisions of Article 280.

(3) The TORs mention that wherever population is taken as a basis for resource transfers, the figures of 1971 population census must be used. It is felt, that these figures are now too outdated. The matter related to the reference year of the population should, therefore, be reconsidered at the appropriate level.

(4) The TORs of the Finance Commissions should not be loaded with additional items related to economic or financial matters, which can be examined by other institutions or committees constituted for specific purposes, as it becomes difficult for the Commission to address all the issues in the time frame given to it.

16.4 Restoring Primacy of Finance Commission in Transfers

250. The Task Force is of the view that the centrality of the role of Finance Commission on devolution of funds from the Centre to the States should be restored as originally envisioned in the Constitution and the Finance Commissions should be entrusted to consider the totality of transfers including, both plan and non-plan requirements of the Centre and the States.

16.5 Conditional Versus General Transfers

251. The Task Force is of the opinion that while there is a case for specific purpose grants as in the case of social sector grants recommended by the Twelfth Finance Commission, the tendency of the Ministry of finance to impose conditions over and above the conditions imposed by the Finance Commission for release of grants needs to be kept under check.
16.6 Finance Commissions and Vertical and Horizontal Imbalances

252. On the whole, the recommendations of the Finance Commissions have struck a judicious balance between the fiscal needs of the Centre and the States. The Finance Commissions have been perceived as fair with respect to vertical imbalance, albeit within the constraints imposed on Finance Commission beyond constitutional requirements.

253. But when we look at the per capita devolution to individual States, there still appears to be a scope for further fine tuning. Among the three main categories of high, medium and low income States there is a fairly large difference in the devolution among States within the category. It is a matter of concern that the post-devolution surplus shows a strong positive association with the level of per capita income of the States. It has also been pointed out by scholars that the transfers by the Finance Commissions fail to remove in any substantial measure the disparities in the revenue capacities of the States.

254. The Finance Commissions have also failed to take into account the uneven flow of investment funds across the States through the mechanism of financial institutions and foreign investments, which are gaining increasing importance as the determinants of economic growth in different States. The poor States are the worst sufferers in this respect and are lagging behind in the pace of economic growth as compared to the richer States.

255. The Finance Commissions can play a role in equalisation of basic economic and social services across the different States in the country. This would require the identification of the basic services and the cost of provision of these services in different States. The Finance Commission transfers should take these requirements in mind while making their recommendations for resource transfers. The Finance Commissions should evolve objective standards of services, which the States need to provide and the financial requirements for provision of such standard of services. The finance Commissions should move towards a system of normative transfers on a comprehensive basis.

16.7 Plan Transfers

256. Over the years, plan transfers have come to occupy a significant share in total transfers to the State. There is, however, hardly any co-ordination between the Finance Commission and the Planning Commission in recommending transfers. A fragmented view of plan and non-plan requirements of the States is taken by the two Commissions. The Finance Commission looks only at the (non-plan) revenue expenditures without paying
much attention to the linkage of interest payments with past fiscal deficits and accumulated
debt stock. On the other hand, the Planning Commission looks at the scope of borrowing
in the Plan period without considering what future liabilities are being created and how
they may be financed beyond the Plan period.

257. Grants under Gadgil-Mukherji Formula, now constitute a rather small part of
total Central assistance to State for State Plans. As a proportion of the State plan outlays
also NCA is of marginal significance now.

258. With the new on lending policy of the Government of India on the
recommendations of Twelfth Finance Commission, the concept of normal Central
Assistance based on Gadgil-Mukerjee Formula has lost much of its significance. One
possible option is to eliminate Normal Central Assistance, which is the only grant based
on Gadgil-Mukerjee Formula and increase the states share in the share of central taxes by
an equal amount.

259. The Finance Commission should take into account the plan needs of the States
and the same formula may be used for transferring Finance Commission shares and plan
assistance.

260. The Task Force is of the opinion that under the changed circumstances, the
amounts being transferred as ACA and other tied types of schemes may also be added to
the Finance Commission based transfers.

261. The States should be left free to decide the size of their annual plan on the basis
of their assessment of total resources available. The funds retained from transfer as
assistance to States’ plans, could as well go to the States as share of States in Central
revenues.

16.8 Centrally Sponsored Schemes

262. The Task Force is strongly of the view that CSS needs to be rolled back and
should not exceed 1/6th or 1/7th of the size of transfers as assistance to States plan as
was agreed by the NDC. CSS should be restricted to a few schemes which are accepted as
having high national priority. Furthermore, CSS should not be conceived and implemented
in a tight-jacket one-size-to-fit-all manner, but should have an element of flexibility and
adaptability in the light of the local considerations. A cafeteria approach would be more
suitable when States are left free to pick up a few schemes suitable for their need from a basket of schemes developed by the Planning Commission/Central Ministries.

16.9 Expanding the Shareable Pool

263. The surcharge on Income Tax and special cesses on Union Excise duties should not be levied by the Union Government except for a specific purpose and for a strictly limited period only. This mechanism should not be used for financing schemes of education and health on a continuing basis. If required basic tax rates should be increased. The Task Force is of the opinion that the power to impose cess and surcharges should be utilised only to meet exceptional and unforeseen expenditure needs and not for meeting normal expenditure on a regular basis.

264. The Task Force is of the view that the jurisdiction of taxation of services between the Centre and the States should be clearly demarcated. States should be empowered to tax services which are of local nature. Moreover, there is no logical basis for keeping the receipts from service tax of the Central Government outside the shareable pool, when the principle of global sharing has been adopted. Constitution may be suitably amended to introduce these changes.

16.10 Borrowing by States

265. The Twelfth Finance Commission had recommended the creation of a National Loan Council, which may look at the borrowing needs of the States. Reserve Bank has since then established a Standing Technical Committee with representations from all the States and Centre. This Technical Committee reviews the availability of borrowing resources in the economy and recommendations what kind of borrowings can be raised by the Centre and the States. This arrangement is working satisfactorily and may continue.

266. The Task Force recommends that there is need to have a practice that as long as the States remain within the overall borrowing ceilings fixed for them by the Centre government and fiscal deficit targets fixed under their own FRBM laws, they should have access to the market without requiring Central Government’s approval.

267. The Task Force is of the view that it is no longer necessary to use NSS instruments to raise resources. Hence, scope of these schemes should be drastically reduced and their receipts should not be compulsorily transferred to the States. The States should have option to borrow out of National Small Savings Fund.
16.11 Channelling of External Assistance

268. External assistance is now passed on to the States on the same terms at which it is received from the foreign agencies. It is routed through the Central budget because the assisting agencies give grants of loans to sovereign States. However, the practice leads to unnecessary bloating of fiscal deficit of the Central Government, and keeps up the practice of states remaining indebted to the Centre. Task Force feels that mechanism should be devised to transfer the proceeds of EAP loans without routing these through Consolidated Fund of India.

16.12 Working of the FRBM Acts

269. The Task Force is of the view that the rules must ensure that expenditure composition is not distorted and essential expenditure categories like maintenance expenditure and social sector expenditure do not suffer. Further, contingent liabilities and power sector deficits need to be incorporated in the consolidated deficit to be targeted. Reporting requirements could be made more stringent so as to impose a sense of discipline and the escape clause should be tightened. It is important to go beyond the basics and make greater use of fiscal policy rules as a tool not only for institutionalizing fiscal balance, but for institutionalizing better public expenditure management.

16.13 Fiscal Domain of Local Bodies

270. Fiscal autonomy is an essential ingredient of any system of decentralisation. A provision in the form of State Finance Commission already exists in the Constitution in the form of State finance Commission to examine the financial requirements of the local bodies with a provision of a review after every five years. It is just and adequate provision to provide for the financial needs of the local bodies.

271. An incentive system should be put in place to encourage the local bodies to raise more resources on their own.

272. The State Governments should not impose too many restrictions on the rates etc. on local bodies in using their financial powers but may lay down broad guidelines.

16.14 Direct Transfers to Local Governments and Other Agencies

273. The Task Force is of the view that direct transfer of funds to local elected bodies and other administrative bodies is against the spirit and provisions of the
Constitution, nor it leads to better and effective utilisation of resources. All funds intended to be passed to the local bodies have to be channeled through the State budgets. A mechanism needs to be put in place to ensure quick transfer of funds to the local bodies. If the State Government delays transfers of the earmarked funds for local bodies or diverts them to other purposes than penalty in terms of interest charges should be imposed on it.

16.15 Augmenting Resources of the States

274. The broad principle governing the division of tax power of different tiers of the Government is: which agency is in a position to collect them efficiently. Broadly, the present division of tax domain meets this criterion. However, some changes in the same are called for. The Task Force would like to make the following recommendations in this regard:

(1) The Task Force is of the view that the States should have the powers of taxing the services which are of local nature and whose base cannot be shifted across States, while the Centre may tax services which are of inter-State nature.

(2) The revenue from service taxes imposed by the Central Government should form part of the shareable pool so that the States also benefit from this buoyant source of revenue.

(3) The Task Force would like to underline the fact that the State Governments have not fully exploited some of their tax powers. Special mention may be made of agricultural income tax and profession tax which are either not levied by them or if levied have been differently implemented in different States. Efforts should be made by the States to fully exploit their existing taxation powers rather than always clamouring from transfer of more resources from the Centre.

(4) The State Governments have not been fully utilising the potential of non-tax revenue sources like user charges for services like electricity, irrigation, medical and educational fees, etc. Rationalisation of user charges and reduction in subsidies can release substantial resources for meeting the developmental requirements of the States.

16.16 Royalty on Minerals

275. The method of fixation of rates of royalty should move forward decisively on the basis of *ad valorem* rates. For retaining specific rates for any mineral, a very strong rationale should be required.
276. The valuation of the mineral for the purposes of royalty should be based on the transaction value and should include the profit element over and above the unit cost of production.

277. Rates of dead rent should be rationalised so that they act as an effective deterrent against a mine owner who does not undertake mining as per the approved mining plan and prefers to keep large areas idle and keeps the mineral resources undeveloped.

278. Transfer fees should be levied on PLs and MLs sought to be transferred.

### 16.17 Tax on Goods & Services

279. GST is regarded as an efficient, effective and tax payer friendly system of taxation of goods and services which would be in line with the international best practices. It is expected that GST would be in the interest of trade and industry, as it would do away with multiplicity of taxes and their cascading impact. It would also help in reducing the cost of administration and improving compliance. GST is also expected to increase tax revenue for the State Governments due to a wider tax base and better compliance.

280. A single GST model is theoretically a preferred model. However, in the present circumstances the option of a dual concurrent GST seems most practicable at the present juncture. The Empowered Committee of the State Finance Ministers has also recommended the concurrent dual GST. Under this model, a concurrent or dual GST is levied by the Centre as well as the States. It would require that States be enabled to tax services and the service tax rate should be the same as that for goods. Alongside, Central Government should be enabled to tax value added in the case of goods upto the retail stage.

281. It would be important to have a fully harmonized dual tax structure of GST with one base and a common set of rules. This can be implemented while maintaining the current pre and post transfer profiles of vertical imbalance. These changes would lead to a comprehensive and unified system of taxation of goods and services. An amendment to the Constitution would be needed to empower the Centre and States to levy the GST concurrently.

### 16.18 Unified and Integrated Domestic Market

282. A common Indian market that approaches in size to some of the biggest markets
in the world would be the foundation of our political unity. The barriers restricting the smooth flow of goods and services should be removed and a system needs to be put into place which ensures a seamless flow of inter-State trade and commerce.

283. A lot of work needs to be done on the positive side to achieve physical market restructuring and development. Massive investments are required in development of widely dispersed warehousing, improved road/rail network and trucking/rail wagons, skilled manpower for grading, and scientific storage and handling.

284. The Parliament should by law, establish an authority called the “inter-State Trade and Commerce Commission” under the Ministry of Industry and Commerce, under article 307 read with Entry 42 of List-I. Alternatively, the Empowered Committee of State Finance Ministers in the context of Goods and Services Tax, may work with all the States, the concerned Union Ministries and Inter-State Council in working out a balanced solution to the issue of integrated domestic market in the federal structure.
The terms of reference of the Commission will be as follows:

(i) The Commission will examine and review the working of the existing arrangements between the Union and States as per the Constitution of India, the healthy precedents being followed, various pronouncements of the Courts in regard to powers, functions and responsibilities in all spheres including legislative relations, administrative relations, role of governors, emergency provisions, financial relations, economic and social planning, Panchayati Raj institutions, sharing of resources; including inter-State river water and recommend such changes or other measures as may be appropriate keeping in view the practical difficulties.

(ii) In examining and reviewing the working of the existing arrangements between the Union and States and making recommendations as to the changes and measures needed, the Commission will keep in view the social and economic developments that have taken place over the years particularly over the last two decades and have due regard to the scheme and framework of the Constitution. Such recommendations would also need to address the growing challenges of ensuring good governance for promoting the welfare of the people whilst strengthening the unity and integrity of the country, and of availing emerging opportunities for sustained and rapid economic growth for alleviating poverty and illiteracy in the early decades of the new millennium.
(iii) While examining and making its recommendations on the above, the Commission shall have particular regard, but not limit its mandate to the following:-

(a) The role, responsibility and jurisdiction of the Centre vis-à-vis States during major and prolonged outbreaks of communal violence, caste violence or any other social conflict leading to prolonged and escalated violence.

(b) The role, responsibility and jurisdiction of the Centre vis-à-vis States in the planning and implementation of the mega projects like the inter-linking of rivers, that would normally take 15-20 years for completion and hinge vitally on the support of the States.

(c) The role, responsibility and jurisdiction of the Centre vis-à-vis States in promoting effective devolution of powers and autonomy to Panchayati Raj Institutions and Local Bodies including the Autonomous Bodies under the 6th Schedule of the Constitution within a specified period of time.

(d) The role, responsibility and jurisdiction of the Centre vis-à-vis States in promoting the concept and practice of independent planning and budgeting at the District level.

(e) The role, responsibility and jurisdiction of the Centre vis-à-vis States in linking Central assistance of various kinds with the performance of the States.

(f) The role, responsibility and jurisdiction of the Centre in adopting approaches and policies based on positive discrimination in favour of backward States.

(g) The impact of the recommendations made by the 8th to 12th Finance Commissions on the fiscal relations between the Centre and the States, especially the greater dependence of the States on devolution of funds from the Centre.

(h) The need and relevance of separate taxes on the production and on the sales of goods and services subsequent to the introduction of Value Added Tax regime.
(i) The need for freeing inter-State trade in order to establish a unified and integrated domestic market as also in the context of the reluctance of State Governments to adopt the relevant Sarkaria Commission’s recommendation in chapter XVIII of its report.

(j) The need for setting up a Central Law Enforcement Agency empowered to take up *suo moto* investigation of crimes having inter-State and/or international ramifications with serious implications on national security.

(k) The feasibility of a supporting legislation under Article 355 for the purpose of *suo moto* deployment of Central forces in the States if and when the situation so demands.
Annexure II

Specific Role of the Task Force

1. Be a knowledge partner of the Commission on the given subject.

2. Draw attention to available scholarship on the subject, which can serve as a knowledge base for the Commission.

3. Raise and generate issues which:
   ♦ require further investigation and inquiry
   ♦ stimulate discussion
   ♦ provide the focus to the Commission's deliberations and help it in establishing the priority areas of concern

4. Specifically to render assistance to the Commission and its Secretariat in finalizing the Questionnaire and in analyzing responses from different stakeholders.

5. As a ‘Think Tank’ to provide appropriate analytical conclusions and recommendations for the consideration of the Commission.

6. Assisting the Commission in preparation of analytical briefs, reports and other inputs.
Annexure III

Constitution of the Task Force On Economic and Financial Relations

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Annexure IV

List of Papers and Notes Prepared by Members of the Task Force

1. Governance Reforms In The Era Of Globalization & Liberalization
   - by Prof. Mala Lalwani

2. Fiscal Responsibility Legislation In India: The Way Forward
   - by Prof. Mala Lalwani

3. Note on Issues Before the Task Force On Economic And Financial Relations
   - by Shri Subhash Garg, IAS

4. A Note For Task Force 2 On Economic And Financial Relations
   - by Dr. N. J. Kurian

5. Desired Reforms Initiatives In The States For Better Governance - Industry’s viewpoint
   - by Shri Sanjay Bhatia

6. Goods And Services Tax – PHD Chamber’s Views
   - Submitted by PHD Chamber Of Commerce and Industry
TASK FORCE REPORT
UNIFIED AND INTEGRATED
DOMESTIC MARKET
REPORT

UNIFIED AND INTEGRATED DOMESTIC MARKET

Task Force-3
COMMISSION ON CENTRE-STATE RELATIONS
## Presentation Flow

- **Introduction**
- **Towards the Unified & Integrated Domestic Market**
  - Constitutional Provision Impacting Unification: 6
  - National & International Best Practices: 10
  - Revenue Financing for States: 13
- **Impact of differential trade tax rates**
- **Difficulties faced in implementation of uniform VAT system**
- **Effect of Uniform VAT system on States’ economies**
- **Tax Principles to Strengthen the Market**
  - Commodity Specific Taxes: 30
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- **Institutional Framework for Implementation, Monitoring & Dispute Resolution**
Unified and Integrated Domestic Market
A Desired Goal

“An important commitment of our Government is to integrate the domestic market for all goods and services. The time has come for us to consider the entire country as a common or single market for agricultural products. We have to systematically remove internal controls and restrictions.”

- Dr Manmohan Singh (9th April, 2005)
Importance of Inter-State Trade

- Share of internal trade in Indian economy-15% of GDP (National Accounts 2007)
- Direct employment generated-36 million
- Most important segment in the tertiary/service sector with a share that is twice the share of ‘finance and insurance’
- However, internal trade level reached a peak since mid-nineties and has been stagnant
- 65% of freight moved by roads in 2005-06 vs 13.8% moved in 1950-51
Towards Unified & Integrated Domestic Market

- The free flow of goods, services, capital, labour, information & technology without geographical barriers brings net welfare gains
- A single unified market doesn’t exist within India and there are significant inter-State barriers to trade
- Especially important for agricultural commodities, since only 17.1% of GDP now comes from agriculture and allied activities, and it gives employment to 52.1% of the working population
- There is a need to develop a national level single market for agricultural goods and commodities by removing all the existing barriers to trade, multiplicity of acts, fiscal policies and marketing arrangements across the country
Unified Market will...

- Result in Inclusive Growth
  - Bringing larger share of consumer spend to producers
- Result in demand driven economic growth
  - By delivering value for money to the consumers
- Expand the market by reducing transaction costs and make goods and services more affordable
- Create additional employment
- Improve competitiveness of indigenous goods and services
The Constitution of India & Common Market

Fundamental Rights & Distribution of Legislative Powers

- Article 19(1)(d) - freedom to move freely throughout the territory of India
- Article 19(1)(e) - freedom to reside and settle in any part of India
- Article 19(1)(g) - freedom to carry on any profession, trade and business, subject to such reasonable restriction as may be imposed in the interests of the general public
- Article 246 and Schedule VII
  - Central Government empowered to levy tax on income, wealth, services - facilitates tax levy and administration
  - States empowered to tax local subjects (property, entertainment, tolls), goods and vehicles
The Constitution of India & Common Market

Trade, Commerce & Intercourse within the territory of India

- Article 301 - The framers of the Constitution included Article 301 to ensure freedom of trade, commerce & intercourse throughout the territory of India
- Automobile Transport Association’s case
  - Article 301 provides for free movement of persons or things, tangible or intangible, commercial or non-commercial, unobstructed by barriers or any other impediments operating as barriers, inter-State or intra-State,
  - The makers of Constitution were fully conscious that economic unity was absolutely essential for the stability and progress of the federal polity for governance of the country. Political unity that had been accomplished by the Constitution, had to be sustained and strengthened by the bond of economic unity
- Atiabari Tea Co.’s Case
  - Even tax laws that directly and immediately restrict the trade are not outside the purview of Article 301
- Automobile Transport Association’s case
  - Regulatory and compensatory taxes are permissible
  - Indirect or remote restrictions are also permissible (eg., traffic regulations, licensing of vehicles, marketing and health regulations etc.)
The Constitution of India & Common Market

Limitations on Power of Parliament & State Legislation

- Article 302 – Power of Parliament to impose restriction
  - Parliament may by law impose such restrictions on the freedom of trade, commerce or intercourse between one State and another or within any part of the territory of India as may be required in the public interest

- Article 304 – Power of the State Legislature to impose restrictions
  - impose on goods imported from other States any tax to which similar goods manufactured in that State are subject
  - impose reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest (requires sanction of the President)
The Constitution of India & Common Market

- However, the Constitution does not specify restrictions and clear guidelines on the taxing power of the States, that lead to:
  - Multiplicity of tax provisions causing distortions in tax application and its administration
  - Conflicting provisions to levy tax and double taxation of one subject
  - Tax competition between States (lead to offering of incentives/exemptions etc.)
  - Tax arbitrage, for its prevention States create physical barriers (check points etc.)
  - Competition curtailed due to fragmented markets - leading to cartelization and monopolies
  - High compliance cost due to involvement of various Government departments for governing storage, movement, marketing of goods
  - Corruption and tax evasion
Federal Form & Common Market

- Federal form of governance demand autonomy for sub-national governments
- Autonomy of government includes fiscal autonomy
- For achieving fiscal autonomy, sub-national governments should be allowed to set the tax policies according to their revenue needs
- Fiscal autonomy should not be detrimental to:
  - The country’s economy
  - The common market

Thus, freedom of movement of capital, labour, goods, services and enterprise should be ensured. Tax laws (direct tax, indirect tax, special tax etc.) and tax administrative procedures should be harmonized
National & International Best Practices

- Australia
- Germany
- Canada
- European Union (EU)
- World Trade Organization
- Double Taxation Avoidance Agreement (DTAA)
Common Market in other Nations

- **Australia:** Section 92 of Australian Constitution: imposition of uniform duties of customs, trade, commerce and intercourse among States whether by means of internal carriage or navigation, shall be absolutely free

- **Germany:** Article 105 – gives the federation exclusive power to legislate on custom duties and fiscal monopolies. Federation has concurrent power to legislate on all other taxes, the revenue from which accrues to it wholly or in part. States have power to legislate on local excise taxes as long as in so far as they are not identical with taxes imposed by Federal legislation

- **Canada:** Inter-State movement of goods free
EU Framework

- EU framework provides for formation of three institutions:
  - Commission – charged with making proposals
  - Parliament – to give its opinion on proposed legislation and recommend amendments before it is adopted
  - Council of Ministers – which adopts these proposals and thereby turn them into law
EU Framework – Features important in Indian Context

- Prohibition on tax discrimination to give an advantage to national product over products from other Member States
- Harmonization of indirect tax laws and tax administration process (turnover taxes, excise duties and other indirect taxes) and allowance of tax credits for consumption tax paid anywhere
- Abolition of the rule requiring multiple registration for a trader
- Restrictions on grant of exemptions, incentives by Member States
- Removal of quantitative restrictions and tariffs on trade between members
EU Framework – Features important in Indian Context

- Common system of excise duties for three products – manufactured tobacco, alcoholic drinks and mineral oils
  - Harmonized tax structure (definition of products, units of measurement, exemptions)
  - Tax rates
  - Movement of products between Member States
- However, Member States allowed to levy other (un-harmonized) taxes on these products (green taxes) and others (vehicle registration, road taxes, fees etc.) provided they do not constitute either a turnover tax or a barrier to trade

Due to harmonization of specification and standards, checkpoints have been removed. Thus, there is a free flow of goods from one member State to another resulting in a single domestic market.
WTO Principle – Features important in Indian Context

- No discrimination among goods originating from different countries
- No discrimination between local goods or goods sourced from another country once a product enters the market (i.e. tax can be collected at entry point so as to avoid discrimination, but such taxes should not exceed the prescribed limits)
- Quantitative and other restrictions are prohibited. However, internal maximum price control measures are allowed
- Payment of subsidies including payments to domestic producers from tax proceeds is also allowed
- Tariff schedules are based on Harmonized Commodity Description and Coding System of classification developed by the World Customs Organization
DTAA – Features important in Indian Context

- Among others, one of the important clauses of DTAA is prevention of discrimination.
- It is provided that in similar situations taxpayers shall not be treated differently unless such differentiation is justified and is without prejudice.
- Some exceptions:
  - Positive discrimination i.e. incentives for development, growth, promotion etc.
  - Different rate of tax permissible under certain cases like higher rate of tax for foreign companies in India having a permanent establishment in India.
  - Specific limit of tax rate – difference in the tax rate shall not exceed a specific limit.
Key Principles Emerging from different Frameworks

- Principle of non-discrimination
  - In case of indirect taxes – no discrimination on the basis of origin of goods
    - Destination principle of taxation: Imports taxable, exports zero-rated. Goods can be taxed at the time of entry
  - In case of direct taxes – no discrimination on the basis of nationality of persons
  - No quantitative or physical restrictions (like check-posts) as they act as a deterrent to free movement of goods
  - Production subsidies are permitted (in larger public interest) even if discriminatory in nature
  - Harmonization of administrative procedures
  - Appropriate institutional mechanism for oversight.
Unified and Integrated Domestic Market

IMPACT OF DIFFERENTIAL TRADE TAX RATES
Impact of Differential Trade Tax Rates

- Differential Tax rate regime gave States autonomy to choose their rates as per their discretion
- Difference existed in tax rates in VAT compliant States and non VAT Compliant States
  - Led to Grey Trade from non VAT compliant States to States with lower VAT
  - Affected growth of input-intensive manufacturing in Non-VAT compliant State (where credit on inputs was not given)
  - Example: Tamil Nadu implemented VAT on January 1, 2007 whereas its neighboring States introduced VAT on April 1, 2005
    - In the interim period TN had at least 10 different rates while its VAT complied neighboring States had only 2 rates
    - In case of FMCG products, Tamil Nadu had a sales tax of 20% as opposed to 12.5% in neighboring States
    - It lead to grey trade from TN to neighboring VAT compliant States
Impact of Differential Trade Tax Rates

- States with higher Tax rates were ultimate sufferers
- States entered into tax rate war to promote trade and manufacturing in their territory
- Tax induced price differential promoted trade diversions
  - High trade diversions in case of High Price, Low Volume(weight), Easily transportable (HLE) goods, as the cost of transportation was less than the tax-induced price differentials
- Some States benefited in short run at the cost of others
- The unhealthy tax rate war affected adversely all the States in long run
DIFFICULTIES FACED IN IMPLEMENTATION OF UNIFORM VAT
States’ Apprehensions

- Loss of State’s competitiveness against other States in incentivizing industry
- Phasing out of CST
- Credit to be given on input in VAT regime
  - Forego taxes collected at multiple stages by different names
- Lower tax rate (VAT) for many commodities
- Revenue Neutral Rate can put inflationary pressure
- Compensation for loss of revenue not guaranteed from Center
- Basic Requirements to be fulfilled (VAT Bills, Rules & Procedure, Design of Forms & Invoices) for implementation of VAT requires lot of effort
Resistance

- Lack of confidence of Stakeholders regarding implication of VAT
  - Strike by Traders
  - Unhappy Tax Holiday Units
  - Resistance from Tax Officials because
    - Re-engineering of Tax Administration Process was required
    - Tax officials were to be trained
    - Automation of process was to be done
  - Polity was expecting its adverse effect on electoral powers
EFFECT OF UNIFORM VAT ON STATES' ECONOMIES
Impact of VAT

- A Report dated August 18, 2005 revealed:
  - Revenues from VAT in the 21 states that had implemented it have risen by 15.3% in the first quarter
  - Leaving 10% as nominal growth, there was net gain of approx. 5%
  - Only 4 States (Andhra, Maharashtra, Bihar and Tripura) had filed loss claim to center
Impact of VAT Contd.

- States having higher sales tax levels (Maharashtra, Kerala and Andhra)
  - Marginal growth (decline in real terms) in revenues from VAT

- States having lower sales tax
  - Whopping increases in revenue collections
  - Orissa - increase of 35%, Delhi - 30% and Karnataka and Himachal Pradesh - 27% and 20%, respectively
DESIRABLE TAX PRINCIPLES TO STRENGTHEN THE MARKET
Commodity Specific Tax - VAT/GST

- Tax to be levied on destination based principle (VAT already in conformity with this principle. However, CST is still origin based, needs to be abolished)
- Single or fewer rates as significant difference in tax rates can lead to distortion of trade
- Broad base tax to apply equally on goods, services, intangibles etc.
- Uniformity in classification & tax procedures to make implementation and compliance easier
- Effective monitoring of tax to prevent leakages
- Physical barriers to be replaced by better mechanisms which are simpler and effective
Location Specific Taxes-Entry Tax

- Entry tax is currently levied and collected on the “entry of the notified goods into any local area” for sale, consumption or use therein
- However, the whole concept of entry tax is confusing and needs to be replaced by a simpler and uniform law
- The Supreme Court has held Entry tax to be in violation of the Constitution (Jindal steel case)
- Entry Tax by whatever name called (e.g., Local Area Development Tax-LADT) should be discontinued
- Alternatively, States may consider converting it into a general VAT or other alternatives as recommended by some State Finance Commissions
Location Specific Taxes – Octroi & Toll Tax

- Octroi is used as a tax levied on the products entering the territory of a city or Municipal corporation
  - Octroi is an onerous tax and the cost of collection is huge. Many States have gradually abolished Octroi
  - This acts as a major harassing force on the movements of the primary commodities and inhibits free movements of goods within a State
  - Octroi should be abolished completely

- Toll tax may be levied in respect of new infrastructure projects, but should be charged as a fee and abolished once the shortfall in the project has been recovered
  - It should not be allowed to continue indefinitely or be an additional source of revenue. There should be a sunset clause
Task Force Recommendations

- **Formation of Empowered Committee of States with binding powers (similar to EU Council) to frame taxation laws**
- **Harmonization of State tax laws (Uniformity in classification, tax rate, base etc.)**
- **The State VAT/GST should be levied at uniform rates on destination basis and cover all tradable goods and services.**
- **Use of IT and greater cooperation between taxation authorities**
- **Abolition of Entry Tax, LADT, & Octroi**
- **Toll Tax can be charged in respect of new infrastructure projects till the shortfalls in the project is recovered. Sunset clause to be incorporated**
- **Take a relook at taxation powers under VII Schedule of the Constitution.**
SOME SPECIFIC CASE STUDIES

1. AGRO & FOOD PRODUCTS
Importance of the Sector

- **Contribution to GDP: Declining**
  - 17.1% in 2008-09, 18.8 in 2007-08

- **Growth Rate: Declining**
  - 1.6% in 2008-09, 4.9% in 2007-08

- **Employment Generated**: 52.1%
Implications of a Fragmented Market

- Fragmented Markets often lead to cartelization and lack of competition
- Farmer’s share of Consumer Rupee very low
  - Need to correct, in view of low realization by farmer
- Lack of sufficient investments in farm productivity enhancements, supply chain infrastructure & food processing
  - Consumers have limited choices in quality food, variety, safety
  - Poor food & nutrition security
- Tax evasion
  - Lower than potential revenues to Exchequer
- Forced investments in uneconomic scale & locations
  - Cannot compete in integrated global markets
Barriers to Integration of Markets

- Taxation
  - Variation in rates across States (rationalised after VAT introduction, but not eliminated totally yet) leads to evasion through paper trades by unscrupulous players
  - High Rates (most common rate of 4% appears low, but given the low margins in agri business, this rate also is an incentive for evasion)
  - Multi point taxation (APMC Cess is collected at multiple points; cascading impact on prices)
  - Incentives for promoting agro-processing within the State (leads to uneconomic scale & locations)
Barriers to Integration of Markets

- Physical Controls
  - Through Essential Commodities Act (physical controls like stock limits at times of short-term shortages lead to long-term supply distortions)
  - Through Check-Posts (more serious in case of perishable agri produce)
  - Through APMC regulations (restricts movement of agri produce to attractive markets over long distance; restricts ability of farmers to manage price risk)
Task Force Recommendations

- Restrict taxation on food grains to 0%, other primary agri commodities to 1% and processed food product to 4% uniformly
  - Limit the incidence to one point in the chain
- Implement Model APMC Act
  - Issue single license in State to operate under APMC
- Allow Futures & Options in all important agri products
  - Permit Warehouse Receipt Negotiability
  - Facilitate Electronic Spot Exchanges
- Restrict usage of ECA to only very exceptional situations
  - Not in routine annual supply variations
The Special Case of Food Grains

- Lack of dis-intermediation, high transaction costs and explicit service charges imposed at various layers
- Limits are imposed on stocking food-grains in some of the States
- Private traders required to obtain Government permit to transport grains out of particular state or even district
- There are also zonal restrictions, with private trade in food-grains across broad zones prohibited
Task Force Recommendations

- Dis-intermediation and Removal of restrictions on storage & transportation of food grains within the State & across States

- State governments identify BPL (below the poverty line) households for both rural and urban areas and issue biometric ration cards

For the PDS, State governments to introduce food stamps in districts that are administratively easy
Unified and Integrated Domestic Market

Policy Environment

- Regulation and Taxation of alcohol is a State subject
- Each State is considered as a separate excise territory and has its own rules and laws to regulate this trade
- Un-harmonized policies are contradictory to common market goal
Current Policies

- The States had promoted various laws and regulations to control the production, distribution and sale of alcoholic beverages.
  - These were also subjected to a large number of taxes which differ widely from State to State.
  - As a result, the country had been divided into 35 separate markets.
  - Severe restrictions had led to formation of cartels and gaps in demand and supply.
Unified and Integrated Domestic Market

State Taxes on Alcoholic Products

- Excise Duty
- Additional excise duty or sales tax
- Inter-state export fees
- Inter-state import fees
- Franchise fees on contract manufacture
- Production License fees
- Bottling fees
- Excise adhesive labels or holograms
- Medicinal & Toilet Preparation Act
- Other State & Local Taxes
Different Tax Rates

- T1 = Taxes on inter-state import
- T2 = Taxes on intra-state (local) production from own unit
- T3 = Taxes on intra-state production with contract manufacture
- T4 = Taxes on imports from outside India

- Generally T1>T2, T1>T4, T3>T2 & T2=T4
- Ideally T1=T2=T3=T4
- These rates differ widely across States and also are changed frequently
- It leads to a great deal of uncertainty amongst Producers and Traders
## Discrimination between Local & Inter-State Trade

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| T2, Local production and sale (Index 100) |
| T1, Inter state sale price after accounting for all levies (import/ export duty, octroi/entry tax, excise duty, addl. Excise duty, sales tax, bottling fee, VAT and turnover tax |
Diseconomies of Scale

- Players in liquor trade establish bottling units in various States and shift production from the parent units to the small and uneconomic units
  - It results in higher cost of production at the cost of the consumers
  - The quality of product also suffers, as it encourages illicit production
  - Such high Import and Export Fee encourage inter-state smuggling of alcoholic products
- This results in heavy loss of revenue to the Government Exchequer
Problems for Stakeholders

Customers
- Limited choice in terms of brands available in their state
- Have to pay higher prices as compared to someone in another state
- Prices may become unaffordable and customers may resort to cheaper illicit alcohols which may be detrimental to their health

Producers
- Higher cost of production
- Entry barriers to new players

States
- Loss of revenue due to illegal cross border movement of the alcoholic beverage products
Taxation on Alcohol in other federal Structures – European Union

- GST applies to alcohol products on top of Excise Duty
  - GST charged on final sales price inclusive of Excise Duty
- GST and Excise are generally applied on non discriminatory basis - on both imported and local goods and services
- The EU has a harmonized structure and collection processes across the 27 member states but the rates are allowed to differ among the member states
- For GST, there is an upper lower limit for national tax rates, i.e. they can be no lower than 15% and no higher than 25%. This is to avoid wide discrepancies within the EU
- All EU member states apply Excise Duties. The revenue from excise duties accrues entirely to the member states
Taxation on Alcohol Other Federal Structure - Australia

- **Excise Duty**
  - Excise is levied on locally produced beer, spirits and Ready to Drink Beverages (RTDs)
  - Tax is applied at a certain rate according to the alcohol content of the product, measured in liters of alcohol

- **Custom Duty**
  - Relevant imported beverages can pay a composite tax:
    - An ad valorem component, based on a percentage of the customs “value of duty” and
    - A volumetric component, based on alcohol content (This component mirrors the excise duty levied on locally produced product)
Taxation on Alcohol Other Federal Structure - Australia

- **Wine Equalization Tax (WET)**
  - Relevant beverages (whether locally produced or imported) pay an ad valorem tax based on a fixed rate (currently 29%) of wholesale sale value.

- **Goods and services Tax (GST)**
  - All beverages pay a 10% GST
Task Force Recommendations

- **Model Excise Act circulated by Government of India should be adopted by all States**

- **The Government should set up an Empowered Committee of Excise Ministers to rationalize the taxes on the alcoholic beverages trade across the States**

  - Although States may have the right to impose varying rate of excise duty, the nomenclature and type of taxes should be made uniform
Task Force Recommendations Cont.

- The State regulation and tax regimes for this sector should be simplified and harmonized
- Production and Distribution of Alcoholic products should be subject to GST/VAT with full credit on inputs
- There should be no discrimination of taxes between goods manufactured/produced in a State and goods imported from another State
Task Force Recommendations Cont.

- The supply regulations through various permits and license create an imbalance between demand and supply and are a source of illegal production and criminal activity in the industry.

- If a State wants to regulate consumption, its objective can be better served through adjustment of excise duty and other fiscal measures rather than Permit & License Raj.
Physical Barriers - Check Posts

- Tax Barriers
- Interstate Barriers
- Octroi Barriers
- Toll Barriers
- Municipal Barriers

There are more than 18 agencies of Center and State which have the power to stop and detain the vehicles
Check Posts - Some Facts

- The average distance covered by a truck in India is 200 Km/day (approx.) whereas in Europe it is 550/day Km and in USA it is 700 Km/day
- Such stoppages at check-posts not only increase the cost on account of slow movement/waiting period, but idle running of engine results in 2.5 litres of diesel per truck per day too
- These checks are generally conducted by respective agencies at separate points, resulting in more than one detention
Vehicle Related Reasons for Stoppage

☐ Checking of Vehicle Papers like RC book, Permits and Authorization, Fitness etc.
☐ To collect tax at barrier on vehicle such as Entry Tax and Toll Tax etc.
☐ Checking of dimensions of goods (weight and ODC) v/s capacity or allowed in the type of vehicle
☐ Checking of vehicles for any changes in chassis, body or fitness etc.
☐ Checking driving license
☐ Violation of any traffic rules by the driver
Goods Related Reasons for Stoppage

- For checking of Goods Documents
- Collection of various taxes on goods like octroi or Entry Tax
- For checking of Goods for any contraband or illegal goods etc.
Other Reasons for Stoppage

- There exist flying squads or surprise checking teams other than normal checkpoints
  - They are empowered to stop and check the vehicle at any point within their jurisdictional limits
  - The vehicle is detained for any violation
- There are ‘no entry hours’ and absence of night clearances in certain States which increase travel time
- Disruption in traffic due to poor law and order situation is another factor affecting free flow of trade
- All these lead to under-utilization of transport capacity and adversely affecting operational viability
Multiple Stoppages & Long Delays

- All barriers and check-posts are not at one location
  - Each department has its own inadequately manned check-posts at more than one place
- All the work at check-posts is done manually
- This leads to multiple stoppages and long delays at each check-post
Transport Sector Overview

- The transport sector accounts for a share of 6.4 per cent in India’s Gross Domestic Product (GDP)
  - Road transport has emerged as the dominant segment with a share of 4.5 per cent in India’s GDP
- 2 to 5 million long distance truck drivers and helpers on the move
- Above 40 lakhs commercial vehicles
Barriers to the growth of Road Transport

- Largely unorganized sector
- Absence of credible database for any planning
- Multiplicity of regulatory and governing authorities/State & Laws
Issues of Road Transport Sector

- Lack of uniform Policy & Systems All over India
- National Permit and Toll Tax Issues
- Special problems due to mobile nature like TDS Cash payment limit, Labor Laws etc.
The National Permit was introduced with a view to promote nationwide smooth operation of goods carried by road permit. Instead of facilitating smooth movement, it has become a big roadblock for inter-state traffic. It takes minimum of 2 hours without any upper time limit for crossing the inter-state border.
Task Force Recommendations

- All the check posts located at different places and managed by different authorities should be replaced by a common check-post. This would reduce the frequent stoppage of vehicles
- The check-posts should be computerized in order to reduce the detention time
- All goods carriers should carry a Smart Card which should contain all vehicle related information including payment of taxes, permit fees, fitness certificate, pollution check etc. This would save time which is taken in checking of various papers and detention at check-posts
Task Force Recommendations Cont.

- National Permit system should be simplified and vehicles carrying national permit should be allowed unrestricted movement across State borders
- Power to check may be restricted to only in exceptional cases to the police where there is doubt of contraband items
- All checking for any goods or vehicle related to be done only at loading/unloading site of the client
- Barriers may be abolished and alternate method for payment of taxes should be found
- GoI should have extensive discussions with States to evolve a consensus
Environment Related Barriers

- Environment-related legislations
  - The Indian Forests Act
  - The Forest (Conservation) Act and Rules
  - The Air (Prevention and Control of Pollution) Act and Rules
  - The Manufacture, Use, Import, Export and Storage of Hazardous Micro-Organisms/Genetically Engineered Organisms or Cells Rules
  - The Wildlife Protection Act and Rules
  - The Biomedical Waste (Management and Handling) Rules

- The system of enforcement of such legislation, with a multiplicity of agencies and multiple stoppages and detentions, are major barriers to inter State trade
Task Force Recommendations

- The Acts and consequent rules should be examined to reduce transaction costs, eliminate multiple checks and harmonize across States.
- The enforcement under these acts should be delegated to the person in charge of the common check post to avoid multiple stoppages.
Commodity Exchange

- Farmers are exposed to the risk of price fluctuation in commodity prices
- Futures markets help in price discovery, provide price risk management and also bring about spatial and temporal integration of markets
- Strengthening of Commodity Derivatives market in all important Agri commodities will enable farmers as well as corporates who procure Agri commodities in bulk to manage their risk and take advantage of favorable events
Spot Market

- Efficient functioning of future markets requires efficient spot markets
- At present the physical spot markets have large number of infirmities which should be removed for proper functioning of futures markets
- Future markets can act as a catalyst of change for spot markets
  - But whenever future markets try to grow faster than the underdeveloped physical spot markets of underlying commodities, disconnect in between the two gets widened thereby exposing the future markets to criticism of being driven by speculators, even if closely regulated
- Efficient spot markets would require integration of spot markets
Spot Market Cont.

- The setting up of National Spot Electronic Exchanges by the National Commodity Exchanges is an attempt to create a national integrated market.
- The legal and regulatory hurdles in setting up and functioning of these national spot exchanges should be removed.
- Further, in order to promote integrated national markets, the Central Government should take active steps to bring inter-state spot trade under the regulation of a central authority rather than leave it to highly scattered APMCs.
- Entry 33 in concurrent list of 7th Schedule of the Constitution seems to provide such a jurisdiction.
Future Markets

- Conditions should be created so that farmers can use agri-future markets to transfer their price risks
- Despite existing facilities and provisions, the farmers are not yet using these markets in sufficient numbers except in some commercial commodities and specific regions such as spices and rubber in Kerala
- The structure of markets, contract designs and other requirements of trading on these markets should be simple and easy to enable farmers to participate in these markets
- The contract designs should be tailored to meet the needs of the physical market
Warehouse Receipt System

- At the time of harvesting, farmers sell a substantial quantity of produce at lower prices. However, price tends to rise as the season progresses.

- If farmers keep their goods in warehouses and use them as collateral to avail credit facility, they would be better placed to take advantage of the benefits of higher price and meet their immediate credit requirements.

- There are many corporate clients as well who are in business of procurement of Agri-commodity on large scale. These corporates invest their capital at the time of procurement.
Task Force Recommendations

- *Forwards & Futures market in all important agri products should be developed and strengthened*
- *The Legal and regulatory hurdles in setting up and functioning of national spot exchanges should be removed*
- *Government should take active steps to bring inter-state spot trade under the regulation of a central authority rather than leave it to highly scattered APMCs*
- *Uncertainty in Commodity Market, through frequent restrictions on future trade of certain commodities, should be minimized*
Task Force Recommendations Cont.

- The structure of markets, contract designs and other requirements of trading on these markets should be simple and easy to enable farmers to participate in these markets.
- A negotiable warehouse receipt system can facilitate internal trade and access of farmers to credit.
- The warehouse receipt should also be transferable and built-in check points integrated into the system to make it foolproof.
Economic Benefits of a Unified Market

- Based on the experience of other federal structures and India’s own experience in implementation of VAT, the Task Force estimates that the following benefits can be anticipated from a unified market:
  - Reduction of post-harvest losses by 5-7% for food-grains and 25-30% for fruits and vegetables
  - Static gains of 10% by harmonizing standards of agricultural products across States
  - Static efficiency gains of up to 20% because of dis-intermediation of distribution chains resulting in higher prices for farmers and lower prices paid by consumers. The welfare gains are roughly distributed in a ratio of 40% for farmers (producers) and 60% for consumers

- Savings in compliance costs by 5% consequent to fiscal unification. Savings of up to 20% if there is a transition to a complete GST and revenue gains of 25%. The tax/GDP ratio goes up by 1%
- Reduction in transportation costs by 30%
- Incremental growth in agriculture and allied activities by 2% because of static gains alone
- Static increment to GDP growth by 1% because of removal of inter-State barrier reforms alone. Increment by 2% if broader agricultural cum rural sector reforms are undertaken
- Increase in export volume (not value) of agricultural products by 20%
- Additional direct employment generation by 5 million a year. Including indirect employment, additional employment generation by 12 million a year
INSTITUTIONAL FRAMEWORK FOR IMPLEMENTATION, MONITORING & DISPUTE RESOLUTION
Dispute Resolution under the Constitution

- Under Article 131, The Supreme Court is the sole authority which has original jurisdiction in any dispute involving Govt. of India and one or more States or between the States *inter se*

- However, the constitution specifically provides for other mechanism such as Article 262 (water resources) or Article 380 (the Finance Commission)

- Article 307 contemplates the setting up of an authority to give effect to the provisions of Articles 301 through 304. This Authority is to be specific to trade, commerce and intercourse within the territory of India

- Although there are some other organizations such as the Inter-State Council (Article 263) or National Development Council, their mandates are not strong enough to entertain and resolve trade disputes
Dispute Resolution under the Constitution Cont.

- The Sarkaria Commission which was set up in 1983 had strongly recommended setting up of a permanent authority under Article 307 to bring out reports on inter-State and intra-State trade & commerce and recommend measures for their modification.

- The First Administrative Reforms Commission, the Rajamannar Committee of Tamil Nadu and the Commission to Review the Constitution have all recommended the setting up of Statutory Authority.

- “A statutory authority contemplated under Article 307 of the Constitution requires to be set up. As the effects of such an authority could well go beyond the purposes of Article 307, the legislation could be comprehensive, drawing on Entry 42 of List-I and, if necessary, Entry 97 of List-I of the Seventh Schedule for carrying out the objectives of Articles 301, 302, 303 and 304.” - Report of the Commission to review the Constitution.
Task Force Recommendations

☐ A statutory authority should be set up under Article 307 of the Constitution to adjudicate on issues pertaining to inter-State trade and commerce

☐ This authority should have both advisory and executive roles with decision making powers

☐ As a constitutional body, the decision of the authority shall be binding on all States as well as the Union of India. Any party aggrieved by its order may appeal to the Supreme Court

☐ State Government, trade bodies and individuals aggrieved by any executive order or legislative measure which imposes unreasonable restrictions on free flow of trade and commerce or discriminates between goods imported from other States and goods manufactured or produced in a State may approach the Authority for redressal
TASK FORCE REPORT

LOCAL GOVERNMENTS AND DECENTRALIZED GOVERNANCE
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16. **Appendix – I** - Office memorandum regarding Setting up of Task Forces to act as Knowledge Partners to the Commission on Centre-State Relations

   Composition of Task Force No. 4

   **Appendix – II** – Dates of Meetings of Task Force and the Officers who assisted the Task Force
Foreword and Background of setting up

Task force on decentralized governance:

This report prepared for the Commission on Centre-State Relations (CCSR) is of considerable significance in the present juncture of India’s Development. The Recent decades have witnessed a fair rapid growth of the economy and some reductions in poverty and deprivation. However the fruits of development did not reach a vast segment of the population. It is in this context that the shift in development strategy and policy to inclusive growth assumes significance. To realize the objective of inclusive growth the reform of the system of governance for development is very important. The steps taken for empowering Panchayats and Urban Local Body (ULB) by the 73rd and 74th amendments and amendment to article 280 of the constitution in the early 1990’s and the subsequent developments will have to be viewed in this broader background. Though, all the State Governments have now taken steps to implement the acts and provisions of the constitutional amendments, the progress achieved in several fronts have been far from satisfactory e.g. 11th and 12th schedule in the case of Panchayats and Urban Local Body or where State Governments have shown little interest, e.g. recommendations of the State Finance Commissions or where State Governments have openly defined the constitutional amendments, e.g. constitution of the District Planning Committees (DPC) and Metropolitan Planning Committees (MPC). There is indeed a consensus that several factors have constrained the effective internalization of the provisions of the 73rd and 74th constitutional amendments. The present report considers these factors. In general, there is no doubt that much of the halting progress of Local Government (LG) empowerment is due to the fact that downstream administrative and fiscal process and practices have not undergone the adjustments necessary, as the nation transits to a multi order governance system comprising of a Central, State and Local Governments.

The eleven Terms of Reference (TOR) given to Task Force No.4 on decentralized governance has covered a wide range of issues that have significant bearing on the functioning of Local Governments. These are issues that have been earlier considered by a number of high level committees, task forces, and commissions, in the recent past. Some of these include the Second Administrative Reforms Commission, the Eleventh Plan document, the Empowered sub Committee of the National Development Council on Financial and Administrative Empowerment of the Panchayats, the Expert Group on decentralized planning at the Grassroots level, the Expert Committee on decentralized planning in the areas not covered under the provisions of Parts IX and IX-A of the Constitution, including the Sixth Schedule
areas and the district planning handbook brought out by the Planning Commission. Several of the recommendations of these committees directly pertain to the TORs before this Task Force and are backed by detailed justifications for the reforms suggested therein. The Task Force felt that for reasons of brevity, wherever it agreed with the recommendations made by an earlier committee regarding a particular TOR, there was no need for it to repeat the justifications and reasoning for reform, but that it would suffice if it referred to the recommendations concerned and indicated the points of agreement and endorsed the same, with elaboration resorted to wherever an additional nuance had to be addressed, over and above the recommendations made by the Committee concerned.

Apart from the various reports already mentioned, the Commissions Secretariat has made available to the Task Force various internal documents, and data that are not published from various departments including the Ministry of Panchayati Raj and Rural Development, Ministry of Housing and Urban Development of the Government of India, reports on Panchayati Raj Institutions (PRI) done by independent researchers and institutes and from the State Governments. As a working methodology, members of the Task Force prepared papers on various aspects of the ToR and these papers were discussed in a series of meetings of the Task Force. The Task Force held eight meetings and the present report was prepared as an output of this process.

The composition of the Task Force and the government order constituting it are given in Appendix I. Appendix II gives the details of the meetings held and the officers who supported the Task Force.
Terms of Reference (TORs) of the Task Force:

The Task force has been assigned eleven Terms of Reference (TORs), which are as follows:

**TOR 4.1:** Even though fifteen years have passed since the 73rd and 74th constitutional amendments of the Constitution, the actual progress in the devolution of powers and responsibilities to local governments, i.e. Panchayats and Municipalities is said to be limited and uneven. **What steps in your view need to be taken to ensure better implementation of devolution of powers and contemplated in the 73rd and 74th amendment so as to enable Panchayats and Municipalities to function as effective units of self government?**

**TOR 4.2:** Should greater autonomy be given by the State governments to Panchayats and Municipalities for levying taxes, duties, tolls, fees etc, in specific categories and strengthening their own sources of revenue? In this context, what are your views for making the implementation of recommendations of SFCs more effective?

**TOR 4.3:** A large number of government schemes are implemented by the Panchayats and Municipalities which are operated on the basis of various guidelines issued by the central and state line departments there is a view that such common guidelines are rigid and sometimes unsuited to local conditions. **Do you think there is a case for making these guidelines flexible, so as to allow scope for local variations and innovations by Panchayats and municipalities without impinging on core stipulations?**

**TOR 4.4:** There are an increasing number of schemes of the Central government for which funds go from the centre directly to local governments and other agencies. The purpose of this is to ensure that the targeted beneficiaries of these schemes get the benefits directly and quickly. **Please comment on the desirability and effectiveness of the practice of direct release of funds and the role of States in monitoring the implementation of the Schemes. Do you have any suggestions in this regard?**

**TOR 4.5:** In the spirit of the 73rd and 74th amendments to the Constitution, primacy was expected to be accorded to the Panchayats and Municipalities in decentralized
planning, in decisions making on many local issues, e.g. Public health school education, drinking water supply, drainage and sewerage, civic infrastructure etc. and in the administration and implementation of government funded developmental programmes, schemes and projects. In practice, however, many authorities, agencies and other organizational entities such as societies, missions, self help groups etc. continue to function in parallel and at times even in competition and conflict. Concern has been expressed by some sections that these parallel institutions are contrary to the constitutional vision and weaken the role and effectiveness of the Panchayats and Municipalities. On the other hand, it is sometimes, argued that Panchayats and Municipalities do not have the capacity to plan, administer and implement many programmes/schemes/ projects requiring very specialized technical and managerial skills and resources. What are your views in the matter? What steps would you suggest to streamline institutional arrangements between such parallel agencies and the Panchayats and Municipalities to bring about more effective and well coordinated action congruent with the spirit of the 73rd and 74th amendments?

TOR 4.6: A view is often expressed that the three levels of the district, intermediate and village Panchayats within the Panchayat system clutter up the system and give scope for friction and discord amongst them. What are the means by which an organic linkage can be best fostered between the Panchayats? Are any changes in the three tier system warranted?

TOR 4.7: Participative planning, especially spatial planning from the grassroots level upwards to culminate in a district plan is emerging as the most potent instrument for empowering PRI Do you think this is the right approach to empower Panchayats? What are your views on the role, functions and composition of the District and Metropolitan Planning Committees?

TOR 4.8: Instances have been reported where the State Governments have held different or even conflicting views to that of the local governments in respect of the administration of devolved subjects and vice versa. What mechanism do you suggest, other than courts, to help resolve such disputes? What other measures would you suggest to bring about better linkages between elected members of Panchayats and Municipalities with the State legislatures, Is there a possible room for representation of elected Panchayats and Municipality members in the Upper Houses/ Legislative Councils of the States where such upper houses exist?

TOR 4.9: What roles do you envisage for the local governments in infrastructure creation especially mega-projects which may involve acquisition of land and displacement of people in areas under the jurisdiction of the local
Local Governments and Decentralized Governance

Local Governments? Local Governments should have a major role to play in decision making on issues relating to management of and resources especially change of land use from agriculture to urban and industrial purposes, acquisition of land for public purposes etc. to ensure greater stakeholder participation and reduce possibilities of conflict between local, state and national interests. **What are your views in this regard?**

**TOR 4.10:** Large urban agglomerations and mega cities pose very different kinds of challenges for governance in a federal context. The relationship between the Governments of such large cities and other levels of government is becoming increasingly complex. **What roles and responsibilities would you like to see assigned to each of the three levels of government for the better management of mega/metro cities including their security keeping in view the specific nature of the problems faced by them?**

**TOR 4.11:** Many of the regions falling in the scheduled areas (Schedules V & VI) have traditional institutions of governance with or substituting Panchayati Raj Institutions e.g. Autonomous Hill Councils etc. **What are your views as to how these institutions can be further strengthened and be congruent with the spirit of the 73rd and 74th amendments without undermining their traditional character?**

These TORs before the Task Force cover a wide spectrum of aspects concerning local governments, both urban and rural. They are inseparably interwoven and consideration of one cannot but impinge upon that of another. Given the vast nature and the interlinking between the TORs, the Task Force has broadly classified them into two categories and considered them as such. These two parts are:
Issues relating to the structure and design of rural and urban local governments, as essential components of a multi-level government

This part of the report considers the following TORs:

♦ **TOR 4.1**: Steps for ensure better implementation of devolution of powers as contemplated in the 73rd and 74th amendment, to enable effective LG functioning;

♦ **TOR 4.5**: Streamlining institutional arrangements between parallel bodies & LGs;

♦ **TOR 4.6**: Reducing clutter in the LG system and bringing about an organic linkage between their levels;

♦ **TOR 4.8**: Mechanisms to resolve disputes between States and LGs;

♦ **TOR 4.10**: Suggestions for better management of mega/metro cities;

♦ **TOR 4.11**: Strengthening of decentralized governance in Schedule V & VI areas;

Part 2: Strengthening finances of and decentralized planning by LGs:

♦ **TOR 4.2**: Giving greater autonomy to LGs for levying taxes, duties, tolls, fees etc., to strengthen their own sources of revenue & effective implementation of SFC recommendations;

♦ **TOR 4.3**: Making scheme guidelines flexible to allow scope for variations & innovations by LGs;

♦ **TOR 4.4**: Desirability and effectiveness of direct release of funds and State role in monitoring implementation;

♦ **TOR 4.9**: LGs’ roles in infrastructure creation & mega-projects involving land acquisition and displacement;

♦ **TOR 4.7**: Role of decentralized participative planning, especially spatial planning culminating in a district plan in empowering LGs and role, functions and composition of the District and Metropolitan Planning Committees;
Part 1: The structure and design of urban and rural local governments:

The Constitution provides for three levels of local governments in rural areas (The District, Intermediate and Village levels) and three categories of urban local governments, the Nagar Panchayats, Municipal Councils and Municipal Corporations for urban areas. Article 243B(1) prescribes that all the States/UTs, excepting those with population not exceeding 20 lakhs, will have to constitute a three-tier system of panchayats, i.e., at the village, intermediate and district levels. States with population not exceeding 20 lakhs have been given the option not to constitute the panchayats at the intermediate level.

The approach to rural areas is upon the report of the Balwant Rai Mehta study team, on which were based the first set of experiments with local governments in rural areas, during the fifties and sixties. While the Balwantrai Mehta study team had recommended the establishment of a three-tier Panchayati Raj, the subsequent Ashok Mehta Committee preferred a two-tier structure, with a zilla parishad at the district level and a mandal panchayat for a group of villages, with a population of 20,000 to 30,000. It must be remembered that prior to the constitutional amendments, States had adopted different variations in the pattern followed, based upon historical precedent and quite often, political expediency. Some of these variations typically included having only two levels of rural local governments, doing away with powerful district boards and following a system of indirect elections to the intermediate level, instead of direct elections. Combined with the tendency to not hold elections for considerable lengths of time to local governments, variations in the powers devolved, different definitions of the inter-se relationships between them and varying approaches to reservations for politically deprived categories, it is no surprise that there was great variation in the political, administrative, fiscal and social approach to local governments from state to state.

Following the 73rd and 74th amendments, some level of standardization has been brought into the structure of local governments across India. This is because the Constitution has defined some aspects of the structure in mandatory terms, whereas flexibility is given to States in others. Though many States have more or less accepted the constitutional dictum of a three-tier structure, of late, there has been a demand from some States that they would like to have the freedom to choose the pattern of decentralisation which, in their
opinion, is most suited to them. The question whether the mandatory three tier approach has served well the objective of strengthening local governments in India, is increasingly being questioned. At least two reports\(^1\), including one specifically constituted for suggesting changes to the constitutional structure have suggested amendments to Parts IX and IX-A of the constitution, mainly to bring about a better definition of the scope of local government’s powers and responsibilities, as also their fiscal domain. These suggested amendments have not found unanimous support. Some have welcomed them as a natural process of evolution of local government. They justify that changes in the constitutional structure are required because fifteen years since the 73\(^{rd}\) and 74\(^{th}\) amendments have not seen the emergence of truly empowered local governments; the current structure leaves plenty of loopholes for the familiar foes of devolution, higher level politicians and bureaucrats, to indulge in the rhetoric of devolution while concealing their true intent of not empowering them under a welter of rules, regulations and schematic guidelines, if not outright violation of constitutional provisions. The no changers argue that considerable progress has indeed been achieved and that tinkering with the constitution might provide alibis for arresting this forward movement, rather than propelling reform faster.

An examination of contemporary accounts and discussions with those who piloted the 73\(^{rd}\) and 74\(^{th}\) amendments does not reveal any specific policy on the basis of which it was decided that we required two separate amendments for urban and rural local governments. It seems that the bulk of the attention was focused upon bringing in rural local governments through the Panchayats and the 74\(^{th}\) amendment and its predecessor, the 65\(^{th}\) amendment were afterthoughts; aiming to take advantage of the political interest in rural local government to slip through constitutional status to urban local governments too, along with socially empowering initiatives such as reservations for deprived communities and women. In all fairness though, while the comparative lack of discussion on the urban local government structure during the days leading up to the amendments might seem inexplicable today, it must be noted that perhaps those days, the rapid urbanization that we see today might have been unanticipated. The amendments preceded economic liberalization, which triggered the meteoric rise of the middle class, which in turn is the reason for the rapid increase in urbanization that we see today. The fact that urbanization would be upon us in a big way is the single biggest imperative for looking at a fresh approach to local governments. We need a robust local government system that will help us to cope with the challenge of India transiting from a largely rural to a substantially urban country, over the next twenty to twenty five years and this might necessitate constitutional changes.

\(^1\) The report of the Justice Venkatachalahlah Committee for amendments to the constitution & the report of the Second Administrative Reforms Commission
A good local government system has to conform to certain design parameters that create the right incentives for them to function in a responsible and accountable fashion. An important one is that they must be politically constructed to minimise, or at least disincentivise the possibility of destructive political rivalries between themselves and between them and political representatives of higher level governments. Second, they must have a clearly defined functional space which is their own, where higher level governments have little role to play. Third, they must have a clearly defined fiscal space, created first and foremost by giving them a meaningful tax base, sufficient tax assignments and if necessary tied fund transfers to handle specific shortcomings or responsibilities. Fourth, they must have the freedom to secure the capacity that they need, both institutional and for the people who run these governments, from either higher level governments or from other sources. Last, there must be in place good systems for people to hold their local governments to account; either directly, or through recourse to an independent agency empowered to intervene and direct local governments if required. It is only when these criteria are fulfilled would there be the right incentives for these to function as local governments. A local government that does not have to deal institutionally with political interference, which has clear functional space and matching fiscal resources, would have the incentive to seek the capacity they need to perform effectively. Citizens would also be more vigilant and seek good performance, particularly if they perceive that it is the taxes that they pay, which are being utilized for the delivery of expected services. Most important, a good local government framework requires compliance with all these criteria and not merely to a few convenient ones. Any deviation from these key principles would mean a distorted system of local government; indeed, a system that is not one of local government at all, but one of politically elected implementing agencies, which are inferior to and accountable more to tiers of higher level governments that provide their functional and financial lifelines, rather than to their local people.

Public finance theories that impact upon local government design have basically revolved around the question of the extent to which role separation between levels of government should be attempted. In one of the earliest papers on the matter\(^2\), the view expressed was that when local governments deliver different baskets of services to their people in return for the taxes that the latter pay, people will tend to exercise their preferences by choosing to live in those local governments that match best with their preferences of public goods. In other words, people will ‘vote with their feet’ and move to those local government jurisdictions that offer to them the best deal for the taxes they pay. This approach predicated for its operation a clear jurisdictional separation of local governments. It also implicitly distinguished between state and local public goods – defining the latter as those where the ‘preferred amount and type provided in a given locality depends upon the tastes and

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preferences of local residents\textsuperscript{3}. However, further theorists noticed that in practice, the ideal scale of provision of services in geographical terms more often than not, does not match political jurisdictions. They felt that there will invariably be spillover effects of local public goods, for the management of which other policy instruments would have to be devised\textsuperscript{4}. Most service delivery responsibilities have externalities, which often undergo constant change given the pressures upon natural resources and changing economies of scale, due to the advent of new technologies and management techniques. In a further development of this line of thought, there is one view that in case all externalities could be estimated and quantified accurately, then having a tiered government structure could be actually redundant. Recent years have also seen surging interest in cooperative federalism.

These theories on the functional separation between levels of government based upon (a) a distinction between local and state public goods (b) the need to manage externalities optimally, have an impact on both the need to have a local government system at all, as also the design of a hierarchy of local governments, with overlapping political, functional and fiscal jurisdictions. Having overlapping layers of local governments can be justified as a response to the difficulty in separating out expenditure and service delivery responsibilities with such precision so as to ensure that each local government has self contained responsibilities. Hierarchies of local governments might be considered necessary where there exist different levels of externalities to be dealt with. Thus what cannot be delivered by a village Panchayat may be entrusted to the Intermediate Panchayat and what cannot be delivered by the latter, to the District Panchayat.

While these are the theoretical underpinnings to the idea of role separation between layers of government, it is doubtful whether these matters were actually considered by various committees when suggesting the design of local governments. Without meaning to cite this as faulty, the approach of the Balwant Rai Mehta towards local government design has to be seen in the light of the priorities of the day, which was more in the direction of bringing about an element of participation into the community development programme. It was therefore designed around the organizational pattern of the community development programme, which typically looked at the district, as a historically well understood level of administrative organization and the village as the traditionally recognized level of grassroots level organization and sandwiched in between the new concept of the development block, as the level at which the development official effort would be coordinated and run. The Ashok Mehta Committee suggested the two tier system with a greater awareness of what constituted a local government, but to a large measure, both reports were more influenced by design patterns of line departments, rather than by the theories of public finance. Subliminally, the approach was to design local

\textsuperscript{3} Robin Boadway & Anwar Shah, Fiscal Federalism Principles and Practice of Multi order Governance Cambridge University Press 2009, p-69

\textsuperscript{4} The classic paper on this line of thought of matching functions to jurisdictions was written by Breton in 1965.
governments in the same manner as departments – the Gram Panchayat being the field office, the intermediate panchayat the block office and the district panchayat the district office. However, what was perhaps not realized was that these are elected bodies with each elected representative at each level, claiming to rightfully possess the mandate of the people. Hierarchical political structures existing cheek by jowl with overlapping jurisdictions, seems to be a recipe for conflict and discord, rather than fulfill the vision of functioning as a harmonious whole.

Given these fundamental weaknesses in the crucible of thought in which the Indian local government system was forged, it is no wonder that the functioning of the Indian local government system does not meet with these good design criteria. In almost all States, even after activity mapping exercises, there is considerable overlap between the functional responsibilities of the different levels of local government. This is further exacerbated by distortions in fiscal design. In no state are local governments given sufficient tax assignments or adequate fiscal transfers packaged with the right incentives, with which they can address their functional responsibilities. This is particularly true of the intermediate and district panchayats, which have either no tax base at all, or only a negligible one which is not worth the effort to pursue. Most fund transfers are tied down to specific schemes and purposes and local governments do not function as anything more than as agents of the State government. These agency arrangements are also most unfair. In most States, the local governments have no clue as to how much and when they should receive fund devolution. Worse still, they are bypassed by official channels that interfere in their functional space. In no State do local governments have the flexibility to secure the capacity they need and remain woefully dependent upon the State for their staff, training and development of physical infrastructure. Most local governments therefore spend most of their time negotiating with their principals; officers of higher level governments, rather than functioning as local governments. Closer examination of even the best of them, reveal that they are nothing but efficient and obedient agents of higher level governments, clearly in a position of subordination. Elected representatives to local governments come with the expectation of becoming respected elected representatives, who have both the autonomy and the resources to meet the needs of their people. However, faced with marginalization, they quickly begin to function more as intermediaries, using their positions as members of local governments to arbitrate between their people and higher level authorities who wield real power by collecting grievances, negotiating funding and supervising local contracting. In these circumstances, local governments have precious little collective vision, merely serving as fora where individual members can occasionally meet, when they are not individually pursuing the needs of their constituents.
The criteria for judging good local governance are themselves distorted; in the blinkered vision of their controllers, it is obedience and not independence, which is the behaviour desired. With no incentive to perform their core responsibilities, local governments are treated indifferently by the people, who quickly take no interest in institutions such as the gram sabha, designed to be a platform where they can hold their local governments to account. Some of this bad incentive structure can be attributed to distorted implementation of devolution. However, some of it is clearly due to design failure, in both the constitution as well as State laws for devolution.

Given these circumstances, the task force suggests that a new paradigm of local government design must emerge, which reduces the scope for these distortions. With these basic insights in mind, the task force offers its views on the TORs concerning the structure of local government. We have addressed the TORs not in the order in which they have been given to us, but in the order in which we perceive that logic demands they be considered.
TOR 4.6: Changes required to reduce clutter in the LG system and bringing about an organic linkage between different levels of LGs:

The Task Force believes that fifteen years after the 73rd and 74th constitutional amendments, the time is ripe to reorder the LG system to mitigate some of the inconsistencies that have been noticed in the current hierarchical design. We suggest that in the long term, we must endeavour to create a flatter structure of local government, which conforms in greater measure to objective design theory of local government and therefore, contains within it the right incentives for their responsible, effective and accountable functioning. The new pattern that we suggest is as follows:

(a) There ought to be only one level of local government, namely, a body in the nature of a municipality, by whatever name called. Each such body would have exclusive geographical jurisdiction, with a functional domain or sphere which operates on the principle of complementarity. This jurisdiction could be either urban, or rural, or a combination of both. It may be noticed that this approach has already been adopted for urban local governments. The Nagar Panchayats, Municipal councils and Municipal corporations are not arranged as a hierarchy, but are to deal with their exclusive jurisdictions. Therefore, the flattening of local governments to just one level would only be necessary for rural areas.

(b) While all municipalities, both urban and rural, would have a common set of functions, their sizes and scale could vary dramatically, from a metropolis such as Mumbai, to a tiny gram Panchayat in a sparsely populated hilly area. We suggest therefore that within the flat structure of local governments that we have suggested, these would be five categories of municipalities as follows:

(i) **Category A:** The national capital territory of Delhi,

(ii) **Category B:** The large metropolises of the country, namely, Mumbai, Kolkata, Chennai, Bangalore, Hyderabad, and perhaps, a few more fast growing cities whose status as me tropolises is imminent – such as Pune, Jaipur, Gurgaon, etc.
(iii) **Category C**: All district headquarter towns/cities

(iv) **Category D**: All Taluk, Tehsil or Block headquarters,

(v) **Category E**: All remaining Gram Panchayats.

(c) This categorized, but essentially flat structure where each entity operates on basically the same ground rules, would supplant the current separate urban and rural local government structure. In particular, it would do away with the hierarchical three tier structure in rural areas.

(d) While each of these bodies would be primarily a local civic body, the fiscal package for each category would differ, given their scales, their expenditure needs and their tax capacities. However, there would be scope for reclassification at periodic intervals as the size and scale of the local governments change. Thus with greater urbanization, municipalities could move up the ladder of categories when they reach certain agglomeration sizes, which could be defined.

(e) This approach would address the current cluttered design of local governments, by removing intermediate institutions such as the Intermediate and District Panchayats in rural areas, which do not have much original jurisdictions, but function more as channelising, pooling or management agencies of higher levels of government.

(f) The de-cluttering of the local government structure would enable a vastly simplified design of institutions, because certain levels would simply disappear. An example would be the attempts to undertake precise expenditure assignments between the three levels or rural governments through activity mapping. These have been virtually impossible to do with a large measure of clarity and overlaps of functions have been inevitable, because of how closely these levels are currently spaced. With only one level of LG, activity mapping would be much more simplified – it would consist only of separating the functions to three clearer categories, national, state and local and therefore, it would be more easily accepted and implemented.

Some of the attendant reforms that are required to enable the flat structure of LGs that we have suggested to function better, are as follows:

**The Gram Sabha:**

The Gram Sabha, which is the pivot of the PRI system has been pushed to a corner in some States. In urban areas, there is not equivalent institution for the direct participation of people in the affairs of the LG. According to Article 243B of the Constitution 73rd Amendment Act, 1992 (hereafter, the Act), gram sabha consists of all persons registered
as voters in the electoral roll relating to the village comprised within the area of the panchayat at the village level. Article 243G defines a village as one specified by the Governor by public notification to be a village for the purposes of the Act and includes a group of villages so specified. The gram sabha under Article 243A may exercise such powers and perform such functions at the village level as the Legislature of a State may, by law, provide.

While in some States, the gram sabha meetings take place in every village whenever the village panchayat consists of more than one village, in some other States only one composite gram sabha is convened for all the villages which constitute the gram panchayat. Unless we insist on each village having a gram sabha of its own, the purpose of accountability may not be served, especially when the village panchayat serves a population of say a few thousands. Secondly, by leaving the powers and functions of the gram sabha to be designed by the Legislature of the State, the Act has not really helped in empowering the gram sabhas so as to make them meaningful and effective. It may, therefore, be necessary to specifically provide that each village (or a ward, if the population of a village is large) shall have a gram sabha/ (or a ward sabha) which will meet at least twice a year, discuss and review all development problems/programmes of the village, select beneficiaries for all beneficiary-oriented programmes transferred to the PRIs, etc.

The second issue relates to the structure of the PRIs envisaged under the Act. While the district has been defined as a normal district in a State, the jurisdiction of village and intermediate levels has not been specifically defined in the Act. The question of adequate area for the basic unit of administration is quite complicated in any State, owing to unevenness in terms of economic resources, communication facilities, population density, level of social integration, civic commitments, etc. A uniform set of criteria cannot, therefore, apply throughout the country. It would, therefore, seem appropriate to leave the exact pattern of local governments below the district to the States/UTs. The Central Government can at best lay down the criteria for the guidance of the States,

The next issue relates to the concept of rotation in respect of the reserved seats. Article 243 D clearly directs that the reserved seats, both for SCs and STs as well as women shall be allotted by rotation to different constituencies in a panchayat. This has been interpreted to mean that such rotation should take place at the end of every five years. If this interpretation is given effect to, no SC, ST or women members will ever get the opportunity of occupying the same seat for a second term, as it is highly unlikely that these persons would be allowed to contest from the same constituency, when the reservation is removed. If we accept the theory that most of the SC/ST and women members do not have any
prior experience and will find it difficult to occupy positions of power in the initial period, it would be very difficult to support the idea that they should not continue in such positions, beyond one term. Since this provision of rotation applies to the chairpersons also, it is possible that the bureaucracy may take an upper hand in some places, as they are sure that the chairperson would not get re-elected. While the concept of rotation is commendable, it is also desirable to specifically prescribe the period for such rotation. This period should be long enough for the incumbent to get familiar with such positions and deliver the goods before completing that period and short enough to give all sections of the community a chance to get into positions of power at the local level.

Another issue which may not perhaps require a Constitutional amendment but at least an administrative order relates to the State Election Commission. We already have a Chief Electoral Officer who is responsible for conducting the election to the Parliament and the State Assemblies in every State. Whether these is any need for another State Election Commissioner to conduct the elections to the local bodies is a point worth looking at, especially in view of reducing administrative costs and also the need to ensure proper coordination between different elections held for different positions within the same area.

One other issue that merits our attention is the constitution of Nyaya Panchayats. The effectiveness of a social sanction, the widespread experience that truth surfaces locally without elaborate evidentiary procedures; the salutary effect of shortening the span between the crime and punishment, injury and redress; need to be utilized in any system of decentralized democratic administration. Nyaya Panchayats, therefore, came into existence in some States to secure speedy and inexpensive justice in civil and criminal matters of a relatively minor nature. Whether this should be extended to the entire country; if so, should they be kept as institutions parallel to the gram panchayats (as in Bihar) or should judicial powers be also vested in the existing gram panchayats themselves (as in Himachal Pradesh), or should we provide for some linkages between the nyaya panchayats and gram panchayats need to be debated in the context of a given State.
TOR 4.1: The steps required to ensure better implementation of devolution of powers as contemplated in the 73rd and 74th amendment, to enable effective LG functioning:

The constitutional pattern of functional transfer is contained in Article 243G & W, which gives leeway to the States to transfer powers and responsibilities to the Panchayats and Municipalities respectively, keeping in mind the need to ensure that they function as effective local governments. In furtherance of this provision, all States to which the provisions of Parts IX & IXA apply have enacted State Panchayati Raj and Municipality related Acts, which transfer functions, powers and responsibilities to LGs to a greater or a lesser degree. However, the precision with which these laws have done this, vary from State to State. Some of the important inconsistencies that have been noticed in the legislative transfer of functions to the Panchayats are as follows:

(a) **Imprecise transfer:** Several State laws have transferred powers to LGs as listed in a Schedule to the Act concerned. However, the schedule is often just a repetition of the Eleventh or Twelfth Schedules of the Constitution, which is left to be interpreted either widely or narrowly. The law therefore becomes a source of conflict between layers of government, rather than clarifying their responsibilities. In any case, no de-facto transfer of functions has taken place in the case of municipalities and the pre-1992 position persists.

(b) **Conditional transfer:** Some State laws contain widely stated and powerful provisions detailing the powers transferred to the Panchayats. However, buried in these provisions are contained conditional clauses, which enable the State, sometimes through a mere government notification or executive order, the withdrawal of powers and responsibilities conveyed through law. This approach is fundamentally flawed, as it makes a mockery of legislation backed devolution, by giving powers to the State to withdraw powers from LGs unilaterally and without giving notice.

(c) **Transfer of moralistic mandates:** Several Panchayati Raj legislations contain vague provisions under which the Panchayats are to ‘endeavour’ to undertake
a number of unfunded mandates. Panchayats are often given the responsibility to ‘promote’ some or the other kind of behaviour, with neither the resources nor the regulatory powers to force people to conform. This kind of moral purpose endowed upon a Panchayat, serves no purpose and detracts from its essential task of undertaking certain tangible services and to undertake local governance.

(d) **Continuing hold of parastatal agencies over local functions:** Parastatal agencies continue to play a major role in matters relating to urban planning, regulation of land use, water supply and sewerage, and slum improvement and upgrading, defeating, in a sense, the intent underlying the 12th Schedule.

(e) **Lack of legislative sanction for fiscal transfers to match functional transfers:** LG laws, while laying down their functional mandates typically do not enforce any obligations upon States to transfer funds to LGs with which they can perform their functions. Thus much of what LGs are to do remain on paper, because they have no wherewithal to act upon them. The State Finance Commissions, created to adjust the fiscal domain to the functional responsibilities have not measured up to the task, with the result that the dependency of municipalities on State transfers has risen since 1992, frustrating one of the key objectives of the 74th Constitutional amendment.

(f) **Compliance of other laws with LG legislation:** Articles 243N and 243ZF of the constitution speaks of the continuance of existing laws with respect to Panchayats and Urban Local Bodies respectively. They state that notwithstanding anything in the constitution, any provision of any law relating to LGs in force in a State immediately before the commencement of the Seventy-third & Seventy-fourth Amendment Acts, 1992, which is inconsistent with the provisions of Part IX & IX-A, shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from such commencement, whichever is earlier. In these Articles is implicit the premise that after one year of the coming into force of the 73rd Amendment, no provision of any law that relates to LGs can exist, which is in violation or contravention of the Panchayati Raj Act of the State concerned. In other words, the LG laws enacted under the provisions of Part IX of the Constitution would gain precedence over any provision of any law. It is thus clear that legislations empowering Panchayats with powers and responsibility have a special and predominant status. However,
in no State except Kerala has an exercise been conducted to amend other laws that impinge upon the functional transfer of powers to LGs so as to bring them into line with the LG legislations. Another blatant violation of the LG laws is the continuing practice of Ministries and Departments both at the Central and State levels to create through executive orders, implementation mechanisms that bypass LGs in violation of the provisions of State legislations that transfer powers to them. Such guidelines are, in our opinion, illegal.

Given these serious inconsistencies, the task force makes the following recommendations:

**Need for a framework law for LGs:**

The second administrative reforms commission recommended that the Centre brings out a framework law for local government utilizing the provisions of Article 252 of the Constitution. This article provides for Parliament to legislate for States in respect of any matter that it is not otherwise competent to legislate, if two or more of them consent. We agree with the Second Administrative Reforms Commission that a central framework law for local bodies would be desirable, to guide the States. Such a law could be formulated by putting out a draft that could be discussed with the States and then finalized as a consensual document. Essentially the Framework Law should contain precise provisions that transfer specific functions to LGs. It should also contain provisions for the manner of devolution of finances and functionaries to LGs. However, we feel that Article 252 might not be the most appropriate instrument for the centre to directly legislate upon this subject. At best, a model legislation may be prepared and circulated, which States may consider passing. It is quite unlikely that States can be persuaded to give their consent to Parliament to pass such a law, as it would then curb their flexibility to go in for a State specific law.

**Giving greater mandatory effect to the devolution of certain ‘core’ functions:**

Several committees have in the past, considered the fact that States continue to drag their feet on the devolution of powers to the Panchayats and ULBs and recommended that there has to be a greater compulsion of States to empower Panchayats and ULBs with such powers and responsibilities that are necessary to enable them to function as institutions of self-government. The Committee to suggest draft changes in the Constitution suggested that about 12 to 13 core functions be determined and mandatorily assigned to LGs through a constitutional amendment. The Second Administrative Reforms

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5 It is understood that the Ministry of Panchayati Raj has already prepared a framework PR law and placed it in the public domain.

6 The Justice Venkatachalaiah committee National Commission to Reviw the Working of the Constitution (NCTWC)
Commission suggested that Article 243G & 243W should be amended to make it mandatory that a Legislature of a State shall, by law, vest the LGs with such powers and authority as are necessary to enable them to function as institutions of self-government in respect of all functions which can be performed at the local level including the functions in respect of matters listed in the Eleventh Schedule and 12th Schedule. While we agree in principle with the views of the ARC, we suggest that such amendments ought to be taken up in tandem with the flattening of the structure to one level of LG as suggested by us. The uncluttering of the LG set up is necessary to bring about clarity in the functional space of LGs and thereby ease the path of the actual devolution of powers and functions to them.

Though the Constitution expects the State Legislature, by law, to endow the PRIs and ULBs with such powers and authority as may be necessary to enable them to function as institutions of self-government, the devolution of powers and functional strengthening of different tiers of the panchayati raj system is progressing at snail’s pace in most States. The dismal picture obtaining in most of the States leads us to the question whether the Act should have gone to the extent of drawing up a fourth list in the Seventh Schedule of the Constitution for district subjects, instead of simply outlining 29 matters in the Eleventh Schedule and 18 subjects in the 12th Schedule. The question of introducing a new subject under the caption “Governance for Development” in the concurrent list may also be considered for strengthening the development administration throughout the country.

**Undertaking mandatory activity mapping:**

Activity mapping is a process by which each function that may be given to LGs is deconstructed to its component activities and then devolved upon each LG in accordance with the principle of subsidiarity - that every activity has to be undertaken at the lowest level at which it can be, and no other. While the Ministry of Panchayati Raj has been proactively persuading States to undertake activity mapping on the basis of the report of a Task Force set up in 2001, its efforts have yielded very little fruit. While States that have shown a commitment to devolution have already undertaken them, others are merely engaging in a cosmetic pursuit and engaging in a dual pursuit of seemingly empowering LGs through activity mapping, while issuing departmental orders that take away these powers. Activity Mapping has also not encompassed any effort to bifurcate the State budget so as to state separately the fiscal transfers that go to LGs. This has meant that Activity Mapping has largely remained on paper. While such hypocrisy is unconscionable, there are also certain genuine difficulties associated with activity mapping. For instance, devolution of responsibilities relating to local service delivery in respect of those matters that have low externalities is relatively easier. However, unraveling and then assigning
tasks of economic development such as agriculture and industrial development to LGs is quite another matter. These aspects of development have intricate interconnections, which make it difficult to undertake a meaningful activity mapping exercise. We believe that activity mapping has to be undertaken, but would be a much easier exercise if there were only one level of LG to deal with. Moreover, once undertaken, activity mapping has to cover all aspects of devolution of functions, funds and functionaries and be given sanctity through legislation, so that it cannot be eroded at the whim of the State or the Centre. The Ministry of Urban Development has not undertaken such an exercise.
TOR 4.5: Streamlining institutional arrangements between parallel bodies & LGs;

One festering problem with no immediate solutions in sight, has been the proliferation and continuance of structures parallel to the LG system. Both the urban and rural governance landscape is pockmarked with Societies, Missions, Boards and Authorities that usurp their powers & responsibilities with little connection to the local governments. Most of these are set up as directed by the Central or State Governments to plan and/or execute development projects in areas which are in the functional domain of local governments, using funds provided by the State or Central Governments or donor funds. They are called parallel because they have a separate system of decision making on resource allocation and execution of projects which is independent and removed from the Panchayat Raj set up. These parallel bodies could have in them bureaucrats, elected representatives and, even, non-officials and community representatives. They have considerable autonomy, flexible procedures and function in isolation directly reporting to the State Government and some times to the Central Government. Parallel bodies can be classified into five broad categories as follows:

(a) **First Generation Organizations**, such as DRDAs, which evolved from early set-ups and is an expanded version of Small Farmers Development Agency and Marginal Farmers and Agricultural Labour Development Agencies set up in the mid 1970’s and their clones such as the Fish Farmers Development Agencies etc.,

(b) **Societies and Missions**, set up by in accordance with directions issued by several Central Ministries, in order to ensure non-diversion and non-lapsing of funds such as the NRHM district missions and SSA missions,

(c) **Project Management structures**, set up to implement externally assisted projects in areas like Water Supply, Irrigation, and Watershed Management etc.

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7Much of this part of the report has been taken from a Note for discussion on parallel Bodies prepared by Shri S.M. Vijayanand and T.R. Raghunandan, circulated at the 2nd Round Table of State Ministers of Panchayati Raj, August 2004. The Committee is grateful to Shri S.M. Vijayanand for his valuable views. Shri Raghunandan is a member of this Task Force.
(d) **Review Committees with or without formal executive functions, typically with the** District Collector as the head, with departmental officers as members. Though constituted with the primary function of review and monitoring, they are often used by Governments as executive bodies, with a large level of non-formal direction and control. A worse form is committees exercising vigilance control over PRI functions. These bodies can be created easily through Government Orders and once created, they tend to survive and create precedents for more such bodies.

(e) **Devolution Authorities, Housing Boards, and Water Supply and Swerage Boards, and Slum Improvements Boards** have been operating in a number of states. In several states, the Public Health Engagement Departments undertake the provision of services that are local in nature. These structures have marginalized local governments substantially, without being accountable to local populations.

User Group-Based Organizations, Community Based Organizations (CBOs) for water supply, irrigation etc., are not per se parallel bodies; they can exist as autonomous social groups so necessary for augmenting social capital and deepening democracy possessing absolute freedom of action with which they can challenge PRIs through public action. However, they could also be government-organised groups for implementation of specific programmes like water supply, irrigation, watershed management or poverty reduction often with donor-support. Such bodies, organized for specific purposes around the promise of a benefit and recipients of public development funds, have to be considered differently. They may acquire the character of a parallel structure if there is no conscious decision to structure their relationship with PRIs.

Parallel bodies might have been created with bonafide reasons in mind, such as to provide multi-disciplinary and supra departmental professional support with a flexible organizational system for quick decision making and easier procurement of goods and services, streamlined accounts management, enabling the direct receipt of funds from the GoI, to enable flexibility and for easier reporting. However, in the new legal context of the Constitutional amendments for LGs, there is a need for revisiting the raison d’être of these bodies. As the Constitution mandates that planning for economic development and social justice and implementation of such plans should be the responsibility of the PRIs/ULBs and as it further provides for transferring schemes in the functional domain of PRIs/ULBs to them, we believe that the parallel bodies have become redundant. As fully elected PRIs/ULBs are in place there is no need for semi-bureaucratic structures with partial role for non-officials. Even in their functioning, there is serious doubt whether parallel structures
have achieved the objectives for which they were set up. While in respect of securing non-diversion of funds they might have been effective. However, in planning and in ensuring transparency and participation the achievements are limited. Similarly the professional expertise has been limited to departmental expertise and there is not much difference between line departments and these agencies in this respect. Many of them also suffer from severe staff shortages and lack capacity to plan and implement.

The continuance of parallel bodies and the resort to such arrangements by central ministries, who persuade their departmental counterparts in States to go in for such arrangements often disregarding their own LG laws, is doing serious damage to the very idea and spirit of local government. Parallel bodies compete for political space and usurp the legitimate space of PRIs/ULBs. They contest the very rationale of PRIs/ULBs and question the conceptualization of PRIs/ULBs as institutions of local self-government. They challenge the idea of functional domain of PRIs/ULBs and mock at them through their superior resource endowments and visible patronage systems. They are bureaucratically controlled and propelled. And finally, several of the arguments quoted by proponents of parallel bodies, such as protection of funds from diversion have now weakened because such protection is easily achieved even through Panchayat Raj Institutions.

The Constitution envisages harmonization not only of laws but also of institutional mechanism with the Panchayat Raj System. Viewed in this sense such institutions have to be harmonized with the LG set up. They should be set up in consultation and with the collaboration of LGs at the appropriate level, with a clear examination of the legal implications a priori; whether they are in conformity with the law and the spirit of the constitution. We therefore suggest the following course of action.

Central Ministries to make their stand clear on continuance of parallel bodies, following a serious examination of their schematic guidelines:

There is no doubt that most of the important parallel structures draw their justification from central schematic guidelines. The District Rural Development Agencies (DRDAs), the National Rural Health Mission (NRHM) and Sarva Shiksha Abhiyan (SSA) societies are typical examples. Ministries might make the customary genuflection in their guidelines towards compliance to the LG system, but management, review and interactions with their State counterparts send out exactly the opposite message – that setting up these parallel structures are near compulsory. Quite often the need to have parallel structures is not overtly stated, but contained in the schematic small print, such as the rules and guidelines regarding fund transfers. Attention to these matters have been time and again drawn by several reform committees, but Ministries at the Government of India (GOI)
level have more often than not, chosen to ignore such suggestions. We believe that parallel bodies are a serious roadblock to the further growth of the LG structure. There is no option but for the GoI to drop this outdated and regressive idea and move forward. Half way solutions are undesirable at this juncture in the development of LGs. Winding up the parallel bodies does not really affect any legitimate interest; indeed if the transition is properly managed, it will accelerate the responsible and accountable growth of LGs. Each Ministry concerned should come out with clear, unequivocal and detailed directives regarding the merger of the parallel structures that they have mandated, with the appropriate LG level. While such directives are formulated, the following steps may be considered, in the interest of harmonious integration: In fact merger will add to the resources of PRIs and enlarge their sphere of action. Outright merger is perhaps the single most significant and effective decision which Government of India can take to strengthen PRIs.

A common set of accounting practices should be prescribed, which ensure that the accounts of the parallel structures are captured in the accounts of the LG concerned, so that it is subject to the same oversight as the LG accounts. These practices may be arrived at in consultation with the Ministries of Panchayati Raj and Urban Development and the Controller and Auditor General (CAG).

The professionals can be retained in the new set up also and special procedures can be designed to insulate fund management and provide flexible functioning.

The professional component of parallel bodies may be continued as Cells or Units within the appropriate local government, so that they can continue to carry out their professional roles including management of funds and reaching out to all implementing agencies, but under the overall supervision and control of the LG concerned.

While the course of action to be followed by a State Government would depend on the level of decentralization and its commitment to strengthening LGs, once the central stand on PRIs is made clear, the process of integration would be monitored State by State, with a greater focus to ensure that a State complies with its own legal framework concerning LGs.

The creation of CBOs to perform functions that fall within the legitimate duties of the PRIs should be eschewed. Creation of beneficiary groups cannot be a substitute for democratic decentralization. There is little hard evidence to show that such groups are free of all the evils that are supposed to bedevil PRIs, such as politics, sharing of spoils, corruption and elite capture. There are also serious questions about the sustainability of such groups. Thus the following institutional design should be avoided:
(a) State continuing to perform local government functions through CBOs.
(b) Line agencies by-passing elected PRIs and directly dealing with CBOs.
(c) CBOs utilizing funds and performing functions in the legitimate sphere of PRIs without their knowledge.
(d) CBOs having not even symbolic accountability to elected PRIs even when they are using public funds or utilizing the natural resources of the locality.
(e) CBOs being politically manipulated by the State Government, often to undermine the political legitimacy of PRIs.
(f) CBOs being nurtured as developmental substitutes of PRIs through generous infusion of funds even while starving the PRIs of resources.
(g) CBOs duplicating the work of PRIs and engaging in turf wars.

CBOs should be seen as the community wings of PRIs, as thematic or sectoral subsystems of PRIs and as the next step in democratic decentralization. CBOs can draw their powers and resources from PRIs, not in a relationship of subordination or agency-function but in a spirit of social contact. That is, the autonomy of CBOs would be well-protected even while being accountable to PRIs. Such an approach would strengthen both PRIs and CBOs and release synergies, paving the way for a symbiotic relationship.

In conclusion, we also believe that in case our suggestions regarding a flat local government structure with no jurisdictional overlaps is adopted, we will have in place a simpler structure of local government, given which the need for separate parallel systems would further diminish. In the urban areas, they could be made to serve as special purpose vehicles of local governments.
TOR 4.8: Mechanisms to resolve disputes between States and LGs;

It may be noted that our recommendation on designing a flatter structure of local governments, which are essentially civic in nature, would raise the question as to what would happen to the various administrative and local government structures at the district level. The district has been a long standing unit of administration and governance, which we have inherited from colonial times. At the district level, the District Collector, by whatever name called has also been recognized as ‘the head of the government at the district level, responsible for a diverse portfolio of functions ranging from delivery of essential services, land revenue administration, execution of rural development programmes, disaster management, maintenance of law and order and collection of excise and transport revenue. As such, virtually all the instruments of the State Government that operated at the local levels did so in conjunction with the Collector’s office either formally or informally’. The Administrative Reforms Commission (ARC) has observed that one view is that ‘with the empowerment of PRIs/ULBs in the districts, there is need to devise an environment in which the institution of District Collector gradually loses importance and ultimately recedes into a district level land revenue functionary, responsible to the local bodies. It has noted that ‘this view is based on the belief that the 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.’ However, it has also considered the counter view, which is, in its words, ‘that the office of the District Collector has risen to this level of importance and utility through many national and local crises and it should not be weakened. After considering these views, it has concluded that ‘though as per the new administrative and development environment, PRIs/ULBs are the third tier of government, they do not totally remove the Collector’s responsibility in matters of local development’, as there are several aspects of State activity at the district level, which would continue even after the full fruition of LGs. It has gone on to list these responsibilities and listed amongst them the task of being the CEO of a representative District Council, which is an institution that it has recommended in its 10th report, on local governance.

We are in broad agreement with the recommendations of the ARC on the need for a representative district council. However, the implications of its recommendation to have

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8 Second Administrative Reforms Commission, 15th report, page 60
the district collector as the CEO of the District Council need to be considered very carefully. We make our additional recommendations on those made by the ARC as follows:

**Need for a District Council:**

We support the suggestion of the ARC to establish a District Council. However, we believe that having direct constituency based elections to this body would again give rise to the possibility of inter tier competition and rivalry, born out of a desire by elected representatives at all levels to concentrate on constituency building rather than focusing on their primary responsibilities in the tier where they belong. We suggest that the District Council should consist of representatives of both the local governments in the District and the State, so that along with its other duties it can also function as a non partisan dispute redressal mechanism to resolve issues that may arise between the State and LGs of the District. One half of the District Council could consist of representatives of the State and the other of those who represent the LGs of the District, who are elected by an electoral college consisting of all elected representatives of the local governments in that district. Apart from these recommendations, we also agree with the recommendations of the ARC that the District Council would subsume within itself aspects of governance that currently span the jurisdictions of urban and rural local governments, including the functions of the district planning committee.

Regarding the continuance of the District Collector as the CEO of the district council, ‘till such institutions gain strength’, we believe that this open ended approach suggested by the ARC will not work. To place the Collector in charge as the CEO of the District Council for an indeterminate length of time, leaves no incentive for States to move towards establishing the district council as an independent and non partisan body. We therefore suggest that from its inception, the CEO of the district council should be a full time officer of sufficiently high stature, not less than that of the District Collector, with this sole responsibility of being the CEO.

**Dispute resolution mechanisms at the State level:**

Some States have established a State level council of the PRIs to deal with matters of coordination. However, these have not functioned well in practice. We suggest that such councils may be established with representation from both LGs and the State, but must be given a clear mandate, functions and appellate powers, so that it can function as a dispute resolution mechanism between the State and the Local governments.
TOR 4:10 Management of Mega – Metropolitan Cities

The Task Force has noted with satisfaction that the CCSR have identified “mega and metropolitan cities”, as a discrete subject for review and examination. Mega – and metropolitan cities have emerged in recent years as key players in the country’s socio-economic and political development, so much so that there is a growing perception that their economic weight is disproportionately higher than the demographic share in urban population. Many observers have taken pains to point out that effective and efficient management of such cities is a pre-requisite to achieving a 9 percent economic growth and reducing poverty in the country.

The Task Force notes that there are 35 metropolitan cities (Census 2001), i.e., cities with over 1 million population, three out of which have populations in excess of 10 million persons. The prognosis is that the numbers of such cities will rise to about 50 by the year 2011 and that such cities will comprise about 45-46 percent of the country’s total urban population. The Task Force has further noted that these cities are distinguished by the fact that these are amorphous spatial units comprising a central city, several smaller towns, villages along the transport corridors, without set boundaries or geographical extent.

Jordi Borja, a noted urban scholar observed that “metropolitan space is a space of variable geometry; we don’t know where it starts and where it ends, and even less, how it will be in 10 or 20 years. In this space of variable geometry, one is inclined to say that urbanization is happening without the city, where the urban entity as a dense and central force is being diluted. There are even people who get excited by the disintegration of the city’s boundaries despite the fact that we all know too well that this increases functional costs, that it fragments social life and makes governing the city very difficult.”

Such cities have other distinct features as well. One is their growing economic, social, cultural, and political dominance that they exert on the national and regional hinterlands. Several of them are globally important. They are powerful engines of growth, in many cases more powerful than the state economies. A second feature, observed almost ubiquitously, is that they are fragmented politically and administratively and are marked by an absence of a unified structure. The main challenge is how developments in the

megacities can be effectively managed and governed, in ways that they continue to remain economically and socially productive and sustainable. As Janice Perlman observes: “Only recently have cities of this size been conceptualized as a distinct phenomenon deserving special consideration because of the unique characteristics posed by their size, the impacts on their habitations, and the economic problem they present of management. As a result, the world has little systematic, as opposed to anecdotal, knowledge and experience to draw upon. Particularly in the case of megacities in the developing world, no precedent exists for feeding, sheltering, or transporting so many people, nor for removing their waste products or providing clean water”\textsuperscript{10}.

The Task Force has briefly reviewed the observations and recommendations of the earlier Committees and Commission on metropolitan cities. The National Commission on Urbanisation (1988) suggested that these cities (27 in number which also included the state capitals) should, for reasons of the economic momentum they generate, be called \textbf{National Priority Cities}, and observed that the central government should have a role in their growth and development\textsuperscript{11}. However, it was the Constitution (Seventy-fourth) Amendment Act, 1992, which firstly, defined the term “metropolitan area” – which incidentally has no formal recognition in the Census of India operations, and secondly, proposed the establishment of Metropolitan Planning Committees (MPCs). According to the Amendment Act, a metropolitan area means “an area having a population of 10 lakhs or more, comprised in one or more districts and consisting of two or more municipalities or Panchayats or other contiguous areas, specified by the Governor by public notification to be Metropolitan Area for the purposes of this Part”. The Amendment envisages that the MPC, to be constituted in every Metropolitan area, will prepare a draft development plan having regard to

1. the plans prepared by the Municipalities and the Panchayats in the Metropolitan area;
2. matters of common interest between the Municipalities and the Panchayats, including co-ordinated spatial planning to the area, sharing of water and other physical and natural resources, the integrated development of infrastructure and environmental conservation;
3. the overall objectives and priorities set by the Government of India and the Government of the State;
4. the extent and nature of investments likely to be made in the Metropolitan area by agencies of the Government of India and the Government of the State and other available resources whether financial or otherwise;


An extremely important ingredient of the provisions relating to MPC is that such Committees shall have the representation *inter-alia* of the Government of India, which recognizes both the crucial role of such cities in the national economy as well as the role of the Government of India in advancing such a role. The Amendment also provides that the draft development plan to be prepared by the MPC shall here regard to the extent and nature of investments likely to be made in the Metropolitan Area by agencies of the Government of India, among others.

The Administrative Reforms Commission recommended that for all “Metropolitan Corporations” which may be defined as cities with a population exceeding 5 million, MPCs may be constituted with the Chief Minister as the Chairperson in order to give the required impetus to the process of planning for such urban agglomerations (231).

The Task Force has considered the observations and recommendations of these Committees and implications thereof for the Centre-State Relations. It is evident to the Task Force that-

(i) metropolitan governments are a special type of local government. In order to determine who exercises power in a metropolitan city, one needs to “look outside the framework of municipal politics”;

(ii) the way metropolitan areas are governed is of critical importance to the performance of the national economy;

(iii) as metropolitan cities leapfrog the administrative borders, the management becomes complex and as a corollary, demand for a sophisticated coordination machinery becomes stronger; and

(iv) these cities require frameworks and structures that can manage both internal transformation and the impact of global forces

The Task Force has also had an opportunity of reviewing the alternative governance structures for metropolitan areas. There are several dominant types, such as -

(i) quasi-autonomous local governments, constituting the metropolitan cities, drawing their powers directly from the state-level statutes, and exercising these powers as defined in the statutes. This arrangement has serious problem of coordination.

(ii) a mixed system of metropolitan governance where power and responsibilities are shared between the local governments, state governments, and numerous state and city-level parastatal organisations. They also are seriously deficient
in terms of managing and governing cities and often provoke the question: who is in-charge of the city? Such governance structure have serious accountability problems.

The two other types are (i) a unified structure where powers and responsibilities are consolidated within a single authority, and (ii) a two-tier metropolitan structure where higher order functions are performed by a senior-level government and lower-order by the local bodies. Both of these are said to have economies and accountability. The latter, however, carries risks in a multi-party political system.

The Task Force considers it important to reinforce the need for the establishment of MPC as envisaged in the 1992 Amendment, combined with either a unified structure, or a two-tier metropolitan government. The Task Force envisages that such governments with at least the functions enumerated in the 12th Schedule and appropriately served by the State Finance Commissions and the Central Finance Commission as constituted under Article [280(3)(c)] will enhance the political and economic roles of metropolitan cities in the country.
TOR 4.11: Strengthening of decentralized governance in Schedule V & VI areas;

The Sixth Schedule of the Constitution is aimed at protecting tribal areas and interests, by constitutionally mandating district or regional local self government institutions entrusted with the twin task of protecting tribal culture and customs and undertaking local development. The Sixth Schedule, confer on paper wide powers regarding the preservation of tribal customs, regulation of activities in tribal areas, execution of development activities and judicial powers to District councils in Tribal areas, which are more than that given to the equivalent institution of the District Panchayat in areas covered by Part IX of the Constitution. However, the actual ground situation varies from State to State. Moreover, there are variations seen even within the Sixth Schedule areas, due to historical circumstances. Many of the powers given to the autonomous councils have emerged through various Memoranda of Settlement and negotiations. The unevenness of the Sixth schedule in devolving functions to various bodies has resulted in further demands for autonomy and district council - like demands being conceded even in areas that are covered under Part IX of the Constitution through State laws, thus leading to clashes with the Panchayati Raj system that is mandated for these areas. In these circumstances, an even approach under the Sixth Schedule would go a long way in ensuring that there is harmony. The Committee feels that the minimum extent of powers given to a District Council ought to be at least that enunciated in the Eleventh Schedule of the Constitution, which can be considered as an indicative list in this case also.

The Task Force endorses the suggestions made in the report of the ARC and by the Expert Committee on Grassroot Level Planning in areas not covered by Parts IX & IX-A of the Constitution and highlights the following specific points:

(a) Harmonising traditional and contemporary institutions:

The feeling that Autonomous Councils do not have a role in development needs to be given up. It must be accepted that the constitutional pattern envisage that they have a development role, along with their undisputed responsibility to pass laws, establish and administer justice through local courts and undertake a few regulatory functions. However,
in order to strengthen the case for Autonomous Council to act as local governments responsible for a wide range of development functions, their structure needs to become more inclusive. These systems have often excluded the participation of women and youth from local governance. With increasing aspirations emerging from women and youth, demands for giving them a formal space in local self-government need to be given adequate attention. The approach adopted in respect of Fifth Schedule areas, where tribal customs and traditions have been given their pride of place, but is harmonised with new approaches such as democratic elections based on adult franchise and reservations have been provided for women in elected seats and leadership positions, should be considered.

(b) Adopting the reforms recommended in general for strengthening of local governments:

Sixth Schedule areas should also adopt the basic reforms that underlie any good system of local self-government. These include activity mapping based on subsidiarity, mechanisms for engaging all stakeholders, devolution of adequate untied funds and streamlining of schemes, assignment of significant revenue raising powers improving internal management and databases, putting in place well laid out systems for maintenance of accounts and accountability for use of funds, performance, outputs and outcomes, streamlining fund flows to the councils and improving their capacities for local management.

(c) Need for village level bodies:

While the Sixth Schedule, makes a provision for village councils to be established by District or Regional Councils, this practice has not been resorted to uniformly. There is a need to have democratically chosen Village Development Committee or Board, consisting of about ten to twenty members formed at the habitation level through open meeting of the community with adequate representation of women and youth to undertake local governance, participative planning and natural resources management, in tune with local customs and practices.

(d) There is a need for State Finance Commissions to recommend local body grants to Autonomous Councils, in the same manner as applicable to LGs.

(e) Need to remove overlaps in functional responsibilities between the States and the District councils:

The separation of functional responsibilities between State and Autonomous Councils is not complete in spite of the mandate of the 6th Schedule. There is an urgent need to
clearly delineate departmental functions and responsibilities so that development projects are effectively implemented. This will also mean that parallel institutions should be wound up or merged with the Councils, in respect of transferred departments, within an agreed time frame.

(f) Clarifying the role of the Governor in respect of Sixth Schedule areas:
The Governor is very special in the context of District and Regional Councils. There is a need for them to be proactive as custodians of tribal autonomy. In this direction, it is advisable that the Governor himself leads a high-level Review Committee of State Government and District Councils in these States to periodically review the functioning of these bodies, any problems that arise in the day to day implementation, maintain oversight on the faithful implementation of the provisions of the Sixth Schedule, make appropriate suggestions and give advice and to report to the Union Government from time to time. He can also appoint a Commission to inquire into the administration of autonomous districts and autonomous regions and to examine and report on any matter specified by him, under the provisions of Para 14 of the Sixth Schedule.

Strengthening of local governance in Schedule V areas:
Panchayats (Extension to the Scheduled Areas) Act (PESA) enjoins upon the State the obligation to consult tribal communities and their elected representatives in evolving criteria for the constitution of Village Panchayats and Gram Sabhas in the Fifth Schedule Areas and to ensure that tribal communities, on the basis of ethnic identities, are constituted into different Gram Sabhas even within a Gram Panchayat area. Under PESA, the Gram Sabhas have special powers, namely, to identify beneficiaries of plans, programmes and projects undertaken for economic development and social justice, grant approval to plans, programmes and projects for local development formulated by Village Panchayats and to authorize the issue of Certificates of Utilization of Funds for plans, programmes and projects undertaken by Village Panchayats. PESA also obliges State Governments to vest in Gram Sabhas and Panchayats in Fifth Schedule areas powers to safeguard community ownership of land and its resources and thus ensure that tribal land is not alienated, that they are necessarily consulted before any land is acquired for any purpose, that their right to ownership of Minor Forest Produce (MFP) is assured; that they can plan and manage minor water-bodies and control and regulate how minor minerals are extracted, used and marketed. With respect to the elections to Chairpersons of Panchayats in Schedule V areas, PESA mandates that all posts would be reserved for persons belonging to the Scheduled Tribes.

The critical issue in the implementation of PESA is to harmonise the provisions of other legislation, both State and Central, so as to ensure that they are in conformity with PESA
provisions. While all States have enacted requisite compliance legislations by amending the respective Panchayati Raj Acts, certain gaps continue to exist. Most states are also yet to amend the subject laws, such as those relating to money lending, forest, excise etc. Vital issues like the ownership of minor forest produce, planning and management of minor water bodies, prevention of alienation of tribal lands etc., which have been duly recognized in PESA as the traditional rights of tribals living in the Scheduled Areas have still not received the warranted attention and the necessary correctives remain unapplied. There are also issues relating to powers statutorily devolved upon the Gram Sabha and the Panchayats, not being matched by concomitant transfer of funds and functionaries resulting in the provisions of the law largely remaining on paper.

A lot of ground has been covered by the Ministry of Panchayati Raj in terms of bringing about harmonization of central and State laws with the provisions of PESA, by entrusting a study in this directions to the Indian Law Institute. The Ministry has also prepared Model Guidelines to vest Gram Sabhas with Powers, Land Alienation, Displacement, Rehabilitation & Resettlement and Minor Forest Produce in consultations with PESA States. However, these recommendations need to be followed up by States and amendments carried out to various subject matter laws and make necessary changes in the rules, schematic guidelines and relevant State policies so as to enable the implementation of PESA in letter and spirit.

A similar exercise will need to be carried out at the central level and the Mines and Minerals Development and Regulation Act 1957, the Indian Forest Act 1927, the Forest Conservation Act 1980 and the Indian Registration Act 1908 and other Central acts examined, with a view to harmonise their provisions with PESA.

A similar process of examination of Centrally Sponsored Scheme (CSS) guidelines from the PESA angle is necessary, to ensure that planning, beneficiary selection and authorization of the issue of utilization certificates comply with the provisions of PESA.

The Planning Commission may monitor compliance with the provisions of PESA during State plan discussions.
Part 2: Strengthening finances of and decentralized planning by LGs:

TOR 4.2: Giving greater autonomy to LGs for levying taxes, duties, tolls, fees etc., to strengthen their own sources of revenue & effective implementation of Securities and Futures Commission (SFC) recommendations;

The experience of many states, especially in North India, has been of the gradual erosion in the financial independence of local bodies, especially urban local bodies. In the not too distant past the urban bodies were not as heavily dependent on grants from the state government as they are today for meeting their routine expenses, including salary of staff. If we take Uttar Pradesh as an example, three parallel developments have gradually sapped the autonomy of both urban and rural local bodies to such an extent that today they have become virtual extensions of state government.

- Many important functions of urban local bodies were gradually transferred to government departments, boards or parastatal organizations. Primary schools being run by municipalities and district boards were transferred to the Basic Education Board (Basic Shiksha Parishad) set up by the state government under the education department. Responsibility for water supply was transferred to two organizations: the Jal Nigam, for construction and a few regional or city-based Jal Sansthans for operation and maintenance of water supply. This dual responsibility has resulted in inevitable problems of lack of coordination and passing the buck. Water supply, it needs to be pointed out, has not been transferred to the Jal Sansthan in all urban areas in Uttar Pradesh. In many urban areas of Uttar Pradesh municipalities continue to perform this function; but in Uttarakhand the transfer is complete, where after the formation of the state, instead of the two Jal Sansthans for Kumaon and Garhwal there is now only one Uttarakhand Jal Sansthan for the entire state. Interestingly, in Hardwar the municipality was responsible for water supply before it was included in Uttarakhand, but now the Uttarakhand Jal Sansthan has taken over this function. Electricity supply was either a municipal function or controlled by private power utilities till the State Electricity Boards took over this responsibility not only in U.P. but all over the country. With the setting up of
development authorities, local bodies have also lost the power of sanctioning building plans. This has also resulted in loss of revenue. Local bodies also lost many sources of revenue, some of them rather flexible, but they have not been adequately compensated, despite being promised compensation by the state government. The maximum revenue loss occurred due to the abolition of octroi, so necessary in the interests of smooth movement of goods across the country. Some municipalities in the mountains also earned substantial revenue through tolls on passengers. This too was abolished by the state government without adequate compensation. Today urban local bodies have been reduced to being providers of sanitation, drainage and street lights. Not only did they lose functions, but in the process all properties associated with these functions e.g. schools, water supply infrastructure, power houses and sub-stations etc. were also transferred to the relevant government agencies without any compensation being paid to the local bodies. The local bodies, thus have become heavily dependent on the government for funds.

A second development that has sapped the autonomy of local bodies has been the provincialization of many services. As a result all senior appointments like Executive Officer belong to provincial cadres controlled by the government which routinely transfers these officers without reference to the local body.

Thirdly the grant of state government salaries to local bodies staff has also brought them under the control of the state government. The reason is that all expenditure on salaries and allowances now has to be approved by the government. In effect this means that the local bodies cannot appoint any staff without the concurrence of the state government. The complaint is frequently voiced that getting approval of the government for appointment of any staff is a time-consuming process.

The situation of panchayats is even worse. The zila panchayat of today has evolved from the district board established by the British in the erstwhile United Provinces early in the last century. District boards of Nainital, Almora, Pauri and Dehradun came into existence between 1918 and 1923. Their functions included running schools, dispensaries, veterinary clinics, and cattle pounds, maintenance of rural roads, administering rural markets and vendors through licensing, fees, tolls and fines, organizing fairs, festivals etc. and executing leases for ferries and shops. They owned considerable land and had their own staff to discharge their numerous functions. They were given powers to impose and collect taxes, especially circumstances and property (C&P) tax and fees, tolls and fines. These remain the main sources of own income of a zila panchayat even today.
Over the years, as the government expanded its role, many functions that in the past had been performed by the district board and zila parishad were taken over by the state government. Zila parishads ceased to run schools and dispensaries, which were taken over by the education and health departments of the state government. Simultaneously, the financial position of the zila parishads also became weaker. As a result, the maintenance and upkeep of assets like rural roads, dak bungalows etc. suffered. On the other hand, the expenditure of zila parishads on salaries and allowances of their staff went up because the state government prescribed salary scales and allowances payable to the staff at par with the state government employees. Thus, the zila parishads became a pale shadow of their former selves in terms of functions and status, and came to be heavily dependent on grants from the state government. Their problems were compounded by the fact that they remained superseded for years at a stretch and were placed under the administrative control of the district administration. Thereby, they lost whatever little autonomy they might have enjoyed in the past.

The situation is no different in respect of the financial powers of the zila panchayats. They have only limited powers of levying taxes, tolls and fees. These powers have not been enhanced since the days of the erstwhile district board. The only tax leviable by them is the circumstances and property (C&P) tax, which is a somewhat archaic tax imposed on those rural residents who have some means. In practice, however, it is being levied only on shops, restaurants, industries and commercial establishments, and is subject to a maximum rate of 3 per cent and maximum amount of Rs 15,000. The definition of “circumstances” is quite arbitrary and in practice is equated with income.

The kshetra panchayats, which are the intermediate level in the three-tier panchayat structure, seem to be in an anomalous situation. Their boundaries are co-terminus with those of development blocks. Although they have been in existence for almost twenty-five years, there is, as yet, little clarity about their role and functions within the three-tier panchayati raj system. They have neither been assigned any independent functions nor sources of revenue, nor do they have any employees, office premises, or money for office expenses. They are dependent on the development blocks for all these facilities. The U.P. Zila Panchayat and Kshetra Panchayat Act, 1961 assigns them almost the same functions as the zila panchayat (and which, incidentally, are also very similar to those assigned to the gram panchayats by the U.P. Panchayat Raj Act, 1947). There is no clear demarcation of functions between kshetra panchayat and zila panchayat on the one hand and kshetra panchayat and gram panchayat on the other, creating unnecessary and avoidable confusion. Theoretically, the act gives KPs the power to levy water and electricity tax. In reality this power is meaningless because it is conditional on their providing these services, which
are the exclusive responsibility of centralized state agencies. The kshetra panchayats have been given the power to levy the same fees and tolls as the zila panchayats. In actual practice this implies that once the latter collect the fees and tolls, there is no scope for the former to impose levy on the same establishment. Thus, for all practical purposes, the kshetra panchayats end up with no real source of income. In this way, they seem to have become merely an extension, and that too a subordinate one, of the block machinery. Their only function is an agency function for implementing anti-poverty and rural development programmes.

Village level panchayats, as formal state-sponsored institutions, have been existing in the state in some form or the other since 1920 when the United Provinces Village Panchayat Act was passed to “assist in the administration of civil and criminal justice in the rural areas and also to effect improvement in the sanitation and other common concerns of the villagers.” The U.P. Panchayat Raj Act, 1947, replaced the earlier Act.

Despite the fact that village panchayats in the state have a long history, they continue to be weak institutions and lack sufficient power and financial resources. As a result, they are dependent on the state government for both direction and finances and suffer from the twin malady of weak finances and weak administrative support. They have only limited financial powers, and they are not exercising even these. Section 37 of the U.P. Panchayat Raj Act makes it mandatory for every gram panchayat to impose a surcharge (ranging from 25 to 50 paisa in the rupee) on land revenue. In actual practice very few gram panchayats are collecting this tax.

The cumulative impact of these developments has been that both the rural and urban local bodies have been behaving like subordinate offices of the state government. They have lost the capacity for independent decision-making and seem to look up to the state government to give directives on important matters. Most importantly they show little inclination to levy new taxes, duties, fees or tolls or revise rates of existing ones. On all these matters they are happy to pass the buck to the state government and follow its directions.

It is true that without adequate revenue-raising powers through levy of taxes, duties, tolls, fees etc. the autonomy of local bodies is incomplete, and they cannot be considered institutions of local self-government in the true sense of the term. At the same time there should also be willingness on the part of these bodies to exercise the powers available to them. For this, it is necessary that the stranglehold of the government over them is loosened. Inevitably this may be a slow process, but a beginning has to be made.
To begin with it should be mandatory for village panchayats to levy property tax suitably calibrated according to the income levels/paying capacity of the residents based perhaps on the kind of dwelling occupied (katcha, pucca, material used, number of rooms, floor area, amenities e.g. water connection, toilet etc. available). This is being suggested keeping in mind that a village panchayat, like an urban local body, is basically a civic body whose primary duty should be to provide basic civic amenities: sanitation, drainage, paved pathways, street lights and drinking water to its residents. Development should be a second order function. This formulation is based on the argument that people either live in a village or in a town/city. Hence it is the responsibility of the basic unit of residence to provide for civic services. In order to meet the expenditure on these services property tax is the universal source of revenue for civic bodies. Apart from considerations of equity, property tax also gives the residents a stake in the activities of the civic body and also helps in enforcing accountability. Property tax is in force at the village level in many states.

The second and third tier of panchayats has a jurisdiction extending over a considerably large area. Hence they cannot be considered equivalent to civic bodies. Unless their jurisdictions and functions are clearly demarcated there is a danger of overlapping and confusion as has happened in Uttar Pradesh and Uttarakhand. Based on the example of District Boards in Uttar Pradesh it is being suggested that in order to make these tiers financially independent they should be given the power to levy some form of profession tax. Power to tax is a necessary corollary of representation and self-governance. It is the reverse of the principle “No taxation without representation”.

The key to effective performance by local governments lies in the devolution of adequate untied funds to them, so that they can perform their assigned public services. The main sources of untied funds to them are:

(a) Tax and non-tax revenues raised from the sources assigned to them and
(b) Block unconditional transfers provided by the State and Central governments by way of share in taxes or through block grants.

A critical factor necessary for strengthening local governments is to enable and empower them to enhance their own revenues. Requiring local governments to mobilise their own revenues strengthens the link between their revenue and expenditure decisions, which is extremely important to promote both efficiency and accountability in the provision of services by them.

For ensuring effective revenue mobilization by local governments, there is a need to re-
orient the legal and policy regime with a view to giving them more tax handles to widen their revenue base, as also ensure that the taxation powers currently given are effectively operationalised. Meeting the challenge of accelerating revenue mobilization by local governments will require effective and close coordination between the local governments, the State government and the Union Ministry of Panchayati Raj and Ministry of Urban Development. There is a need to address and reiterate the roles and responsibilities of the local governments, the State Governments and the Central Government, with a view to articulating Action Points, which will strengthen and enhance revenue mobilization by Panchayats and ULBs.

The following Action Points recommended by a National Seminar organized by National Institute of Public Finance and Policy (NIPFP) in 2007 on raising local resources by local governments in 2007 deserve serious consideration:

**Responsibilities of the State Government:**

**Data collection in respect of own revenues:**

(a) At present, there is inadequate data available on tax collection by local governments. State Governments should take steps to prepare detailed demand collection and balance statistics in respect of tax and non tax revenues, separately for local governments through the permanent SFC cell mandated to be constituted by the 12th Finance Commission.

(b) The information system organized for tax administration in respect of local government revenues should be a part of the general statistical information system relied upon for designing the planning and delivery of services at their levels. The information system should be progressively compiled on a Geographical Information System (GIS) platform using initially, each District as a unit. Such data would be uploaded on the National Panchayat Portal and regularly published.

(c) States should prepare a compendium of the legal provisions and executive orders issued by the State Government in respect of the administration of taxes by local governments. This compendium would be made available to all local governments across the State. The Compendium would be updated every year on 1st January and would contain details of incentivisation programmes, recommendations of the State Finance Commissions and of any innovations in this regard.
Analysis of data on own revenues:

(a) There are instances of good practices emerging where Panchayats on their own have improved the collection of taxes and non tax revenues through innovative measures. It is important to understand these practices to evolve incentive structures aimed at promoting tax collection. States should further analyse the data collected in order to identify broad trends among local governments, and identify champions among them who have demonstrated good performance.

(b) States should identify local government leaders who have created an enabling environment for taxation, who can be used as roving consultants to help design village level local government specific solutions and promote the idea of tax collection by these bodies.

Assignment of tax and non tax revenue powers to Local Governments:

(a) State Governments should assist the State Finance Commissions to lead policy work in respect of exploring the appropriate tax and non-tax revenue assignments to the local governments as well as ways and means of administering and enforcing them to achieve a greater linkage between revenue raising and spending decisions at the local level.

(b) An examination of the various taxes levied by panchayats across States reveals that there are as many as 66 different types of taxes, user fees and charges. Most of these levies are listed in the Panchayati Raj Legislation and Rules. States should undertake to rationalise the list of taxes that may be levied, to improve efficient administration.

(c) State Governments, while undertaking the assignment of tax revenues to local governments, should ensure that each level of local government is given a basket of at least one or two important tax handles.

(d) Following the introduction of full fledged Value Added Tax (VAT) at the state level States may examine the feasibility of earmarking a stipulated percentage of levy on the VAT turnover at the last point at which a registered dealer sells the commodity to the non-registered dealer or consumers, which could by assigned to lower levels of local government.

Promoting tax and non tax collection by Local Governments:

(a) Pending reform in the tax assignment system, significant gains can be made
by concentrating on persuading local governments particularly at the village level to undertake systematic and timely assessments, to survey fully the tax base and to enforce tax collection. States should undertake a campaign mode approach on improving tax collection based on the existing legal regimes in various states and overcome the large slack in revenue collection.

(b) States should re-examine the current rates of taxation previously fixed and consider an upward revision, keeping in mind current circumstances. In this respect, States should endeavour to remove maximum limits fixed on tax and all conditionalities that hamper or restrict the powers of local governments to tax.

(c) There is an imperative need to strengthen the capacity of village level local governments to levy and administer property tax. Experience has shown that area based property taxation would be appropriate, varying with the location of the property, floor area and the type of construction. State government may work towards implementing a guided value system on a block-wise basis, making it easy for local governments to apply these guidelines in a simple and transparent manner.

(d) States should take steps to focus on improving the collection efficiency in respect of water charges for the provision of drinking water, with a view to achieving the recommendation of the Twelfth Finance Commission, that is recovery of 50 per cent of the maintenance costs by way of user charges. Where the task of supply of drinking water has not yet been devolved to local governments and separate specialised agencies undertake water supply, village level local governments should be assigned the role of collection agents for which they would be adequately compensated at predetermined rates. Similar intermediation may also be considered in respect of electricity bills.

Capacity Building of Local Governments in Tax Administration:

(a) States may take steps to strengthen the administrative and enforcement capacity of local governments to collect revenues through frequent training of tax collectors to determine and collect tax demands in accordance with rules and regulations. If one collector for each village body is not viable, a tax collector can be assigned to multiple villages with appropriate specification of responsibility.

(b) State Governments should ensure that their training programmes for local
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government elected representatives and officials contain well structured modules on administration and collection of taxes and non-tax revenues by local governments.

Incentives for Collection of Tax and non-Tax revenues:

(a) There is room for tax efforts incentives in States. States could consider incentivising tax effort by village level local governments by reworking the formulae for distribution of revenue from the State, adjusting for the revenue capacity of the local governments, estimated on the basis of a simple indicator such as the number of pucca structures,

(b) States may also promote village level local governments to collect revenues, by providing bonus payments at specified pre-announced rates to those that have demonstrated exemplary collection performance. Such incentive system for enhanced collections may be built around a framework, under which local governments would be grouped according to their tax potential into clearly identifiable categories and rewards through increased grants would be given to those who exceed the target.

(c) The incentive package may also contain a set of disincentives, such as mandating that local governments publish lists of defaulters and ensuring that all elected members set an example by paying their taxes.

Responsibilities of the Ministry of Panchayati Raj:

The Ministry of Panchayati Raj shall assist States to design local solutions, which could encompass suggesting legislative changes, draft model executive orders, design training programmes and develop local software solutions for tax management. This would be undertaken primarily by networking with those who have championed such approaches at State levels.

The Ministry of Panchayati Raj shall undertake analysis of State to state trends to identify initiatives and drives in respect of enhancing revenue collection by local governments. This would also include a compendium of good practices on local taxation, which would be widely disseminated to all States.

The Ministry of Panchayati Raj shall conduct experience sharing workshops on local taxation on a half-yearly basis. Local government leaders from various States would also be invited to share their experience in these workshops. In particular, the Ministry of Panchayati Raj shall compile details of good practices and incentives mechanisms
developed by States and recommend them for application to other States.

The Ministry of Panchayati Raj shall support policy studies on local taxation, particularly in two directions, first, to ascertain taxation capacity and second, to design incentive packages.

The State Finance Commissions have been making suggestions for strengthening the revenues of local bodies. Unfortunately, only those parts of their recommendations which deal with financial devolution are being implemented. Their suggestions for strengthening local bodies in terms of funds, functions and functionaries do not seem to be attracting much interest. The action taken reports presented to the state legislature also seem to follow a routine pattern and the legislatures also have not shown much interest in subjecting them to close scrutiny. The Task Force suggests that a permanent cell may be set up in the state government at an appropriate place (Finance Department) for monitoring implementation of the recommendations of the State Finance commission and a Standing Committee on local government in the state legislature for the same purpose. The two should work in tandem. Hopefully this will ensure better discussion and compliance of the recommendations of the State finance Commissions.
TOR 4.3: Making scheme guidelines flexible to allow scope for variations & innovations by LGs;

The Constitution provides that Schemes for economic development and social justice may be entrusted to the local governments for implementation. Though this is only one of the methods by which LGs are to receive finances, the ground reality is that LGs are predominantly engaged in implementation of agency functions of implementing schemes, rather than undertaking local governance. CSSs have been part of the fiscal transfer landscape of India for the past few decades. As of 2009-10, the total number of CSSs nearly touch 100 and totaling to an allocation of nearly Rs. 100,000 crore. The CSS system has been criticized for several design faults, which are their accent on expenditure milestones, paucity of information on physical outcomes, absence of penal provisions, lax accounting and auditing practices, considerable discretion in allocation criteria and a poor monitoring system coupled with limited remedial action. In addition, several of them are plagued by rigid conditionalities and a lack of a consistent approach to institutional structures. The latter is particularly harmful. Several CSSs have adopted institutional mechanisms that reveal no consistent pattern even within the same ministry, regarding assignment of functions and responsibilities. This happens because most of them are designed in isolation to deal with the priority involved resulting in a haphazard proliferation of different institutional means often working at cross purposes. Most CSS design carries the whimsical stamp of the individual who drafted it, with a disregard of the formal assignment of functions to LGs. It is therefore no surprise that the manner in which CSSs deal with the roles of Panchayats varies widely. While some are relatively Panchayat friendly, as they transfer funds to Panchayat bank accounts and entrust both the planning and execution responsibility upon them, others clearly set up and operate through parallel structures that at worst, ignore the Panchayats are set up at State, District and lower levels which bypass Panchayats and deal directly with NGOs and user groups, or at best, treat Panchayats as departmental subordinates. Such CSS implementation concentrates powers in District Missions, which have a wide flexibility to deploy funds. Such practices have actively harmed and stunted the growth of LGs. Given these serious shortcomings of CSSs and the fact that their continued proliferation has harmed the LG cause, there is a need to re-examine the whole approach towards them. The Task force makes the following recommendations in this regard:

Rationalisation and simplification of schematic transfers to Panchayats:

The Task Force accepts that there is a need for directed specific purpose grants, such as CSSs, However,
too many fragmented schemes leads to confusion, wastage, duplication and leakage. The multiplicity of fiscal transfers at the Centre and State levels should be clubbed into the minimum required for devolution to Panchayats. Ideally, these should be rearranged in accordance with the items in the Eleventh and Twelfth Schedules. Rationalisation of schemes and line items in the budget could be based on activity mapping, aimed at moving away from scheme-based allocation to an activity/service-based allocation of funds. In the meantime, each scheme being operated at present could be reviewed with reference to its stated objectives, delivery mechanism, performance in the last few years, outcomes achieved, productivity of scheme expenditure, explicit subsidies and administrative and delivery costs with a view to eliminate/phase out schemes that are redundant, duplicated or uneconomic.

Bringing about consistency in the institutional design of CSSs:

There is need to bring about a cross-ministry consistency in the way that CSSs are designed and articulated. This will ensure that each CSS guideline meets certain design requirements, to ensure easy comparison. A standard chapterisation ought to be put in place for CSSs, so as to capture every aspect of CSS management. We have attempted a draft, which is placed below:

Chapter 1: Objectives of the CSS.

Chapter 2: Implementation Modalities and Strategies:

This chapter would describe the strategies for achieving the objectives of the CSS and schematically represent this through a Logical Framework Analysis. An Activity Mapping matrix, should also be prepared indicating precisely how the Central Ministry concerned envisages the assignment of agency responsibilities upon the State and the Local governments.

Chapter 3: Description of Milestones and Targets:

Chapter 4: Decentralised planning:

This chapter would describe the manner in which decentralized planning is to take place in the scheme and how these plans would be integrated into the district plan by the DPC.

Chapter 5: Women’s component, Gender budgeting and weaker sections chapter:

What is the special focus on gender awareness and mainstreaming in all areas of budgeting and programme design of the Scheme? Steps for promoting active participation of women and those who are excluded and disadvantaged in decision making and reviewing of progress may be separately described. Special skill building measures under the scheme, if any, may be described.
Chapter 6: Systems for ensuring accountability and transparency

This would contain a description of both the downward and upward accountability systems envisaged. The details of how each level of government would put out its data on the implementation of the scheme concerned in the public domain through suo moto disclosure ought to be specified. The funding mechanism & systems for financial accountability should be specified.

Chapter 7: Fund Flow

The Fund flow for the scheme will have to be described clearly, covering the exact mechanism of flow of funds from level to level, time limits at each level for the transfer of funds to the next level and how IT would be used for electronic tagging and tracking of funds transferred to Panchayats from higher level of governments, including rapid bank transfer of funds, tracking fund transfers to, and expenditures of the Panchayats.

Chapter 8: Reporting Systems and Monitoring of Implementation.

The reporting systems would require detailed enunciation in the light of the National Right to Information Act. ‘Reporting’ would have to be interpreted widely, to not merely cover reporting to higher levels of government, but also mechanisms for suo moto disclosure to local people through the Gram Sabha. This chapter could contain the reporting formats for the Scheme, the modalities of independent assessments:

Chapter 9: Innovation fund, Disaster preparedness and guidelines for use.

Chapter 10: Consultation framework, I.e., any draft MOU between the Centre and the State in implementing the programme, if any

Chapter 11: A repository of good practices relating to the CSS:

Chapter 12: Capacity building of elected Panchayat representatives and officials:

This chapter can describe the modalities of training. Basic core content and pedagogy may be annexed here, as also the formats for monitoring of training and assessment of post training results.

Chapter 13: Frequently asked questions

These would include inter alia, the following questions:

- Who can apply under the scheme and how?
- What are the pre-requisites for application?
- What are the criteria for eligibility/ ineligibility?
- What are the time limits prescribed by for screening of applications?
TOR 4.4: Desirability and effectiveness of direct release of funds and State role in monitoring implementation;

The most important weaknesses in the system of fiscal transfers to Panchayats, apart from the obvious one of mismatch between functions devolved upon Panchayats and funds are the uneven, unpredictable, lumpy and untimely financial transfers to Panchayats, the imposition of treasury bans on expenditure, the lapsing of funds devolved to Panchayats at the end of the financial year and their recoupment into the Consolidated fund, delays in releases caused by cumbersome financial transfer processes involving several intermediate steps and prior cuts imposed on funds transferred to Panchayats.

Since the late 1970s, several Central Ministries release funds for CSS directly to project implementing agencies, usually set up at the State or District level as registered societies. Even after the 73rd & 74th Constitutional Amendments and the establishment of LGs, these project implementing agencies have continued to receive funds from Central Ministries for schemes relating to matters listed in the Eleventh Schedule. The practice of sending money directly to a District or State level project implementing agency is followed by most Central Ministries such as Rural Development, Education and Health, for schemes implemented by these ministries. This complexity is further compounded by the large number of CSSs and consequently, multiple systems of fund transfers. There are also a variety of mechanisms adopted by States for transferring funds relating to their shares in CSS, State Finance Commission devolutions and State schemes meant for LGs. This results in a confusing and opaque system of fund transfer from Central and State Governments to LGs.

States have made repeated demands that CSS funds ought to be released to the Panchayats only through the Consolidated Funds of the States. In the meeting of Chief Ministries held on 18/10/2002 at New Delhi under the Chairmanship of the Prime Minister, there was a consensus that henceforth all releases under CSSs should be made through the Consolidated Fund of the States and not directly to the project implementing agencies set up by the Central Ministries. It was also agreed that as a pre-condition, the States would pass on the funds to the end users within a stipulated time of three weeks and inform the Central Ministry concerned in the Government of India of having done so. Accordingly, vide Office Memorandums (OMs) dated 13/1/2003 and 6/02/2003, the Ministry of Finance, Government of India intimated Central Ministries to re-classify their budgetary provisions so that the funds from Centrally Sponsored Schemes would go as grants-in-aid to State Governments. However,
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These OMs were withdrawn by the Ministry of Finance vide OM dated 11/06/2003. Efforts to go back to this short lived system have been shelved, following opposition from many central ministries.

In the meantime, there have been dramatic improvements in the technology of fund transfer. These opportunities afforded by technology would also influence the manner in which funds are transferred to the Panchayats. The core banking network, which allows for instantaneous transfers of funds through the internet, is covering more and more bank branches. The National Rural Employment Guarantee Act (NREGA) has shown that payments can indeed be channelised to each individual who works on an NREGA site through banks or post offices. There is now consideration of programmes of financial inclusion, which aim to ensure that every family or individual has access to a bank account. In a fresh development the Planning Commission and the Ministry of Finance are putting in place a Central Scheme and Programme Monitoring system which attempts to track fund transfers made under all schemes on line, regardless of the actual method of fund transfer adopted. This approach, while not addressing the core issue of rapid transfer of funds is still a step in the right direction, as the progress of funds could be better tracked.

These advances in technology will help in cutting the ideological Gordian knot. Given certain conditions, simple and standardized mechanisms could be adopted for just-in-time funds transfer to LGs, which are quick, direct, transparent, easy to track and not subject to diversion.

An outline of such a system would be that releases would be made directly to the implementing LGs, not in a lump sum, but as and when expenditures are reported. Simultaneously, the State could be alerted electronically, so that it is aware of the release and cannot complain as it does now, that it is being bypassed. This approach would have immense advantages. First, it will improve cash flow management tremendously, by reducing the ‘float’ that intermediate agencies such as missions and societies hold. Second, it will make available funds in a timely manner directly to the LG concerned, without making its release dependent on whether other LGs have reached the same levels of expenditure. This change alone would be a telling incentive to efficient LGs. Third, monitoring of LGs individually would become possible.

It may be noted that due to advances in treasury computerization, several States have already taken steps such as treasury computerization and the fast expanding electronic network of Banks to transfer funds meant for LGs quickly. To extend this approach to central transfers with a normative ‘credit’ given to the State for accounting purposes, is futuristic; it is eminently possible and should be implemented as quickly as possible.

However, even if money payments are streamlined, made online and intermediaries removed, the transparency of releases may still not be ensured. There is a need to separate out all monitoring responsibilities and adopt a central overarching professional system to undertake the specialised tasks of fund tracking of transferred funds. An Special Purpose Vehicle (SPV) on the lines of the National
Securities Depository Ltd., could be set up for tracking CSS fiscal transfers too. Such a system could also provide a range of fund transfer related services to Panchayats, such as linking funding departments with them, acting as a clearing house of fund releases, maintain accounts information for local bodies and monitor the submission of utilisation certificates individually by LGs.
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TOR 4.9: LGs’ roles in infrastructure creation & mega-projects involving land acquisition and displacement;

The constitutional amendments regarding decentralisation have given a greater role for the local governments in the management of common pool natural resources such as water within their territory. However, the provisions in environmental acts (including those for the sustainable use of natural resources) do not envisage any substantial role for local governments. There needs to be ways of addressing this discrepancy. However we need to consider certain issues while thinking about the best way of addressing this problem.

The spirit of environmental act, especially those made from the eighties onwards in India, is of centralisation. This is based on a thinking that central government need to have powers (to some extent overriding those of the state governments) to ensure environmental conservation. Certain environmental issues (including the Silent valley Project) underline such thinking. There is also a hypothetical position in environmental economics, which sees higher levels of government better equipped to take environment-oriented decisions, primarily because these are distant from local (short-term) interests. Combining this thinking with the ‘elite capture’ hypothesis of the decentralisation process (by which it is expected that decentralised governments are more likely to be captured by the local elite interests), would strengthen the impression that, if environmental decision making is left to the local governments, this may lead more often to ‘anti-environmental’ decisions. This thinking may work against giving more powers to local governments with regard to environmental protection. However, we know, at least from states like Kerala where environmental awareness is not an urban phenomenon, and is widespread even among rural population, that local governments may be in a position to take more pro-environmental decisions. These issues need to be considered in deciding what should be the appropriate role of local governments in environmental protection or the conservation of natural resources. The following two strategies can be thought of.
1. All local governments have to take a pro-active role in certain spatial planning (for example, the zoning in urban areas), or in the management of common pool resources like water bodies, parks, public lands, etc. Zoning and development plans have to be made in these regard, and there should be ways of encouraging and enhancing the rights and duties of the local governments to incorporate environmental considerations in this regard. For example, the development plan of a local government can identify the area within its territory suitable for industrial locations, etc. There should be provisions to ensure that all economic activities within the local government may have to abide by these development plans.

2. A more proactive role for the local governments in terms of environmental protection, including the licensing of polluting activities can be decided by considering the state-level characteristics. This decision is best taken by the state governments. Hence the national legislation can have provisions encouraging state government to delegate the powers it has (regarding environmental conservation) to local governments wherever state government perceives such delegation enhancing social welfare.

Increasing friction between local governments and mega projects is emerging as a serious matter to which solutions must be found quickly. Usually, local governments and mega-projects are suspicious of each other, as often local governments stand to suffer and be marginalized by acquisition and resettlement, rather than gain stature or prosperity through it. Local natural resources are often damaged by mega projects, or local citizens are denied access to what they have for long considered their own. One time compensation might be paid, but no continuous benefit sharing mechanisms are in place. Finally, local governments usually do not gain from the improved tax base that local industrial development might provide, as tax concessions are given exempting such projects from the application of local taxes by higher level governments.

The last mentioned point is very important and is usually neglected. States usually enter into ‘State support agreements’ for mega projects such as power projects, airports etc. wherein they give up the rights of local governments to gain from the improved tax base provided by such projects. Such moves immediately vitiate the atmosphere between local governments and mega projects. So far, such problems have not occupied centre stage because local governments have not become assertive or articulate enough. However, one can expect that such simmering tensions will surface in the future and local governments actively resist projects. However, the scenario is not always so dismal. There are instances where States have not exempted mega projects from paying local taxes, with good beneficial results all around and particularly resulting in a harmonious relationship between them and local governments (See Box).
The Kochi International Airport, India's first outside the Government sector is located in the Nedumassery Panchayat in Ernakulam District. The Panchayat gains by a large payment of tax from the airport to the Panchayat, since no exemption has been granted by the State. Employees of the airport also pay professional tax to the Panchayat. The payment of these local taxes has established a firm and harmonious relationship between the airport and the Panchayat, which has over time, translated into several other collaborative arrangements to benefit the local area. Therefore, the airport authorities maintain dossiers of the rehabilitation efforts it has made for those displaced by it and shares information with the Panchayat regularly. The airport has assisted the Panchayat in managing Kerala's first ever complete poverty eradication programme under which destitute who have no recourse to livelihoods are fully supported through a Panchayat driven poverty support programme largely funded from taxes paid by the airport.

Entrustment of natural resource conservation to local governments; design precautions:

There are several design precautions that have to be kept in mind while entrusting conservation responsibilities to local governments. First, one must not give them scope to substitute their property tax bases with revenues earned from indiscriminate exploitation of finite natural resources. In Karnataka when Mandal Panchayats were given the rights in 1987 for the extraction of minor minerals such as granite, there were several instances of they indiscriminately issuing licenses for granite extraction, sometime even endangering historical sites such as forts and archeological excavations. Similarly, in Kerala, Panchayats were given the rights to extract sand from river fore-shores in 1996, which resulted in the ruthless removing of sand from river banks. Consequently, in both States the system did not work due to bad devolution design. Panchayats got a bad name and finally after a lot of irreversible damage was done to the environment, powers of licencing granite and sand extraction were withdrawn from them. Devolution of powers of licencing natural resource use to local bodies without adequate safeguards can result in ruthless exploitation of these resources as Panchayats prefer to gain funds this way rather than through increasing property taxes. There also exists the possibility of corruption and nepotism in the handing out of granite and sand extraction licenses.

Issues concerning local governments arising out of large scale rehabilitation:

The other major looming problem concerns the obliteration of local governments, when large scale rehabilitation and relocation takes place. This is usually the case with mega hydro projects where backwater submergence from dam constructions can fully erase several local governments. Affected populations are usually relocated in resettlement colonies, which exist in a grey zone as far as local governance is concerned. These colonies are typically serviced by the resettlement agency, usually an SPV, which builds and maintains housing colonies, roads, street lights, water supply and other amenities.
However, such arrangements have the serious potential of encouraging a crushing dependence syndrome, as people will see the benefit in not paying taxes or re-establishing a local government system. Apart from the unwillingness of resettled colonies to give up the free maintenance that they enjoy, the other problem associated with large scale relocation is the redrawing of local government’s boundaries. This is a sensitive issue fraught with political complications. Large scale dispersion of people from one local government into several rehabilitation colonies lying adjacent to other local governments can lead to changes in the local political power base, which is in any case already complicated by various issues such as caste equations, and elite dominance by land owners. These problems have occurred in Karnataka’s Upper Krishna Resettlement Project where the area nearly the size of an entire taluk has been submerged and more than 30 Panchayats relocated in toto. The resettlement colonies have been maintained by the resettlement agency for more than a decade, with no end in sight for these temporary arrangements. These issues are often glossed over when rehabilitation programmes are designed and implemented. However, even though it is a tricky thing to handle, it is best to tackle these issues head on and lay out clear path for withdrawal of rehabilitation facilities and replacement by local Governments and plan for delimiting new local government boundaries right at the time that the rehabilitation plan is designed.

In conclusion, the following suggestions would go a long way on better natural resource governance by Local Governments. First, given the externalities that are associated with natural resource management and governance, there must be scope for arrangements that are more flexible and which can go beyond the tiered system of Local Government. Thus, local governments should be encouraged to enter into partnerships with each other, form clusters and collaborate with private entities to tailor proper arrangements for natural resource management. Another possibility, particularly, in the context of natural resource management across urban and rural local governments is to use the instrumentality of the District and Metropolitan Planning Committees to develop solutions for matters that straddle rural and urban jurisdictions, such as water supply, garbage disposal etc., by providing an overarching system that manages these activities. Finally, it will be necessary to create a set of new fiscal instruments and arrangements for resource sharing and benefit sharing from exploitation of natural resources. Similar instruments such as SPVs will need to be conceived for undertaking common overarching projects.

The designing of appropriate systems for natural resource management by Local Governments is an interesting policy challenge. This has to be approached objectively and with an unwavering focus on the objective to be achieved, namely, that humanity requires responsible natural resource management for its survival. In doing so, there should not be biases or notions harboured for or against decentralization. One will have to think out of the box, particularly while designing systems for collaborative action by Local Governments and other stake-holders. Designing regulations and more important, enforcement and a self-regulatory system built around providing incentives and disincentives will have to be carefully thought out. These will have to be positioned as options so that Local Governments can chose the most appropriate one for themselves.
TOR 4.7: Role of decentralized participative planning, especially spatial planning culminating in a district plan in empowering LGs and role, functions and composition of the District and Metropolitan Planning Committees:

There has been sporadic attention paid to decentralized planning. After Independence, we find a number of interesting examples of regional development plans.

- When Bengali refugees from East Bengal were resettled in central India, the Dandakaranya region in Madhya Pradesh and Orissa was attended to in great detail, and a Dandakaranya Development Authority was set up.

- In the 1970s, the Planning Commission encouraged what was called Taluk/Block level planning exercises. To a large extent, it consisted of a resource survey, with ideas on how those resources could be used. There was no corresponding market survey or even a financing plan. But a great deal was done in terms of information on resource availability.

- In the 1990s, the Department of Science and Technology launched its Natural Resources Development and Management Scheme [NRDMS], which was implemented in a number of districts. This was based on a detailed natural resource survey which was computerized, and then fed to various departments via the Nicnet as an input into local planning.

- There has been a plethora of other experience that has still not been comprehensively assessed. These range from the action plans of district industries centres, to ‘potential linked plans’ of NABARD, to the ‘service area approach’ of the banking system, to sectoral plans of all kinds apart from state levels experiments. In many the marketing dimension is missing. In most the agency issue is not addressed—it is ‘government’ by default. All are top down schemes depending on the union and state civil services.

The existing provisions relating to the DPC incorporated in the Constitution by the 74th amendment do suggest a bottom-up planning process. However, it is not clear whether the district plans are to be formulated in a decentralized manner from the village up, or
they are to be formulated at the district level with some (undefined) inputs from the lower levels. Furthermore, decentralized, bottom-up planning logically implies that state plans should also be formulated from the district up.

Whether the DPC in its existing form also envisages a participatory, planning process is not that obvious. While it cannot be denied that a participatory bottom-up planning process will undoubtedly be a potent instrument for empowering Panchayati Raj Institutions, one has also to realistically understand the constraints that have to be overcome in order to make it work successfully.

There are basically two issues that require attention. The first concerns the institutional support for planning at the district and lower levels. In this context it is useful to remember that the institutional support for planning, especially in terms of the theoretical and conceptual understanding and basic economic and statistical techniques, is rather weak even at the level of many states. At the district level this aspect of planning is virtually non-existent. There does exist some government machinery in the form of DRDA, Chief Development Officer/District Development Officer, District Economics and Statistics Officer, but this machinery generally performs routine functions rather than engaging in any worthwhile planning exercise. Their loyalty is to the state civil service hierarchy and not to elected local councils. We cannot expect much from them if they are not strengthened considerably in different dimensions. The basics needed for local planning, in the form of an accounting system, do not exist. At best, one finds cash books at this level. This level is not considered a ‘unit’ for accounting purposes, neither as a local self government [gram panchayat] or as a service provider [school or health centre].

The term ‘budgeting’ cannot be used at this level because budgeting is a process that begins in a democracy with an elected government that sets priorities. These are then translated into programmes that are to be implemented. The cost of implementing these programmes is then estimated, and then exercises are undertaken to see how they can be financed—by taxes, borrowing, foreign aid etc. The whole exercise is presented to a legislature for approval, after which it is monitored and implemented. Implementation is followed by audit. The setting of priorities and their approval by the elected body are essential parts of budgeting. In our ‘local bodies’ there is no such process.

Planning, as it is generally understood and practiced at the state and district levels, consists of an aggregation of departmental schemes without any effort to relate them to an overall framework. The issue, therefore, really is what kind of planning exercise should one realistically expect to be undertaken at the district and lower levels in the existing situation. For ensuring effective bottom up participative planning, there is a need to re-orient the
district planning mechanism with a view to ensuring centrality of Panchayats in participative planning from the village level upwards. Meeting the challenge of ensuring that the Five Year Plans of the State are built through a participative bottom up process at each local body level will require effective and close coordination between the State government, the Union Ministry of Panchayats Raj and the Planning Commission. In this endeavor, the following action points on the part of the Planning Commission, the Union Ministry of Panchayati Raj and the States based on the conclusions of a Workshop on Planning at the Grass-root level, held in the National Institute of Public Finance and Policy, on 8 and 9 May, 2006 deserve attention.

**Action Points by Planning Commission:**

The Planning Commission should take the following steps in order to operationalise District planning and seamlessly integrate it into the planning process

The Planning Commission’s guidelines for the preparation of the Plans should mandate the preparation of district plans through DPCs. States should be informed that the DPC would be the sole body that is entrusted with the task of consolidating plans at the district level. These guidelines should also mandate that each State would in turn, issue detailed guidelines for decentralized planning by the DPC. These State guidelines should inter-alia include

- The mode of assessing of resources available at each panchayat level including an assessment of own resources,
- The total quantum of untied amounts available for local planning
- The methodology for planning by DPC – both essential steps as well as desirable steps,
- Formats for presenting the summary of district plans in the State Five Year plan documents

2. A time frame should be specified within which States will need to issue detailed instructions covering the manner in which the DPC would perform its functions, for setting up the district planning cell and the provision of institutional support through universities and research institutions, both at the District and State level, for assisting the DPC in planning, monitoring and evaluation.

3. The Planning Commission should take steps to provide the required support for the District Planning Committee, on terms similar to the earlier support provided for district planning. In this regard it should examine the provision of support to the District Planning Committee by way of providing a lump sum allocation per district as also for supporting the provision of at least five qualified persons per DPC for technical support.

4. The Planning Commission should issue instructions that every district plan should be annexed to the Five Year Plan document prepared by the State and submitted to the Planning Commission.
5. Detailed instructions should be issued to all Central Ministries also prior to plan discussions by the Planning Commission, on decentralised planning at the grassroots level. This should inter alia specify the sectors that are to be mandatorily included in each district plan. It should also indicate the relevant CSSs that would be integrated into the process of district level planning, thereby ensuring that no separate planning cycle is needed for the same. The Planning Commission should also persuade the relevant ministries in Delhi to issue instructions that the identified CSS would be planned for by DPC.

6. The question of linking credit plans with the District Plans should be taken up with the RBI and the NABARD. Issuance of instructions to Bank officers also to participate as experts in the District Planning Committees should also be issued.

7. The Planning Commission should ensure that the role of local governments with reference to planning, implementation and monitoring with special focus on the CSS, relating to subjects in the 11th and 12th Schedules is introduced as a specific Term of Reference for all Working Groups and Steering Committees set up by it.

8. Instructions should be issued to national level statistics organisations to share their data, including raw data collected at district levels and below, with the State Planning Department and the DPCs. The National Informatics Centre and the Department of Science and Technology should be actively involved in the creation of databases for planning.

9. A system of collecting information from the village level onwards should be instituted and the statistical cell within the DPC should be the nodal point for collection and maintenance of the database. To that end, existing data, to the extent possible, should be re-organised on a local body wise basis and made available.

10. Instructions should also be issued to central agencies such as Indian Council of Agricultural Research (ICAR)/Council of Scientific and Industrial Research (CSIR) Commodity Boards, national level institutions and ICSSR-supported institutions to participate proactively in providing technical support and essential data to District Planning Committees.

11. Representatives of the Panchayati Raj Ministry should be associated with the Annual plan discussions of States held by the Planning Commission, so as to review the decentralized planning process adopted. The Secretary Panchayati Raj should be associated with the Plan discussions conducted with Ministries dealing with matters listed in the Eleventh Schedule.

Action Points by the Union Ministry of Panchayati Raj,

1. The Ministry of Panchayati Raj should provide technical support for activity mapping and the decentralized planning process in States. This should include:
Local Governments and Decentralized Governance

- Collection and dissemination of the activity mapping undertaken by some States for guidance of all,
- Analysis of State budgets to ascertain the schemes and line items that ought to be placed in the Panchayat window of the budget, so as to match the devolution of functions to Panchayats, as manifested in the State Panchayati Raj legislation and Activity Mapping,
- Collection of good practices in decentralized planning, particularly at the village level, for dissemination to all States,
- Preparation of model rules and guidelines to guide the planning and implementation processes of participative plans in PESA areas.

2. The Ministry should prepare a list of institutions to comprise a national pool of resource providers for grassroot level planning. In the first instance, the list of such institutions consolidated by the Rajiv Gandhi Foundation should form the core.

3. The Ministry should prepare a training design for capacity building for local government elected representatives and officials on grassroot level planning. This should provide for support to the State Institute of Rural Development for faculty and resource persons and exposure visits to other States for local government members, trainers and officials.

4. The Ministry should work closely with the C&AG, to ensure that the accounting system and formats prescribed for local government accounting harmonizes with and serves the purpose of decentralized planning.

5. The Ministry, in collaboration with the UNDP’s solution exchange, should create a space for experience sharing among practitioners in district level planning.

6. The Ministry should undertake regional workshops in collaboration with the Planning Commission, on local level planning.

7. The Ministry should work towards creating awareness among the youth and the student community, women, and elected representatives of the significance of Grassroot level planning.

**Action Points by States:**

1. In States where District Planning Committees (DPCs) are not constituted, they should immediately be constituted in accordance with the provisions of Article 243 ZD of the Constitution. In States that do not have legal provisions in place for the constitution of DPCs, they should be constituted immediately through executive orders, pending the enactment of statutory provisions in this regard.
2. Provision should be made outlining the functions and procedures of DPCs, if not done already.

3. Taking into account the imperative need to increase the professional competence of the DPCs so as to better equip them to consolidate and prepare draft development plan for the district as a whole, steps should be taken to specify the institutions and professionals that the DPC could access, in terms of Article 243 ZD (3)(b) of the Constitution.

4. Steps should be taken to create, preferably within the District Panchayat, a separate cell headed by a full time professionally qualified District Planning Officer to service the District Planning Committee with separate and distinct sections dealing with plans of rural and urban local governments and for maintenance of data and undertake research, with the necessary support in terms of IT and qualified research assistants.

5. Guidelines should be issued for the preparation of perspective Five Year Plan and Annual Plans by each level of local government, which would be consolidated by the DPC,

6. Systems should be put in place for peoples’ participation through strengthening of Gram Sabhas, so as to ensure a fully inclusive system that enables all, particularly women and SCs and STs in the planning process as a whole. This should incorporate the suggestions made by the Expert Group on Grassroot-level Planning appointed by the Planning Commission.

7. In respect of the Fifth Schedule areas, action should be taken to ensure full conformity with the provisions of Panchayats (Extension to Scheduled Areas) Act 1996 (PESA). Thrust areas should inter-alia include:
   
   (a) Issuance of rules that lay out the detailed processes to ensure effective implementation,
   
   (b) Harmonisation of provisions of other legislations with PESA,
   
   (c) Ensure that local planning and implementation processes conform with the provisions of PESA,
   
   (d) Particularly ensure that the planning process is fully compliant with the special powers given to the Gram Sabha in PESA areas.

8. With growing urbanization of smaller and intermediate sized towns, there is need to especially draw in experts on municipal matters and the urban rural inter-phase to assist the DPC in planning for local resource sharing, area planning, solid waste and sewage disposal and other such matters which call for close coordination between rural and urban local governments, in terms of Article 243 ZD (3)(b)(i).
9. Activity Mapping, aimed at effectively devolving functions, funds and functionaries to local governments based on the principle of subsidiarity, should be undertaken if not already done. The activity mapping undertaken in this regard should be the basis of entrustment of the planning functions and implementation of schemes, including CSSs that should be entrusted to the PRIs.

10. The states should have to ensure that planning at the local level does not become a mere collection of schemes and works. It should be ensured that the planning process should ensure inclusive participation of all. To this end, the following specific steps should be taken:

(a) State governments should indicate at each local government level the extent of funds allocated and receivable from recommendations of the (i) Finance Commission, (ii) Backward Regions Grant Fund (BRGF), (iii) Centrally Sponsored Schemes, (iv) Different Development institutions at the Center and in the States like Scheduled Castes Commission, Women’s Commission, etc., (v) Financial Institutions, (vi) Externally assisted schemes, and (vii) their own resources.

(b) For effectively performing the functions devolved to them through Activity Mapping, the local governments would need a matching transfer of funds in respect of the devolved functions. This should require the entrustment of all schemes pertaining to the activities devolved upon local governments to the respective levels. Steps should be taken by States to indicate the extent and type of available resources to each rural and urban local government in order to facilitate planning. Particular care should be taken to ensure that the allocation of funds to matches the legislative devolution of functions to them, preferably through the creation of a LG Sector in the State Budget. At least in respect of items dealing with minimum needs as listed below, the Annual Plan proposals have to indicate the detailed activities of the different kinds of local governments:

(i) Literacy (adult literacy) & elementary education
(ii) Primary health & sanitation
(iii) Water Supply
(iv) Roads
(v) Housing for the poor (rural & urban)
(vi) Nutrition, children & women & crèches
(vii) Livelihood & employment guarantee
(viii) Rural electrification
(c) The above detailed exercise in respect of items of minimum needs should be undertaken as a first step and a similar exercise in respect of the entire set of items to be implemented through/by local governments as part of the Plan, should also be undertaken.

(d) The provisions of funds for the Tribal Sub-plans should also be indicated separately, local body wise.

(e) In undertaking the above, a distinction should be maintained between administrative grants and development grants in allotting financial resources to local governments.

(f) Recognizing the importance of accounting & audit, dissemination & capacity building, States should endeavour to earmark four per cent of the untied block for strengthening these activities. Earmarking may be done for these activities in the Annual Plan Proposals.

(g) In order to enable local governments at different levels to formulate and implement locally relevant schemes in respect of functions that have been devolved to them, States should work towards devolving to them a District Plan outlay of 30% of State Plan outlay and untied funds of 25% of the District Plan outlay.

11. State Governments should, if not already done, incorporate in their State laws provisions for Standing Committees in local bodies for planning and implementation of allotted subjects, with an earmarked budget. Standing Committees could handle implementation from conception to approval, calling of tenders, finalization of vendors; conducting supervision of on-going works and certifying issue of utilization certificates.

12. Committees of the Gram Sabha dealing with matters such as education, health, midday meals, women and child welfare etc. should be worked out. This should at the minimum include ensuring that the accounts of such committees or user groups become a part of the Accounting process of the Panchayat concerned.

13. The Annual Plan Proposals submitted by the State should:

- indicate the detailed deployment of funds received from the above different sources for a specific subject in each of the districts of the State.

- indicate the criteria followed by the State Government for allocating the resources for the above items, district-wise. The State Government may also indicate how the district allocation should be distributed among the different categories of local government taking into account the conditions in the State.

- Indicate the steps taken by the State to equip the local governments with substantive...
financial power in order to generate adequate resources, as also the own resources expected to be raised by them for the plan,

14. For local governments to effectively plan and implement the functions that have been devolved upon them it is necessary that funds pertaining to these schemes are transferred to them without delay or diversion. As part of this process, the State Governments should put in place systems that are capable of tracking transfers of funds to them, both through Banks and treasuries. The report of the Committee on rapid transfer of funds to Panchayats through banks should be used for guidance in devising this system.

15. For the effective implementation of plans prepared by local governments, State Governments should issue necessary instructions that the functionaries concerned with these functions are accountable to local governments.

The emphasis on participatory processes in development programmes is undoubtedly laudable, we should also be aware that promoting participation, especially at the grass roots, is a rather slow and difficult process requiring considerable time, effort and patience. We have, by now, a large body of experience of participation in India and other countries. They all point to one basic pre-requisite for a successful outcome: the involvement, in a sustained manner of a dedicated group of persons, generally belonging to an NGO, CBO or a grass root based organization. This task, clearly, is beyond the capacity of the usual government machinery. Hence for a successful effort at participation either the government machinery would have to be completely re-oriented in its attitude and approach, or NGOs and dedicated grass root workers would have to be involved in the task. Given the scale of the work both the alternatives appear highly unlikely. Perhaps a beginning could be made by experimenting with pilot programmes in a few districts, using various alternative approaches. The challenge really will be scaling up based on the results of the pilot programmes. Our experience with government programmes in different fields has demonstrated that though pilot experiments have been more or less successful, the attempts at scaling up have not been that successful.
OFFICE MEMORANDUM

Sub: Composition of Nine Task Forces to act as Knowledge Partners to the Commission on Centre-State Relations

Taking into account the nine broad groupings of its Terms of Reference, the Commission has constituted nine Task Forces to act as its Knowledge Partners on the following thematic areas:

(i) Constitutional Scheme of Centre-State Relations
(ii) Economic and Financial Relations
(iii) Unified and Integrated Domestic Market
(iv) Local Government and Decentralized Governance
(v) Criminal Justice, National Security and Centre-State Cooperation
(vi) Natural Resources, Environment, Land and Agriculture
(vii) Infrastructure Development and Mega Projects
(viii) Socio-Political Development, Public Policy and Governance
(ix) Social, Economic and Human Development

2. The details of the composition of each of the Task Forces are contained in the Annexure.

3. The Members of the Task Forces constitute a cross-section of expertise of the highest order in public service, Constitutional law, social and economic studies, engineering, civil service, finance, banking and industry. The Task Forces may meet as often as required.
Such meetings would be convened by the designated Secretariat Officers on behalf of the Task Forces.

4. The outstation Members of the Task Forces will be entitled to travel by air. Such members of the Task Forces as are still serving with Government or the Public Sector will travel by the entitled class. Those retired from service may travel in the class they were entitled to at the time of retirement. Those members who were not in Government service may travel by executive class. The expenditure incurred on the local transport by taxi between residence to airport at the place of origin of journey, and between the airport-hotel venue of the meeting and back will be reimbursed as per actuals subject to a ceiling of Rs. 500/-.

4.1 The Delhi/NCR-based members will be entitled to road mileage for journey by taxi as per actuals subject to the above-said ceiling.

4.2 The Members will be provided accommodation in the ITDC-run Hotel Janpath. The ITDC will charge the Commission a tariff of Rs. 6,125/ inclusive of all taxes and breakfast per day. As per the Supplementary Rules, reimbursement of rent in any State Guest House or accommodation provided by the registered societies like India International Centre and India Habitat Centre or any of the medium-range ITDC/State Government Tourism Hotel will be made subject to the above said ceiling. As for the boarding, breakfast is generally part of the room rent. Lunch will normally be served following the meeting of the Task Forces. The Members will be entitled to reimbursement for dinner as per actuals subject to a maximum of an amount of Rs. 600/- plus payable taxes.

4.3 The receipt of this O.M. may kindly be acknowledged at either of the addresses given below:
Report of the Commission on Centre-State Relations

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(Veena Upadhyaya)
AS & Adviser, ISC
June 18, 2008
### COMPOSITION OF TASK FORCE NO. 4
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Appendix-II

Dates of Meetings of the Task Force:

(1) 1st Meeting 30.6.2008
(Plenary-combined of all Task Forces)
(2) 2nd Meeting 18.8.2008
(3) 3rd Meeting 18-19/9/2008
(4) 4th Meeting 17.10.2008
(5) 5th Meeting 25.11.2008
(6) 6th Meeting 24.2.2008
(7) 7th Meeting 9.4.2008
(8) 8th Meeting 16-17/7/2009

Officers who assisted the Task Force:

(1) Shri Ravi Dhingra Secretary (since retired)
(2) Shri Mukul Joshi, IAS Secretary (ISC & CCSR)
(3) Ms. Veena Upadhyaya, IAS Former AS & Adviser, ISCS
(4) Shri Shashi Prakash, IAS AS & Adviser, ISCS
(5) Shri T. N. Sansi Director & Co-ordinator
(6) Shri Randhir Singh Co-Coordinator
TASK FORCE REPORT

CRIMINAL JUSTICE, NATIONAL SECURITY AND CENTRE-STATE COOPERATION
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INTRODUCTION

The Task Force was concerned with two major areas relating to Centre-State Cooperation, namely, criminal justice and national security. Both of these call for a synergetic relationship between the Centre and the States. Under our constitutional scheme, “Criminal Justice” is encompassed in Entry Nos.1, 2 and 11A of List-III of the Seventh Schedule of the Constitution of India (Concurrent List); “National Security” is not a subject specifically delineated in any of the three Lists (Union, State or Concurrent): it being left to the President of India (i.e. the Central Government) when satisfied that a grave emergency exists whereby the security of India, in any part of the territory thereof is threatened, whether by war or external aggression or armed rebellion, to make a declaration to that effect by Proclamation – in respect of the whole of India or such part of the territory as may be specified in the Proclamation: it is really an over-riding executive power – and in the field of legislation falls under Entry 97 of List-I (Union List): a residuary item covering “any other matter not enumerated in List-II of List-III…” In constitutional practice, however, “National Security” is a subject in which all the States of the Union have a common interest and are expected to act in a coordinated manner. On occasions though – such as the Babri Masjid demolition – lack of understanding of these subjects have led to problems of a serious nature. Some of the existing strains in the relationship between Centre and States in these matters are reflected in Part 5 of the Questionnaire circulated by the Commission.

In its initial meetings, the Task Force deliberated on the subject in depth and identified the following as some of the major areas calling for a detailed study:

1. Criminal law, including all matters included in the Indian Penal Code at the commencement of this Constitution but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of naval, military or air forces or any other armed forces of the Union in aid of the Civil power.

2. Criminal procedure, including all matters included in the Code of Criminal Procedure at the commencement of this Constitution.

3. Administration of justice; constitution and organisation of all courts, except the Supreme Court and the High Courts.

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1 Criminal law; including all matters included in the Indian Penal Code at the commencement of this Constitution but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of naval, military or air forces or any other armed forces of the Union in aid of the Civil power.

2 Criminal procedure, including all matters included in the Code of Criminal Procedure at the commencement of this Constitution.

3 Administration of justice; constitution and organisation of all courts, except the Supreme Court and the High Courts.
Criminal Justice, National Security and Centre-State Cooperation

• Need for an ‘Internal Security Doctrine’ for the country, *inter alia*, clearly delineating the roles of the Central and the State Governments as also the mechanics for concerted action between them.

• Crimes impacting on National Security, such as terrorism – Role of the Central Government:
  ♦ Need to identify such crimes;
  ♦ Need for Central Legislations in respect of such crimes, and
  ♦ Need for a Federal Law Enforcement Agency to deal with such crimes.
  ♦ The issue of the President’s Assent to legislations passed by State Legislatures to deal with crimes having a bearing on national security (for instance, the Gujarat legislation to deal with organised crime);
  ♦ Deployment of Central forces in states in times of necessity;
  ♦ Armed Forces (Special Powers) Act, 1958;
  ♦ Police reforms and other measures for capacity building of police forces;
  ♦ Functioning of the Centrally-sponsored Non-Plan scheme of Modernisation of Police Forces / Prisons;
  ♦ The need to restore the all-India character of All India Services and to enhance their effectiveness in promoting uniformity of standards in service delivery, across the country.

**Issues examined by the Task Force**

The Task Force began with the overwhelming concern that any reform or innovation in criminal justice and in the national security apparatus had to be people-centric. Apart from the legal apparatus, the citizen-friendly nature of agencies dealing with these subjects, in consonance with Human Rights, had always to be kept in mind, and had to be ensured.

Consequently, it sought to go into four questions in depth. The first question was the extent of the federal powers in intervening in the matters of ‘public order’. The second
question was that of creating an appropriate internal security mechanism. The third issue was regarding ways and means of augmentation of police efficiency. Finally, it was felt necessary to take a view on the issue of defining the role of the Armed Forces of the Union in internal security duties. It was felt that the first three questions were interlinked and none would work without the other. From the very outset, and repeatedly thereafter, the members felt that without substantive police reforms no amount of change would be effective in this area.

However, after the events of 26/11 – the terrorist attack in Mumbai, it was felt that the Task Force needed to examine the federal police powers beyond the conventional ‘public order’ framework, creating a broader framework of ‘internal security’. It was also felt that the Task Force should give a framework and design for a National Counter Terrorism Agency. The issue of professional efficiency of the police too needed to be looked at in the same context.

For want of time, the Task Force could not go into the other issues identified earlier by itself, as listed above, for examination. Papers on some of those issues, drafted by individual members, could not be discussed by the Task Force in detail. Those papers are, however, enclosed as Appendices to this report.

**Federalizing India’s Internal Security**

In order to look at the federal powers and responsibility in the maintenance of internal security and make suggestions to the Commission regarding appropriately assessing and situating such powers, the Task Force defined ‘internal security’ generally as well as in the Indian context as follows:

**Internal security can be defined as ‘security against threats faced by a country within its national borders, either caused by inner political turmoil, or provoked, prompted or proxied by an enemy country, perpetrated even by such groups that use a failed, failing or weak state, causing insurgency, terrorism or any other subversive acts that target innocent citizens, cause animosity between and amongst groups of citizens and communities intended to cause or causing violence, destroy or attempt to destroy public and private establishment.’**

While such threats cannot be defined as falling either within the traditional law and order realm or military threats from across the border, they cause both kinds of threats simultaneously, aimed at causing detriment to societal peace and national security. Naturally, they cause a peculiar dilemma for an affected state and
its agencies. This necessitates a clearly defined and delineated threat perception and a coordinated, synergized strategy implemented through a designated agency that is mandated to create a structure of cooperation with other concerned departments.

The above definition not only puts the responsibility equally both on the Centre and the States, it also necessitates that each of these entities synergize efforts and resources in this direction.

The Task Force examined the scope of Articles 256, 355 and 365 of the Constitution of India as well as the other relevant provisions regarding the division of power between the Centre and the States as operating in our country since 1950 as well as in the context of provisions in other federations relating to federal supremacy and federal policing powers. There was unanimity in the Task Force that there was no need to make any alteration in the existing constitutional provisions, which were wholesome in this regard.

However, as the Task Force went about proposing an internal-security-doctrine for the country, it felt that equal responsibility of the Union and the State Governments in this sphere needed to be unequivocally stressed. The Task Force, thus, proposes the following:

1. A binary, mutual and cooperative relationship between all the existing agencies of both the Central and the State Governments.
2. Strengthening the base, i.e., cutting edge level policing.
3. Building political consensus.
5. Creation of State Security Councils.
7. A networking of these institutions.
8. A system of half-yearly review and performance evaluation.

National Counter Terrorism Mechanism

The Task Force was unanimously of the view that to effectively counter serious threats to National Security, such as terrorism, a comprehensive national strategy and a well-
designed security regime had to be prescribed, with the following essential elements:

1) A comprehensive legal framework to deal with terrorism;

2) A specialized, pan-India nodal agency to holistically deal with the pre-emption, prevention, detection and control of terrorist crimes;

3) A specialized response system to effectively contain the damage, in the event of an incident still taking place; and

4) Strengthening the functioning of the existing intelligence and law enforcement agencies of the Central Government and of the States, including mechanisms of inter-se coordination between them.

The Task Force examined the recent Government of India initiatives in strengthening the internal security of the country. It felt that the Unlawful Activities (Prevention) Amendment Act, 2008, did take care of many lacunae that earlier existed in the country’s legal framework for effectively dealing with acts of terrorism: the Amending Act, inter alia, expands the definition of ‘terrorist act’ to cover almost all possible forms of terrorist activity. It also criminalizes the act of demanding firearms, explosives, bombs, or any hazardous nuclear, biological or chemical etc. device or material for the purpose of aiding, abetting or committing a terrorist act. **However, the inadmissibility of evidence of a confession made to a police officer remains a weak-link in the chain. Similarly, the issue of the right to silence of the accused in cases of terrorist-related acts needed to be re-examined in the context of the existing constitutional provision contained in Article 20 (3) in the Fundamental Rights Chapter**

The Task Force welcomed the creation of the National Investigation Agency. But, this laudable initiative nonetheless suffered from some structural and procedural weaknesses. Particularly, the restriction imposed on the NIA’s power to investigate a crime only when directed by the central government and that too after a circuitous procedure, which could dilute the response of both the police station and the Agency. Further, the NIA is tasked with investigating a case only after it has taken place and is not concerned with preventing it.

The Task Force proposes the National Agency to undertake holistic measures for **pre-emption, prevention, detection, and control of terrorist crimes** and the other scheduled offences covered in the NIA legislation, including the investigation of such crimes if and when actually taking place. It should act as the country’s nodal organisation for counter-terrorist operations, guiding, assisting and coordinating the work of the state law enforcement apparatuses while also taking up important operational tasks by itself, in
due collaboration, as necessary, with the law enforcement agencies of the States as well as all the concerned Central Government agencies.

The Task Force is unanimous in emphasizing concurrent responsibility of the Central and State governments in curbing national-security-related crimes. The National Agency proposed by the Task Force should be vested with and have concurrent jurisdiction in the administration of the amended Unlawful Activities (Prevention) Act, with the stipulation that every crime, as soon as it is committed, should be promptly registered by the State Police of the concerned jurisdiction and its investigation taken up in the right earnest, if the case is not taken up by the national agency – under its own original jurisdiction – in the first instance itself. **If and when the National Agency decides to take over any particular case for investigation, the jurisdiction of the State Agency concerned over that case will automatically cease.** The case will then become the primary responsibility of the National Agency, which may obtain back up and support, as necessary, from the concerned State agencies and it should be made obligatory by law for the latter, to extend the same when so requested or requested.

The Task Force recommends the following functions in the charter of duties and responsibilities of the National Agency:

(a) To be a clearing house of all-source intelligence information relating to terrorism and all the other scheduled offences – to collate, analyse, and assess all such intelligence from strategic as well as operational aspects, and disseminate the same, in real time, to policy makers as well as end-users responsible for preventive and enforcement actions;

(b) To collect tactical and operational intelligence on its own, in the follow-up of the intelligence inputs received from other agencies or otherwise;

(c) To create and maintain exhaustive data banks of information on all terrorist crimes and the other scheduled offences; their masterminds as well as actual perpetrators including suspects; their modus operandi; sources of arms, ammunition, explosives and other equipment of ‘war’; sources of funding; hideouts and shelters; collaborators and associates etc.;

(d) To pre-empt and prevent terrorist crimes and the other scheduled offences by unearthing and, where possible, busting terrorist modules and the plans and preparations of all elements to commit any crime pertaining to the agency’s charter of duties;

(e) To keep the active suspects relating to such crimes under constant surveillance;
(f) To keep a constant vigil on sources of funding, arms, explosives etc., and bust the same as soon as possible;

(g) To take cognizance of offences and take up investigation;

(h) To launch prosecution of offenders in such cases in the competent courts;

(i) To undertake a post mortem of all terrorist incidents, occurring anywhere in the country, with a view to drawing lessons for the future;

(j) To undertake psy-war operations with a view to preventing radicalization of youth and other vulnerable elements, and of home-grown terrorism;

(k) To coordinate the work of, and function in tandem with, the state law enforcement and intelligence agencies, to prevent, and to take action against those who commit, the specified offences;

(l) To provide the necessary assistance, support and guidance to the state agencies, in law enforcement functions relating to the specified crimes;

(m) To coordinate with, and act synergistically with, all the concerned central agencies including those dealing with customs, immigration, coast guarding functions, narcotics, tax evasion, foreign currency manipulation etc., the various central intelligence organizations, and others concerned; and

(n) To liaise with counter-terrorism units of friendly foreign countries for professional coordination.

Proposing an elaborate organisational structure for the Agency covering intelligence, research, forensic, and other fields, the Task Force would emphasize the importance of quality-manpower with an attractive package of service conditions. It would also emphasize the need for a quality-leadership in the Agency, selected through a non-partisan and neutral mechanism involving various constitutional offices.

While vesting the superintendence of the agency with the Central Government, the Task Force recommends improving the NIA legislation with certain definite proposals such as appropriate legal provisions, coordination of intelligence and preparedness at each level. The Task Force also felt that the functioning of the existing agencies and mechanisms, particularly the police, must be improved. That police reform is imperative to any internal security reform was repeatedly echoed by each and every member of the Task Force.
Qualitative Augmentation of Professional Efficiency in Police

The Task Force has also gone into the issue of qualitative augmentation of police efficiency at some length. Indeed, the question of police efficiency has been on the state agenda for a fairly long time and various recommendations have been made by several Commissions and Committees, from time to time, in this regard. The Task Force reviewed the proposals made with regard to police behaviour, a code of conduct for the police, quality of leadership and the existing state of the police. The central and state governments have, from time to time, taken steps for improvement in the police, but these measures have not kept pace with the needs and the time. No wonder, several state police forces have large numbers of unfilled sanctioned vacancies. The training of the police personnel too has not kept pace with the requirements.

The Government and the Police Departments always pride themselves with their efforts at upgrading the infrastructure, technical equipment etc. of the police and the budget allocated for this purpose. Indeed, such action is needed as most state police organizations seriously require such support. However, while this type of upgradation is somewhat visible, it remains cosmetic in terms of changing the mind-set of the police. Similarly, the numerous efforts and attempts made at introducing new methods of training, running seminars and courses, exposing our police personnel to the functioning of police organizations outside the country sound impressive, but they alone do not bring out a wholesome and essential change in police-ethos and promote the conviction that better standards of efficiency and professionalism must be aspired to and achieved.

Professionalism represents the quantitative dimension of an organization in the service of the community. It showcases the value orientation of the police force and reflects the ethos of the organization, enhancing its credibility, esteem and image. Devoid of such ethos, any organization will lose its credibility and will lead to rejection by the people and the society, in varying degrees. Leadership constitutes a critical variable in enhancing the level of professionalism in any organization and is expected to provide additional support system to meet unforeseen challenges. For police, the two elements namely, professionalism and leadership are inescapable imperatives of which good leadership is of paramount importance. All police recruiting agencies, as also the UPSC which selects Indian Police Service officers, must realize this fact and remodel the recruitment/selection system accordingly, so as to select the right kind of human material – with due physical mental, psychological and intellectual attributes – for the police service at various levels, which should be the starting point in any endeavour to ensure augmentation of professional efficiency of a permanent nature, in police.
Defining Role of Armed Forces of the Union in Internal Security Duties

The Armed Forces of the Union have been deployed on internal security duties from time to time. The Task Force was unanimous in its view that except for the routine, day-to-day public-order functions, the Union Government remain constitutionally empowered to deploy its forces in specified cases. Whether or not the deployment is *suo motu* would, indeed, depend on the circumstances. The acts of terrorism and subversion as the country has witnessed in the recent past do create conditions for their deployment.

However, past experience also indicates difficulties that arise leading to non-performance, under performance and even aberrations. Some such problems faced by the central forces are:

1. Deployment on short notice in unknown terrain and unfamiliar environments greatly reduces the effectiveness and impact of the force;
2. Organization and equipment of the units do not always suit the task that is meant to be performed;
3. Lack of knowledge of local customs, language and religious sensitivities hamper effective use of the force;
4. Political considerations inhibit effective action by the force;
5. Lack of integral capacity to acquire real time intelligence is a major handicap in dealing with insurgents and terrorists;
6. Lack of inbuilt logistic support arrangements proves a handicap in proper functioning of the force;
7. Prolonged deployment under stress, without proper logistic support and welfare measures, affects morale;
8. The weapon system and equipment is often outdated and does not meet the current operational requirements;
9. No time is available for refresher training or training for use of new weapons due to constant operational demands on the forces;
10. Leave and welfare measures are not well organized under the present system, oftentimes leading to low morale, indiscipline and suicide cases;
11. Units are often deployed for guard duties or other static jobs and their potential is not fully utilized.
The nature of internal security environment has changed drastically in the past few decades but our methods of deployment, weapons and equipment, even tactics and procedures, remain largely unchanged. In view of the threats of transnational terrorism and increasing turmoil in our neighbouring countries, we need to reorient our systems, infrastructure and policies to meet present and future threats. The command and control, organization and weapon system of the central forces should be reviewed at regular intervals.

The deployment of a variety of forces for internal security operations often leads to command and control problems that hamper effective action. Better coordination among various central forces and state agencies engaged in internal security duties, therefore, must be achieved. The system of unified command has not succeeded in bringing about the required coordination between the army, the central police forces and the civil administration in all areas. There are shortcomings in the working of the system – they are known – and corrective measures must be taken. In the State of Jammu and Kashmir, despite the establishment of a Unified Command, there has been a visible lack of coordination, and appropriate interaction between the Rashtriya Rifles, the police, other security forces and intelligence organizations functioning in the state.

Involvement of regular army formations in internal security on a permanent basis in J&K and the North-Eastern regions must be constantly reviewed. Means and methods must be found to release the regular army formations from such duties – and this must be done in consultation with the senior chiefs.

There is need to take an overarching view of the challenges posed to the internal stability of our country by Pakistan, the Jihadi elements both inside and outside the country, separatist and Naxalite groups etc., and there is need to raise suitably organized, equipped and trained internal security forces that can be deployed in the aid of civil authority for meeting future challenges to the breakdown of law and order.

In sum, the Task Force is of the view that all the reforms, changes and institutional framework suggested have to be put in place in a citizen-centric framework. The entire orientation of the criminal justice system, the attendant laws and the internal security architecture should be remodelled from being state-centric to be people-centric. And the initiative as well as the leadership role in this direction has to be assumed by the Union Government, which must build political consensus with parties and states on this issue, so that regime changes do not affect this orientation.

Police reform is the key to any change or improvement in the criminal justice system and internal security framework. The recommendations of the various Commissions and
Committees in this regard must immediately be considered for implementation. The ‘Review Committee on Recommendations relating to Police Reforms’, appointed by Ministry of Home Affairs, Government of India, in its Report (2005), had not only listed out all such recommendations but also identified 49 crucial recommendations for immediate implementation. These must be implemented urgently. But first, a political consensus must be built for the purpose.

26/11 and other terrorist attacks in the recent past have sent a clear message that the time-honoured traditional existing perception of public order must be enlarged, in the wider context of “internal security”.

The Task Force has proposed a definition of internal security as well the adoption of an internal security doctrine for India. We recommend their consideration and adoption.

Re-designing of the internal security architecture as well as the counter-terrorism regime of the country is the need of the hour.

**Questionnaire of the Commission for the Task Force**

5.1 Article 355 of the Constitution stipulates that “it shall be the duty of the Union to protect every State against external aggression and internal disturbance…….” Although Public Order and Police come within the State List, deployment of Central forces in any State in aid of the civil powers including jurisdiction, privileges and liabilities of members of such force while on such deployment are subjects for legislation under the Union List. In the context of recent developments of prolonged extremist violence and cross-border terrorism in certain States, the role and responsibility of the Central and State Governments to contain such disturbances have come up for examination in meetings of the Centre with the States.

This is an issue which has a vital bearing on the life and security of the people and deserves urgent attention. Given the mandate of Article 355 and the division of powers in respect of internal and national security, do you think the role and responsibilities of the Centre and States in the matter of controlling internal disturbance often spread over several States require delineation through supporting legislation?
5.2 By convention and in practice, Central forces are deployed to control “internal disturbance” only when specific requests are made to that effect by individual State Governments. Article 355 of the Constitution enjoins the Union to protect States against external aggression and internal disturbances. What courses of action you would recommend for the Centre to effectively discharge its obligations under Article 355?

Social and Communal Conflicts

5.3 Maintenance of communal harmony in the country is one of the key responsibilities of both the Union and the State Governments. The Government is expected to ensure that communal tensions and communal violence are kept under control at all times. What according to you should be the role, responsibility and jurisdiction of the Centre vis-à-vis the States –

(a) During major communal tensions particularly the ones which may lead to prolonged and escalated violence? and;

(b) When such prolonged major communal violence actually takes place?

5.4 Likewise, what are your views on prevention and control of sectarian violence or any other social conflicts that may lead to prolonged and escalated violence?

5.5 In the light of the above two questions, what according to you should be classified as a major and prolonged act of violence? What parameters would you like to suggest in defining a major and prolonged act of violence?

5.6 In the above context what steps would you suggest for making the role of the National Integration Council more effective in maintaining and sustaining social and communal harmony in the country?

5.7 How can the media in your view play a constructive role in preventing and containing communal and sectarian violence?

Crimes affecting National Security

5.8 Several expert committees constituted by the Government from time to time for reforming criminal justice administration have consistently recommended
the need for classifying crimes threatening national security as a separate category requiring differential treatment. These are crimes generally masterminded by criminal syndicates across State and National boundaries using illegitimate or ostensibly legitimate channels mostly with the support of anti-national elements. This category may include crimes such as terrorist violence, economic crimes like money laundering, production and distribution of fake currency and stock market frauds, trans-national crimes like drug trafficking, arms and explosives smuggling etc.

Given the potential danger to the security of the country arising from such inter-state and trans-national crimes, which crimes in your view merit inclusion in such a category?

5.9 Given their characteristics as mentioned in 5.8, inter-State and transnational crimes do warrant different procedures for investigation and prosecution as compared to other crimes. A Central Agency with special expertise and resources working in co-ordination with international security agencies on the one hand and the State police on the other, is the model recommended by expert committees to tackle the problem. What are your views in this regard?

5.10 The Central Agency so constituted as a result of issues raised in 5.9 above would not be able to operate effectively without the cooperation and support of the State law and order machinery. What are your suggestions in this regard?

The Response of the Task Force to the above Questions

5.1 The Task Force, in its different meetings, discussed these issues in detail in the context of the subject matters examined by it and its views are reflected in the relevant chapters of this report. The Task Force was unanimously of the view that the existing provisions in the Constitution are adequate to take care of the emerging security situation in the country in the context of recent developments.

5.2 There is no Constitutional bar to the Central Government sending its armed forces to the disturbed area even when the state is unwilling to receive the central forces sent in discharge of the duty of the Central Government under Article 355 to ‘protect the state against external aggression and internal disturbance….’ However, it is not considered wise to permit a situation to be created where the central forces have to operate without the cooperation or in opposition to the state administration, especially the state police. Persuasion and responding to the concerned State’s view helps to open a dialogue –
which is so essential in Centre-State relations. However when permission fails and where the State Government is opposed to intervention by central forces, the right course, would be the constitutional – viz. to first issue directives under Article 355 to the State, and in the event of the State not complying with the directive of the Central Government, to take further action under Article 356 (by imposing President’s rule).

5.3 Normally, it should be the duty and responsibility of the concerned state government to maintain communal harmony at all times. It is expected to control communal violence with a firm hand in the initial stages as laid down in the directives of the Union Home Ministry and deploy all the available resources to ensure that it does not spread. If there is reasonable apprehension that the State Government is reluctant to act for political or other reasons, then the Union Government should issue written directives to the State under the Constitution and, if need be, follow it up by taking further action as explained in Para 5.2 and send its armed forces to control communal violence.

5.4 “Communal violence” includes violence due to sectarian, ethnic and social conflicts, and should be effectively dealt with like other religious-conflict-situations.

5.5 In almost all cases of inter-community conflicts – whether on local issues or those which have wider dimensions – speedy, non-partisan response of the local police and administration is crucial in restoring peace and preventing vested interests from converting small local issues into divisive national issues, which gives an opening to hostile and anti-national forces both inside and outside the country. Clear directives must be issued to the local police and administration to take proactive measures to bring the situation under control within the first two hours or else the area-in-charge must be held personally responsible.

5.6 For obvious reasons, the Union Government has to play a more effective role. It must take a lead and ensure that issues of communal conflicts do not become a subject of electoral politics. The National Integration Council should not become a forum for fighting electoral battles. It should be used as a forum for reaching a broad consensus among all the political parties and governments on a comprehensive strategy to fight communal conflicts in the society.

5.7 The media has a vital role in ensuring that it does not sensationalize inter-community conflicts. It must play a non-partisan role. The media in India was known for its discretion and restraint in printing or telecasting stories of communal conflicts. But lately, there is a noticeable tendency among a section of
the media, due a spirit of competitiveness, to ignore this self-imposed restraint. This can best be combated by district authorities by expeditiously providing accurate information to citizens in a balanced manner through all available media channels. In addition, the district authorities must maintain regular active relations with responsible, peace loving citizens so that at times of crisis they can be speedily mobilized for restoring communal harmony.

5.8 The Task Force is of the view that while there is need for special laws to deal with crimes like terrorism and organised crime, there has been genuine public apprehension that until the police and the criminal justice systems in India are radically reformed, such laws could be misused for political and other reasons.

5.9 and 5.10 While, the need for constituting such an agency to investigate such crimes could not be denied, the Task Force is of the opinion that in the given political environment, it is unlikely to get the due cooperation from the States. And, without active cooperation from States, such an agency would simply not be able to perform its role and functions. Therefore, it has recommended the constitution of a National Counter Terrorism Centre that is more likely to receive active cooperation from the States.

These issues have been further elucidated in the chapters that follow.
FEDERALIZING INDIA’S INTERNAL SECURITY

Introduction

The 26/11 terror wrought by the *fidayeen* attack in Mumbai by some *jihadis* from Pakistan has naturally sent a shock wave not only through the security establishment in the country, but also through the governments at all levels. Beyond the political blame game engendered by the country’s contemporary political texture, the need for a comprehensive and ‘federalized’ approach to ‘internal security’, beyond the simplistic and out of date ‘division of power’ and ‘centre-state relations centric’ approach for maintaining law and order, has never been so crucial and urgent. Indeed, the Government of India reacted immediately by creating a National Investigating Agency (NIA), but coming so close to the fifteenth general elections, it naturally drew mixed, if not adverse, political reactions. Even as the NIA takes shape with several pieces of organisational, jurisdictional and juridical jigsaw gradually coming together, the need for a debate on ‘internal security’ as a comprehensive concept within the existing constitutional framework, which links the law and order machinery (along with all the attendant constitutional and federal as well as procedural and penal provisions of the criminal justice system) with the national security structure, virtually working as a bridge between the two, has never been so urgently necessary. It is expected that with the return of a stable government in New Delhi after the people of the country reposed faith in the Congress-led United Progressive Alliance government in the fifteenth general elections, the new government would use the unequivocal mandate to review the concept and structure of internal security in a decisive fashion.

This chapter aims at defining ‘internal security’, generally as well as in the Indian context, reviewing the constitutionally ordained police and security structure in India and propose an ‘internal security’ structure for India, keeping in view its federal polity as well as decentrist sentiments that create a paradoxical annoyance at the ‘Central’ interventions and encroachments on this state responsibility and blame the Centre for not aiding the states in time. Given the kind of reactions that have emerged from some of the States ruled by non-UPA parties or coalition formations to the NIA, the federal nature of the Indian society and polity that is being governed by or likely to be governed in near future by a federal party system, the term deserves a consensual definition, accepted by all the
parties. Keeping this in view, the paper will also attempt to propose an ‘internal security doctrine’ for the country, which would attempt to visualize a nation-wide link up for internal security architecture for India.

We would like to stress and underline, at the very outset, that the proposals being made by this Task Force are not aimed at securitization of the Indian state. The proposals of the Task Force are for ensuring the security of the people of India and strengthening the security apparatus of the Indian state to the extent that there is capacity and capability enhancement to secure the people and the state. Naturally, protection of human rights – both in terms of training and orientation of the security personnel and in terms of legal and institutional arrangements – has to be necessarily built into the scheme we are proposing here.

It would be appropriate to mention here that the Constituent Assembly had elaborately discussed the questions of life and personal liberty of the people of India, which form the bases of the concept of human rights, in the context of police powers of the Indian state. This debate is reflected in the context of discussion on Article 21 (draft Article 15) and Article 22 (draft Article 15A). Though Dr. Ambedkar was able to convince the members to go along with the proposed draft on ‘procedure established by law’, respecting the sentiments of the House on dangers inherent in empowering the representatives a little too much, he returned to the question nine months later with draft Article 15A (now Article 22), which attempted greater safeguards for citizens by making two clauses of the Cr.PC constitutional – virtually taking them away from the Parliament’s amending powers, as it were. This, he claimed, brought in the spirit of (substantive) ‘due process’ in the functioning of the ‘procedure established by law’. The debate as well as the two substantive provisions supported by the whole gamut of Fundamental Rights in the Constitution of India in any case give the framework for capping and using the police powers of the state in the interest of the people. The scheme and the recommendations here are complementary to the constitutional provisions.

**Defining Internal Security**

The politics surrounding security of the state and its actors has been reflected upon by thinkers around the world since time immemorial. Kautilya in India and Machiavelli in Europe broke new grounds in this sphere in their treatises (*Arthashastra* and *The Prince* respectively) indicating a fundamental break between political idealism and political realism when the ruler (the king or the prince) deals with his subjects and when countries, kingdoms and nations connect to each other. In recent times, Hans Morgenthau’s *Politics among Nations: the Struggle for Power and Peace* published in 1948 introduced the concept of

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political realism, presenting a realist view of power politics.\(^6\) Morgenthau’s political realism is not only said to have guided the US foreign policy since, it has also influenced how nations and governments have defined national security. But despite perspective change introduced by the thinkers and proponents of political realism, national security remains broadly defined as defence of borders from external aggression and only political and diplomatic methods of the pursuit change from ‘idealism’ to ‘realism’. Internal security, on the other hand, is a more comprehensive approach to public order that has evolved with internal threat perceptions emerging out of non-domestic factors but intermeshing with the domestic ones, e.g., foreign policy considerations of unfriendly countries and activities of non-state actors, who have developed world-wide network in the era of globalisation. In foreign policy discussions these factors are known as intermestic factors – emerging out of intermeshing of international and domestic factors.\(^7\)

The ‘Dictionary of Military and Associated Terms’ of the US Department of Defence, 2005, describes internal security as ‘the state of law and order prevailing within a nation’. Obviously, maintenance of ‘law and order’, which can further be defined as ‘the maintenance of order in accordance with law’, is the prime basis on which law and order could be defined. However, not only the USA, which has had to redefine its perception of internal security since 9/11, despite sticking to the law and order definition in 2005, by creating the Department of Home Land Security (2002)\(^8\), but also Asian countries such as Indonesia have attempted to redefine internal security in a more comprehensive fashion, linking it to national security. In short, to put it unambiguously, as the external threats cross national borders to impinge on internal security in the form of proxy wars, terrorism, narco-terrorism, smuggling of arms, cyber crime or any other attempt to create internal disturbances, not only the national security architecture has to create operational bridges with the institutions and mechanisms of internal security, the law and order approach to internal security too gets enlarged, refined and redefined. The task becomes imperative for two interdependent reasons. First, the law and order machinery, with police as the pivot, is compelled to take up a combative role too. The need for it to connect to counterparts in other states as well as at the national level becomes compelling and urgent. Second, the national security machinery hinging on the defence

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\(^8\) http://www.dhs.gov/xlibrary/assets/hr_5005_enr.pdf.
forces, is trained in combat, i.e., to fight and destroy the enemy. Despite the motto of sparing the civilian population, collateral damages too are similarly accounted for and the prisoners of war, who are aliens, are treated in accordance with the precepts of the international law and the Third Vienna Convention on Prisoners’ of War, 1949. However, the internal security functions such as dealing with terrorism makes the police and concerned security agencies arrest foreign non-state actors either conspiring or committing terror acts and confront rebel ‘citizens’ too, who must not necessarily be killed and after captured, must be dealt with in accordance with the rule of law9 (and in the Indian case ‘procedure established by law’). It is therefore necessary to define internal security under new circumstances. And for that purpose, it would be appropriate to peruse through and scrutinise the Acts, statutes and machinery created by other countries.

The US Home Land Security Act (PUBLIC LAW 107–296—NOV. 25, 2002) does not define internal security, for its task has been clearly focused on preventing terrorism10 in

9 The dilemma appearing and expressed in certain sections of the Indian society on giving a fair trial being given to Ajmal Kasab, the only surviving terrorist in 26/11 carnage in Mumbai, is indicative of the serious issues of the rule of law that might arise in dealing with cases of terrorism. Similar dilemma was also visible in the case of death sentence to Afzal Guru, whose conviction in the Parliament attack case – was confirmed by the Supreme Court of India. However, he has not been hanged even after years, because the Union government has been unable to take a decision on his mercy plea.

10 (b) MISSION.—

(1) IN GENERAL.—The primary mission of the Department is to—

(A) prevent terrorist attacks within the United States;

(B) reduce the vulnerability of the United States to terrorism;

(C) minimize the damage, and assist in the recovery, from terrorist attacks that do occur within the United States;

(D) carry out all functions of entities transferred to the Department, including by acting as a focal point regarding natural and manmade crises and emergency planning;

(E) ensure that the functions of the agencies and subdivisions within the Department that are not related directly to securing the homeland are not diminished or neglected except by a specific explicit Act of Congress;

(F) ensure that the overall economic security of the United States is not diminished by efforts, activities, and programs aimed at securing the homeland; and

(G) monitor connections between illegal drug trafficking and terrorism, coordinate efforts to sever such connections, and otherwise contribute to efforts to interdict illegal drug trafficking.

(2) RESPONSIBILITY FOR INVESTIGATING AND PROSECUTING TERRORISM.—Except as specifically provided by law with respect to entities transferred to the Department under this Act, primary responsibility for investigating and prosecuting acts of terrorism shall be vested not in the Department, but rather in Federal, State, and local law enforcement agencies with jurisdiction over the acts in question.
the Home Land, which has been defined as whole of the USA. However, by focusing on security beyond physical security, it does delineate what could be called internal security and its linkages with the established structures of law and order administration at ‘Federal, State, and local’ levels. A private enterprise ‘The National Home Land Security Consortium’ in a document titled Protecting Americans in the 21st Century: Imperatives for the Home Land\(^1\) has articulated elements that could constitute units and mechanisms for internal (Home Land) security. It states that **The wide range of factors that influence our safety and security are rapidly evolving.** Our thinking and actions must therefore be agile and progressive.’ The analysis presented in it identifies and elaborates on nine elements of internal security:

i. Communication and Collaboration;

ii. Intelligence and Information Sharing;

iii. Use of Military;

iv. Health and Medical;

v. Interoperability;

vi. Critical Infrastructure;

vii. Surge Capacity and Unified National Capabilities Approach;

viii. Sustained Resources and Capabilities; and

ix. Immigration and Border Security.

A detailed analysis of each one of these given in the document highlights five elements that could constitute integral parts of internal security – i) assessment; ii) strategizing; iii) communication; iv) a synergetic collaboration with a broad range of government departments; and v) a quick response. In fact, a careful reading of the Home Land Security Act too gives the impression that even where a specialised and dedicated agency is created for the purpose, dealing with threats like terrorism as well as with larger issues of internal security beyond public order requires a coordinated effort of several related agencies.

Indonesia, which has been grappling with insurgency and terrorism for some time, too has been attempting to put together an effective internal security strategy. In 2004, a document titled Indonesia: Rethinking Internal Security Strategy, prepared by the International Crisis Group (ICG), based in Brussels and Jakarta, identifies five major problems in Indonesia\(^12\)


unclear institutional division of labour, particularly between the police and the military (Tentara Nasional Indonesia, TNI);

contradictory or ambiguously worded legislation on some aspects of internal security and no legislation at all on others;

lack of accountability of the security services;

inadequate oversight of operations; and

no strategic direction.

Clearly, without defining internal security, the document gives prime importance to cooperation (amongst the police, military, the intelligence services and the legal regime), coordination, accountability and strategizing in maintaining internal security. Going further, the document says: ‘One of the thorniest issues is the precise division of labour between the police and military. Formal responsibility for internal security has rightly been allocated to the police but there are “grey areas”, such as counter-terrorism and counter-insurgency, where the roles are poorly defined. Moreover, even in areas that are exclusively police responsibility, such as upholding law and order, police capacity remains weak.’ Obviously, while stressing capacity building for the policy, it also emphasizes intelligence and a coordination of intelligence efforts amongst various agencies in the field. ‘Political neutrality’ and ‘civilian oversight’ are other two significant elements emphasized. Even though the paper does not define internal security, it talks of ‘a systematic attempt to define internal security strategy and responsibilities’ and lays down requirement for an internal security policy paper as follows:

- the nature of the threats;
- policies for addressing the causes of conflict and resolving existing conflicts;
- policies for preventing, countering and recovering from outbreaks of violence whether resulting from a breakdown of public order or political motivations;
- the division of responsibility between national and local government, departments and agencies; and
- capability requirements, including expected changes over time, especially for the police, military and intelligence services.

A perusal and analysis of these three documents on contemporary thinking on Home Land/internal security gives us sufficient insights to define internal security. Internal security can be defined as ‘security against threats faced by a coun-
try within its national borders, either caused by inner political turmoil, or provoked, prompted or proxied by an enemy country, perpetrated even by such groups that use a failed, failing or weak state, causing insurgency, terrorism or any other subversive acts that target innocent citizens, cause animosity between and amongst groups of citizens and communities intended to cause or causing violence, destroy or attempt to destroy public and private establishment.

While such threats cannot be defined as falling either within the traditional law and order realm or military threats from across the border, they cause both kinds of threats simultaneously, aimed at causing detriment to societal peace and national security. Naturally, they cause a peculiar dilemma for an affected state and its agencies. This necessitates a clearly defined and delineated threat perception and a coordinated, synergized strategy implemented through a designated agency that is mandated to create a structure of cooperation with other concerned departments.

India’s Internal Security Architecture

In keeping with the discussion and definition above internal security is being used here with a larger connotation than the oft-used term ‘public order’, the expression that is used in the Constitution of India as well. This also makes a distinction with the term national security, connoting security of the nation from external aggression, which is unquestionably the domain of the Union Government. The context of internal security in this essay thus would refer to the problems and issues related to public order, peace and tranquility and security from armed violence within the country, which are managed by the police in the states (both unarmed, i.e., located in police stations and the armed police), the central paramilitary forces (e.g., CRPF, RAF, BSF, ITBP, et al.), the central investigating agency like the CBI. The constitutional and legal apparatuses supporting the functioning of these agencies as well as the entire gamut of the criminal justice system in the country also form part of the internal security architecture.

It is well documented and comprehensively discussed that the strong-centre framework of the Indian constitution is a result of the concern for ‘national unity and integrity’ emanating out of partition of the subcontinent, which comprehensively undid the extent and nature of the federal framework developed earlier by the (Motilal) Nehru report (unacceptable to the Muslim League) and the Cabinet Mission (unacceptable to the Congress) when the Constituent Assembly began framing the Constitution for an independent India. It is not surprising, therefore, that despite entries 1 and 2 of List II (State List)
in the Seventh Schedule placing public order as the responsibility of the States and assigning police as the instrument for the purpose at their disposal, several constitutional provisions outlined the role of the Union Government in the internal security too. As the constitution was inaugurated and the government began functioning, ‘(p)rotecting national integrity through preserving political stability was thought to be in conflict with the democratic rights to freedom of expression and personal liberty(.)’, which led to the reconsideration of certain freedoms granted through Fundamental Rights, particularly in Article 19.13 The disputes related to the deployment of the central forces during the late 1960s were part of the transformation from the one party dominant system, but the changes in the entry 2A of the List I and corresponding change in entries 1 and 2 of the List II in the Seventh Schedule brought about by the controversial 42nd Amendment and retention of these changes by the Janata Party Government, (which otherwise undid many parts of the 42nd Amendment through the 44th Amendment) were reflective of consensus on the police powers of the Union Government. The past two decades, however, have brought to the fore problems and issues – collective and communal violence arising out of ethnicity-based political mobilisation, political partisanship affecting the performance and professionalism of the state police, Naxalism, terrorism and insurgency – that have raised questions regarding efficacy of the states in dealing with complexities of internal security and reflected that they have conceded the turf to the Centre in such eventualities. The demand for deploying the RAF, a specialised wing of the CRPF, for dealing with communal violence by States is a clear indication of the fact that the States have been unable to equip their internal security apparatuses to keep up with troublesome times.

The Legacy

The internal security structures in India, like many aspects of the country’s federal and constitutional structure, were outlined, if not defined, during the colonial rule. First, the system of police and policing developed in three stages – the Cornwallis system in the late 18th century attempted to formalize the policing through the thanadari system, bringing an end to the system being run through the zamindars, which was not accepted throughout the British India (in the Madras presidency particularly), Charles Napier’s successful experiment with the Irish Constabulary in Sind since 1847 that became the model of the police force in colonial India and, finally, the design of the British Indian police and the criminal justice system since 1860. The system, though under the centralized control of the colonial state, was sufficiently decentralized to take care of local specificities, which were not tampered with by the Indian Police Act 1860.

Second, the Indian Penal Code (1862) and the Criminal Procedure Code (1861) and the Indian Evidence Act (1872) outlined a criminal justice system that supported the overwhelming presence of an Indian state that was suspicious of its ‘subjects’. The provincial (and later State) police functioned with this overbearing attitude towards people, which was shaped by a highly centralized state.

Third, the all-India services – the Indian Civil Service (ICS) and the Indian Police (IP) – precursors of the IAS and the IPS were designed and institutionalized to maintain uniformity, which also meant a centralized control over the police. The magisterial control of the police, wherein the ICS occupying various magisterial seats at different levels in the district administration that the British had designed, exercised control over the police. This situation remains unchanged to date except in the Police Commissioner system which has been introduced and continues in some metropolises in India.

Fourth, this system continued despite Provincial Autonomy introduced with the Government of India Act 1935. Law and order remained with the Governor, who was accountable to the Governor General and Viceroy. At the same time, as the Jallianwala Bagh (1919) tragedy indicated, the option to use the Army for internal security, even in the most brutal fashion, where considered necessary, was not given up.

Finally, police structures evolved with the ‘thanadari’ system and attendant subsystems (like the Chaukidari system) at the local level. It was a decentralized system of sorts being operated by a highly centralized and oppressive state that also simultaneously used the local feudal structures, that were equally, if not more, oppressive. The impact of this on the evolving local police cultures, even in independent India, should not be undermined. This point deserves emphasis and needs to be taken into analysis, because in talking of the Indian police, consequently on the discourse on the police and internal security in the country, is often missed. In other words, with a pan-Indian police culture imposed from the top, local police sub-cultures also appear to have developed, which deserve documentation and analysis to fully comprehend the functioning of the police in a federal system with centralizing tendencies. For an understanding emanating from such an analysis alone would help devise corrections and innovations in the police in the new context of internal security role, which requires a synergetic relationship of a pyramidal structure at the base of which is police.

**Public Order in a Federal Constitution**

Article 356, a replica of the much-criticised Section 93 of the Government of India Act, 1935 that empowered Governors of Provinces in British India to dismiss an elected government, is among the main constitutional provisions that made K C Wheare\(^\text{14}\) to charac-

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Criminal Justice, National Security and Centre-State Cooperation

terize India as a quasi-federation. In any case, various pronouncements, from Jawaharlal Nehru’s objectives resolution to the statements of the framers of the Indian constitution in the Constituent Assembly leave no doubt about the strong-centre framework as the main feature of the Indian federal experiment. Obviously, internal security had to be a part of it.

**Division of Power:** However, in the original Constitutional scheme there was no ambiguity about the task of public order and police as the custodian of this task to be the responsibility of states. Entries 1 and 2 of List II in the Schedule 7 (as part of division of power under Article 246) unambiguously allotted Public Order and Police to states. Though the all-India services IAS and IPS, latter particularly, lurked in the background as institutions that could be used if the Centre so desired, and entries 1-4 in List III dealing with criminal law, criminal procedure, preventive detention, etc., were put under concurrent jurisdiction, keeping in mind their use for the Centre’s national security role and the need for maintaining uniformity of criminal law and procedure across the country. Discerningly, no entry or subject was put in the List I that cast its shadow on the States’ role in internal security. Interestingly, the Constituent Assembly, despite its strong-centre mindset, was unanimous on this arrangement, with only one discordant voice (Brajeshwar Prasad) that strongly argued that public order should be transferred to List I, because:

... the administration of public order in the provinces has not been of a satisfactory character. They have not the resources to maintain an efficient system of administration. Seventy-two per cent is left for managing a large number of subjects. The result has been deterioration in the efficiency of the administration.

There are also some States and provinces on the borders of foreign States.

Referring to States like Assam (undivided, including Meghalaya, Mizoram and Nagaland) and East Punjab, on the borders of foreign States, which might not be able to maintain public order, he opined that, ‘... it is necessary that the power to maintain public order should remain in the hands of the Central Government.’ His amendment was eventually negatived by the Constituent Assembly.

15 He further said:

The provinces of West Bengal and East Punjab are partitioned provinces. They are suffering from the problem of relief and rehabilitation, from the problem of migration of population, and there has also been infiltration of subversive elements in the services of these two provinces. I do not say that the services of the other provinces are safe; there has been infiltration in the services of the other provinces also; but in the case of these two provinces in particular, there has been considerable infiltration of subversive elements. The result is that the integrity, the efficiency of the provincial administration – my friends from West Bengal will bear me out – has deteriorated. Sir, in other provinces also crimes are on the increase. The machinery of law and order has been considerably weakened. Lawlessness prevails in many provinces.... I, therefore, strongly feel that public order should become a Central subject. There are dangers within and dangers without, and we cannot depend upon the loyalty of the provincial administration in times of crises. Centrifugal forces have been the bane of our political life since the dawn of history. I, therefore urge, Sir, that pubic order should become a Central subject.
However, the 42nd Amendment to the Constitution of India (1976) brought by Mrs. Indira Gandhi during the Internal Emergency of June 1975, sweepingly aimed at altering the constitutional balance in several fields. It unambiguously created a space for central intervention in internal security. Entry 2A inserted in the List I read:

2A. Deployment of any armed forces of the Union or any other force subject to the control of the Union or any contingent or unit thereof in any State in aid of the civil power; powers jurisdiction, privileges and liabilities of the members of such forces while on such deployment.

To make the Central role even more unambiguous entries 1 and 2 of the List II were also altered by the same Amendment by making additions to ‘Public order’ in entry 1 and ‘Police’ in entry 2. The amended provisions read:

1. Public order (but not including [the use of any naval, military or Air Force or any other armed force of the Union or of any other force subject to the control of the Union or of any contingent or unit thereof] in aid of the civil power).

2. [Police (including railway and village police) subject to the provisions of entry 2A of List I]16

Obviously, Mrs. Gandhi was influenced in bringing about these changes not just by the events that led her to (mis)use the Emergency Provisions, she was also influenced by India’s the post-1967 politics, during which in three cases, which the Sarkaria Commission too acknowledges, the Centre’s right to deploy the Central paramilitary forces, even to protect its own establishments, were questioned and tested. The significant point in this context is that the 44th Amendment brought about by the Janata Government, after it came to power in 1977, to undo the wrongs of the Emergency Era, retained these changes, reflecting an unusual consensus across the political class on this issue, despite the severe criticism Indira Gandhi always evoked amongst her opponents for her Centralist attitude!

Emergency Provisions: Part XVIII of the Constitution, of which the much criticised Article 356 is also a part, clearly tilts the balance in favour of the Centre even on issues related to public order when the nation faces a national insurgency. Article 356, which empowers the President to dismiss an elected State government, dissolves or puts in abeyance an elected State Legislative Assembly, is a comprehensive one, under which the State is directly ruled by the Centre. This provision has often been misused politically.


\[2\] The texts in parenthesis in both the entries were inserted by the 42nd Amendment.
and except for Punjab, the North East and Jammu and Kashmir, where the decline in law and order due to terrorism and emergency prompted imposition of the Central rule, public order related dismissal of State governments have been rare. Since Dr. Ambedkar was explicit in his response in the Constituent Assembly that the imposition of Article 356 is not related to good governance, public order as part of good governance cannot be used as an argument in using this provision. However, terrorism and insurgency are extraordinary situations, involving special techniques on the part of the security agencies, State or Central; thus, a use of this provision because of breakdown of public order due to any such situation cannot be politically faulted. The provision, to this extent provides extra advantage the Centre and an additional constitutional instrument at its disposal, to take over governance in a State, obviously, including law and order.

The national emergency under Articles 352 (read with 353, which elaborates on its impact) has been in operation thrice, first in the wake of the Chinese war in 1962, which also saw the country through the 1965 Pakistan war, then during 1971 Bangladesh liberation war and then in the period of the Internal Emergency in 1975-77. Since the first one was during the era when the Congress ruled in most States as well, whether or not the Central government issued instructions under Article 353, there was no reported controversy regarding the Centre overextending itself in any area, including in matters of public order. The third case is only one of its kind where emergency was not imposed due to external aggression, but due to ‘internal disturbance’, giving the Union government and the Indira Gandhi-led Congress tremendous power to use the provisions against their political opponents. No wonder, then that the Janata Government who followed in March 1977 substituted ‘armed rebellion’ for ‘internal disturbance’ through the 44th Constitutional Amendment in 1978.

Article 355\(^\text{17}\), which empowers the Union Government to deploy central paramilitary forces in a State where public order is in jeopardy and out of control of the State police, gives a paternalistic responsibility, as it were, to the Union Government to protect the States. Similarly, Article 365 too gives greater responsibility to the Union government in internal security affairs. Despite the concept of federal supremacy being an accepted constitutional maxim worldwide, and as we will see in the following discussion, even in India due to emerging political situations, specific uses of these provisions in the country deserve to be put under a microscope from the perspective not merely of federal balance, but also their impact on the internal security structure in the States.

\(^\text{17}\) It says, ‘It shall be the duty of 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.’
**Sarkaria Commission on the Balance of Power Between the Union and the States:**
The Commission on Union State Relations headed by Justice R. S. Sarkaria in considering the ‘Rule of Union Supremacy’ in legislative and administrative fields maintained that supremacy rule is the key-stone of federal power.\(^{18}\) Putting this concept in comparative perspective with other federations such as Canada, Australia, Germany and the USA, the Commission maintained:

In every Constitutional system having two levels of government with demarcated jurisdiction, contests in respect of power are inevitable…. The rule of Federal Supremacy is a technique to avoid such absurdity, resolve conflicts and ensure harmony between the Union and State laws. This principle, therefore, is indispensable for the successful functioning of any federal or quasi-federal Constitution.\(^{19}\)

Making observation on Articles 246 and 257(1) the report further said:

The essence of the rule embodied in Article 257(1) is that, in case of conflict, the valid exercise of Union executive power must take priority over the valid exercise of State executive power. Indeed, it is an ‘executive’ facet of the principle of Union Supremacy.\(^{20}\)

Sarkaria Commission, thus, in principle, justified the letter and spirit of Articles 355 and 365. In fact, in response to the Commission’s questionnaire most States too accepted the deployment of the armed forces of the Union as constitutional, but with the proviso that it was only ‘with the consent of the State Government concerned.’ As if protecting their domain, some States added a qualifier, as it were, ‘It is only when national security or integrity is threatened and the State Government adopts an intransigent attitude, that the Union Government should deploy its armed forces *suo motu*. This power should be used sparingly.’ There was also acceptance of the fact that the Union armed forces were


\(^{19}\) ibid, p. 28.

\(^{20}\) The report also quoted the Calcutta High Court’s judgment on Jay Engineering Works v. State of West Bengal to substantiate the point. The honourable High Court had said:

“The authority and the jurisdiction of the State Government to issue administrative directives are limited, firstly by the Constitution and, secondly, by the laws of the land. There is no law which authorises the State Government to issue directives to officers in charge of maintenance of law and order not to enforce the law of the Land upon certain conditions being fulfilled and complied with. The provision in Article 256 of the Constitution, which requires that the executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State, are mandatory in nature ….”

needed by States because the States lacked resources to build their police forces to meet all contingencies.\textsuperscript{21} A few states expressed disagreements with the Administrative Reforms Commission's views on the extent of the Centre's power and constitutional responsibility under these provisions to deploy its forces in aid of civil administration in States,\textsuperscript{22} while two state governments referred to the encroachments on the State rights made by the 42\textsuperscript{nd} Amendment by altering Entry 2A in List I and Entries 1 and 2 in List II. Another State Government asserted its rights to requisition the CRPF on its requirement and convenience and not at the Centre’s discretion.\textsuperscript{23}

Even while accepting the doctrine of federal supremacy, the Commission’s overview of the internal security scenario leaned towards caution. The internal security scenario as well as requirements of the country is indeed complex. Aside from the State Police and the Central para-military forces, the Army too has had to step in to tackle insurgency and terrorism. In fact, according to the recent reports, the Union Government is considering using the Air Force to locate the hideouts of the Maoists in thick forests of the Andhra Pradesh and Chhattisgarh, which will be the first instance of the use of a wing of the defence forces other than the Army in tackling internal disturbance or armed rebellion. Clearly, in such abnormal circumstances of the breakdown of public order, the normal legal criminal justice framework is not sufficient; therefore Disturbed Areas Act is applied. But the application of this Act and its impact due to the sweeping powers it gives the security forces, has met with severe resistance from the local population (in the North Eastern States for example) and the civil rights movement in the country.

Observing that the State Governments and their police organisations are many a times found wanting in training and professionalism in dealing with these extreme and abnormal situations, it identified political partisanship also as a bane of the state police. Therefore, without recommending a change in the existing relationship between the Union

\textsuperscript{21} Ibid, p. 195

\textsuperscript{22} It is worthwhile for our discussion here to present the summarisation of the objections by States to ARC recommendation by the Sarkaria Commission. The reasons given were:

(i) Article 355 does not confer any powers or responsibilities on the Union other than those implied in Articles 352 and 356. As neither of these Articles provides sanction for \textit{suo motu} deployment of armed forces of the Union in a State, Article 355 cannot be deemed to confer this power on the Union.

(ii) The word “aid” in the expression “in aid of the civil power” in Entry 2 of List I connotes that the armed forces of the Union can be deployed in a State Government. “Aid” cannot be forced on its recipient.

(iii) The proposition that the Union Government can deploy \textit{suo motu} its armed forces in a State goes against the scheme of the Constitution. As ‘public order’ and ‘police’ fall entirely in the State sphere, the responsibility of a State Government in regard to these two subjects should be fully respected.

\textsuperscript{23} Ibid, p. 195
armed forces and the state civil authorities, the Commission advised that ‘before the
Union Government deploys its armed and other forces in a state in aid of the civil power
otherwise than on a request from the State Government, or declares an area within a state
as “disturbed”, it is desirable that the state Government should be consulted, wherever
feasible, and its cooperation sought, even though prior consultation with the State Gov-
ernment is not obligatory.’ It also advised the States to strengthen their police forces.24

Adequacy of Federal Powers and Internal Security

The foregoing discussion on division of powers between Union and states on ‘public
order’ brings out the existing rough edges between the two spheres. Since partisanship
has become the defining principle in contestations between the two spheres on this issue
since the breakdown of the Congress monopoly in 1967, the Sarkaria Commission too
appeared to be doing a tight-rope walk. The question as it has all along been posed
appears to be about preserving the autonomous domain of states in the classical federal
model and establishing dominance of the federal/Union/Central government in the In-
dian strong-centre federal model. In this section, we shall attempt to examine the ade-
quacy of the powers of the Union Government in public order and in the redefined
internal security sphere and location of states in what could be a redesigned sphere. The
discussion here goes beyond straight-jacketed theories and attempts placing the issue on
a realistic and pragmatic plane, of course beyond partisan politics.

There are three main articles in the Constitution of India that determine the pow-
ers of the Union Government vis-à-vis states generally as well as in the sphere of internal
security. They are:

Article 256: The executive power of every State shall be so exercised as to ensure compliance with the
laws made by Parliament and any existing laws which apply in that State, and the executive power of
the Union shall extend to the giving of such directions to a State as may appear to the Government of
India to be necessary for that purpose.

Article 355: It shall be the duty of 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.

Article 365: Where any State has failed to comply with, or to give effect to, any directions given in the
exercise of the executive power of the Union under any of the provisions of this Constitution, it shall
be lawful for the President to hold that a situation has arisen in which the Government of the State
cannot be carried on in accordance with the provisions of this Constitution.

24 Ibid, p. 204.
These three Articles assert supremacy of the federal (or Union) government in matters of national importance. As clearly stated during the debates in the Constituent Assembly Dr. B.R. Ambedkar clearly stated that autonomy of the states in the areas constitutionally assigned to them will be protected; however, issues affecting sovereignty of the nation will over ride the issues of autonomy. Even though the Constituent Assembly did not see any dichotomy between autonomy and sovereignty, the prevailing political environment before and after the partition naturally overwhelmed the concerns for unity, integrity and sovereignty over autonomy. No wonder, the three Articles quoted above clearly confer a paternal responsibility upon the ‘the Union Government’ (as stated unambiguously in the Constituent Assembly) in maintaining integrity and unity of the country. These three articles as well as article 356 falling in between 355 and 365, clearly bring out the concern of the time that guided the framers of the Constitution and the need they felt for empowering the Union Government to step in with special constitutional responsibility, if not obligation, where ever a state appeared to be abdicating its role and responsibility.

A review of and reflection on these Articles should be from four perspectives of scope, the intent and design, operationalisation and international experience. The four perspectives are presented below.

Placed in Part IX (Relations between the Union and the States) Chapter II, Article 256 significantly defines **Obligation of States and the Union**. It obligates the States to use their executive power in compliance with the laws made by Parliament and all existing laws applying to respective States. It also empowers the Union Government to give necessary directions to a State as and when required. This unambiguous obligation of ‘autonomy’ to ‘sovereignty’ and the supremacy of ‘sovereignty’ over State ‘autonomy’ were passed by the Constituent Assembly without any discussion. Obviously, the Constituent Assembly, which discussed the draft Article 233 (that became Article 256) on June 13, 1949, was in unison regarding obligation of the states and the power of the Union conceived by the drafting committee. Commenting on the Union supremacy contained in Article 256 and 257, M.C. Setalvad has observed that:

Having regard to this unified system of administration of justice, it became essential to provide for the obligation and powers enacted in Articles 256 and 257 in order to ensure effective compliance with the Union laws and the due execution of the Union Executive powers.\(^{25}\)

The Commission on Centre-State Relations (Chaired by: Justice R.S. Sarkaria) also examined the issue of the federal supremacy contained in Article 256 and supported the wisdom of the Constituent Assembly (p.7):

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The primary lesson of India’s history is that, in this vast country, only that polity or system can endure and protect its unity, integrity and sovereignty against external aggression and internal disruption, which ensures a strong Centre with paramount powers, accommodating, at the same time, its traditional diversities.

It also looked at other federation and found the principle of federal supremacy enshrined in the US Constitution (Section 2, Article VI)<sup>26</sup>, the Australian Constitution (Section 61 in conjunction with Section 51 XXXIX)<sup>27</sup> and the German Basic Law (Article 84)<sup>28</sup>. The Commission admitted that unlike in the Article 256 of the Indian constitution, there is no provision in these federal constitutions conferring the power to give directions to the federating units.

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<sup>26</sup> This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the Länd; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

<sup>27</sup> 51 Legislative powers of the Parliamnet: The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to: (XXXIX) matters incidental to the execution of any power vested by this Constitution in the Parliament or in either House thereof, or in the Government of the Commonwealth, or in the Federal Judicature, or in any department or officer of the Commonwealth.

<sup>28</sup> Article 84 [Execution by the Ländere in their own right and federal oversight]

(1) Where the Länder execute federal laws in their own right, they shall regulate the establishment of the authorities and their administrative procedure insofar as federal laws enacted with the consent of the Bundesrat do not otherwise provide.

(2) The Federal Government, with the consent of the Bundesrat, may issue general administrative rules.

(3) The Federal Government shall exercise oversight to ensure that the Länder execute federal laws in accordance with the law. For this purpose the Federal Government may send commissioners to the highest Länd authorities and, with their consent or, where such consent is refused, with the consent of the Bundesrat, also to subordinate authorities.

(4) Should any deficiencies that the Federal Government has identified in the Länder not to be corrected, the Bundesrat, on application of the Federal Government or of the Länd concerned, shall decide whether that Länd has violated the law. The decision of the Bundesrat may be challenged in the Federal Constitutional Court with a view to the execution of the federal laws, the Federal Government may be authorised by a federal law requiring consent of the Bundesrat to issue instructions in particular case. They shall be addressed to the highest Länd authorities unless the Federal Government considers the matter urgent.

These provisions are further supported by provision in Article 31: ‘[Supremacy of federal law]: Federal Law shall take precedence over Länd law’ and Article 83: ‘[Distribution of authority between the Federation and the Länder]: the Länder shall execute federal laws in their own right insofar as this Basic Law does not otherwise provide or permit.’
A careful look at the constitutions of these federations show that despite the principle of autonomy of the federating units guaranteed in greater manner than in the Indian constitution, federal supremacy, which should be construed as an assertion of nation’s supremacy, is present in each case in provisions other than the ones mentioned here. The German Basic Law for example, unambiguously states in Article 37 relating to federal execution that, (1) (i)f a Länder fails to comply with its obligations under this Basic Law or other federal laws, the Federal Government, with the consent of the Bundesrat, may take the necessary steps to compel the Länder to comply with its duties and (2) (f)or the purpose of implementing such coercive measures, the Federal Government or its representative shall have the right to issue instructions to all Länder and their authorities. It is further reinforced by Article 30 relating to division of authority between the ‘Federation and the Länder’: ‘Except as otherwise provided or permitted by this Basic Law, the exercise of state powers and the discharge of state functions is a matter for the Länder.’ Such provision is found also in the US constitution and the Australian Constitution.

Granville Austin has reviewed Article 256 and 257 from the perspective of the Union Government from time to time using these provisions to deploy Central forces in States, which many States from time to time objected to. Some States also registered their objections to the Sarkaria Commission regarding the use of this provision. Austin’s own observation is that ‘The central government has authority to bend state governments to the Constitution, or to its own will, beyond those to declare an emergency and to proclaim President’s Rule.’

29 Article. IV - The States:

Section 1 - Each State to Honor all others

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Section 4 - Republican government

The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

30 109 Inconsistency of laws: When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid.

Article 355 along with Article 356, which form a part of the Emergency Provisions in Part XVIII, and Article 365, which is placed in Part XIX under Miscellaneous provision, have a common thread running. First, there is an obligation on the Centre to ‘protect’ States against ‘threats’ external and internal. Second, there is an added and presumably emanating obligation to ensure that the states carry on their government in accordance with the constitution. Third, there is a warning of take over of the government by the Centre in case of a ‘constitutional breakdown’ that eventually finds an expression in Article 356. This most abused Article of the Constitution has naturally been controversial. The Union Government’s obligation under this Article was eventually transformed into responsibility by the Bommai judgment in 1989. Reviewing the dismissal of the S.R. Bommai government in Karnataka on an appeal the Supreme Court asserted that the court had a right to restrain the dissolution of the assembly prior to parliamentary ratification of the proclamation. It could also revive the assembly and restore the incumbent government if the court finds the proclamation to be unconstitutional (despite parliament having approved the proclamation). It could also grant interim relief to prevent the holding of elections to the assembly, which might defeat the purpose of a legal challenge (in Bommai’s case, fresh elections were held soon after his government was dismissed). Ten situations were described by the bench, which did not amount to ‘failure of constitutional machinery’ as specified in the Constitution.

The Emergency Provisions invited a heated debate in the Constituent Assembly. Intervening on Article 355 (draft Article 277 A), Dr. Ambedkar asserted that the Indian constitution in the making was federal in character and that the provinces/states were sovereign/autonomous within their constitutional realms. He clarified that ‘barring the provisions which permit the Centre to override any legislation that may be passed by the Provinces, the Provinces have a plenary authority to make any law for the peace, order and good government of that Province’. He admitted that any invasive role of the Centre under the condition required a rationale:

… if the Centre is to interfere in the administration of provincial affairs, as we propose to authorise the Centre by virtue of articles 278 and 278-A, it must be by and under some obligation which the Constitution imposes upon the Centre. The invasion must not be an invasion which is wanton, arbitrary and unauthorised by law. Therefore, in order to make it quite clear that articles 278 and 278-A (Article 356) are not to be deemed as a wanton invasion by the Centre upon the authority of the province, we, propose to introduce article 277-A. As Members will see, article 277-A says that it shall be the duty of the Union to protect every unit, and also to maintain the Constitution.
He admitted that such federal obligations in other federations stopped at what was contained in (draft) Article 277 A, but in the Indian case, he felt that ‘it will be an act in fulfillment of the duty and the obligation and it cannot be treated, so far as the Constitution is concerned, as a wanton, arbitrary, unauthorised act. That is the reason why we have introduced article 277-A.’

However, (draft) article 277 A was not the one that invited debate. The fierce debate focused on (draft) articles 278 and 278 A, which eventually became articles 356. Two strands of arguments were given. First, that of the misuse of this provision by the Centre or the party ruling the Centre. Second, those supported it and expressed apprehensions of lawlessness that the Provinces/States may not be able to deal with. Responding to the debate, Dr. Ambedkar opined thus:

The other point of criticism was that articles 278 and 278-A were unnecessary in view of the fact that there are already in the Constitution articles 275 (Article 352) and 276 (Article 353). With all respect I must submit that he (Pandit Hriday Nath Kunzru) has altogether misunderstood the purposes and intentions which underlie article 275 and the present article 278. His argument was that after all what you want is the right to legislate on provincial subjects. That right you get by the terms of article 276, because under that article the Centre gets the power, once the Proclamation is issued, to legislate on all subjects mentioned in List II. I think that is a very limited understanding of the provisions contained either in articles 275 and 276 or in articles 278 and 278A.

The Constituent Assembly debates, as well as the review of the Centre-State Relations in these realms in the Sarkaria Commission clearly bring out that these three Articles of the Indian Constitution must be seen as interlinked bouquet of enabling provisions along with Articles 249, 250, 257, 352, 353 and 356 for the Union Government to intervene in States either on crucial matters of national import or during a situation of grave emer-

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32 Aside from the provisions quoted earlier from the US, German and Australian constitutions, the following article of the German constitution is also relevant for a comparative view of the federal obligation towards federating units. We would also like to refer to Article 91 of the Canadian constitution.

Article 37 [Federal execution]

(1) If a Länd fails to comply with its obligations under this Basic Law or other federal laws, the Federal Government, with the consent of the Bundesrat, may take the necessary steps to compel the Länd to comply with its duties.

(2) For the purpose of implementing such coercive measures, the Federal Government or its representative shall have the right to issue instructions to all Länder and their authorities.
gency. In fact, in discussing Articles 256, 355 and 365 in the Constituent Assembly, whether the members were commenting or Dr. Ambedkar was responding, the discussion invariably veered to Articles 352 and 356.

This brings us to some questions regarding issues of internal security viz.:

1. What should be the criteria for the Union Government to intervene by directing a State on an issue of internal security?

2. Given the emerging contestations leading to conflict in various parts of the country, is it possible for the Union Government to intervene in a meaningful way by dispatching its own force, which may not have familiarity with the local situation?

3. Many of the conflict situations arising in recent years are either political in nature, or are politicised heavily on sharp political grounds. Is it possible for any Union Government to maintain non-partisanship on such issues?

4. Will increasing involvement not politicise the central forces too like the State police?

5. Given the fact that coalition government has virtually become a norm at the Centre, will the Central intervention not become difficult, or take a partisan shape (Gujarat 2002, recent Orissa incidents and MNS violence in Mumbai are examples)?

These are only some of the questions that arise in this context and answer to this could be found in the formulation of an Internal Security Doctrine for India. We propose below a draft of such a doctrine.

**An Internal Security Doctrine for India**

Given the fact that intermestic issues and circumstances have created the compulsion of viewing security within country’s borders and of people therein in a larger perspective than we get from the traditional public order or law and order approach and there is an urgent need to transcend the conventional policing approach in order to create a greater synergetic energy for a more symphonized method, it is imperative to define an internal security doctrine for the country. A synergetic concept of internal security has been necessitated also because the National Investigation Agency in the context of federal
crimes, which could be defined in due course, is already a reality. This will require a binary, mutual and cooperative relationship with all the existing agencies, both Central and the states.

Internal security doctrine, which will be an articulation of intent and resolve, elucidation and rationalisation of procedures, and creation of new and strengthening of existing institutions, is a political statement that requires a political consensus regarding security within national borders. Indeed, ideological (sic!) differences would (and should) prevail and could bring in adjustments and shifts in approach with regime change from time to time. However, a broad systemic, institutional, statutory and procedural consensus would be germane to such a doctrine and political parties and leaders in India must not dither or quibble over this.

Internal security, as explained at the outset, will have to be a pyramidal structure, with the police in the states at the base. No internal security architecture in physical terms is possible without strengthening this foundation. That this foundation at the moment is extremely weak, inadequate, deficient, unprofessional, highly politicised and demotivated, has been stated again and again and reams written by police commissions in states and at the national level on this have been fossilized without any consideration. This clearly means that the prevailing deficiencies in the police organisations and policing system must be removed on an emergency basis, or neither an internal security architecture could be created, nor any strategy for internal security would be effective. A Police Station (PS) is the pivot of policing and security in India. Over the years it has been deinstitutionalised by political and bureaucratic malevolence. Its dignity and importance deserves to be restored. Effectively it means that the PS level police functionary would have to be trained at the highest level of professionalism. The mindset that colonial structure of organising policing in the country in which ill- or semi-trained personnel managing PSs would be supervised and superintended by highly trained elite cadre to ensure their efficiency has to give way to a highly trained PS level staff, many of whom would rise to higher supervisory and superintending levels. PSs would need to be enabled and networked in every possible fashion in order to raise their technical efficacy and improve safety in the age of satellite telephony and the internet. An effective and continual chain of horizontal and vertical communication, exchange of information and strategizing would have to be established and institutionalized. Obviously, this would create autonomy with accountability for PSs. Of course, this is linked to overall police reforms, particularly at the cutting edge level, that has been stressed by concerned commissions, analysts and public intellectuals.
This takes us naturally to each of the higher echelons of the policing and criminal justice pyramid. While they need to do their bit in improving the basic policing by strengthening police stations and giving the police persons the stature of a dignified cop, they also deserve restoration of their dignity from political whims. Rationalisation of transfers and postings as well as rewards and punishments would be critical in strengthening supervisory and monitoring police functions. Indeed, the networking stated above would be applicable at this level too, which would be linked to the police headquarters as well as all other relevant agencies and departments.\textsuperscript{33}

The Indian state’s response to the havoc of 26/11 came under criticism of the experts and the media for being inadequate, apparently exposing a lack of a systematic thinking on internal security in the government. There was a blame game and a few political heads rolled. The analysis of the events by Ram Pradhan Committee appointed by the Maharashtra government is not available as yet in the public domain. The media reports have indicated that the committee has given a clean chit to the police and Maharashtra government and criticised the central intelligence agencies for not giving timely intelligence inputs. The report appears to have caused much public consternation.

In order to secure agreement to the suggestions below; we would suggest that the Prime Minister should invite an all-party meeting.\textsuperscript{34} All the recognised and regis-

\textsuperscript{33} Since such agencies and departments have been mentioned in the chapter on National Counter Terrorism Centre, those are not listed here.

\textsuperscript{34} The Election Manifesto of the Indian National Congress for the 2009 general elections has taken a very clear stance on terrorism, security and police reforms. This makes it easier for the Prime Minister and the UPA government to set a consensual agenda in these fields. Since the BJP too has been taking a stand against terrorism, it should be possible to build a political consensus.

\textbullet{} \textit{We will guarantee the maximum possible security to each and every citizen.}

Our policy is zero-tolerance towards terrorism from whatever source it originates. We have already initiated the process of equipping our police and other specialist security forces with the latest weapons and technology to meet terrorist threats. This process will be taken forward vigorously. More specialist battalions will be raised and positioned in key locations across the country.

Citizenship is a right and a matter of pride. With the huge IT expertise available in our country, it is possible to provide every Indian with a unique identity card after the publication of the national population register in the year 2011.

\textbullet{} \textit{We will accelerate the process of police reforms}

The Indian National Congress recognizes the imperative of police reforms. A clear distinction between the political executive and police administration will be made. The police force will be better provisioned especially in the matter of housing and education facilities; the police force will be made more representative of the
tered political parties should be requested to send a representative, authorised by the party to put up the parties’ views on the suggested model, make alternative suggestions and agree to the consensus model. The agreed upon model should then be implemented forthwith.

Any ambiguity with regard to the roles of the Centre and the States in tackling internal security challenges must be removed and it needs to be stressed that internal security is a joint responsibility of both. An Internal Security Council (ISC) should be created at the national level and its existence should not depend at political whims. The constitution of this body, mostly from amongst the concerned institutions and departments with sprinkling experts, needs to be carefully discussed. The Union Home Minister should chair this body. The proposed ISC should be supported by a committee of experts, which should have adequate representation from states.

Based on an assessment of major internal security challenges present in the country, their geographical location, networks and reach by the body of experts suggested above, it would be necessary to create regional security monitoring zones that would be inter-state and connect with each other in the same fashion as proposed above. The Home Ministers of concerned states should be its members and chair of the body could rotate amongst states in alphabetical order. An appropriate mechanism needs to be developed and put in place so that this is above any kind of professional ‘sibling’ rivalry. Mechanism for resolving disputes too has to be integral to this regional approach to internal security. The regional bodies would be networked at the national level horizontally as well as with relevant national agencies.

diversity our population; and police recruitment will be made more effective and training professionalized to confront new and emerging threats. Accountability of the police force will be institutionalized.

http://www.congress.org.in/home-layout-manifesto.php

The Election Manifesto of the BJP on the other hand stresses strengthening the securitization of the Indian state and empowering the state and the police with more legal instruments. The section on the police too mentions ‘modernisation’ rather than reform:

State Governments will be provided with all assistance to modernise their respective police forces and equip them with the latest weaponry and communications technology. This will be done on a mission mode approach. The police are the first responders to any crisis situation. Drawing lessons from experience, police forces will be trained and fully equipped to deal with situations similar to that of Mumbai and in meeting the challenge posed by Maoists and insurgents.

http://www.bjp.org/content/view/2844/428/

However, since the BJP agenda too expresses concerns regarding deficiencies in police organisations and threats from terrorism and subversive activities, it is possible to develop a consensus on police reforms.
A periodical review (at least every six months) of the security architecture (form and functioning), challenges and strategies must be mandatory. Benchmarks for the functioning of the entire structure at each level must be set; existing experiences, successes and failures should be examined and emerging lessons should be used to revise and reset the benchmarks. Evaluation of performance of these bodies as well as of any significant event that might take place should be undertaken in a given time frame. The time frame could be initially set from the experiences available internationally; it could be later reset in accordance with Indian experiences.

The responsibility to be autonomously borne by this architecture should be clearly defined. Beyond the autonomous responsibility of India’s internal security, the bodies designed as part of the internal security architecture could be given a specific responsibility by either the Union Government or any of the state governments.

The attendant reforms in the criminal justice system, judicial bodies and prison too would be critical in articulating and implementing an internal security doctrine.
NATIONAL COUNTER TERRORISM AGENCY

1. The need for a specialized national agency to combat terrorist activities which gravely impinge on the security, integrity and sovereignty of the country, is now well beyond the stage of a debate. If there was any iota of doubt ever on the subject, the increasing frequency and ferocity of terrorist crimes in the recent times, culminating in the dastardly terror attacks of November 26, 2008 in Mumbai, forever, froze the scope for any further debate on the issue. Indeed, the Union Government, over and above the well-acknowledged role and obligation of the State Governments, has a Constitutional responsibility to combat the challenge of terrorism and other similar grave threats to India’s security and it must take the lead in putting in place not just a nodal national-level agency but a comprehensive, nation-wide internal security regime – with all the legal, institutional and operational instruments that are needed for an inclusive counter-terrorism mechanism – encompassing the roles and responsibilities of all the concerned agencies of the union as well as the State Governments.

The Constitutional Position

2. Article 355 of the Constitution casts a duty on the Union Government ‘to protect every State from external aggression and internal disturbances’. It is a crucial Constitutional obligation. And, the types of crime in terrorist violence of contemporary times relate to both external aggression and internal disturbances. External aggression, in this context, is to be viewed from the perspective of all-too-clear shifting trends in warfare strategies – the world over – of ‘proxy wars’ or ‘asymmetric warfare’ increasingly substituting conventional wars, which often is the cause of such crimes. Oftentimes, such ‘wars’ also involve non-state actors who have an axe to grind against the target nation, for whatever reason or in pursuance of whatever ‘cause’. Sometimes, such elements are also instigated, encouraged, supported, even sponsored, by some national governments to wage a ‘war’ against a target country, through acts of terrorism, fomenting insurgencies, circulation of counterfeit currency, etc. Internal disturbances are, often, the effect of these crimes.
3. Creating effective legal and institutional instruments to deal with such external aggressions and internal disturbances is, thus, a solemn duty of the Union Government, obligated by the Constitution itself, not a matter of choice. The Union Government’s obligation under Article 355 also clearly supersedes the argument that ‘police’ and ‘public order’ are subjects falling in the exclusive domain of the States, by virtue of their placement in the List II (State List) of the Seventh Schedule of the Constitution. This has been amply clarified by the Supreme Court, repeatedly, in its verdicts in (1) Ram Manohar Lohia v. State of Bihar {AIR 1966 SC 740 (V 53 C 140)}, (2) Kartar Singh v. State of Punjab (1994 Cr.LJ 3139), and (3) People’s Union for Civil Liberties v. Union of India {2004 9 SCC 580}.

4. The judgments of the Supreme Court in all these cases leave us in no doubt that any criminal act which is aimed at, or which clearly has the potential of, causing detriment to the country’s security, integrity, stability or sovereignty, or destabilizing its economy, is to be deemed as a threat to national security and defence of India. Such perilous activities cannot obviously be left to be routinely dealt with by the concerned state police force as an ordinary crime or law and order problem. The Union Government will have to have a clear cut role in dealing with such acts, albeit in active collaboration with the State Government(s) concerned.

National Counter-Terrorism Regime – Important Elements

5. To effectively counter serious threats to national security, such as terrorism, calls for a comprehensive national strategy and a well-designed security regime with the following essential elements:

1) A comprehensive legal framework to deal with terrorism;

2) A specialized, pan-India nodal agency to holistically deal with the pre-emption, prevention, detection and control of terrorist crimes;

3) A specialised response system to effectively contain the damage, in the event of an incident still taking place; and

4) Strengthening of functioning of the existing intelligence and law enforcement agencies of the Central Government and of the States, including mechanisms of inter-se coordination between them.

Recent Government of India Initiatives

6. Effectively dealing with terrorist crime, with all its complexities, demands the requisite legal framework with certain much-needed special provisions of criminal proce-
dure and the law of evidence, which have largely not been available in our legal regime, after the repeal of POTA (Prevention of Terrorist Activities Act, 2002). However, in a laudable initiative, taken in the wake of Mumbai terror attacks of 26/11, the Indian state has sought to fill the existing legal and institutional vacuums in the country’s counter-terrorism mechanism fairly substantially, by two significant legislative measures – one to strengthen the legal regime by way of amending the Unlawful Activities (Prevention) Act, 1967, and the other to create a new ‘National Investigation Agency’ to undertake investigation and prosecution in offences affecting the sovereignty, security and integrity of India, security of state etc. In an unprecedented show of solidarity displayed by our parliamentarians, cutting across party lines, the two Legislative Bills were passed by both the Houses of Parliament in record time, without even a minimal debate. Both the legislations have since become part of the Statute Book.

The Unlawful Activities (Prevention) Amendment Act, 2008

7. The Unlawful Activities (Prevention) Amendment Act, 2008, indeed, takes care of many lacunae that earlier existed in the country’s legal framework for effectively dealing with the horrendous acts of terrorism. It, inter alia, expands the definition of ‘terrorist act’ to cover almost all possible forms of terrorist activity. It also criminalizes the act of demanding firearms, explosives, bombs, or any hazardous nuclear, biological or chemical etc. device or material for the purpose of aiding, abetting or committing a terrorist act. The criminal provision against raising of funds for terrorist activities has been significantly widened to include action also against those persons who contribute funds; raising of funds even in a foreign country is also now made punishable. Recruitment of persons for commission of terrorist acts as also organising training camps too would now be punishable offences. Detention of an accused in judicial custody is made permissible for up to 90 days without filing of charge sheet, and this period can be extended to 180 days on the report of the Public Prosecutor indicating specific reasons for seeking continued detention beyond 90 days. The maximum permissible period of police custody for the purposes of investigation has been enhanced to 30 days.

8. The new legislation, however, leaves out as unaddressed a basic drawback of the existing legal framework, namely inadmissibility of evidence of a confession made to a police officer. Given the widespread reluctance of witnesses to tender evidence in terrorist cases, this will remain a major handicap for the prosecution.

Need for Amendments in Unlawful Activities (Prevention) Act, 2008

9. It would be desirable to remove this infirmity by way of bringing in the necessary amendment in this legislation, at the earliest. Indeed, while doing so, adequate safeguards,
such as mandatory videotaping of the confession, must be provided, to ensure that the confessions recorded are voluntary and not made under duress. This will be in line with the recommendations of Justice Malimath Committee on Criminal Justice Reforms (2003)\textsuperscript{35} and the Second Administrative Reforms Commission (2007)\textsuperscript{36}. Madhava Menon Committee on Draft National Policy on Criminal Justice too had endorsed this recommendation and added that ‘to block out such evidence totally from the purview of the court on the ground that whatever is given to the police is not admissible is neither logical nor prudent particularly when there are technological and procedural guarantees now available to ensure the voluntary character of such statements. …….the policy of distrust of the police requires change.’\textsuperscript{37}

10. Another legal provision acutely needed to effectively deal with terrorist crimes – which are marked by utmost secrecy in their planning, preparation and execution – relates to ‘right to silence’ of the accused. Since the accused is, in most cases, the best source of information about the crime concerned, there must be a positive obligation imposed by law on him to assist the court in the discovery of truth. The recommendation of Justice Malimath Committee on Criminal Justice Reforms\textsuperscript{38}, in this regard, needs to be implemented, at least in respect of terrorist crimes, forthwith. Necessary amendment may be incorporated in the Unlawful Activities (Prevention) Act, 1967 accordingly.

11. Also, any legal regime to effectively deal with such serious threats to national security as terrorism has to have stringent provisions regarding the release of offenders on bail. The Unlawful Activities (Prevention) Act, thus, needs to be amended in that regard too, albeit providing for due, adequate and effective safeguards to prevent any misuse of the power.

The National Investigation Agency Act, 2008

12. The avowed objective of this statute is to provide for the constitution of an agency for investigation and prosecution of terrorist crimes and offences under the scheduled Acts. The Act provides for powers of investigation to the new central agency (the NIA) without needing the concurrence of the State Government concerned, while simultaneously taking care to uphold the power of the law enforcement agencies of the States to investigate terrorist etc. offences. It accords to the investigating officers of the NIA the

\textsuperscript{35} Committee’s Report – Recommendations, S. No. 37, page 276
\textsuperscript{36} Commission’s Report on Public Order, page 186, para 7.5.4.10
\textsuperscript{37} Committee’s Report, page 26, para 6.5
\textsuperscript{38} Committee’s Report – Recommendations – S. No. 3, page 267
powers vested in the officer-in-charge of a police station by the Criminal Procedure Code (Cr.PC). It also contains a provision for involving the state agency concerned in the investigation, even if the case is being handled by the NIA.

13. However, a major problem in the provisions of this legislation is that the NIA, to take up a case for investigation, has to depend on a direction from the Central Government. It is not authorized to do so, on its own. Now, this may sometimes create problems and controversies of a political nature, to the detriment of the case in question and to the benefit of the accused terrorists. Further, as rightly observed by the Second Administrative Reforms Commission, “crime investigation is a quasi-judicial function of the police”. It does not normally fall in the realm of executive power to be exercised by the government. The Supreme Court also observed, in its judgment dated 18.12.1997 in Vineet Narain & others v. Union of India that “the general superintendence over the functioning of the department and specification of the offences which are to be investigated by the agency (the CBI in that case) is not the same as, and would not include within it, the control of the initiation and the actual process of investigation. ……Once the CBI is empowered to investigate an offence generally by a specification under Section 3, the process of investigation, including its initiation, is to be governed by the statutory provisions which provide for the initiation and manner of investigation of the offence. ……It is settled that statutory jurisdiction cannot be subject to executive control”.

14. Power to investigate a cognizable offence, without the orders or approval of any other authority (including the judicial authority of the concerned jurisdiction), is vested in an officer in charge of a police station, under the Cr.PC. Rendering the NIA’s power to investigate the offences under the NIA Act contingent upon the direction or approval of the central government, does not, thus, seem to be appropriate or logical. Particularly so, in the background of the stiff and long-drawn opposition of the State Governments to the very concept of creation of a central agency of this nature, which had obstructed its creation for such a long while.

15. A yet another flaw in the Act is the longish procedure it prescribes for the NIA to be entrusted with the investigation of a case. Barring some high profile cases in which the Central Government may, *suo motu*, decide to do so, in all other cases, the officer in charge of a police station, on receipt of information relating to a scheduled offence and recording thereof under Section 154 Cr.PC, will be required to forward the same to the state government, which in turn will forward it to the Central Government as expeditiously as

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39 Commission’s Report on Public Order, page 64, para 4.3.2
40 Supreme Court of India – Judgment Info System Website

“http://www.judis.nic.in/supremecourt/chejudis.asp
possible. Thereupon, the Central Government ‘shall determine on the basis of information made available by the State Government or received from other sources, within 15 days from the date of receipt of the report, whether the offence is a scheduled offence or not and also whether, having regard to the gravity of the offence and other relevant factors, it is a fit case to be investigated by the Agency’. It will thereafter direct the NIA to take up the investigation. But, the danger is that, in the meanwhile, valuable time and vital evidence are most likely to be lost.

16. Indeed, the Act requires the officer in charge of the police station to continue the investigation till such time as the NIA actually takes up the case. But, practical experience shows that once the officer in charge sends his report to the State Government, in all likelihood, his interest in the case would get diluted and he may merely bide his time, just waiting for the NIA to take over the investigation. Also, it is usually difficult to expect any direct evidence in terrorist crimes. Most of the available evidence would be in the nature of indirect evidence, largely forensic evidence which warrants careful collection of all the available physical clues from the scene of crime and other possible sources at the soonest in point of time, before they are destroyed or contaminated. Now the question is that even if the officer in charge of the police station sincerely continues with the investigation, how well the local police stations are equipped to use scientific aids in crime investigation? The chances of the specialized investigation wings of the state police, which are sufficiently equipped and trained in handling forensic evidence, being called in for the investigation of a case in which a report has already been sent, through the State Government, to the Central Government, for considering its transfer to the NIA, are remote. In any case, the Act is also silent on this aspect.

17. Even more fundamental is the problem relating to the charter of functions assigned to the NIA, which is limited, under this legislation, to investigation and prosecution of a scheduled offence after it has occurred. Much more important task of pre-empting and preventing a terrorist crime before it actually takes place, which is a matter of greater concern to the nation today, does not fall in the ambit of NIA’s responsibility. In fact, the NIA Act is totally silent on the aspect of pre-empting and prevention of terror attacks. It seems ironical that a legislation, which came into being as a response to the nation’s collective outrage against the Mumbai terror attacks of 26/11, should fall short of measures aimed at effectively preventing similar incidents in future. What is the need of the hour, more than a mere crime investigation outfit, is a national counter-terrorism agency, as a nodal outfit, that would comprehensively deal with pre-emption, prevention, detection and control of terrorist activity, as well as investigation of the crimes which still take place, in synergy with all the other concerned agencies of the central and state governments.
Proposed Framework for the National Counter-Terrorism Agency

Objective & Purpose

18. The objective of the proposed National Agency should be to undertake holistic measures for pre-emption, prevention, detection, and control of terrorist crimes related activities, and the other scheduled offences covered in the NIA legislation, including the investigation of such crimes if and when actually taking place.

19. To achieve this objective, the Agency should act as the country’s nodal organisation for counter-terrorist operations, guiding, assisting and coordinating the work of the law enforcement agencies of the States while also taking up important operational tasks by itself, in due collaboration, as necessary, with the state law enforcement agencies as well as all the concerned central government agencies.

Role and Status vis-à-vis the State Law Enforcement Agencies

20. Nation’s security requires a truly national effort, with goals and responsibilities shared between the Union and the States. Curbing national security-related crimes too has to be a shared responsibility. Insofar as investigation of terrorist crimes and other scheduled offences covered in the NIA Act is concerned, the state police agencies and the NIA (or whatever nomenclature is assigned to the new agency after its charter of functions and duties is enlarged) should have concurrent jurisdiction in the administration of the amended Unlawful Activities (Prevention) Act, with the stipulation that every crime, as soon as it is committed, should be promptly registered by the state police of the concerned jurisdiction and its investigation taken up in the right earnest, if the case is not taken up by the national agency – under its own original jurisdiction – in the first instance itself. If and when the national agency decides to take over any particular case for investigation, the jurisdiction of the state agency concerned over that case will automatically cease. The case will then become the primary responsibility of the national agency, which may obtain back up and support, as necessary, from the concerned state agencies and it should be made obligatory for the latter, under the statute itself, to extend the same when so required or requested. The state police agencies, on their part, may also like to refer complex cases having a bearing on national security to the national agency.

21. In enforcement and preventive functions too, the national agency should play a nodal role, directly and actively performing its own assigned role while also guiding, supporting and assisting the state enforcement agencies – as, indeed, the other central
enforcement agencies, such as, immigration, customs, income tax etc. – in their work on these fronts, at the same time. A credible mechanism will, however, need to be put in place to resolve disputes, if any, between the national agency and the state law enforcement organizations, over the jurisdictional issue in respect of any particular case or situation.

**Criminal Jurisdiction of the National Agency**

22. The new agency should have criminal jurisdiction over all terrorist crimes and other scheduled offences covered in the NIA Act, as also activities like planning, preparation, financing, aiding, abetment etc. connected thereto.

**Functions of the National Agency:**

23. The national agency should have the following functions in its charter of duties and responsibilities:

(a) To be a clearing house of all-source intelligence information relating to terrorism and all the other scheduled offences – to collate, analyse, and assess all such intelligence from strategic as well as operational aspects, and disseminate the same, in real time, to policy makers as well as end-users responsible for preventive and enforcement actions;

(b) To collect tactical and operational intelligence on its own, in the follow-up of the intelligence inputs received from other agencies or otherwise;

(c) To create and maintain exhaustive data banks of information on all terrorist crimes and the other scheduled offences; their masterminds as well as actual perpetrators including suspects; their modus operandi; sources of arms, ammunition, explosives and other equipment of ‘war’; sources of funding; hideouts and shelters; collaborators and associates etc.;

(d) To pre-empt and prevent terrorist crimes and the other scheduled offences by unearthing and, where possible, busting terrorist modules and the plans and preparations of all elements to commit any crime pertaining to the agency’s charter of duties;

(e) To keep all the active suspects relating to such crimes under constant surveillance;

(f) To keep a constant vigil on sources of funding, arms, explosives etc., and bust the same as soon as possible;
(g) To take cognizance of offences and take up investigation;

(h) To launch prosecution of offenders in such cases in the competent courts;

(i) To undertake a post mortem of all terrorist incidents, occurring anywhere in the country, with a view to drawing lessons for the future;

(j) To undertake psy-war operations with a view to preventing radicalization of youth and other vulnerable elements, and of home-grown terrorism;

(k) To coordinate the work of, and function in tandem with, the state law enforcement and intelligence agencies, to prevent, and to take action against those who commit, the specified offences;

(l) To provide the necessary assistance, support and guidance to the state agencies, in law enforcement functions relating to the specified crimes;

(m) To coordinate with, and act synergistically with, all the concerned central agencies including those dealing with customs, immigration, coast guarding functions, narcotics, tax evasion, foreign currency manipulation etc., the various central intelligence organizations, and others concerned; and

(n) To liaise with counter-terrorism units of friendly foreign countries for professional coordination

**Organisational Structure**

24. The agency should have the following wings and units, each manned by hand-picked personnel of high credentials, rich in experience and expertise in their respective fields of activity:

1) *Intelligence Wing* – for collation, analysis and assessment of all-source intelligence and its dissemination, besides collection of tactical intelligence of its own;

2) *Surveillance & Operations Wing* – comprising adequate number of crack teams as well as financial & counter-money laundering experts and other needed specialists;

3) *Operational Control Room*;

4) *Crime Investigation Wing* – for undertaking investigation of terrorist crimes and other scheduled offences, and keeping track of investigations undertaken by state agencies, also duly providing all the needed assistance to them;
5) **Mobile Forensic Laboratory**;
6) **Bomb & Explosives Research & Development Wing**;
7) **Interrogation & Hostage Negotiations Teams**;
8) **Counter-NBC Threats Wing** – for constantly studying and assessing the range and level of threats and advising the concerned state and central agencies on counter measures; also to coordinate with the NBC wing of National Disaster Response Force (NDRF) on deployment matters;
9) **Research & Overseas Liaison Wing** – to, *inter alia*, (i) regularly study and assess emerging literature and good practices (both indigenous and foreign) relating to prevention and control of terrorist etc. crimes; (ii) regularly explore relevant applications of science and technology in countering terrorism and effective prevention and control of the other scheduled crimes; and (iii) formulate and regularly update Standard Operating Procedures (SOPs) for its own different functions and for the various other agencies, for different situations;
10) **Psy-Operations Wing**;
11) **Administration, Finance and Provisioning Wing**;

**Manpower**

25. The agency should be provided with the best available human resource, equipped with and trained in different skills needed for its functioning, drawn on tenure basis from diverse sources within the government or even outside. The normal period of tenure should be fixed at seven years, with a provision to extend the same in deserving cases.

26. To ensure induction of quality manpower, the Agency should carefully identify and clearly set out the eligibility criteria and qualification requisites (QRs), for each post in its organizational structure. To be able to attract quality manpower, it should have a broad based recruitment policy encompassing deputations of experienced personnel from different Central and State Government agencies as well as lateral induction of talent from outside the government.

27. Provision of an attractive package of monetary and non-monetary incentives will be called for, to draw the best available talent. In addition to offering a sizeable special pay (say, 50% of the normal emoluments), one-rank promotion, handsome group insurance coverage, assured family accommodation and the choice of posting at the conclusion of the assignment, etc. would be helpful in this regard. Selections will, however, have to be made very very carefully, and through a transparent process, to ensure induc-
tion of personnel only with high levels of expertise, motivation and commitment as well as due experience, and on no other consideration.

28. In deciding upon the manpower structure of the Agency, it has to be kept in mind that for professional efficiency, a ‘crack’ organization has necessarily to be as lean as possible. Too much of flab renders an organization unnecessarily bureaucratic, impeding efficiency as well as speed of action in its work. Since the Agency is envisaged as one to supplement the law enforcement apparatus of the States, and not to supplant or substitute the same, it should, in any case, not require too much of staff strength. Maximal induction of Information, Communication and other relevant technologies should also be provided for, to cut down the requirement of manpower.

**Head of the Agency**

29. The agency should be headed by a senior officer with profound professional experience and a person of repute, carefully selected with an eye on expertise in law enforcement functions and crime prevention and detection work, besides exemplary physical and intellectual attributes as well as mental agility. Due measures need to be taken to make the selection for the post entirely merit-based as well as transparent, under a laid-down process. For this purpose, the selection can be made from out of a panel prepared by the Union Public Service Commission (UPSC) by constituting an Empanelment Committee comprising the Cabinet Secretary, the Home Secretary, the Director Intelligence Bureau, the Director CBI and the Director General of Police of at least one of the terrorist-affected States, besides a Member of the UPSC itself. The empanelment will, however, have to be done by the UPSC on a fast-track. To further ensure credibility of the process, the final selection out of the panel prepared by this Committee may be made by a high-powered Committee having the Prime Minister, the Leader of the Opposition in the Lok Sabha and the Speaker of the Lok Sabha as its members. Once so selected, the incumbent should be provided a mandatory minimum tenure of three years.

**Funds and Other Resources**

30. The agency should be equipped with all the necessary resources, including dedicated finances, specialized and trained manpower, the requisite equipment and other wherewithal needed for effective and efficient discharge of its assigned functions.

31. The Head of the agency should be vested with full financial powers as well as full administrative powers to enable him to administer the agency in the most professional manner, without the usual bureaucratic delays.
Superintendence over the Agency

32. Subject to the above and also the statutory powers vested in the agency by the law – as highlighted by the Supreme Court in its judgment in Vineet Narain case (para 12 above refers) – the superintendence of the Agency shall vest in the Central Government.

33. It will also be useful to clearly define the term ‘superintendence’ in the statute itself, to avoid any ambiguity in its interpretation as also any political controversies in the functioning of the Agency. It should normally be taken to mean as:

i) Laying down broad policies and guidelines for the professional functioning of the Agency;

ii) Setting standards and benchmarks for professional performance, and facilitating their implementation;

iii) Identifying performance indicators to evaluate the functioning of the Agency; and

iv) Evaluation of professional performance of the Agency periodically, say, on an annual basis.

34. The day-to-day administration, including postings, transfers, deployment etc. of personnel, and supervision of – including operational decisions relating to – individual tasks of preventive, investigative and other functions of the Agency, should be left to the professional leadership of the Agency. These functions should not be allowed to be interpreted to fall in the ambit of ‘superintendence’.

Amendments recommended for the NIA Legislation

35. In view of the foregoing, it is recommended that the legislation on NIA should be suitably amended to incorporate the following improvements therein:

1) The charter of NIA should include the tasks relating to pre-empting and prevention of terrorist crimes before they actually take place, and not limited to only post-offence investigation and prosecution in a terrorist case. It should, thus, be an agency to comprehensively deal with the prevention, detection and control of terrorist activity, as well as the investigation of terrorist offences.

2) The nomenclature of the Agency should also be changed accordingly. It may
be christened as National Counter-Terrorism Agency instead of National Investigation Agency.

3) The Agency should not be required to wait for a direction from the Central Government to take cognizance of a terrorist crime. It should be able to do so *suo-moto*.

4) The jurisdiction of the Agency over the scheduled offences should be concurrent with that of the state police forces. It would be for the Agency to decide which case it would take up for investigation by itself and which case may be left to the state police.

5) It should be made mandatory in the statute itself that the state police forces shall give full support and cooperation to the Agency in the prevention, control as well as investigation of terrorist crimes.

6) Each state police force and every agency of the central government whose functioning has a bearing on counter-terrorism work should be required to nominate a Nodal Officer for coordination and day-to-day liaison with the National Counter-Terrorism Agency.

36. The statute should also provide that in the event of any State Government official not extending the due and required assistance and cooperation to the Agency, the later shall have the powers to initiate disciplinary action against such official, including the power of suspension and reinstatement. This power will, however, be limited to the period of currency of investigation or other enforcement actions in any particular case on hand, on the lines of the powers vested in the Election Commission.

**Coordination of Intelligence**

37. Intelligence constitutes the first line of defence in the combat against terrorism. Real-time sharing of the available, actionable intelligence between the various intelligence and operational agencies holds the key to success in preventing terrorist strikes. However, the present situation in this regard leaves much to be desired. Indeed, certain new mechanisms, such as Inter-State Intelligence Support Teams, a Joint Task Force on Intelligence, and a Multi Agency Centre (MAC) at the national level and Subsidiary Multi Agency Centres (SMAC) in the States, have been devised and sought to be put in place, as forums for exchange of actionable information, in the recent times. But, the ground situation with regard to inter-agency coordination, reportedly, still remains abysmally poor. Unwillingness to share information with others on the part of personnel of different agencies, turf rivalries, et al. are said to be still dogging the system and coordination
heavily depends on personal equations rather than institutional mechanisms. It has been a constant complaint that the agencies hardly exchange any actionable information in the forum of MAC, and what is discussed there is largely only background information, strategic intelligence in broad terms and post-mortems of events. Functioning of MAC under the aegis of one of the member-agencies, namely, the IB is pointed out as a systemic impediment.

38. It is gratifying to find that some efforts to regalvanise the institutions and their functioning have already been initiated recently by the Union Home Minister. The same need to be vigorously pursued at all levels, and taken further forward. It needs to be mentioned in this regard that the United States faced similar problems of inter-agency coordination prior to 9/11, but has taken significant initiatives thereafter to tide it over. Among other things, it has created an institution of the ‘Office of Director of National Intelligence’, which is vested with the due authority to oversee the functioning of all the intelligence agencies of the country. This model deserves our consideration for adaptation, with due customization, as necessary, to suit our conditions. The model of the Republic of Germany where a ‘Daily Briefing’ session is held for threat assessments, in the forum of their multi-agency centre, christened as the ‘Joint Counter-Terrorism Centre’ (JCTC), is also worth following by us. The Government may consider these options in its effort to promote effective mechanisms for coordination of intelligence between the disparate agencies.

**Strengthening of the Existing Agencies/ Regulatory Mechanisms**

**State Police Forces**

39. The War on Terror – to borrow the American phraseology – can never be effectively won by merely enacting a comprehensive anti-terror law and creating a specialized national agency to deal with terrorist crimes. The proposed National Counter-Terrorism Regime has to simultaneously take care of the capabilities of the regular law enforcement machinery of the country, which is primarily represented by the state police forces and which has to be in the forefront of this war, always bearing the first brunt. The importance of the ordinary cops in the fight against terror lies not only in their role in preventing attacks by collecting critical intelligence, mounting surveillance over and arresting or questioning suspects, it also applies to the tactical response to armed attackers, as so amply brought out in the successful arrest of a live terrorist – Ajmal Kasab – in Mumbai, by a Head Constable of the local police. Also, it is the efficacy of the day-to-day policing and the routine crime prevention work of the state police forces – which unfortunately have become a big casualty today – that will always have a huge bearing on the success in the effort of prevention and control of terrorism.
40. The war cannot be effectively fought with the overworked, overstretched, ill-recruited, ill-trained, ill-equipped, ill-paid and ill-motivated force that our state police organizations have come to represent today. The state police organizations are too poorly equipped, organized and funded to effectively address threats like terrorism. Even numbers-wise, the police are handicapped, if one goes by the highly adverse police: population ratio in our country. Diversion of even the available manpower on VIP Bandobust, VIP Security, Bandobusts relating to processions, rallies, dharnas etc., is another factor to be reckoned with. All-too-prevalent extraneous influences in the day-to-day police functioning and corruption also take a heavy toll of efficient policing. A comprehensive and holistic effort at reforming and refurbishing the functioning of the police is a highly urgent demand of the time. What all exactly needs to be done in this regard has all been elaborated in the reports of numerous officially-appointed Commissions and Committees which have painstakingly examined all the problems and ills, dogging the police functioning. Even the Supreme Court has issued certain clear-cut and unequivocal directives to the States for police reforms but nothing tangible has been done by the States to address the problem. The time has come when the subject of police reforms has to be taken up by the Central Government as a grave and important national issue. The States will have to be persuaded and goaded – if necessary, coerced – into taking urgent measures to reform the functioning of the police, so that they can deliver professional policing which has a direct impact on national security in the contemporary scenario.

Pressing Reform Measures

41. Some of the important reform measures to promote professionalism in police working, that need to be put in place with a sense of urgency, are (a) foolproof mechanisms to insulate the police functioning from political and other extraneous influences; (b) improvement in the service and working conditions of police personnel so as to make the police job attractive for the right kind of human material; (c) streamlining the recruitment procedures to make it entirely merit-based as well as transparent; (d) revisiting training strategies and infrastructure to ensure that every police official – down to the level of Constabulary – undergoes a properly structured training programme (with periodically updated curricula) initially at the time of recruitment, as also compulsory annual refresher training of an appropriate duration thereafter, besides job-specific, specialized training for skill development and upgradation, needed for deployment on different assignments; (e) dovetailing participation in appropriate training programmes with the posting, transfer and promotion policies; (f) immediate upgradation of police equipment; (g) creation of SWAT Teams (Special Weapons and Tactics Teams) with appropriately trained manpower, in every district and all the major cities; and (h) greater infusion of technol-
ogy in all aspects of police work, including crime investigation, surveillance over suspects and suspicious activities, etc.

42. To identify the specific steps to be taken to implement these measures, and to draw up a detailed, time-bound plan of action, a Task Force comprising experienced officers of proven merit and reputation for professional competence may be urgently constituted preferably by the Union Government centrally. The reforms must be brought in with a sense of urgency and sincerity of purpose.

District-Level Preparedness

43. The first brunt of terrorist actions will always have to be borne by the police and the other concerned agencies at the district-level, whose preparedness is, therefore, extremely important for success in the fight against terror. This will require a systematic effort at promoting sensitization of personnel at the cutting-edge levels to the threat profile as well as modus operandi of different terrorist groups, alongside regular training and mock exercises in different aspects of counter-strategies. The olden system of every State and every district having a well-formulated and periodically reviewed Internal Security Scheme has, somehow, come to suffer total neglect, like many other good practices, in our administrative system. This needs to be revived and reinvigorated. The Directors General of Police of every State should be directed to urgently draft Internal Security Schemes for the State as well as each district, in due consultation with senior functionaries of all the concerned departments and agencies of the State and Central Governments, and get them approved by the State Government concerned. The Schemes should, \textit{inter alia}, incorporate detailed Standard Operating Procedures (SOPs) for each foreseeable situation, and these should be periodically rehearsed by the personnel of all the agencies concerned in joint mock exercises. Rules may also be framed prescribing mandatory periodical review (at least once annually and more frequently as necessary) of the Internal Security Schemes, under approval of the State Governments.

Other Agencies

44. There are a large number of agencies of the Central and State Governments whose work has a definite role to play, and contribution to make, in the nation’s counter-terrorism effort - Customs, Immigration, Border Security, Coast Guard, Narcotics, Income Tax etc. organizations – to name a few – of the Central Government, and Civil Defence, Fire Services, Emergency Medical Services etc. of the States. Experience shows that the personnel of many of these organizations often lose sight of the national security perspective in their day-to-day work. There is an urgent need, therefore, to undertake a review of the functioning of all such organizations from the point of view of their role in combat-
ing terrorism and other grave threats to national security, and re-engineer their work pro-
cesses, as necessary. Even more importantly, foolproof mechanisms of _inter-se_ coordination
between all the disparate agencies need to be evolved and put in place. It should also
be made mandatory for all the intelligence agencies, including the Intelligence Wings of
the Departments of Income Tax, Customs and Excise etc., as also the three Defence
Services, to maintain close day-to-day liaison with, and promptly pass on all terrorist-
related information coming to their hand to, the National Counter-Terrorism Agency.

45. The United States, to deal with the problem of inter-agency coordination, has
come up with the concept of a ‘National Strategy for Homeland Security’ and has also
created a ‘Department of Homeland Security’ as an umbrella outfit of all the concerned
agencies of the national and the state governments. The Department incorporates as
many as 22 agencies, including the US Customs Service, US Coast Guard, US Secret
(FEMA), Federal Law Enforcement Training Centre etc. The model is worth studying by
us, for adapting in our own national security system, with due customization, as needed
to suit our conditions.

**Regulatory Regime to Control Misuse of Firearms and Explosives**

46. Growing criminal misuse of firearms and explosives, particularly in the perpetra-
tion of terrorist crimes has become a major source of concern, in the recent times. The
existing regulatory regime to keep a tab on their criminal misuse is provided for in the
Explosives Act, the Explosive Substances Act and the Indian Arms Act. These legisla-
tions were enacted during the times when terrorist crime was relatively unknown, and
many of their provisions are clearly outdated and ineffective from the standpoint of
countering terrorism in today’s scenario. There is an urgent need, therefore, to undertake
a thorough review of the provisions of these statutes in the light of the gravity of the
current-day threats, and revise them as necessary.
QUALITATIVE AUGMENTATION OF PROFESSIONAL EFFICIENCY IN POLICE

Professionalism among police personnel and police organizations in India gains particular significance in the context of democratic governance and process of social development. Democratic governments and social change (including mal-development and distortions) generate certain dilemmas and a conflict within the police organization and among the police leadership, giving rise to numerous stresses and strains. Professional ethos provides some solutions out of these dilemmas and conflicts and helps in improved performance in terms of effectiveness and efficiency.

Professionalism has been defined in the Longman New Universal Dictionary as, “the especially high and consistent conduct, aims, or qualities that characterize a profession or professional person”. It also defines a professional as one who engages in a pursuit or activity professionally and one with sufficient experience or skill in an occupation or activity to resemble a professional. A profession is characterized by or conforming to the technical or ethical standards. It is also characterized by conscientious workmanship. In Longman Synonyms Dictionary, a professional is characterized as efficient, competent, capable, able, hardworking, conscientious, thorough, systematic, prompt, quick, practical, realistic, sensible, pragmatic etc., For police, it can be said that proper recruitment, training, modernization, introduction or upgradation of techniques of detection and investigation of crime, computerization, introduction of sophisticated arms and ammunition and methods of communication, designing and introduction of decision making and operational systems, upgradation of skills along with clarity in roles and organizational goals represent essential prerequisites for churning out a “professional” policemen. It represents also the value orientation and ethos of police organization. Police professionalism represents the qualitative dimension of excellence in service to community. Devoid of high ethos, the policemen may degrade themselves to careerists. There are certain variables like recruitment, training and good leadership, proper political climate etc., which bring out the finer aspects of professionalism in police.
Elucidating the role of police, the Gore Committee on Police Training (1972) said: “The police have been called a vital element of the welfare of the people”. Under the Police Act, they are required to execute all lawful orders and warrants promptly, collect intelligence affecting the public peace, prevent the commission of offences, detect them and bring offenders to justice, and take charge of all unclaimed property and dispose of the same in accordance with the order of the Magistrate of the district. The normal functions of the police are:

i) Prevention of Crime
ii) Detection of Crime
iii) Traffic Control
iv) Maintenance of Order
v) Internal Security.

The National Police Commission (1981) has articulated, “The fundamental basis for any criminal justice system is the law of the land, especially in a democratic society. The very process of evolution of law in a democratic society ensures a measure of public sanction for the law through consent expressed by their elected representatives. The entire criminal justice system in our country, therefore, revolves around laws passed by the Union parliament and State legislatures. Police come at this stage as the primary law enforcement agency available to the State. Enforcement by police is primarily an exercise of taking due notice of an infraction of law as soon as it occurs and ascertaining the connected facts thereof including the identity of the offender.”

The following redefined role, duties, powers and responsibilities of the police were formulated by the National Police Commission (1981):

i) to promote and preserve public order;
ii) to investigate crimes, and where appropriate, to apprehend the offenders and participate in subsequent legal proceedings connected therewith;
iii) to identify problems and situations that are likely to result in commission of crimes;
iv) to reduce the opportunities for the commission of crimes through preventive patrol and other appropriate police measures;
v) to aid and co-operate with other relevant agencies in implementing other appropriate measures for prevention of crimes;
vi) to aid individuals who are in danger of physical harm;
vii) to facilitate orderly movement of people and vehicles;
viii) to counsel and resolve conflicts and promote amity;
ix) to provide other appropriate services and afford relief to people in distress situations;
x) to collect intelligence relating to matters affecting public peace and crimes in general including social and economic offences, national integrity and security; and
xi) to perform such other duties as may be enjoined on them by law for the time being in force.

All the above clauses have not only been included but also elaborated by the Soli Sorabjee Committee in the Model Police Act which seeks to substitute the Police Act of 1861.

Increased challenges for the Police

While, what the National Police Commission (1981) said about the role, duties, powers and responsibilities of the police holds good today, endemic challenges dogging the police since the independence of the country (like communalism) have increased in intensity and additional challenges have manifested themselves in the shape of:

i) Increased terrorist crimes
ii) Polarizing communal differences
iii) Mafia activities
iv) Human trafficking
v) Hostage / ransom situations
vi) Economic offences – counterfeit currency and counterfeit stamps
vii) Money laundering and FERA violations
viii) Crimes relating to anti-piracy
ix) Offences relating to NDPS Act
x) Offences relating to firearms and explosives
xi) Cyber crimes
xii) Sharp increase in vehicular traffic
xiii) Crimes targeting national infrastructure
xiv) Over enthusiastic media with little care for ethics and professionalism

xv) Urbanization

Some of the above could be termed as comparatively unconventional challenges and others as those whose increased intensity has left the police with more questions than answers. Therefore, the police machinery finds itself extremely inept to deal with them with the existing tools and methods and legal support systems.

**Existing initiatives to meet the challenges**

It is noticed that in the last two decades, some attention has been paid to the development of physical infrastructure for the police. Many States have constructed new buildings for their Police Headquarters, a number of Police Stations, the District Armed Reserve etc. These have certainly enhanced the outwardly image of police and improved the physical aura of the force. Similarly, in matters of training, some States have created Police Training Schools and Colleges and other institutional infrastructure where human resource development can be upgraded to meet the special needs of the changing environment and increased commitments of the police. On the technical side, a quantum jump has been affected in terms of mobility, communication and computerization ensuring better police connectivity, both intra-State and inter-State. Wherever all this has happened, it has enabled a much improved and efficient response system for the police.

Some States can now boast of much improved criminal investigation tools in the shape of Forensic Laboratories of reasonable sophistication; the Forensic Science Laboratory of Andhra Pradesh, for instance, stands out in excellence in this regard. Certain ‘Centres of Excellence’ in the field of Science and Technology in the country, such as, the Centre for DNA Fingerprinting and Diagnostics (CDFD), Hyderabad also lend further support towards meeting newer challenges in the field of criminal investigation. All these developments have certainly contributed towards enhancing police efficiency.

While so, augmentation of police manpower has remained woefully short, especially at the thana and district levels, thus depriving the force the ability to effectively meet the day-to-day policing problems at the grassroots level. Some of these, when inadequately attended to, develop into serious, if not perennial, societal ulcers and consequently add to the problems the police has to face.

Many States in the country have been able to develop for themselves auxiliary manpower support by cashing in on the subsidy offered for raising Home Guard units. It is a fact that
Home Guards in such States perform almost all police duties except for those directly related to investigation of crime and dealing with serious law and order situations. But, they cannot serve as a substitute for trained police manpower.

Upgradation of the tools and techniques of investigation and detection of crime, use of computers, improved communication systems, introduction of sophisticated arms, ammunition and surveillance devices, improved training methods and infrastructure have resulted in professionalizing the police to some extent, in some of the States. But, even in those States, they have not been able to bring about as much of a qualitative change in human response systems of police as to appropriately enhance its organizational image and convincingly negotiate and neutralize the increasingly diverse challenges, changing political climate and demands of urbanization.

Therefore, where the quest for improvement, upgradation and sophistication in the means and methods presently in vogue in the police must continue, there is need to develop an audit system to examine their effectiveness and devise methods for concurrent revision and modification wherever required.

It is an accepted fact that good organizational structure, sound procedures and methods alone cannot translate policy into action and that the most important factor is the personnel in the organization through whom the procedures and methods have to be implemented. The Gore Committee on Police Training has rightly emphasised that “of all the public services, the police alone can exercise direct coercive influence on the individual citizen. They have also been given direction in order that they can be effective and responsive to the needs of the public. Major role calls upon them to make quick, perceptive judgment in the thick of conflict and in the glare of public scrutiny and errors of judgment on their party can cause irreparable harm”.

Some impediments to effective Police functioning

The response pattern outlined by the Gore Committee on Police Training cannot be overemphasized. Even a thorough professional would require some basic safeguards with regard to his stability and what the future holds for his family in terms of his tenure of service at the station where he is posted. Uncertainty of transfers affect the family of the police officers as it disrupts children's education. On him alone devolves the responsibility of providing sound and stable education for them. Any police officer understands, and can in most cases face up to the pitfalls, dangers and hardships of his career, but if this impinges seriously on the well-being of his family, he usually loses heart and prefers the path of compromise, giving a go-by to the mandated response and commits
himself to a comfortably convenient, if not lucratively deviant, mode of behavior. Police officers who can withstand the vagaries of service transfers and remain psychologically unscarred would be a miniscule minority and an exception. Certainty of suitable length of tenure at a station is a must for augmentation in the efficiency of the police.

In similar light, though to a lesser degree, is to be viewed the matter of perks that go with an assignment. As it is, basic creature comforts are hard to come by as there is dearth of accommodation, transport, medical facilities and other supporting perks like drivers, personal staff etc. The status attached to a post becomes a relevant factor affecting the mindset of police officers. When these are in danger of being withdrawn or lost, holding on to the “grand” principles of police code becomes quite unimportant, to say the least. Especially for police officers of and above the rank of Sub-Inspector, this element of service conditions becomes relevant and important as it often affects their image and esteem in society and among their peers and subordinates. A system needs to be worked out where the perks and privileges to a particular rank in police remain common and constant irrespective of where and to which post they are transferred.

Another impediment that adversely affects efficient police functioning and which needs to be addressed and neutralized is political interference in the day-to-day functioning of police. In a democratic system like ours, this cannot be wished away and police officers do learn to live with it and find their own way to resist or neutralize such interference, without it affecting their psyche and well-being.

Similarly, “work over-load” and mounting pendency of court cases and their tardy and cumbersome disposal does often distort police decision making at the subordinate level. Though no perceptible solution for these problems seems possible in the foreseeable future, the police leadership along with the judicial system could find ways to reduce the magnitude of the problem and its resultant effect on efficient police functioning.

**Code of conduct for Police in India**

Many people believe that the code of conduct for police strengthens their professional fibre. Various codes serve as mission statements for the police to guide their actions as per the dictates of law and the aspirations of people. The Bureau of Police Research and Development (Government of India) sponsored a research study on “Decline in Professionalism in Indian Police – Causes and Remedial Action”, which suggested the following as code of conduct for the Police:

1. The police must bear faithful allegiance to the Constitution of India and respect and uphold the rights of the citizens as guaranteed by it.
2. The Police should not question the priority or necessity of any law duly enacted. They should enforce the law firmly and impartially, without fear or favour, malice or vindictiveness.

3. The Police should recognize and respect the limitations of their powers and functions. They should not usurp or even seem to usurp the functions of the judiciary and sit in judgment on cases to avenge individuals and punish the guilty.

4. In securing the observance of law or in maintaining order, the Police should as far as practicable, use the methods of persuasion, advice and warning. When the application of force becomes inevitable, only the irreducible minimum of force required in the circumstances should be used.

5. The prime duty of the Police is to prevent crime and disorder and the Police must recognize that the test of their efficiency is the absence of both and not the visible evidence of Police action in dealing with them.

6. The police must recognize that they are members of the public, with the only difference that in the interest of the society and on its behalf they are employed to give full time attention to duties which are normally incumbent on every citizen to perform.

7. The Police should realize that the efficient performance of their duties will be dependent on the extent of ready cooperation they receive from the public. This, in turn, will depend on their ability to secure public approval of their conduct and actions and to earn and retain public respect and confidence.

8. The Police should always keep the welfare of the people in mind and be sympathetic and considerate towards them. They should always be ready to offer individual service and friendship and render necessary assistance to all without regard to their wealth or social standing.

9. The Police should always place duty before self, should remain calm in the face of danger, scorn or ridicule and should be ready to sacrifice their lives in protecting those of others.

10. The Police should always be courteous and well-mannered; they should be dependable and impartial; they should possess dignity and courage; and should cultivate character and the trust of the people.

11. Integrity of the highest order is the fundamental basis of the prestige of the
Police. Recognizing this, the police must keep their private lives scrupulously clean, develop self-restraint and be truthful and honest in thought and deed, in both personal and official life, so that the public may regard them as exemplary citizens.

12. The Police should recognize that their full utility to the State is best ensured only by maintaining a high standard of discipline, faithful performance of duties in accordance with law and implicit obedience to the lawful directions of commanding ranks and absolute loyalty to the force and by keeping themselves in a state of constant training and preparedness.

13. As members of a secular, democratic state the Police should strive continually to rise above personal prejudices and promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities and to renounce practices derogatory to the dignity of women and disadvantaged segments of the society.

**Essential Attributes for Leaders in Police**

“The code of conduct for the Police” as mentioned above, though verbose and not directive enough (as would be by using “shall” at appropriate places), is certainly all inclusive as far as expected police behavior is concerned. The code requires somewhat of an exceptional professional to put it into practice at all times and under all circumstances. In every clause of the code of conduct, one commonality stands out, that being the requirement of persons with superlative qualities, not just run of mill persons who come through the routine selection systems that are followed both by the State Police and the Union Public Service Commission. The selection systems lay down the academic and physical requirements for the police but do not lay down a scientific system for selecting persons with the superlative qualities required for discharging police responsibilities.

A true professional in the police must have the following attributes of characters and mental ability; as mentioned in a research study conducted by Dr. Anil K. Saxena of SVP National Police Academy, Hyderabad in 1995 sponsored by the Bureau of Police Research and Development MHA, New Delhi:

- Efficient, honest and impartial performance of duty in accordance with law in spite of political interference.
- Anticipation, planning, proper assessment of situations, self-discipline, proactive thinking, timely action, impartiality, tact, intelligence, close contacts with all subordinates and superiors and keeping abreast of social changes.
Criminal Justice, National Security and Centre-State Cooperation

- Cultivation of ability and competence, backed by sincere ambition of handling problems related to law and order and prevention and detection of crime.
- Thorough knowledge of law, rules, VIP security, ballistics and forensic science. Doing the job with integrity.
- Professional competence based on knowledge, skills, techniques, high esteem, control over subordinates, code of ethics, esprit-de-corps and building confidence in public.
- A professional policeman (all ranks) is one who knows his job thoroughly well and does it conscientiously.
- Learns the role of a parliamentary democracy and total commitment to the goals and objectives of the organization. Professionalism is the hallmark of true leadership in police. A watchful eye on the integrity of his men is a sine-qua-non of true professional leader.
- Combined with the above mentioned attributes, modern day complexities and challenges dictate the need to earmark officers for specialized police work such as Traffic Planning and Control, Crime investigations and Forensics, Economic offences and Cyber crimes, Armed Engagements, Anti-terror/Anti-extremists operations, and V.I.P. security and related intelligence. Officers with special interest, knowledge, inclination and acumen will have to be encouraged to take up specialization in such fields and posted to deal with such challenges giving them the essential perks and allowance to enable them to cope with the job-requirements.

Need for recruiting leaders

At the cost of being repetitive, it needs to be stressed that what emerges as a fundamental requirement for the police is the need for recruitment of leaders or at least persons with leadership qualities at all levels of intake into the force. The Gore Committee on Police Training dealt extensively on the subject of recruitment in police.

After studying the modes and methods adopted by various States in the country for intake of manpower at different levels in police, the Committee made concrete recommendations with regard to age, education qualifications and physical standards and mentioned clearly that there was need for recruitment of persons of exceptional ability, intelligence, alertness and a high level of physical courage and stamina. Besides, they should be honest and impartial and men of character. They expressed their extreme concern by
Capitalizing on available Commission/Committee Recommendations

Over the years a number of Commissions and Committees have been constituted by the Government of India to look into the problems that affect police functioning as also police-public relations. Some of these are the National Police Commission, the Gore Committee, the Soli Sorabjee Committee, and the Malimath Committee etc. All these Commissions/Committees have made very valuable recommendations for improving the functioning of the police, as well as, for bringing about changes which will ensure better police-public relations and improve police image and efficiency. It is necessary that relevant recommendations from the Commission/Committee reports be culled out and serious thought be given to implementing them.

Also, a Model Police Act has been elaborated by the Soli Sorabjee Committee which is a great improvement over the existing Police Act 1961 under which the Police in India still functions. The Model Police Act is drafted with adequate updating and modifications and includes provisions for efficient police functioning in the present times. It is imperative that an urgent attempt is made to examine the Model Act and put it into operation.

It is also necessary to mention that All India Services, of which Indian Police Service is one of the components, was formed to serve as an instrument for promoting national integration. This ideal has remained but a dream. Special steps need to be introduced to ensure that officers who are allotted states other than their home state are provided with necessary means for enabling their smooth and harmonious integration, with the cadre and people of the state to which they are allotted. At present many of these officers serve under the shadow of insecurity and fail to live up to their potential as the leaders of the force. Many of these officers often look to proceed on deputation to the Central Government or to Organizations in their home state. This defeats the very purpose for which the founding fathers of the Constitution of India devised the All India Services. A concerted effort needs to be made to ensure better Cadre functioning and integration and for enabling a higher level of efficiency of I.P.S. officers who are not natives of the State to which they are allotted.

Useful initiatives for implementation

A properly selected and experienced leadership will automatically realize that any organization like the police that faces multifarious challenges and multi-dimensional complexities, needs to develop for itself its own response systems and initiatives, which could meet, at least to a satisfactory extent, some of the existing as well as emerging challenges for which government response has not catered for or is unable to provide.
For instance, while the police department is woefully short of numbers in terms of manpower as compared to the acceptable norms, further shortage occurs due to regular wastage through superannuation etc. The vacancy position is regularly projected to the respective governments but recruitment to fill up the resultant vacancies is delayed and is unable to keep pace with the requirement. Regular systematic recruitment programs are never laid down and if laid down are mostly not followed for various reasons. The problems is compounded as the time lag between issuance of orders for recruitment and the time it takes for the trained manpower to reach their respective stations is about 1½ years. To reduce this time lag, academies could be set up in the private sector, which could provide trained manpower to full-up police vacancies as and when required. Needless to say that such academies would have to adopt and conform to the various intake formalities of the police at the stage of selecting persons for the courses they run. Many of the products of such academies would find ready jobs in the open market in the field of private security. Such a process could be put in place even for recruitment to the level of Deputy Superintendent of Police. All that would be needed is a very short orientation course to fine tune such resource to adapt themselves to structure and systems of police.

A very short training course of about 3 months in police training institutions would suffice thus reducing the present time lag for trained manpower from 1½ years to 3 months. Setting up of faculties for police studies at college and university level has been discussed but rather summarily dismissed. This also needs to be examined with all seriousness with the idea of setting it up through a pilot project with a leading university. Similarly there is an urgent need to think out of the box, so to speak, and allow lateral entry of trained professionals especially in the technical fields such as police communication, computers, forensic science and police training institutions run by state police organizations and introduce them at appropriate levels in police ranks on a regular basis. The Gore Committee on Police Training, while dealing with the subject of recruitment, examined the possibility of opening a Police Wing of the NCC. This was not accepted by the Ministry of Defence which suggested instead, that the National Service Corps could be utilized for the purpose in view. A scheme was then drawn up by the Ministry of Home Affairs (MHA) and instructions were issued to the various State Governments in June 1970. But, the scheme has remained on paper. The Committee categorically mentioned “we are impressed with the objects and potentialities of the scheme and recommend that the State Governments and the Police, as well as, the Educational Authorities in the States should implement it with all the earnestness at their command. The scheme should be of positive use in bringing about, amongst students, a greater understanding of the role of police. We recommend further that students who have participated in police programmes of the NSC should be given preferential treatment in the recruitment of Constables and Sub-inspectors.” The more serious and persistent problems in the police need to be dealt
with by adopting unique methods. Fear of the unknown seems to be inhibiting the leadership and they usually adopt an easy way out by allowing ‘status quo’ to prevail. Such an attitude never results in problem solving and often aggravates the situation. Extremism is noticeably growing in a number of States in India and has been termed by the Prime Minister himself, as the greatest threat to Internal Security. Andhra Pradesh pattern of recruiting Home Guards from extremist-affected Tribal areas, as well as, creating a Tribal Battalion and positioning its headquarters in the vicinity of such troubled areas, has produced extremely good results. It has not only bridged the gap between the people who felt marginalized (mostly tribal) but also provided them with honorable employment and made them feel part of society at large. It would not be out of place to say that such steps have enabled better acceptance of Government schemes devised for these areas. Stagnation and lack of motivation is one of the major problems confronting healthy police response. Today, police has the luxury of recruiting persons who are very well educated. For want of any other avenue of employment, they choose police service as a career. Their potential remains unexploited as they are stunted due to the tardy promotional system existing in the police. They are often compelled to move at the same pace as others, some of whom are incapable of further advancement or are debilitated for health reasons. It devolves as a responsibility on senior police leadership to find ways of sifting the good from the bad, weeding out those who are unfit for police duties and providing a faster promotional advancement system for those whose competency level is well above their peers.

Harmonious, positive and progressive public relations are the bedrock of good police image and definitely impact on police community relations. The aggressive and often antagonistic media often negates the constructive work done by the police. Therefore, it devolves as a responsibility on police leadership to be alive to this challenge and develop a strong public relations organization. This is lacking in most state police set-ups. Even while facing intense aggression from the Naxals and Maoists, Andhra Pradesh Police could earn for itself a very public-endearing image despite going after the extremists hammer and tongs in 2005-06. An efficient Public Relations System established at DGP office level and similarly at district headquarters level was largely responsible for this. The resultant effect is there for the entire country to see. Another important area in developing a positive and healthy police image is, capitalizing on the impressive minds of the “young”. Children and the youth all over the country hold the police in great awe. Fear and dread are in greater proportion than respect and reverence. There is an urgent
need for an “image make-over” for the police. “Bal mitra (or child-friendly) Police Stations” in Andhra Pradesh produced the desired result only to be shelved by successive police leadership. India as a country is greatly blessed, in as much as, it has the largest young population as compared to any other country in the world. Impressionable minds therefore are an immediate and readily available asset on which Police can build its image and endear itself to the public. Establishing Police Clubs for youth and providing them with healthy recreational facilities would go a long way in establishing better rapport and understanding ultimately resulting in establishing an image where reverence and respect substitute fear and distrust.

A successfully tried and tested initiative which in the past has reduced gaps in police-public relations and created better ‘bonhomie’ between them is organizing sports for the youth. For this and the preceding point above something like a ‘Social Service Fund’ should be sanctioned for the police, and utilized judiciously in partnership with youth clubs or social service organizations.

It is pertinent to mention that many of the above endeavors have been exercised by police departments in various States but have remained, at best, occasional and personal initiatives of well-intentioned and motivated police leaders. However, such initiatives have never been structured as permanent ongoing programmes supported by the government, except the Tribal Home Guards and ‘Tribal Battalion’ of Andhra Police. Therefore successful endeavors which have resulted in improving police image and consequently police efficiency have remained in the realm of ‘success stories’. It is time that the Ministry of Home Affairs, Government of India, State governments and Police leadership in all states seriously adopt the above and other similar initiatives on permanent basis with all seriousness.

CONCLUSION

The Government and the Police Department always pride themselves with their efforts at upgrading the infrastructure, technical equipment etc. of the police and the budget allocated for this purpose. Such action is certainly needed as most State Police Organizations seriously require such support. Though, this type of upgradation is pleasantly visible, it remains cosmetic in terms of changing the mindset of the police. Similarly, the numerous efforts and attempts made at introducing new methods of training, running seminars and courses making foreign tours to police organizations outside the country do sound impressive but they do not bring out the essential change in police ethos and conviction to achieve better standards of efficiency and professionalism.
Professionalism represents the quantitative dimension of an organization in the service of the community. It showcases the value orientation of police and reflects the ethos of the organization, enhancing its credibility, esteem and image. Devoid of such ethos any organization will lose its credibility and can lead to social rejection in varying degrees. When compared with all other government organizations, the police stands apart, and exclusive in every respect. Its duties, powers and mandate, its numbers and visibility, all point to its exclusively. Its command structure requires leadership by example. It is a big mistake not to use imaginative means and method to fill up its rank and file, with ideal human resource. After all, the investment (recruitment) is not something to be put up with for just a few years, but for decades, not to serve just a small body of persons but the public at large.

Leadership constitutes a critical variable in enhancing the level of professionalism in any organization and is expected to provide additional support system to meet unforeseen challenges. For police the two elements namely, professionalism and leadership are inescapable imperatives of which good leadership is of paramount importance. All police recruiting agencies as also the UPSC which selects Indian Police Service officers must realize this fact and remodel the recruitment / selection system accordingly for ensuring augmentation of professional efficiency, of a permanent nature, in police.
POLICE REFORMS

In the chapter on National Counter Terrorism Agency, we have touched upon the subject of police reforms as an imperative for success in the nation’s fight against terrorism. Indeed, police reforms are not just needed to more effectively deal with ghastly crimes of terrorism but are significant also for the preservation of rule of law which is the bedrock of democracy. Efficient policing is essential for the maintenance of public peace and for providing a sense of security to the people, both of which are so very vital for achieving the goals of social and economic development of the country.

The need and consciousness for police reforms has been felt in the country for a very long time, right from the early decades of our Independence but the matter, all this while, has not been pursued with due determination and to a logical end. Police being a subject under the ‘State List’ in our Constitutional scheme, it was perhaps natural that the infirmities and inadequacies of the policing system were first felt by States themselves. This led to a series of States appointing their own Commissions of Inquiry, from time to time, 1959 onwards, to go into the causes of inadequacies of the system and recommend measures for reform. Police Commissions were, thus, appointed in as many as 11 States, namely Kerala (1959), West Bengal (1960-61), Bihar (1961), Punjab (1961), Maharashtra (1964), Madhya Pradesh (1966), Delhi (1966), Uttar Pradesh (1970-71), Assam (1971), Tamil Nadu (1971) and Andhra Pradesh (1984).

In keeping with the crucial role of police in a democratic polity and the inevitable linkage between efficient policing and effective internal security, the Government of India too appointed several Committees and Commissions to go into the issues of police reforms, to bring about qualitative improvement in policing in the country. Studies for identifying the essential reform measures were, thus, undertaken by the following bodies appointed by the Central Government, from time to time, to review the functioning of the police either exclusively or as a part of the National Security apparatus or the Criminal Justice Administration of the country:-

- Gore Committee on Police Training (1971-73)
- National Police Commission (1977-81)
The Commissions and Committees – of the State and National levels – having examined, indepth, the causes of the ills dogging the police functioning, made elaborate recommendations on reform measures, with the numbers of their recommendations running into several hundreds. While most of them were to be implemented by the State Governments, a good number of them involved action by the Central Government too. However, the implementation of the recommendations, on the part of both, has only been tardy and lackadaisical, and the sincerity of purpose has been conspicuous by its absence. A few peripheral, piecemeal refurbishments apart, most of the recommendations, crucial for structural reforms in police functioning, have been awaiting implementation for decades. Nothing much by way of a change in the way the police functions is, thus, in evidence, on the ground.

Meanwhile, the Supreme Court of India too, in its decision in a public interest litigation petition (field by Shri Prakash Singh, IPS (Retd.), former DGP, UP), issued certain specific directions to the States as well as the Central Government to implement some of the crucial reform measures in police functioning, duly fixing deadlines for their implementation. But it appears that the Governments of some States and even at the Centre have not been stirred into action by those directives of the Apex Court though the deadlines have long expired.

The net result is that the police in the country continue to function in their original colonial mould, not only with the same old mindsets but also with antiquated equipment and wherewithal. Thus, the common citizen continues to fear the police while criminals violate the law with impunity. The functioning of the police is still governed by the archaic Police Act of 1861 which was legislated by the British to subserv their own colonial interests, and which does not at all reflect our Constitutional values and does not even envision a service-oriented, people-friendly and professionally competent police organisation.

Democratic societies require a responsive, professionally competent and people-friendly
police force, free from extraneous influences in its functioning and accountable to law and law alone. Police reforms are, therefore, needed to improve the overall quality of police service as an instrument of providing protection and sense of security to the citizens as much as a bulwark against the multifarious threats to internal security of the nation. Reforms are required to be comprehensive, touching upon all the components of the management universe of the police system, namely, (i) the human element, that is, manpower of the police, (ii) the conditioning environment for the human element, (iii) the institution (police stations and other police establishments), (iv) the institutional environment, and (v) the boundary environment (aspects of police-public interface, police-political interface and police interface with the criminal justice system).

Reforms have also to be structural. The personnel entering the police service should be better educated than now, should be recruited through a rigorous, fair and merit-based selection process, and should go through an efficacious regime of training and periodical retraining for upgrading their professional competence from time to time as well as promoting their inter-personal skills and human-rights consciousness. Their emoluments, service and working conditions should be commensurate with the arduous, stressful and hazardous nature of their duties.

The police stations, which are the basic functional units at the cutting-edge level, today, lack even bare minimum infrastructure, equipment, even manpower, not to speak of facilities of forensic science and other modern tools of policing, in most cases. The pace of modernization has been hurdlestone and poor infrastructural resources available at the police stations have remained a major stumbling block in efficient police performance. The situation demands serious attention.

The poor state of police image among the people needs particular attention too since mistrust of the police by the public, in turn, also affects police efficiency. Basic issues leading to large-scale citizen dissatisfaction against the police, such as non-registration of crime etc. need to be effectively addressed by introducing structural changes in police functioning and in the processes of evaluation of police performance. Credible institutional mechanisms need to be created to deal with public complaints against police misconduct and for proper audit of police performance. All these will go a long way in instilling greater confidence in police functioning, among the public.

The area of police-politician interface has become increasingly problematic. In a democratic society, governed by the rule of law, the police have to be totally apolitical in the performance of their professional work and unquestionably fair in the application of law. Unfortunately, in the name of democratic responsibility, some elected representatives
have come to assume that interference in professional police work is their duty as well as right. Thus, in the contemporary political scenario, police are often sought to be used as a tool to subserve the partisan political interests of leaders of the ruling party. To forestall any political or other extraneous interference in the statutory functions and duties of the police, institutional safeguards are required to be put in place.

**Role and Responsibility of the Central Government**

Professional and efficient functioning of the police is a *sine qua non* not just for the rule of law but also for creating and nurturing an environment of peace and security which is a vital necessity for the success of the agenda for economic growth and social development that the country has set for itself. Apart from that, in the contemporary era of ‘proxy wars’ waged against nations by belligerent, inimical countries as well as a host of ‘non-state actors’, the role of police in safeguarding national security has emerged as crucial. The Group of Ministers on National Security (2000-01), has, in its report, laid stress on this aspect, and made as many as 62 actionable recommendations aimed at enhancing the professional effectiveness of the police in dealing with national security challenges while remaining people-friendly in their day-to-day work, actions and behaviour. Many of these recommendations have met with the same indifference from our Governments as those of the various other Committees and Commissions.

A time has now come when the subject of police reforms is to be taken up by the Government of India as an important national issue. After all, a matter of such grave national importance cannot be left only to the whims and fancies of the State Governments, particularly with all its serious import for national security.

**What should the Government of India do?**

The Government of India had, in 2005, appointed a Review Committee to take stock of all the pending recommendations of various Commissions and Committees on police reforms which were awaiting implementation, and to recommend further course of action on them. The Committee, after an assiduous exercise, shortlisted 49 recommendations that were considered critical to the process of police reforms, and recommended their implementation on an urgent footing. Those recommendations were, thereafter, circulated to the States for immediate action. But, the matter, even now, reportedly rests at that. It needs to be taken up with the States with fresh vigour and a sense of urgency, and pursued to its logical conclusion. It will be useful if the Central Government issues a clear cut directive to the States under Article 256 of the Constitution, to implement police reform measures in a fixed timeframe, and closely monitor their implementation.
The Government of India should also implement those 49 recommendations as well as the directions of the Supreme Court of India, besides enacting a new police legislation based on the Model Police Act, drafted by the Soli Sorabjee Committee, in respect of all the Union Territories (including Delhi) without any delay, to provide a lead to the States.

The Government of India should undertake to bear most of the additional financial burden involved in the implementation of the recommended reform measures by the States. It will be a small investment in a major stride in the direction of creating a more conducive climate for social and economic development of the country, as also towards strengthening national security. The scope of the existing central scheme of Modernisation of Police Forces should be enlarged, for this purpose. It should also be brought under the category of ‘Plan Schemes’ so that modernization of police is taken up in the ‘Plan mode’, with adequate availability of finances and other resources.

Urgent measures are also needed to evolve a political consensus across the States and the Centre, in favour of police reforms. Perhaps, a high-powered Committee on Police Reforms with State Chief Ministers as its members, the Prime Minister as its Chairman and the Union Home Minister as the Convenor, could be set up to steer the process. Also, what was done for the implementation of the VAT scheme across States could be adapted as a process model in this regard.

The need for police reforms in the country is grave for the sustenance of rule of law and for the health of democracy. Moreover, reforms in the functioning of police are vital for good governance and speedy social and economic development of the country as much as for strengthening our national security preparedness. Given its importance, the subject of police reforms ought to be topmost in the agenda for Centre-State cooperation.
DEFINING ROLE OF ARMED FORCES OF THE UNION IN INTERNAL SECURITY DUTIES

INTRODUCTION

Transnational terrorism launched with long term political objectives to weaken a country by disturbing peace, creating administrative and political chaos, fuelling communal and ethnic violence is a new form of aggression that has narrowed down the differences between internal security and external aggression. The parameters of internal security that now connote public disorder, as distinct from national security, are not fully valid because of the developing threats of transnational terrorism and war by proxies. In this environment, internal security can no longer remain the sole responsibility of the States and the Union must step in to control the situation, as and when necessary.

In view of the growing threats to our security from trans-border terrorism and internal turbulence that is abetted and aided by external agencies, there is a need to reexamine the role and conditions of deployment of the Central and State Armed Police Forces during crisis situations. The new threats have changed the parameters on which our concept of deployment of Central forces for internal security duties has been premised. The conventions governing the role of Central forces should be reviewed to make their response more prompt and effective in countering transnational terrorist threats.

By convention, Central Forces are deployed to control internal disturbances only when specific requests are made by individual State Governments, although under article 355 of the Constitution the Union is duty bound to protect the States against external aggression and internal disturbances, including the obligation of the Centre to prevent internal disturbances from occurring, there are many grey areas regarding the deployment of Central Forces to curb widespread disturbances, terrorist attacks, hostage situations etc. The terrorist attacks in various urban centres in 2008, culminating in the November attack in Mumbai have highlighted the necessity of creating Special Forces to deal with terrorism. There is now a need to raise specially organized and trained forces both at the Centre and at the State level to deal with the growing threats to our national security.
The conventions governing the deployment of Central forces should be reviewed to make them more effective in dealing with diverse internal disorders and threats. At times, army or paramilitary forces have been requisitioned without being actually employed; the most glaring example of this was during the demolition of Babri Masjid and Mumbai riots that followed the demolition.

The aim of this chapter is to examine the role, organisation and the deployment of Armed Forces for internal security duties under the existing laws and conventions and suggest ways and means to improve our response to terrorist attacks and insurgencies in the prevailing security environments.

THE ROLE OF THE UNION IN MATTERS OF INTERNAL SECURITY

The role and responsibility of the Central and State Governments to contain cross-border terrorism and extremist violence in disturbed areas has been discussed time and again between the Centre and the States. Reservations of the States about deployment of Central forces without their request persist and require to be resolved urgently because threats to national security by unconventional methods and non-state actors, who act on the behest of a sponsoring country, have multiplied.

Supreme Court judgments in certain cases leave us in no doubt that any criminal act which is aimed at, or which clearly has the potential of, causing detriment to the country’s security, integrity, stability or sovereignty, or destabilizing its economy, is to be deemed as a threat to national security and integrity of India. The three Articles quoted below clearly lay responsibility upon the Union Government of maintaining integrity and unity of the country and state the conditions under which the Union Government must step in to control crisis situations in any State or part of a State.

**Article 256**: The executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose.

**Article 355**: It shall be the duty of 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.

**Article 365**: Where any State has failed to comply with, or to give effect to, any directions given in the exercise of the executive power of the Union under any of the provisions of this Constitution, it shall be lawful for the President to hold that a situation has
arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution.

**DEPLOYMENT OF PARAMILITARY FORCES**

Central Paramilitary forces are normally deployed on internal security duties on the requests of the States and function under the Director General of Police of the State, and may be placed at the disposal of the State for unspecified periods. Their higher commanders have little say in their deployment or the suitability of the operational task given to them or the duration of their deployment. They are invariably used in company or platoon size subunits with junior commanders at the helm of affairs; they are often misused and remain neglected. To make the deployment of paramilitary more efficient and effective it is suggested that the present system of command and control and deployment of Central Paramilitary Forces be reviewed.

Due to the nature of their tasks and increasing demands paramilitary units are on the move almost all the time creating serious functional and operational difficulties which often lead to indiscipline, job fatigue and inefficiency in all ranks. There is a certain adhocism in the system of deploying central police forces; generally requests are received from the States stipulating the number of companies or personnel required by them, the Centre rushes these in haste in case of grave situations or bargains regarding numbers it can make available at a given time. If there is a problem in more than one State, logistical difficulties of the paramilitary forces multiply and units are moved frequently from one State to another without any time for rest or reorientation. In such conditions, the requirement of number of units and their areas of deployment in various parts of the country cannot be precisely determined. As there is little reserve capability within the force, multiple demands for deployment result in overstretching the available assets of the paramilitary forces. The main factors that hamper the operational efficiency of CRPF, the primary paramilitary force involved in internal security duties, may be summarized as under:

1. Employment on short notice in unknown terrain and unfamiliar environments greatly reduces the effectiveness and impact of the force.
2. Organization and equipment of the units do not always suit the task that is meant to be performed.
3. Lack of knowledge of local customs, language and religious sensitivities hampers effective use of the force.
4. Political considerations often inhibit effective action by this force.
5. Lack of integral capacity to acquire real time intelligence is a major handicap in dealing with insurgents and terrorists.

6. Lack of inbuilt logistic support arrangements proves a handicap in proper functioning of the force.

7. Prolonged deployment under stress without proper logistic support and welfare measures affects morale.

8. The weapon system and equipment is generally outdated and does not meet the current operational requirements.

9. No time is available for refresher training or training for use of new weapons due to constant operational demands on the force.

10. Leave and welfare measures are not well organized under the present system, leading to low morale, indiscipline and suicide cases.

11. Units are often deployed for guard duties or other static jobs and their potential is not fully utilized.

A force deployed for counter-insurgency operations for long durations must be given periodic breaks for recuperation, leave and welfare; men suffer from low morale and operational fatigue without any relief in sight specially when deployed in hostile environments and inhospitable terrain.

To overcome some of the problems stated above establishment of Regional or Zonal commands is recommended, the organization and the functions of the proposed Zonal commands are discussed below.

FUNCTIONS AND THE STRUCTURE OF ZONAL COMMANDS

Establishment of Zonal Commands with a specified number of units which are specially trained and equipped for the probable or allotted tasks is recommended. The attached units will operate in zones where they are familiar with the terrain, local language and culture, a percentage of recruitment may be done locally. The command of the paramilitary forces will remain under the Zonal Commander; once the task is allotted by the State authorities, the Zonal commander should be allowed full freedom to employ his units as he deems fit to accomplish the given task. The Zonal headquarters should also have intelligence elements to provide operational and real time intelligence to units in field. Some integral heli-borne reconnaissance and lift facilities for quick reactions and reinforcements must be provided for operations against terrorists, insurgents and Naxalites.
Zonal headquarters should have integral administrative units with arrangements for providing logistic support, rest and recreation, refitting and relief facilities, presently these facilities are not available to units deployed for operations in far flung areas. The zonal headquarters can also provide facilities for refresher or specialized training for the units. Special units trained, armed and equipped to tackle terrorists and insurgents will be required as add-on to the standard units in each zone. A percentage of non-lethal weapons should be provided for dispersing mobs along with heavier weapons for fighting insurgents and terrorists. A well organized Zone based composite force with specialized units equipped with suitable weapons and good logistic backup will prove more effective in dealing with internal disturbances or insurgency and terrorism.

RAISING OF SPECIALISED FORCES

Deployment of Rashtriya Rifles (RR) in Jammu and Kashmir and Assam Rifles in the Northeast serves a limited purpose, the case of raising specialized forces for internal security duties in other parts of the country should be examined in view of growing terrorist threats and continued turmoil in various parts of the country. The situation in Northeast and Jammu and Kashmir demands long term deployment of Special Forces to combat indigenous and sponsored terrorism, raising suitably organised Central and State police forces should be considered to take over internal security duties from the army in both these areas.

A very large paramilitary force on the model of Central Reserve Police Force (CRPF) or RR will be required to replace the army, it may be better if the State Armed Police Forces are remodeled, financed and equipped by the Centre for specialized roles within their own regions. These forces should be especially trained for combating terrorists, insurgents and other armed groups such as Maoists, Naxalites and their associate organizations. Each region has its peculiar challenges and State Armed Police Forces if suitably organized and equipped will be in a better position to deal with the problems than Central Forces.

The training of the Special State forces for combating terrorism should be centrally organized to achieve uniform standards. To ensure operational efficiency and good discipline and morale it would be necessary to create an office of ‘Inspector General of Armed Forces’ that will periodically inspect units of Special State Forces to check the state of their operational preparedness, training, maintenance of equipment and weapons, standard of leadership, morale and discipline etc.

Special provisions for dedicated financial support from the Centre will be necessary for
maintaining the required standard of State level forces. Provisions to empower Centre to pool forces from various States to meet unforeseen crisis situations will be required. Such situations may arise when the force of a single State will not suffice or when the activities of terrorists or insurgents spill over several States. Under such conditions Armed forces of the Union may also be deployed for short periods.

**ROLE OF THE ARMY**

Standard Operating Procedure for deployment of armed forces for internal security duties in aid of civil power are laid down in the instructions on ‘Aid to the Civil Authorities by the Armed Forces.’ When called out to quell civil disturbances or for help during natural or man-made calamities the role of the defence forces is clearly defined, but when these forces are employed for long periods to counter insurgency or cross-border terrorism the laid down norms prove inadequate. To combat insurgencies or trans-border terrorism large army formations, air force and naval contingents may have to be deployed *suo motu*; conditions for such deployment should be clearly stipulated.

Army can be requisitioned for aiding the civil authority by a magistrate if he determines that the situation cannot be brought under control by the civil authorities, however in practice this applies only to localized internal disturbances and not to widespread violence in a state. At times army has been called in to quell riots but kept waiting without actually being employed depending on the political expediency of the party in power, on such occasions it had to watch the disturbance or rioting escalating beyond the control of the local police but was unable to intervene to bring the situation under control. There is requirement of a legislation detailing the situations under which army commander of a certain level should be authorized to deploy troops without being formally requisitioned, of course its consequences has be deliberated upon with great care.

The deployment of the army in aid of civil authorities for indefinite periods erodes their combat potential, causes undue wear and tear to costly equipment required for war, not only prolonged deployment of the army on such duties is wasteful but also generally proves counter-productive in the long run. It is suggested that suitably organized paramilitary forces should be raised to take over these duties from the army.

The duration of deploying Army formations for internal security duties should be laid down in more precise terms. A timeframe must be stipulated for which combat units or formations can be deployed in aid of civil authorities; their deployment should not normally extend beyond three months after which the forces should be automatically derequisitioned.
CONCLUDING OBSERVATIONS

The nature of internal security environment has changed drastically in the last two decades but our methods of deployment, weapons and equipment even tactics and procedures remain largely unchanged. In view of the threats of transnational terrorism and increasing turmoil in our neighboring countries we need to reorient our systems, infrastructure and policies to meet present and future threats. The command and control, organization and weapon system of the Central and State forces should be reviewed at regular intervals to keep pace with the developing situations.

The deployment of a variety of forces for counter-insurgency operations often lead to command and control problems that hamper effective operations, better coordination among various central forces and state agencies engaged in internal security duties must be achieved. The system of unified command has not succeeded in bringing about the required coordination between the army, paramilitary forces and the civil administration in all areas, the shortcomings of the system must be examined and corrective measures taken. In J&K despite the establishment of Unified Command there has been visible lack of coordination and appropriate interaction between the RR with other counter-insurgency and intelligence organizations functioning in the state.

Involvement of regular army formations in internal security duties on a permanent basis in J&K and the Northeastern regions must be reviewed, raising of special forces to release the regular army formations from such duties should be considered.

An overarching view of the challenges posed to the internal stability of our country by Pakistan-sponsored terrorism, Jihadi elements both inside and outside the country, separatist and Naxalite groups, should be taken and the requirement of raising suitably organized, equipped and trained internal security forces, especially at the State level, that can be deployed for meeting future security threats should be seriously examined.
A number of security-related issues resonate in the North-east, which remains the “most continuously militarized region of the country.” The Government’s view of these issues lies in the formulation and implementation of a series of tough legal measures, some of which are extraordinary in their scale and scope and at least one, the Armed Forces Special Powers Act, empowers non-commissioned officers (army and security forces) to use force to kill people on suspicion.

There are many enduring concerns at the “peoples’” level or that of the non-government, civil society level from the North-east on these laws, some of which are listed as an Appendix; these concerns are reflected in this brief paper. The effort is to develop a comprehensive set of perceptions and views with a recommendatory list of what could and should be done, within a specific time frame, to lead to a peaceful resolution of issues.

This paper should not be regarded as representative of civil society groups in the region; that would be too presumptuous. It is an effort to briefly place the perspectives of the author, drawing on over 25 years of field work in the region, reporting, documentation and interactions with stakeholders, civil society and communities as well as independent writing, analysis and service on Government Committees as well as in an advisory capacity to GOI and State Governments.

The centralized power of the Indian State is repeatedly questioned in the lightly-populated North-east, where over 220 ethnic groups live in eight states and where the population is about 40 million or about 2.5 percent of the national figure. Also questioned is its management of the problems of dissent and political identity and especially the question of “one nation”, with a stress on homogeneity. The first real armed challenge to the Indian state came from the North-eastern region and especially its hills. These areas were historically kept at a distance from the “mainland” by the British, through special administrative arrangements with the hill tribes, and they were uninvolved in the welter of the independence movement led by Mahatma Gandhi.

41 National Commission for Women: The Impact of Conflict on Women in Nagaland and Tripura, Government of India, 2005
This paper flags a few issues of National Security relating to existing legislation and human security, impacting on State-Centre relations, especially in the continuing discussions of a National Security law to deal with the growth of terrorism. The problem is often connected to the GOI’s efforts to develop geographic-specific laws through Parliament to deal with what it views as regional issues, but which are actually “national” in scope. These central laws have a visible and visceral impact on the states.

- At the heart of this impact is the deep public anger against the continuing and extensive use of the armed forces in essentially policing duties; there appears to be a tacit understanding between the armed forces and local state administrations in Nagaland, Manipur, Assam and Tripura especially, to enable such a status quo to continue although this benefits neither. There is a trust deficit here and army interventions – in the case of the North-east for over 50 years – are not a panacea for issues which are essentially political in nature. Local police organizations and state administrations must be enabled to stand on their own, instead of being dependent on the army, which must return to its mandated priorities, dealing with external threats.

- The continuing use of the army for “local” issues, especially after a crisis has abated, tying down tens of thousands of combat troops, cannot be regarded as a sensible deployment of the armed forces.

- Deployment of armed forces to combat disturbed conditions should be the exception and not the rule and such deployment, as one Committee noted succinctly, “should be undertaken with great care and circumspection … since too frequent a deployment, and that too for long periods of time, carries with it the danger of such forces losing their moorings and becoming, in effect, another police force, a prey to all the temptations and weaknesses such exposures involve … may well lead to the brutalization of such forces.”

- The question of the continuance of the Armed Forces Special Powers Act (1958) has agitated the minds of the public for decades. GOI should take on board the Review Committee’s report (better known as the Reddy Committee Report) which advocated its repeal in unambiguous terms, saying that law had become “a symbol of suppression, an object of hate and an instrument of discrimination and high-handedness” in the North-east and among people. It proposed an alternate legal mechanism to enable the army to act in extraordinary circumstances where its presence was required.

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The Reddy Committee Report has been backed by the Veerappa Moily-headed Administrative Reforms Commission as well as the Md. Hameed Ansari-led Working Group on Reducing Conflict Levels in Jammu and Kashmir. Yet for over two years, GOI has neither published the Reddy Committee Report in full or made even its Recommendations public, showing it is neither sincere or interested in the public response to a national security law or conducting a discussion on the same despite PM’s assurances of remedial action and “human” touch. This official lack of response has created greater antagonism in the region on the “national security” issue vis-à-vis GOI views which are dominated by a military approach, especially that of MOD, MHA and the army.

The enabling legislation for AFSPA (declaration of an area as Disturbed under the relevant legislation which then empowers the armed forces to act) was once dependent on state governments (to be renewed every six months) but the Centre has, through an amendment, given itself powers to extend the same; this should not be seen as a power in perpetuity which often is misused to sidestep state governments of other political hue. The Centre or the government, instead of simply laying the extension on the table of the House (Lok Sabha or State Assembly) explain in detail why such extension is necessary and submit to a Parliamentary debate and a Parliamentary Committee audit on the same every six months. If the State Government asks the Centre to deploy armed forces or any force under the control of the Union, then it can seek a review at the end of the period of six months.

The Reddy Committee view on a national security law, especially dealing with terrorism, is reflected in its approach that the existing Prevention of Unlawful Activities Act was adequate because it very specifically defines “terrorism” in terms of activities and the names of various terrorist organizations and even has a clause (Section 49) that protects “any serving or retired member of the armed forces or paramilitary forces” from being prosecuted “in respect of any action taken or purported to be taken… in good faith, in the course of any operation directed towards combating terrorism.”

It also defined and developed specific clauses on deployment of armed forces with or without the request for such force from the State Government concerned. (pg. 83, 3.)

A national law will deal with the charge of discrimination against a particular
region since terrorism is seen as a national problem and an international phenomenon, as GOI and other governments keep declaring from time to time

- Grievance Cells (to receive complaints from the public of those missing or detained in army actions) to be set up in every district where there is army deployment to provide information about those taken into detention (see Reddy Committee, pg 78-80); this may not regarded as protected information under the RTI (the law to be amended, if necessary).

- The amendments to the ULP seek to democratize the law because they bring in the police immediately into the process of detention even when Central forces are deployed for quelling “internal disturbance.”

- All persons arrested and detained to be produced before the nearest magistrate in 24 hours excluding the time taken for journey from the place of arrest to the nearest court of the magistrate (Article 22 clause 2). It is the Reddy Committee’s view that the deployment of armed forces “to restore public order and/or peace of to protect a State against internal disturbance” cannot supersede this right or the Right to life or personal liberty (Art. 21), or equality before law and equal protection of laws and non-discrimination against any citizen or group of citizens assured in Article 14 of Part III of the Constitution or the six freedoms assured in Art. 19. These rights “remain sacrosanct and effective.”

- Illegal migration from Bangladesh and to a limited extent from Myanmar are creating major demographic challenges especially in Assam and slowly spreading across Meghalaya and Nagaland as well as other parts of the country. This creates both social tension and security risks. After the Supreme Court (2005) declared the Illegal Migrants Determination by Tribunal Act of 1983 as ultra vires of the constitution, GOI tried to bring it in by an amendment to the Foreigners Tribunal which sought to have a separate law for foreigners in Assam; this too was overturned by the Supreme Court. Currently, Citizenship Act and Foreigners Act as well as the original Foreigners Tribunal Order are used to prosecute alleged illegal migrants.

- The following suggestions are made to deal with this issue:

  (i) National Immigration Commission to review all data w.r.t illegal immigrants. Refugees (political) and Internally Displaced Persons (displaced by natural calamity or human intervention) and develop laws for the
definition and governance of these groups, sensitive to local concerns;
(ii) Commission to be headed by prominent jurist who is also active in
the human rights area and commission members to comprise of civil
society, including those with expertise in migration issues, lawyers and
government specialists.

(ii) Constitutional reservations for Assam states residents or those of
Assamese origin (whose origins can be matched against the National
Register of Citizens 1951 and the 1971 state assembly voting lists) to
the extent of 60% of the state assembly in perpetuity as well as similar
control over land rights.

(iii) ID cards for all residents of the NE; these may be multi-colored as Shri
Prakash Singh (IPS, Retd.) has suggested; funds to be set aside by Plan-
ning Commission to be made payable through MHA to state govern-
ments.

(iv) For better border management, along with above laws and ID cards, a
Work Permit system for labour migrants from Bangladesh and Myanmar
with pupil and finger detection is crucial. There may be special color
code cards for labour migrants from Bangladesh and Myanmar. This
may not be foolproof but it is important to be innovative and think
into the future. Also to be considered, perhaps on a trial run in specific
areas, should be the bio-metric system as is to be introduced in Britain
(these are described in news reports on Sept. 25, 2008, as forgery and
tamper-proof) (NB: much of migration from Bangladesh is economic
driven: NE’s labour needs are large but existing work force is small –
for the massive infrastructure projects GOI is planning, over 22 lakh
labour is required. The region has only about 3 lakh as of present)

(v) GOI has to tread cautiously on its Look East Policy and promotion of
globalization, despite huge economic infrastructure investment plans
(Rs. 50,000 cr. On roads alone in the 11th Five Year Plan) in a sensitive
ethnic mosaic and ecological zone because local communities will have
to be protected against rapid change that may overwhelm them and
destroy their livelihoods and sustenance. Local laws and traditions to
be protected while enabling a business environment and international
trade. But rigorous enforcement of laws in the region, and esp. at bor-
ders, to prevent trafficking of women and children, gun running and
drug trafficking which are emerging as major challenges.
(vi) Under-development is a non-conventional threat to security, especially on the river bank and river islands areas of Assam (2,500 islands with 25 lakh people of nearly 10 percent of the state population); lower Assam has seen substantial influx from Bangladesh although many Muslims here are also old settlers, unlike the popular perception. Centre to fund projects on health, education and infrastructure development (esp. flood management and control of river erosion) in these areas; this is being done to some extent but rigorous review by funding agencies is called for with regard to use of resources and implementation of programmes.

(vii) Inter-State Border Resolution Mechanism: currently Assam has border disputes with Meghalaya, Nagaland and Arunachal Pradesh. There needs to be a Border Resolution Mechanism that comprises of border management experts, social scientists from the concerned states as well as stakeholders, headed by an independent legal luminary familiar with the issues and the area

(viii) Central efforts for conflict resolution – i.e. peace processes with Naga insurgent groups, Assam and Manipur armed groups need to be developed in a broader framework that involves specialists from civil society in an advisory capacity and with feedback from the ground. There needs to be a response mechanism to the public, not just the principal stakeholder i.e. government. Regular consultations with CSOs to be part of the process of interaction because without the involvement of people (as is now happening with Naga Reconciliation Forum leading the movement for reconciliation), no official negotiations or agreement can be sustained. Despite the obvious challenges, civil society movements would need to take the lead in these areas.
Appendix

Security Laws which have been/are being used in the North-East

- Assam Maintenance of Public Order, 1947
- Assam Disturbed Areas (Special Powers of Armed Forces), 1947
- Assam Maintenance of Public Order (Autonomous Districts) Act, 1953
- Assam Disturbed Areas Act, 1955
- Armed Forces Special Powers Act, 1958 (extended to Manipur and Assam)
- Nagaland Security Regulations Act, 1962
- Unlawful Activities Prevention Act, 1967 and 2004
ACCOUNTABLE, EFFICIENT POLICE: BEDROCK OF INTERNAL SECURITY

Madhu Purnima Kishwar

India is facing unprecedented security threats from our hostile neighbours as well as from a whole range of home bred terrorists operating, not just in the Border States but also in large parts of heartland India. The US State Department has listed India “among the most terrorism affected countries” and noted that the archaic police system makes India ill equipped to meet the challenge. This is the first time that the failure of our Intelligence and security agencies, the dysfunctionality of our police in dealing with the situation became a major election issue. It is a welcome sign that the very first “solemn promise” made by the Congress Party in the “Work Programme for 2009-2014” in the Manifesto released before the General Elections of 2009 underscores the priority the Party will give to Internal Security:

“We will guarantee the maximum possible security to each and every citizen. Our policy is zero tolerance towards terrorism from whatever source it originates. We have already initiated the process of equipping our police and other specialist security forces with the latest weapons and technology to meet terrorist threats. This process will be taken forward vigorously. More specialist battalions will be raised and positioned in key locations across the country.”

The Party thereafter lays down the principles it will follow in implementing police reforms, which is listed as its third “solemn promise”, after assuring citizens that it will ensure “a high level of defense preparedness.”

“The Indian National Congress recognizes the imperative of police reforms. A clear distinction between the political executive and police administration will be made. The police force will be better provisioned especially in the matter of housing and education facilities; the police force will be made more representative of the diversity our population; and police recruitment will be made more effective and training professionalized to confront new and emerging threats. Accountability of the police force will be institutionalized.” [Emphasis mine]

It is significant that the Manifesto does not spell out “accountability” to “whom”? Even under the existing Police Act of 1861 vintage, policemen are indeed accountable—but

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only to their political and administrative superiors. The hallmark of effective policing in functional democracies is “accountability to citizens”, who have effective, institutionalized powers of oversight over those entrusted with the job of providing a safe environment for them. The Government of India has appointed numerous Commissions and Committees to chart out the road map for Police Reforms. Despite several valuable recommendations made by some of these Commissions, especially by the Committee that drafted the Model Police Bill of 2006, all of them define “accountability” in terms of answering to some “higher up” authority. None of them provide a radically new framework for policing because they have not made adequate and effective institutional provisions for **accountability to citizens** in their proposals for reform. A detailed discussion on this follows later.

Moreover, the use of the term “police force” is in itself unfortunate. Most countries that take their democratic commitment seriously have brought about a basic change in their vision of the role of the police, which is also reflected in the change in nomenclature from “police force” to “police service”. The term “force” connotes a coercive organ at the service of the State rather than an institution to provide security of life and property to citizens.

**“Nation” Cannot be Secure if Nation’s Police Make Citizens Insecure**

If “national security” is viewed in terms of providing safety of life and constitutional rights of India’s citizens from internal and external threats, the dysfunctionality and large-scale criminalization of our universally feared and hated police force poses the biggest security threat to India as a nation State and its citizens—rich and poor alike. The poorly paid, poorly trained, poorly equipped, politically manipulated, thoroughly demoralized and universally despised police force in India lacks the capacity even to enforce traffic laws honestly and efficiently, leave alone be effective in combating serious crimes. Even a cursory look at the miserable working and living conditions of police personnel at the level that matters most—namely at the local police station level, the absence of basic amenities to perform their responsibilities with a modicum of efficiency, distorted relationship between the elite IPS officers and lower ranking policemen, absence of coordination between its various wings and the unholy political pressures under which they operate, are enough to show that they are not meant as instruments of law and order. The widespread proliferation of gated communities whereby the wealthy citizens are organizing their own parallel security arrangements amounts to a declaration of “No Confidence” in the police.

This is not to deny that there are numerous honest and highly competent police officers at
all levels. But those who manifest integrity and commitment to their professional duties and refuse to yield or compromise with unlawful demands end up being marginalized and often rendered ineffective by frequent postings and being systematically undermined by their administrative and political bosses. The existing police system often punishes those who value their professional integrity and rewards dishonesty, sycophancy and pliability. Terrorists thrive in a situation where ordinary citizens deeply mistrust and fear the police while criminals feel confident of buying their cooperation and patronage.

**Why Honest Citizens Fear to Act as “Eyes and Ears” of the Police**

A major factor essential to the success of anti terrorism operations is the willingness of law abiding citizens to act as the “eyes and ears” of the police. Unfortunately, today, it is mostly unsavoury characters who act as “police informers”—a term almost always used pejoratively. Not surprisingly, the ability of the police in gathering intelligence is seriously compromised. Therefore, **there is urgent need for institutional reforms, to combat the increasing criminalization of the police force, as manifest in the following symptoms:**

1) Since our police force has been constituted in a top down manner and lacks accountability to citizens, it is conditioned to respond only to two codes: A *kick from above and a bribe from below*. Even a casual time utilization audit of the police station level staff will show that most of their time is spent on collecting *hafta* and sniffing new opportunities for making the extra buck often in cohort with criminals. Gathering pointed and reliable information on terrorists and gangsters requires focus expertise, sensitivity, and the trust of citizens who should not feel vulnerable after disclosing information regarding criminal mafias. Since their expertise is so focused in one direction, most policemen lack both the skills as well as the motivation to track down terror networks. Policemen openly talk of “sookbi / geeli/ malaidar postings.” The *geeli* postings are those that provide opportunities for regular bribes and payoffs while *sookbi* postings are devoid of such privilege. The biggest bribes predictably come from patronizing those engaged in unlawful activities – peddlers of drugs and pornography, flesh traders, local thugs, land grabbers, corrupt builders and political mafias. Even in sensitive areas like J&K, one hears stories from knowledgeable people how our police and security forces are known to have sold off seized guns and ammunition to the very same terrorists from whom they were recovered.
2) Even in cases of murderous assaults, the police will take money from the accused and force the victim into accepting a “compromise”—a euphemism for unconditionally withdrawing the complaint. It is not uncommon for the police to harass and threaten the victims if they dare persist in registering complaints against those who have bought favours with the police, as happened in Nithari. The more serious the crime, the more money the police make for overlooking it or for actively collaborating with the crime perpetrator in terrorizing his victims.

3) Today the vast majority of policemen consider the extra income as their legitimate due because promotions, prime postings do not come without political patronage and/or hefty bribes to those in charge of promotions and posting. Therefore, being part of extortion rackets and patronage of political bosses has become a necessary component of survival and a prime means to career advancement. In many states, recruitment as police constables is openly purchased through pay offs.

4) It has become a fairly common practice for the police to implicate in false counter cases those few who dare challenge the activities of criminal mafias enjoying police and political patronage. Today, even educated upper middle class citizens fail to get their complaints registered unless they are willing to pay off. Most of us fear inviting the wrath of the police by reporting on criminals, for fear of being implicated in false counter cases, as happened with Bina Ramani.

5) An increasing number of police are not just aiding and protecting but actively engaging in outright crime ranging from dacoity, supari killings, land grab operations and smuggling of contraband goods. Dawood Ibrahim could not have become so invincible without having a number of policemen on his payroll. Who in their right senses will risk their lives by volunteering information to the police regarding suspicious or criminal elements, if they see the police routinely connive with criminals? Expectedly, the information provided by our Intelligence agencies is even less reliable than our weather department forecasts!

6) The frequency of people being tortured and/or killed in police custody, including those who are brought to the police station on allegations of petty crimes shows that our policemen are ill trained to carry out even routine investigations and the system turns many of them into sadists.
7) Crime rate is much higher in those cities with a high concentration of police and villages that are close to police stations and government offices. By contrast, remote villages which rarely see the sight of a policeman are much safer and relatively crime free. Most atrocities in villages take place at the hands of castes and communities that can count on police support. Ordinary citizens fear any contact with the police. A Bengali saying sums up the perception of the ordinary citizens very well: Baghe kater 16 ghan, police kater 32 ghan. (If a leopard attacks you are likely to end with 16 wounds, but one who is targeted by the police will end up with at least 32 wounds). Not surprisingly, the entry of police in villages and neighborhoods evokes fear rather than a sense of security.

8) Cases of innocents being dubbed as terrorists after being killed in false encounters in order to “show results” or win awards and promotions, with several “encounter specialists” turning blackmailers and becoming part of underworld gangs, shows the dangers of giving immunity to the police in their methods of dealing with terrorists or gangsters.

9) Instead of nurturing high quality professionalism in our police force and creating adequate incentives for honest functioning for police personnel, our ruling establishment has created too many perverse incentives and systematically crippled the ability of the force to act as guardians of the life and liberty of citizens. For example, the in-charge of a police station that registers a higher number of criminal cases is pulled up for poor performance. Therefore, they have figured out a simple way of bringing down the crime graph: just don’t register cases! That not only earns the thana a “good record” but also earns the goodwill of powerful vested interests and local mafias. Officers who turn a blind eye to unlawful activities and protect the perpetrators from prosecution, become wealthy and influential and those few who dare stick to their professional duties often pay a heavy price.

A police force that is universally feared and despised for its lawlessness, a force that has not learnt to handle the already available copious provisions and powers bestowed by the IPC and Cr.PC, is not likely to produce magical results with “more stringent laws” like POTA, TADA or the Unlawful Activities (Prevention) Act or yet another over arching law in the name of strengthening National Security. By merely adding “latest weapons and technology” and raising more “specialist battalions” as promised in the Congress Party Manifesto, or by creating yet another organization like the National Investigating Agency, as has been already done, the Government cannot “meet terrorist threats”.

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Under the current regime, there is no way of ensuring that another federal agency for crime detection or internal security will improve the situation. On the pretext of combating terrorism and insurgency in J&K and the Northeast, our Intelligence agencies, paramilitary and armed forces have been given a free hand bolstered with draconian laws. Far from producing enduring peace and stability, they have facilitated increases in human rights abuses, and brutalization of ordinary citizens. The people’s consequent estrangement from and mistrust of the Government along with marginalization and demoralization of the local police due to excessive reliance on the armed and paramilitary forces in these States has made it far more difficult for security forces to gather intelligence and isolate terrorists.

Similarly, the politicization of the existing Intelligence agencies, such as Research and Analysis Wing, the Intelligence Bureau, the Central Bureau of Investigations and the veil of secrecy adopted by them for remaining unaccountable, allow them to indulge in devious turf wars, function at cross purposes to undermine each other and tailor the Intelligence they provide to suit the whims of their political bosses. Similarly, the fate of the National Security Council and the utter irrelevance of the National Security Advisory Board points to the danger of creating multiple agencies whose functioning is neither clearly defined nor its performance put under regular scrutiny. A new Internal Security apparatus will work well only if the existing ones are rigorously revamped and merged under a unified command with full responsibility—its performance carefully monitored on the basis of clear guidelines and objective criteria.

However, it can never be over emphasized that an efficient, well trained, well equipped, well paid, highly motivated and self respecting police service accountable to citizens — through carefully worked out mechanisms of checks and balances — manning every police station in the country is the bedrock of internal security.

Inadequate Accountability Mechanisms in the Model Police Bill of 2006

Our erstwhile colonial masters have in recent decades introduced far reaching changes in the very conception and role of policing in their own society. It is a disgrace that our political establishment has allowed many more perversions to creep into the system instead of outgrowing their addiction to using the arbitrary powers bestowed on it in the archaic Police Act of 1861, which was meant as an instrument of subjugation of our people.

The least we could have done is to keep pace with the process of democratization of the
British Police in recent decades. Nor have the various Police Commissions and Committees tried to incorporate in full measure systems of accountability and transparency institutionalized in recent decades in formerly colonized countries like Ireland and South Africa.

All these countries have started with the premise that in a democracy police cannot merely act as the executive arm of the state within the given boundaries of law. But that they must make a special effort to safeguard activities that are essential to the exercise of democracy. The process to make police function as an essential instrument of democracy must start with serious, in depth consultations with a wide range of citizens’ groups, especially with the poor and marginalized groups who at present bear the brunt of police high handedness, to understand their legitimate grievances and expectations from the police. None of the Commissions and Committees so far appointed for charting a road map for police reforms has made a serious attempt to involve citizens in defining the role and functioning of the police. Each of these Commissions was a closed door affair involving retired or serving police officer, bureaucrats with at best token representation of civil society. Therefore, in each case “accountability” got defined in terms of creating some “higher” oversight body.

For example, the Model Police Bill drafted by the Sorabjee Committee makes a welcome beginning by promising a Police Service which will have “respect for and promotion of the human rights of the people, and protection of their civil, political, social, economic and cultural rights”, and be trained to believe that their primary duty is to uphold “the Rule of Law.” It recognizes that “it is the constitutional obligation of the State to provide impartial and efficient Police Service safeguarding the interests of vulnerable sections of society including the minorities, and responding to the democratic aspirations of citizens”. It asserts that, “such functioning of the police personnel needs to be professionally organized, service oriented, free from extraneous influences and accountable to law”. It also envisages “redefine[ing] the role of the police, its duties and responsibilities, by taking into account the emerging challenges of policing and security of State, the imperatives of good governance, and respect for human rights.” It acknowledges that, “it is essential to appropriately empower the police to enable it to function as an efficient, effective, people-friendly and responsive agency”. It also makes an important commitment by providing for civilian oversight of policing through the institution of a State level Police Accountability Commission as well as District Complaints Authority.

**Biased Composition & Limited Powers of State Accountability Commission**

The mandate, composition, jurisdiction and powers of oversight bodies under the Model
Police Bill are circumscribed in such a manner that they thwart the very purpose for which the civilian oversight agencies have been created. They do not provide a meaningful role for citizens, except as aggrieved petitioners.

Jurisdiction of the State Police Accountability Commission is limited to attending to allegations of “serious misconduct” against police personnel, defined as any act or omission of a police officer that leads to or amounts to:

(a) Death in police custody;
(b) Grievous hurt, as defined in Section 320 of the Indian Penal Code, 1860;
(c) Rape or attempt to commit rape; or
(d) Arrest or detention without due process of law.

There is no provision for monitoring the routine functioning of police stations and redressing complaints regarding the routine abuse of power and common types of misconduct such as extortion, implicating people in false cases, patronizing criminal mafias, acting in a partisan manner towards vulnerable groups, dishonest investigations to protect vested interests, fabricating evidence, perjury or failure to uphold the rule of law. Its definition of “serious misconduct” does not include torture that does not lead to “grievous hurt”. Nor does it have oversight rights over ‘death in police action’ as opposed to ‘death in police custody’. For every person who dies in police custody, thousands are terrorized and blackmailed through less lethal but no less harmful methods. Unless the routine, hum drum functioning of every police station is put under thorough scrutiny of citizens of the area through well worked out mechanisms including the power to hire and fire, the fate of high powered oversight bodies at the district or state level to take cognizance only of cases of death or grievous injury will be no better than that of our ineffective Human Rights Commissions. If the day to day functioning of police stations is not rigorously monitored by local citizens, the District and State level bodies will collapse under the overload of complaints, especially since in all likelihood they will be denied adequate resources to attend to even a fraction of complaints they receive.

The Composition of the Commission dilutes the idea of accountability to citizens. Of five members—four are either serving or retired government functionaries—a retired High Court Judge as the Chairperson of the Commission; a retired police officer from another state cadre, a person with a minimum of 10 years of experience either as a judicial officer, public prosecutor, practicing advocate, or a professor of law and a retired officer with experience in public administration from another state — among these sarkari representatives, there is just one person as a representative of civil society — who could also well
end up being a retired bureaucrat or a political appointee. The very idea of including a retired police officer in the oversight body defeats its purpose and will compromise its credibility because the Commission is intended to inquire into serious complaints of police high-handedness and the failure of internal review and redressal mechanisms of the police.

*Insufficient Powers and Limited Mandate:* The Commission has not been given a clear mandate to call for evidence and relevant documents or to demand compliance of its orders or ensure that the police do not allow enquiries into cases involving vested interests drag on endlessly. It is not enough to limit its powers to merely “advising” the police to expedite completion of cases. It should have the power to investigate the cases itself and ensure compliance of its orders. It also needs to have the power to prosecute government servants without prior sanction of the Government. Minus that power, it will find itself thwarted because such permission is rarely forthcoming due to the immunity provided to government officials by Section 197 of the Criminal Procedure Code.

**District Accountability Authority: a Mere Post Office for Complaints?**

This body appears to have no real function or power except to forward complaints of serious misconduct and monitor them. It can at best give advice to police authorities. Therefore, it cannot live up to the promise of being an “Accountability Authority”.

The idea of having a District Complaints Authority will work only if it actively monitors the functioning of all police stations under its jurisdiction *in a proactive* way rather than merely act as a post office for forwarding complaints. Such an Authority will need to be created in each police district, rather than lumping a group of districts together citing lack of resources as the reason. Unless it makes special effort to be accessible to the poor and marginalized groups, it will degenerate into yet another dysfunctional body. As with the State Commission, the District Authorities require effective local civil society representation instead of having retired judges, police officers and bureaucrats doing the job.

*Uninspiring Track Record of Newly Created Police Complaints Authorities:* The Model Bill provides that an independent selection panel and not the government will nominate members of the above-mentioned Commission and the Authority. However, the few state governments that have set up a Police Complaints Authority, following directions of the Supreme Court, have appointed handpicked members of their choice rather than let independent panels select them. The well-entrenched tendency of our political establishment to capture all such institutions through pliable political appointees is evident in the composition of all these bodies. Almost all these state level Authorities are ill equipped,
poorly staffed and starved of resources. Not surprisingly, none of them are functioning as effective watchdogs as per the mandate of the Supreme Court. If this is the fate of Police Complaints Authorities constituted under the watchful eye of the Supreme Court, one can well imagine the fate of the entire top heavy accountability structure once the “business as usual” attitude takes over.

**Special Police Officers or Official Touts?**

The concept of Special Police Officer is provided for in Section 17 of the 1861 Police Act. It enabled the police to enlist members of the local community in special cases of disturbance to peace in an area. But this was intended for extraordinary circumstances, with the permission of the magistrate and the assent of the local residents of the area. But Section 22 of the Model Police Bill makes it a regular feature, without requiring evidence of any special disturbance in the area or without seeking the involvement of the local community.

The institution of SPOs has earned enough disrepute. It is well known that every thana patronizes the most unsavory elements in any neighborhood to act as informers and touts. They work as go-betweens between citizens and the police for the purpose of collecting bribes and for “controlling” citizens. These touts usually enjoy the backing of local, state or even national level politicians. It is through them that the politician–police nexus turns so lethal. The power to appoint “Special Police Officers” has therefore been widely misused in favor of such touts. During the decade of separatist terrorism in Punjab such SPOs created widespread resentment because of frequent abuse of power instead of acting as links with civil society.

Unfortunately, the Model Police Bill has lent further legitimacy to this practice. The Superintendent of Police is given the power to appoint “any able-bodied and willing person,” aged between 18 to 50 years, that he considers fit to be a Special Police Officer to assist the Police Service. This SPO appointed under Section 22 would have the same powers and immunities as ordinary police officers, without the obligation or opportunity to get the comprehensive training a regular officer is made to undergo. We need more rigorous selection norms for selecting well-qualified officers and invest far greater resources into providing them world class training than we do at present. The institution of SPOs will further compromise standards, which are already appallingly low. Quality policing is too vital a matter to be subject to cutting costs in this manner.

**Rural Police System: Vast scope for Abuse**

The Model Police Bill introduces the concept of Village Guard for each village. He will be provided with an honorarium and treated as a government servant. There will also be
multi Village Defense Parties consisting of about 15 members who will be given a modicum of training and provided identity papers. They will be paid nominally for their expenses. The duties of Village Guards and village Defense Parties will include:

a) Preventive patrolling;
b) Securing and preserving scenes of crime;
c) Remaining alert and sensitive to any information about any suspicious activity, or movement of suspicious persons or development of any conspiracy in the village, that is likely to lead to a crime or breach of law and order, and promptly passing on such information to the police;
d) Making arrests and handing arrested people to the police without delay.

This is another cost cutting measure that has vast scope for abuse. These provisions would amount to every village being infested with police agents with the power of arrest. Given the shoddy track record of our supposedly trained policemen in “preserving and securing crime scenes or in preventive patrolling” or in preventive patrolling, one can well imagine the level of expertise Village Guards are likely to be provided. But they will have sweeping powers with ample scope for settling personal scores, extortion and blackmail. Who decides who is a “suspicious person” or “suspicious activity”? Authorizing Village Guards to arrest and hand over a suspect to police without the requirement that this takes place within twenty-four hours of arrest will make them even less accountable than the regular police. The politically dominant caste groups are bound to corner all such posts leading to further bolstering of their power and likelihood of abuse. Surprisingly, the Model Bill does not have any role for elected panchayats at the village level. Today’s sarkari panchayats function poorly because the bureaucracy and the politicians lord over them. If we create yet another powerful body located right in the village to lord over the panchayats as an extension of the local police station, this will make panchayats totally effective. Village policing ought to be brought within the purview of the elected panchayats with due safeguards rather than have police appointed Village Guards become empowered tyrants.

**Licensing Powers and Good Behavior Bonds**

Sections 92-97 grant police special powers in metropolitan and major urban areas under the Commissionerate system, including powers for licensing or even prohibiting the keeping of a place of public entertainment; licensing or even prohibiting the running of cinemas; regulating or prohibiting public assemblies and processions; and requiring people
to execute bonds, “with or without sureties for good behavior” if the police receives information that the concerned person is “likely to do any wrongful act that may lead to disturbance of public order”. This is no different than the existing Kalandra system and likely to be just as ineffective in controlling crime.

Even in the hands of civic agencies, the License-Permit-Raj has an inglorious track record of being corruption-friendly because it legitimizes harassment through arbitrary denial of licenses or assembly to those who do not find favor with the current regime. It is not appropriate to let the police have powers to regulate the cultural life of a community.

**Sultani Power to Banish People**

Section 97 grants the police to issue sultani farmaans to remove and banish people from their homes and cities. For example, a person may be removed if “it appears to the Commissioner of Police” that the person’s “movements or acts” “are calculated to cause alarm”, “danger, or harm to person or property”. This section also provides ample scope for misuse at the behest of vested interests who may implicate their opponents in false and fabricated cases to get rid of them from the area and deprive them of their land and home. In any case, if a person is “hazardous for a community”, he/she should be booked for the offences committed and put in jail if found guilty rather than be allowed to run amok in some other areas. The scope for misuse is enormous especially since the police can exercise such sweeping powers without the need for judicial process with independent witnesses willing to testify to the wrongdoings of the person thus targeted.

**Special Security Zones**

Section 112 to 118 and Section 121 enables Special Security Zones to be declared by Union Government with the concurrence of the State Government. It mentions the need for appropriate police structure, integrated mechanisms and standard operating procedures for such Special Zones. But all these terms are vague and ill defined, thus providing ample scope for arbitrary exercise of power as happens in regions which are under the purview of Disturbed Areas Act. Similarly, phrases like “terrorist activity”, “militant activities”, and “insurgency” are used without precise definitions of what these terms imply. Many poor people—street vendors, rickshaw pullers etc.—who operate at the mercy of the police, routinely complain of “police aatank or terror” However, we know that it is not the citizens’ perceptions of terror but that of police officials that will decide what these loaded terms mean. This is likely to mean further compromises with fundamental rights of the community at large and of political dissenters in particular. The arrest and prolonged detention of Dr Binayak Sen on charges of abetting terrorist activities in Chhattisgarh and the undiminished influence of Maoist terrorism in the Disturbed
is equally important to learn from India’s own pre British institutional history - how vari-
ous communities catered to their security needs and instituted forms of accountability
into the system. The continued dependence of our political and intellectual elites on the
models of governance created by our colonial masters and their inability to democratize
them is in large part due to a very high level of ignorance of our ruling establishment
regarding India’s civilizational principles, contempt for the surviving indigenous institu-
tions, a deep mistrust of our people, lack of respect for their views, wisdom, needs and
aspirations. That is why post independence legislation tends to be highly authoritarian
and our reform measures always top down.

This is not to suggest that we have to blindly emulate or relive our real or imagined past
history. But we need to study our pre-colonial history and the nature of diverse civil
society institutions prevalent in different parts of India without looking through colonial
lenses if we wish to understand India’s civilizational heritage, including its flaws. People
without a healthy critical sense of their society’s past often lose the ability to creatively
shape its future. Our people’s continuing reliance on caste and biradari institutions, often
in preference to governmental structures and laws, points to the need to build the demo-
cratic institutions of today and tomorrow by including the positive features of the insti-
tutional genius of India’s diverse peoples.

Pre British India has often described as a society of self-governing village republics. Ma-
hatma Gandhi’s vision of Swaraj was based on resurrecting and renewing some of the key
principles and institutional structures of those self-governing village republics to suit
present day requirements. Unfortunately, in post independence India, we stayed enamoured
with colonial modes of governance and did very little work to unearth and document our
forgotten institutional history.

One of the few illustrative accounts of how the self-governing republics functioned is
provided in the works of Gandhian historian, Shri Dharampal. To illustrate an example
from the vast body of his writings, I would like to cite a small insightful extract pertaining
to the system of policing in pre British India described in his work on the “Indian Economy
and Polity in the 18th Century” jointly authored with M D Srinivas. This was based on a study
of palm leaf manuscripts of 1764 to 1774 pertaining to Chengalpattu District in Tamil
Nadu along with a contemporary survey of the villages mentioned. These manuscripts
provide a detailed account of the functioning of more than 2,100 localities in the
Chengalpattu region of Tamilnadu around the time of the British conquest of the region.
It bears testimony to highly productive and wealthy village communities, with a sophisti-
cated decentralized system of self-governance by citizens involving all spheres of life,
including inter-village and intra-village security apparatus. This was in sharp contrast to
the highly centralized, authoritarian system of governance and policing thereafter imposed by the British colonial regime.

The practice in this region of Tamil Nadu was that every household in the village contributed about 30% of its produce to the common resource pool of the village in order to pay for the over 30 categories of service providers required by the village. This included artisans—weavers, potters, ironsmiths, goldsmiths, carpenters, sthapatis as well as those who provided intellectual, cultural or spiritual services such as teachers, priests, vaidis, devadasis and so on.

It is noteworthy that unlike our present day underpaid police force - the village militia and police were among the highest paid functionaries of the village. They received a certain proportion of the total agricultural produce of an area, and in lieu of such remuneration, it was their duty to protect all those who contributed to this charge from local disturbance, thefts, etc.

The Karnam or Conicopy (which really implied the office of the registrar of the village, a sort of secretariat, rather than a single individual) generally had an allocation of 3–4% while the Taliar (i.e. the village police, which may have included several persons) generally had an allocation of around 3%. In cases of theft etc., if the police or the Palegar (the head of the militia and perhaps one who also acted as a modern Inspector General of Police for his area) were unable to recover the stolen property, they were expected to compensate the aggrieved party from the incomes allocated to their offices. Since each household paid a portion of their produce for the services of the police, each could demand and get accountability of a high order.

The establishment of British rule was accompanied by the imposition of alien laws, regulations to facilitate draining of the economic wealth of local communities and a repressive top down police force to enforce those laws. It is worth noting that the offices of the Taliar, the Corn-Measurer, the settler of boundary disputes, and a few other village offices, were generally filled by persons from what later came to be described as the Pariah and allied castes. For example, in Maharashtra, it was the Mahars (who are today listed as lowly Scheduled Caste) that constituted the village police. This indicates that the present day depressed status of many of SC and Backward Caste communities is primarily rooted in the impoverishment of Indian society and the forced disruption of their functions and entitlements.

The disempowerment of village communities from managing their internal affairs ushered in the demeaning “Petition Raj” whereby the only remedy available to citizens was to appear as hapless supplicants before some higher authority against wrong doing by
their juniors. This authority was also not by law obliged to respond to citizens. This colonial minded system and mindset process continued unchecked even after we began to be ruled by our “elected representatives.” Despite the trappings of democracy, officials in India, especially the police are a law unto themselves, accountable only to their seniors and are accordingly designated “Government Servants” rather than “Public Servants.”

Today, crude, effete, caricature versions of the traditional community appointed policing are evident in many of our urban centers, including Delhi, despite the highest concentration of government police stations and therefore among the highest crime rate in India. Almost every middle and upper middle class colony has become a gated community with private guards paid by local residents for their neighbourhood security. But unlike the highly paid local police of the Chengalpattu variety, most of these security guards are recruited from among the impoverished, undernourished, untrained rural migrants who are handed simple lathis and whistles to patrol at night or note the names of people and the number plates of vehicles entering the area during day time. They are paid a miserable pittance, not provided even elementary training or basic facilities like toilet or a place to rest after duty hours and treated with utter disdain. They are therefore good only for harassing those as vulnerable as them—street hawkers or other service providers - whose entry they can restrict at will. This indicates that centuries of enslavement and tyranny of the colonial system has disoriented our society at large and destroyed the inner strength and moral values of community life in India, something essential for devising functional, people centric institutions.

**Towards an Accountable and Efficient Police Service**

The police system cannot be set right in isolation. Police reforms have to be an integral part of institutionalizing radical measures of accountability of government officials and elected representatives to citizens, involving far reaching electoral, legislative, judicial and administrative reforms. However, it is vital to start the process with the law and order machinery because its malfunctioning makes all other institutions dysfunctional. Citizens who feel confident in the ability of the police to uphold their constitutional rights do not take long to acquire the power and resolve to demand and secure better performance in all other areas of governance.

If we cannot make our police stations into institutions trusted and respected by ordinary citizens who feel that the police are willing to make common cause with them in marginalizing the role and power of criminals in our country, none of the special institutions for countering terrorism are likely to deliver results. It is only honest, law abiding
citizens who can become effective “eyes and ears” of the police. Dubious elements and tout., even those working for the most professionally trained Intelligence agency, cannot pre-empt external or internal subversive elements.

While a concrete blueprint for creating an accountable and efficient police service worthy of a vibrant democracy cannot be accomplished without active involvement of a cross section of concerned citizens and a vibrant public debate on the role, duties, responsibilities, entitlements, and powers of the police, I would like to present a small wish list, indicative of the direction in which I would like to see the agenda of police reforms move:

1. Even the best of reform measures will fail if the Government does not take determined steps to weed out the criminal elements which have become well entrenched in the system. In order to put a new system in place and protect it from sabotage, the police establishment has to be rid of the enormous control and influence such criminal elements have come to acquire at all levels of the system. This will give strength to people with integrity who currently feel marginalized and demoralized.

2. The present four tier system is far more vicious than the inequities of our much vilified caste system. The social, educational, cultural gap that exists between the lowly constables and the elite IPS cadre makes effective teamwork virtually impossible. Both for State Police Services as well as for the All India police cadre, there must be a single entry point for joining the police service and the starting salary should be MORE if not comparable to that of a Lieutenant in the Indian Army.

3. The police service must be among the highest paid services in the country. Minimum educational qualification should also be raised to Graduation along with competence in the use of computers. This should be followed by two years of world class training in policing, including the judicious use of arms, gathering intelligence, building trustworthy relations with citizenry, proactive approach in upholding democratic, constitutional rights of citizens and protection of vulnerable groups.

4. The current system of a common civil services exam must be replaced by a specialized recruitment process as currently operational for recruitment in the Army. The police service must not be saddled with people who accept this service by default simply because they fail to make it to the more sought
after IAS and IFS. Special aptitude and psychological tests need to be given precedence over judging merit on the basis of marks obtained in written tests and common interviews for civil services by the UPSC.

5. There should be a complete ban on the use of constables as personal servants and orderlies. It vitiates the morale of lower level staff by destroying their self-esteem. Such persons become unfit to perform cutting edge policing involving active interface with citizens.

6. CCTV cameras should be installed in each and every police station so that the routine functioning of police personnel can be monitored by independent and empowered Monitoring Authorities constituted for this purpose comprising mainly of credible local residents selected through a rigorous transparent process, with institutionalized checks and balances for their functioning. All meetings of these Monitoring Authorities must also be video recorded and made available to citizens on demand under RTI. The District, State and National level Monitoring Authorities will work effectively only when monitoring the functioning of police stations is honest, transparent and effective.

7. Part of the salary of police personnel must come from a special tax levied from local residents of the area so that they feel they have a stake in the efficient and honest functioning of the system.

8. The practice of using transfers, as rewards and punishment must stop. If a police officer is found abusing his power in the job he was assigned, he should be dismissed rather than given a respectable way out of the mess he has created. There should be transparent and finely tuned institutional mechanisms for transfers and postings which are currently based on the whims and prejudices of bosses—both administrative and political.

9. Promotions should not be determined solely on the basis of Confidential Reports by senior officers, nor depend on the political patronage commanded by an officer. That breeds a culture of servility, sycophancy and authoritarianism. Instead, professional advancement should depend on the institutionalization of proper performance evaluation systems at each level, including citizen’s evaluation and feedback from juniors.

10. Police stations must be well equipped, well furnished and designed to meet the requirements of 21st century policing. Even their physical appearance must
be such as can inculcate a sense of professional pride and self esteem among those who operate from there.

11. Democratic rights of police personnel as citizens must be well protected and effective machinery for speedily responding to their legitimate grievances must be an integral part of police reforms.

All this will succeed only if civil society has the capacity to produce credible and competent representatives, deeply committed to democratic values and respect for the human rights of vulnerable groups as well as the courage to act in a non-partisan manner. This process cannot happen without refashioning our governance institutions in a manner that rebuild the crushed self esteem of citizens. Citizens without self-respect inevitably turn into petty tyrants who emulate the habits of their own oppressors, even while they despise them. All this requires a long term perspective, patience and nurturing. If not in this lifetime, I hope to see this wish materialize in a future lifetime.
TASK FORCE REPORT

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The Task Force

1. Creation and Composition of the Task Force

(1.1) Task Force No. 6 on Natural Resources, Environment, Land and Agriculture (TF 6) was set up by the Commission on Centre-State Relations under OM No. 1-14/2008-CCSR dated 18 June 2008 (Appendix I) with Ramaswamy R. Iyer as Chairman and Dr. Kanchan Chopra, Dr. Ligia Noronha, Dr. S. N. Rai, Shri Alemtemshi Jamir, Dr. Suman Sahai and Ms Madhu Sarin as members. Later on, one more member, namely Dr. B. Sengupta, was added under F.No.1-23/2008-CCSR dated 1 September 2008, communicated to the chairman through an e-mail dated 5 September 2008 (Appendix II).

2. Scope of Work

(2.1) The OM dated 18 June 2008 did not spell out the precise Terms of Reference of the TF, but the subjects referred to the TF were clear from the title and membership of the TF. However, in advance of the Plenary meeting on 30 June 2008 the Commission made available a questionnaire (Appendix III) which gave us an idea of the issues as seen by the Commission. That questionnaire became a working guide in our deliberations.

(2.2) The Commission also referred to the TF two communications received from the Tamil Nadu and Kerala State Governments on the subject of water, and in particular, inter-State differences in relation to water. The TF took note of those communications (Appendices IV and V).

(2.3) It was clear to the TF that its focus had to be not so much on sectoral policy issues as on the Centre-State Relations aspects of those issues. It was also clear that the term ‘Centre-State relations’ must necessarily be taken to include inter-State relations as well, particularly because intractable inter-State river-water disputes have been a familiar feature of Indian political life. Moreover Indian federalism now encompasses not only the Union and the States but also a third tier of local self-governance, and any report on Centre-State relations must take note of Centre/State – Local Level relations.
3. Meetings

(3.1) Four members of TF 6 (the Chairman, Dr. Kanchan Chopra, Dr. Ligia Noronha, and Shri Alemtemshi Jamir) had an informal preliminary meeting on 30 June 2008 afternoon following the Plenary meeting of all the Task Forces with the CCSR. Thereafter TF 6 had four meetings on 28 August 2008, 15 January 2009, 23 March 2009, 20 April 2009 and 12 May 2009.

(3.2) Because of some common concerns, TF 6 had a joint meeting with TF 7 (on Infrastructure Projects) at the latter’s suggestion on 28 August 2008 after the completion of its own meeting.

(3.3) At the request of the Chairman of TF 1, conveyed by Additional Secretary, ISC, the Chairman of TF 6 participated in a meeting of TF 1 on certain constitutional issues on 20 December 2008.

4. Limitations

(4.1) Updated Some limitations on the working of TF 6 must be mentioned here. The subjects to be dealt with were many and added up to a vast canvas, but the time available was extremely short. This meant that the TF could not undertake new studies or generate new knowledge. The Task Force would have liked to supplement the knowledge and expertise available within the group by a few papers commissioned from experts outside the TF, and to hold a couple of meetings outside Delhi, preferably in tribal areas, but resource and time constraints made these ideas impracticable.

(4.2) Under the circumstances, the Task Force had to deal with the subjects referred to it on a selective basis, leaving some topics uncovered, proceed on the basis of the available knowledge and experience, and do its best within the limited time at its disposal.

5. Papers

The members of the TF contributed the following papers (annexed to this Report in Appendix VI):

- Ramaswamy R. Iyer: ‘Water: Centre-State and Inter-State Relations’.
- Dr. Ligia Noronha: ‘Minerals and Hydrocarbons’.
II. Problems and Issues

6. Commonalities and Specificities

(6.1) What was referred to TF 6 was not a single subject nor even a large complex subject composed of components but a cluster of diverse though inter-related subjects. There are some common issues (or common categories of issues) that relate to several of the subjects, and some special issues and concerns exclusive to each subject (water, forests, minerals, etc). Both categories are important, but the specificities are overwhelming, making the task of integration in a common report somewhat difficult.

(6.2) Broadly speaking, the problems and issues that emerge from the papers can be grouped into the following categories: (i) issues of constitutional significance (inadequacies, excesses, failures of compliance); (ii) issues of equity and inclusiveness in relation to natural resources and to development in general; (iii) issues of ecological sustainability and harmony; and (iv) issues specific to particular resources or sectors. That is not a rigid categorization. Some issues and concerns can be classified under more than one head. Moreover, one concern that came up repeatedly in different contexts was that of empowering the local level of governance and making democratic decentralisation real.

(6.3) What follows is a broad and selective overview of some of the major issues that emerge from the papers, organized roughly on the lines indicated above. It is intended as a sign-posting of a vast and varied territory in preparation for a reading of the papers themselves.

7. Issues of constitutional significance

(7.1): Constitutional inadequacy and Central ineffectiveness (Water): There is an unsatisfactory constitutional division of legislative power relating to water between the Union and the States; no constitutional recognition of water as a scarce and precious
natural resource, an integral part of the ecological system, and a basic right; no nationally agreed statement of principles of water-sharing between riparian States, between uses, between sectors and between areas; no satisfactory institutional arrangements for allocations, priorities, or the prevention and/or settlement of disputes; considerable difficulty in institutionalizing any kind of holistic coordination at the river basin level because of strong resistance by the State Governments; legal weaknesses that render the regulation of groundwater use difficult; and general dissatisfaction with the working of the constitutionally mandated adjudication process for inter-State river-water disputes. All this indicates the need for a major constitutional and legal reform in relation to water.

(7.2) **Central intrusion into the domain of the States (Minerals and Forests):** In the case of both minerals and forests, a number of Central laws impinge heavily on the States: Mines and Minerals Development and Regulation Act (MMDR), Forest Conservation Act, Wildlife Protection Act, Environment Protection Act, etc. There are valid concerns and objectives behind them, but as the papers show, the centralising characteristics of these laws and the related centralised management control tend to abridge federalism and alter the constitutional Centre-State balance. This tendency has been unwittingly reinforced by some well-meant judicial pronouncements.

(7.3) **Failures of adherence to constitutional and statutory provisions (tribal areas):** The strong constitutional and statutory legal provisions and Acts for the protection of the rights of tribal communities tend to get overridden by the provisions and laws for the protection of the environment, forests, wildlife, etc. This is a matter for serious concern. The absence of full adherence to the provisions of Schedules V and VI and PESA for the protection of the rights of tribal communities is leading to considerable distress as well as the marginalization of these groups.

(7.4) **Slow progress towards constitutional mandates (local self-governance):**

(7.4.1) In the political sphere, we have been moving gradually from quasi-federalism and a strong Centre towards decentralization and greater federalism. An important milestone in this evolution was the introduction of a third tier in the federal structure by the 73rd and 74th amendments. The democratic decentralisation ushered in by those amendments (as also its extension to Schedule V areas through PESA) is not yet fully operative. It will not become a reality until the subjects listed in Schedules 11 and 12 are duly devolved to the local level, with the necessary financial resources.

(7.4.2) Decentralisation has been emerging in the economic domain as well. The changing climate of opinion has been pushing various sectoral policies, and indeed planning as a whole, in the direction of a more decentralised, local, participatory orientation. This
indicates the paramount significance of the third tier of governance as an integral part of the federal polity. The Eleventh Plan focuses on planning at the district and lower levels, and envisages an important role for local-level land and water planning, including watershed planning.

(7.4.3) A parallel development during the last few decades has been the emergence of civil society and NGO initiatives towards social mobilisation for wide-ranging local action (water-harvesting, watershed development, sanitation, public health, and so on). Constructive working relationships need to be established between such civil society institutions and the constitutionally mandated governance structures (PRIs, Gram Sabhas or traditional institutions).

(7.4.4) What is needed is a convergence of political, economic and social forms of local self-governance.

8. Issues of equity and inclusiveness

(8.1) In the context of water-resource, mining and other kinds of developmental projects, several issues of equity, social justice and inclusiveness arise. Such projects often impinge heavily on the lives and livelihoods of human settlements (including tribal, aboriginal and Scheduled-Caste ones) existing in the project area, in some cases for centuries, but the people likely to be affected are rarely consulted or even informed in advance about the impending disruption, and play no role in decision-making regarding the project or resettlement plans. The ‘social costs’ (a euphemism for adverse impacts) of such projects fall on one set of people but they have hardly any claim on the benefits expected from the projects, which go to another set of people. The displacement and disruption caused by such projects is not a voluntary ‘sacrifice’ by some in the national interest but an imposition on them. Their fundamental rights (in the Indian constitutional sense) and human rights (in UN terms) are affected. The compensation for such involuntary displacement and disruption is generally late and inadequate and often vitiated by corruption (and in some cases unavailable because of a non-recognition of rights.) The rehabilitation policies and packages vary considerably, and even where they are enlightened, the implementation is often unsatisfactory.

(8.2) All this causes resentment, resistance and social unrest, which affect good and bad projects alike. No project or programme can succeed without the willing participation of the people concerned from the earliest stages. Unfortunately the idea of ‘stakeholder participation’ is marred by the failure to distinguish the stake-losers (those who lose their lands, habitats and livelihoods) from the stake-gainers (those who stand to benefit from
the project). Unless the primacy of the former is recognized, and inclusiveness and equity are ensured, no project can make progress. This would hold good even in a unitary state but the problems get accentuated in a federal structure.

(8.3) These issues often arise in the context of particular projects and are dealt with by the State Governments concerned in the light of their own rehabilitation policies and packages, but there is clearly a need for an overarching or framework policy at the national level. That consideration led to the National Rehabilitation and Resettlement Policy 2007, followed by the introduction of the National Rehabilitation and Resettlement Bill 2007 and the Land Acquisition (Amendment) Bill 2007. These respond partially to some of the concerns mentioned above, but need some changes; however, they are still pending and seem likely to lapse. If that happens, work on these matters may have to start afresh after the new Government comes into being. (Attention is also invited to paragraph 10.4.6 below.)

9. Issues of ecological sustainability and harmony

(9.1) Water-resource, mining and many other developmental projects are also likely to have major environmental/ecological impacts and consequences, disrupt the habitats and passage-routes of wildlife, and cause severe disturbances in pristine areas. There are some facile responses to these problems. One is to say that there is no conflict between ‘development’ and ‘the environment’. This is not true. Conflicts can indeed arise and some difficult decisions may have to be made. Another response is to say that the answer lies in ‘trade-offs’. However, there may be areas and cases in which no trade-offs are possible. Yet another response is to privilege ‘development’ over ‘environment’. This is a fallacy because damage to the latter may in the long run make the former impossible.

(9.2) The proper response is to try and foresee the consequences (short-term, medium-term and long-term) of the proposed activity to the fullest possible extent, and build the appropriate offsetting, mitigating, compensatory, or other remedial measures into the project or programme as an integral part of it. Where the divergent concerns cannot easily be reconciled, choices may have to be made, including the abandonment of a proposed project in an extreme case (as was done for instance in the case of the Silent Valley Project).

(9.3) Decisions in such cases are generally made on the basis of Environmental Impact Assessment statements (EIAs). Unfortunately, these are often very unsatisfactory and need to be substantially improved.
(9.4) EIAs must encompass or be supplemented by assessments of social and cultural impacts, including impacts on the ways of living and sacred beliefs of tribal communities. Ecological and social/cultural dimensions are closely intertwined, and biodiversity-conservation is intimately linked to the conservation of cultural diversity and the indigenous knowledge that it harbours. An ecologically pristine area, for example, could also be a sacred area for an indigenous community.

10. Sector/resource-specific issues

(10.1) Issues relating to water: The issues outlined in paragraph (7.1) above under the head ‘Issues of constitutional significance’ may also be treated as resource-specific issues in so far as water is concerned.

(10.1.1) Water Quality Management: The problems of intermittent and unreliable water supply and the poor quality of that water; the enormous generation of waste and the grossly inadequate collection and treatment of that waste by municipal authorities; rivers running dry because of excessive extraction, or dying because of massive pollution loads; the pollution/contamination of groundwater aquifers by industrial effluents and by fertilizer and pesticide residues in agricultural runoff: all this is well-known. These are major national problems, but not necessarily Centre-State or inter-state issues, which are the concern of this Task Force. From that perspective, it must be noted that though the problem may be perceived as a municipal one, there are many major factors that impinge on it, such as the inadequacy of resources and capacity at the local level, the competitive unsustainable demand for water by the States and by major users, leading to inter-State, inter-sectoral (e.g., agriculture, industry) or inter-area (rural–urban) disputes, and so on. In turn, pollution itself can become the source of inter-state, inter-sectoral or inter-area conflicts.

(10.2) Issues in relation to mining: Mineral deposits belong to the States where they occur. The Constitution recognizes the rights of States to regulate mines and mineral development, but it does so with the rider that this has to be in conformity with the Centre’s power to do exactly the same through legislation (which is the Mines and Minerals Development and Regulation Act or MMDR). While a State has the right to allow the exploitation of minerals, it has to take the prior approval of the Central Government in the case of some major minerals specified by Central legislation. Although a State has a right to a share of revenues from mining in the form of royalties and dead rents (indications...
tive of its ownership of minerals), it has no right to decide on the rates or the method of
determination of these, or levy any additional tax for which it may see a requirement.

(10.2.1) There is serious dissatisfaction at the State level with the sharing of rev-
enues from natural resources between the Centre and the States, but this is
not merely a Centre-State question. The intrusion of mining activities in a
hitherto undisturbed area, and the cessation of mining when the deposit is
exhausted, have major impacts on the livelihoods of the local people. There
is thus a local dimension here, and that includes not merely the local self-
governance institutions (the PRIs), but also the people themselves.

(10.3) Forests: a paradox: There are two divergent, almost opposite problems in relation
to forests: (a) an indifference to protection and conservation arising from a lack of under-
standing of the importance of forests, leading to the deterioration and decline of forests,
and (b) an unreal expansion of nominal forest land through misclassifications of non-
forest lands as forest lands, leading to unacceptable consequences.

(10.3.1) Importance of forests: There is inadequate appreciation of the role that
forests play in our lives and the multiple benefits that they provide. In a
sense, they can be regarded as ‘environmental infrastructure’. The motiva-
tion and the resources for their rehabilitation, protection and conservation
need to be enhanced. The States that hold large areas of forest land need to
be supported, and those that manage their forests sustainably given due rec-
ognition and encouragement.

(10.3.2) The problem of misclassification: Over the years there has been much
misclassification of diverse kinds of cultivated and multi-functional commu-
nal/community lands as state forest land without following the due pro-
cess of law and often without any ecological rationale. This began in colonial
times and continued after independence, and has by now assumed massive
proportions.

(10.3.2.1) There is a double problem here: the transfer of community lands to the
State Revenue or Forest Departments, and the transfer of large areas from
the State to Central control. The first deprives the community of its lands
and rides roughshod over traditional rights and livelihoods, and the second
runs counter to constitutional federalism.

(10.3.2.2) ‘Land’ is a State subject, but a declaration of any land as ‘forest’ imme-
diately brings it within the purview of a Central Act, namely, the Forest Con-
servation Act. (Compensatory afforestation, meant as an environmental re-
medial measure, also has the effect of bringing non-forest land within the purview of the Forest Act.)

(10.3.2.3) As mentioned earlier, the misclassification has been going on for a long time, and disentangling the knots created by it will take time. The Forest Rights Act 2006 holds promise of a beginning towards the rectification of this muddle, but it is only a first step. Much more needs to be done.

(10.3.2.4) The general approach towards forests outlined in the preceding paragraphs has been unthinkingly applied to the North Eastern States, ignoring longstanding traditions and practices, and the special constitutional/legal provisions applicable to them. In particular, the recording of customary community lands as ‘Unclassed State Forests’ (USF) in those States is questionable. This needs an urgent review.

(10.4) Land:

(10.4.1) Land figures explicitly or implicitly in all the papers because developmental activities affect land in diverse ways.

♦ Land is needed for a wide range of projects and activities: water-resource projects, mining projects, industrial complexes, highways, Special Economic Zones, and so on.

♦ With economic development come major changes in land-use (for instance, from agriculture to industry or mining or aquaculture or urban housing).

♦ The acquisition or purchase of land for various developmental purposes leads to the displacement of people and necessitates their rehabilitation.

♦ Land itself can be affected by industry, mining, water-resource projects, etc (water-logging and salinity, desertification, deterioration of wetlands and estuaries, and so on).

♦ Ownership and control can change; for instance, community land can come under the control of the Forest and Revenue Departments of the State Governments through classification as forest land, control over land can pass from the States to the Centre through the operation of central laws such as FCA, and so on.

All these are discussed under various heads in this report and in the papers, and do not need to be gone into again separately under the heading of ‘land’. In particular, we refrain
from entering into some of the current controversies in this regard, such as the desirability and/or inevitability of the transfer of agricultural land to non-agricultural uses, the ‘real estate’ aspect of such transfers, particularly in SEZ cases and the possible financial benefit to particular private companies. This report is essentially concerned with Centre-State and inter-State questions.

(10.4.2) In the context of the acquisition or purchase of land for the kinds of projects that we are concerned with in this report, the problems that arise may vary from case to case, but broadly speaking, there are three kinds, with different degrees of incidence: the problem of loss of land (in particular, agricultural land), habitat and livelihoods; the problems caused by the modalities of land-acquisition; and the problems of relocation and rehabilitation (which again may need land, or, if not land-based, may call for major adaptations in skills and ways of living). These have already been partly referred to in paragraph 8 above. There the focus was on people, whereas here it is on land, but these are two sides of the same coin. In the case of forests, the problem is one of common lands becoming forest lands, as mentioned in paragraph 10.3.2 above.

(10.4.3) Briefly speaking, project managers and operators need secure access to land and the community’s consent, and communities need to ensure that their land rights are properly recognized, that their consent is informed and voluntary and not forced, and that appropriate compensation and rehabilitation policies are in place. Very often, the land that is taken over is a common property resource. Even when property rights are bestowed on local people, these resources tend to be under-valued. If the acquisition of land takes place under the Land Acquisition Act, then the compensation, however fair it may be, may not be equal to the replacement cost. If it is a case of negotiated purchase, the negotiations depend on the distribution of information, power and influence, and these are typically asymmetrical.

(10.4.4) Conflict over land for development tends essentially to become a conflict between those to whom land is part of their lives (economic, social and cultural) and those who see the land as a factor in the production process. Valuing land in such transactions is not easy, as the yardsticks of measurement are not comparable. Moreover, those whose lands are taken over whether through acquisition or through negotiated purchase are bound to become discontented when they see the value of those lands going up steeply later on.
(10.4.5) All these, again, are not necessarily Centre-State or inter-State matters, but they are of relevance here because the land may often lie in areas coming within the purview of Schedule V or Schedule VI or PESA.

(10.4.6) A special problem that must be mentioned here is that the Land Acquisition (Amendment) Bill, even with further improvements in it, will do nothing for those who are affected by the diversion of ‘forest’ land for non-forest uses or by the allocation of so-called revenue ‘wasteland’ for other uses, because such diversions and allocations are not acquisitions within the purview of the Land Acquisition Act. Although Section 3(b)(ii) of the Land Acquisition (Amendment) Bill states that those who possess any rights under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, should be considered interested parties, the problem is that most rights under the FRA will be in forest land which is not ‘acquired’ under the LAA but ‘diverted’ by MoEF without any involvement of local right-holding communities. Similarly, government-owned revenue ‘wasteland’, often consisting of common lands or lands under occupation by those whose rights have never been settled, is allocated for other uses by government authorities instead of being acquired.

III. Recommendations

11. From that broad overview of problems and issues we now proceed to recommendations. The recommendations in full and the detailed analysis and arguments leading to them will be found in the papers. Each paper reflects the views of its author. A moderation of those views at the TF level has not been attempted. It was felt that each member was entitled to expect a careful consideration of his or her paper by the CCSR. However, there was a broad consensus within the TF on certain directions of change, and these are set forth below in summary form, not necessarily structured in the same manner as the statement of issues in the preceding paragraphs.

12. Water:

(12.1) A major transformation of the constitutional and legal structure relating to water is proposed, consisting, among other things, of

♦ declarations regarding the nature of water (in particular the life-support, ecological and community resource aspects) and the need to protect this precious resource in the Directive Principles of State Policy and in the Fundamental Duties parts of the Constitution;
• a constitutional amendment transferring Water to the Concurrent List;
• an explicit constitutional recognition of the fundamental right to water;
• a National Water Act, as an umbrella legislation or code providing a framework for policy-making and action at the Central, State and local levels, and enshrining the Public Trust doctrine;
• further amendments to the Inter-State Water Disputes Act 1956, as amended in 2002, to speed up the adjudication process, modify the existing bar on the jurisdiction of the courts to provide for an appeal against the Tribunal’s Final Order to the Supreme Court, and enable changes in the composition and style of functioning of the tribunals;
• changing the law to treat groundwater as a common pool resource, and facilitate regulation;
• expediting the pace of devolution to PRIs; and
• establishing a constructive and collaborative relationship between the state and civil society.

(12.2) **Water Quality:**

Sewage generated in States (423 class I cities and 498 class II towns) should be collected and treated as per CPCB standard. No untreated/partially treated sewage should be discharged in river/water bodies. States may follow the ‘polluter pays’ principle to generate funds for sewage management.

• States must ensure the necessary flows in rivers so that adequate dilution is available to meet water quality criteria as prescribed by CPCB.
• Untreated or partially treated effluent generated from distilleries from paper and pulp, dye and pesticides industries, which are considered highly water-polluting industries, should not be discharged in water bodies/rivers.
• States should prepare and implement water quality management plans to protect river/water bodies from water pollution as per guidelines as given by CPCB (www.cpcb.nic.in).
• Major emphasis should be given for decentralized waste water treatment for large commercial establishments.
• Rain water harvesting and other water conservation plans, including waste-water recycling, should be given priority by the States.
13. Minerals

The main directions of change proposed here are:

♦ entrusting decisions relating to royalties to an independent body such as the Finance Commission or other third-party mechanism;

♦ ensuring that compensation and revenue-sharing go beyond the State Government to the people of the State, and in particular, to the project-affected people;

♦ recognizing the moral right of the local people in the mining area to a share in the depletion component of the royalty payment because they are affected *twice*, once at the commencement of mining, when people change from earlier skills, lifestyles and livelihoods to mining-related lives, and a second time, when mining ceases with the inevitable depletion of the finite resource in due course, and it may not be possible to revert to old skills and livelihoods; and

♦ reviewing the National Mineral Policy 2008 to ensure that a sustainable development framework is in place before any major new mining activity is undertaken.

14. Forests

(14.1) Protection and conservation: The statement of issues in paragraph 10.3.1 above is itself an indication of the desirable changes, i.e., regarding forests as ‘environmental infrastructure’, enhancing the motivation and resources for their rehabilitation, protection and conservation, and compensating the States holding large areas of forests, and also those that are managing their forest sustainably.

(14.2) The misclassification problem: The most important recommendations here are:

♦ the rectification of the large-scale misclassification of diverse kinds of cultivated and multi-functional communal/community lands as state forest land;

♦ a systematic review of all lands simply ‘recorded’ as forest in government records;
an explicit recognition of common property rights in forest and other common lands;

♦ for ensuring this, a Judicial Commission for undertaking a comprehensive census of common property rights on all forest lands not covered by the FRA as well as revenue ‘waste lands’;

♦ a petition to the Supreme Court to review its interim order of December 1996 extending the application of the FCA to lands conforming to the dictionary definition of ‘forest’ irrespective of ownership;

♦ the remedying of the recording of customary community lands as ‘Unclassed State Forests’ in the North-eastern States and of the classification of constitutionally protected tribal lands in Schedule V areas as state forests, and ensuring compliance with the spirit of the Samata judgement in the latter areas; and

♦ reviewing the current requirement of ‘compensatory afforestation’ for the diversion of forest land, as this compels State Governments to notify additional, already depleted, common lands as state forests

(14.3) Forest funds:

Locally collected taxes or payments in lieu of conservation or conversion (NPV or CA funds) should go substantially to the local people, particularly those who are affected by such diversion or conversion, though a part of such funds may go to the State or Central levels for related purposes. For this purpose, National, State-level and Local ‘Forest and Environment Funds’ must be set up. This would facilitate the application of such funds for the benefit of people with legitimate claims on them.

15. Common Concerns

(15.1) Land/Displacement/Project-Affected People:

♦ Minimum Displacement: Avoid or minimise displacement; give priority to non-displacing or less displacing alternatives (where available); adopt minimum displacement as a criterion for project-selection; where displacement is unavoidable, let it be by consent and not forced.

Free, informed prior consent: Adopt the principle of free, informed prior consent not only for displacement but also for all project decisions (mining, water-resource, industrial
or other projects); for transfers of common or community lands to the Forest or Revenue Departments, diversion of lands under customary tenures in the North-east or in Schedule V Areas, use of community lands for compensatory afforestation, and for all interventions that have an impact on land, habitats and livelihoods; provide full information to the people concerned from the earliest stages; provide the necessary access to expertise for understanding the information; make public hearings meaningful; and acknowledge that the people have the right to withhold consent.

♦ **Participation:** Ensure people’s participation in decision-making *ab initio*, and not merely at a late stage in dealing with the consequences of decisions already taken.

♦ **Local Level Committees:** Set up empowered and truly representative Local Level Committees, with links to State-level committees, for land acquisition and displacement, resettlement and rehabilitation.

♦ **Claim on benefits:** Give the project/programme-affected persons a statutory prior claim on the benefits expected from the project or programme in question.

♦ **Tribal areas:** In Schedule V and Schedule VI and North-east areas, conform to the constitutional and statutory requirements in letter and spirit.

♦ **NRR and LAA Bills:** Hold fresh consultations to improve these Bills; if they lapse, re-introduce them after the Elections; and ensure that diversions of lands as forest lands and allocations of revenue ‘waste lands’ are also brought within the purview of these bills.

(15.2) **Environmental / Ecological Concerns**

♦ Going beyond Entry 20 (Economic Planning) in the Concurrent List, introduce an appropriate new entry, say 20A, suitably titled, to ensure that developmental projects and activities are undertaken within an overarching environmental and ecological framework.

♦ Observe the Precautionary Principle of refraining from interventions which seem likely to have major long-term impacts, or of which the full long-term consequences are difficult to predict.

♦ Determine by law and notify in advance ecologically or culturally sensitive or natural heritage areas in which no interventions can be permitted (‘No Go’ areas), so as to obviate infructuous investments and subsequent proposals for *ex post facto* exemptions on the ground of such investments.
♦ Adopt ‘least environmental impact’ as a criterion in the processes of ‘options assessment’ and project decision.

♦ In environmental remedial measures such as catchment area treatment or compensatory afforestation, avoid or minimise complications such as secondary and tertiary displacements.

♦ Enhance and reinforce the objectivity and quality of EIAs by making them truly independent, rigorous and professional with a statutory charter, distancing EIAs from project proponents and approvers, and ensuring right appointments to the appraisal committees.

♦ EIAs must encompass or be supplemented by assessments of social and cultural impacts as well.

♦ Ensure a holistic view and avoid fragmented concern focussed on isolated themes such as ‘forests’ or ‘wildlife’ or even ‘the environment’, ignoring the vital nature-wildlife-human inter-relationships.

♦ Ensure that the strong constitutional and statutory legal provisions and Acts for the protection of the rights of tribal communities do not get overridden by the provisions and laws for the protection of the environment, forests, wildlife, etc.

(15.3) Local self-governance

(15.3.1) The future role of the local level in relation to water and other natural resources makes the empowerment, institutional strengthening, funding and capacity-enhancement of that level of governance very important. Without full devolution of the subjects listed in Schedules 11 and 12 to the local level, and the simultaneous transfer of corresponding financial resources, there can be no resource federalism of an inclusive kind. Further, in preparation for devolution, there has to be institutional integration as well as the enhancement of capacities at the local level.

(15.3.2) Gram sabhas, PRIs and/or traditional institutions must be enabled to function as forest and protected area managers in collaboration with, or supported by, the official agencies concerned in line with the constitutional mandate of the 73rd amendment and Schedules V and VI.
IV. Submission of Report

16. This report, which provides an overview of issues and important recommendations, and the papers listed in paragraph 5 above, is submitted to the Commission on Centre-State Relations for their consideration.

17. One of our Members, Dr. S.N. Rai, has sent a note titled “An Alternate View on report of Task Force 6” with a request that it be appended to the report, which has been done. He has added that in view of this his signature may not be necessary. We have carefully considered his note but see no reason to make any change in our observations or recommendations, which we reiterate.

18. We acknowledge with appreciation and gratitude the support that the secretariat of this Task Force and the ISC Secretariat as a whole have extended to us during the last one year.

Sd/- Ramaswamy R. Iyer  Sd/- Dr. Kanchan Chopra  Sd/- Alemtemshi Jamir  Sd/- Dr. Ligia Noronha

Sd/- Dr. S.N. Rai*  Sd/- Madhu Sarin  Sd/- Dr. B. Sengupta  Sd/- Dr. Suman Sahai**

*Please see paragraph 17 above.

**Approved by e-mail from abroad.

New Delhi, 12 May 2009
Subject  Fw: Dinesh <d.kishwan@nic.in>; kp.mishra <kp.mishra@nicin>
From  “Ramaswamy R. Iyer” <ramaswam@vsnl.com>
Date  Monday, May 11, 2009 6; 11 pm
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Cc  “kp.mishra” <kp.mishra@mc.in>, Dinesh <d.kishwan@nic.in>
We have to discuss this tomorrow.
Best Wishes.
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— Original Message —
From: shobhanath rai
To: Ramaswamy R. Iyer
Sent: IVIonday, May 11, 2009 12:58 PM
Subject: Dinesh <d.kishwan@nic.in>; kp.mishra <kp.mishra@nicin>
Dear Shri Iyer,
Please accept my greetings and convey to all others.
I am not able to attend the meeting as I am away in Nepal on some FAO work.
Please find a brief note from me and use it in the appropriate place, preferably just below the main part of the report and before the annexures. You may kindly edit it.
In view of this my signature may not be necessary.
With best regards to all.

S N Rai
An alternate view on Report of Task Force 6 of CCSR

The national fervour was probably the maximum soon after the independence and country came up with a National Forest Policy in 1952. The Forest Policy considered forests of the country that covered diverse tracts of land. It is stated as:

“Forests in the Indian Union naturally reflect reaction to diverse range of climatic, biotic and edaphic factors, and exhibit corresponding varieties as typified by snow deserts, alpine vegetation, Himalayan conifers, subtropical and tropical deciduous forests, moist evergreens, mangroves along the deltas of large rivers, xerophytic plant communities, and sand deserts. “

The Forest Policy of 1952 was revised in 1988 and it stated that ecological security, biodiversity conservation and people’s participation will be its main goals and it enshrined that the local communities will have first charge on the forest.

A National Forest Commission was appointed and it submitted its report in 2006. The Commission recently reviewed forest-related policies and legislations. The Commission made recommendations for sustainable development of forests without suggesting any amendment in the National Forest Policy, 1988. The National Forest Commission, 2006 observed:

Water and fertile soil are the two most important pre-requisites of our food security. Both are irrevocably linked with forest and watershed conservation. The gravity and consequences of Indians water scarcity are as yet not fully realized and hence it has not yet been universally acknowledged that the greatest product of our forests - both qualitative as well as quantitative is water'.

Some of the salient recommendations of the National Forest Commission, 2006 which have overall bearing on the future imperatives of forest management are reproduced below:

[218]: The country’s forests must now be looked upon as ecological entities; as regulators of water regimes, watersheds and catchments, gene pools, habitats of wildlife, providers of the needs of the neighboring communities and as treasure troves of the nation’s natural heritage. The country’s needs of timber, fuel wood, fodder, industrial wood, and medicinal plants must mainly be met by plantation forestry and agro-forestry, which must receive much greater attention and support.

[6]: The Indian Forest Act, 1927, needs revamping, taking into account current requirements, inter alia:

a. The revised version must give emphasis to the conservation of forest lands and not only forest alone. It must address itself to the ecology, biodiversity and overall significance of for-
ests including grasslands and wetlands and to forests as a biotic community and as a life-supporting factor to the local communities and to the populace downstream.

b. The term ‘forest’ needs to be defined for the purpose of the Act.

[191]: The traditional rights of the North-eastern people’s forest and land must be honoured. They should have the right to conserve, manage and utilize their forest.

Brief Comments on the Report of Task Force 6:

In order not to add a lengthy argument I am submitting brief one liners as alternate views. The main plank of my argument is that forests are vital for our survival, they have welfare role for all, and have more use for the people living in its proximity. In my view they are a public trust and should be managed by the state. The comments on the relevant paragraphs are given in red:

(7.2) Central intrusion into the domain of the States (Minerals and Forests: (None of the states have raised this before the Commission. Forests are vital for our survival.)

(7.3) Failures of adherence to constitutional and statutory-provisions (tribal areas): (There is a Department of Govt. of India to look after these matters. I do not agree with the views expressed).

(10.3.2) The problem of misclassification of lands as Forest: (There is the Report on National Forest Commission and its recommendations to deal with this. The issue has not been raised before the Commission. I do not agree with the views expressed).

(10.4) Land: (Forest and Revenue lands are also community lands in a larger sense and they do not really create any difficulty as far as environmental services are concerned).

Brief Comments on Recommendations

12. Water:

(12.1) An explicit constitutional recognition of the fundamental right to water. (Water is a product of forest. The forest should first get its place of primacy and attention for development.)

(12.2) Water Quality: (Forests are responsible for quality and quantity of water. This should be a prerequisite and expressly stated.)

14. Forests

(14.2) The misclassification problem: (Better to follow the recommendations of the National Forest Commission, which devoted considerable time and has come with largely acceptable recommendations).
(15.2) Environmental / Ecological Concerns

‘No Go’ areas. (We may be creating hurdles for us there are enough provisions *in* law to safeguard this.)

· Rights of tribal and laws for the protection of the environment, forests, wildlife, etc. (Such issues have not been raised by the States or the concerned people before the Commission. Joint Forest Management initiatives need to be strengthened.)

(15.3) Local self-governance

(15.3.2) Gram sabhas, PRIs and/or traditional institutions must be enabled to function as forest and protected area managers. (Forests have major welfare role for the state that meeting only local needs. World over the experience has been that forests are better managed under the state control, particularly in densely populated poor countries.)

(S.N.Rai)
OFFICE MEMORANDUM

Sub: Composition of Nine Task Forces to act as Knowledge Partners to the Commission on Centre-State Relations

Taking into account the nine broad groupings of its Terms of Reference, the Commission has constituted nine Task Forces to act as its Knowledge Partners on the following thematic areas:

(i) Constitutional Scheme of Centre State Relations
(ii) Economic and Financial Relations
(iii) Unified and Integrated Domestic Market
(iv) Local Governments and Decentralized Governance
(v) Criminal Justice, National Security and Centre-State Cooperation
(vi) Natural Resources, Environment, Land and Agriculture
(vii) Infrastructure Development and Mega Projects
(viii) Socio-political Developments, Public Policy and Governance
(ix) Social, Economic and Human Development

2. The details of the composition of each of the Task Forces are contained in the Annexure.

3. The Members of the Task Forces constitute a cross-section of expertise of the highest order in public service, Constitutional law, social and economic studies, engineering, civil service, finance, banking and industry. The Task Forces may meet as often as required. Such meetings would be convened by the designated Secretariat Officers on behalf of the Task Forces.
4. The outstation Members of the Task Forces will be entitled to travel by air. Such members of the Task Forces as are still serving with Government or the Public Sector will travel by the entitled class. Those retired from service may travel in the class they were entitled to at the time of retirement. Those members who were not in Government service may travel by executive class. The expenditure incurred on the local transport by taxi between residence to airport at the place of origin of journey, and between the airport-hotel-venue of the meeting and back will be reimbursed as per actuals subject to a ceiling of Rs.500/–.

4.1 The Delhi/NCR-based members will be entitled to road mileage for journey by taxi as per actuals subject to the above-said ceiling.

4.2 The Members will be provided accommodation in the ITDC-run Hotel Janpath. The ITDC will charge the Commission a tariff of Rs. 6,125/ inclusive of all taxes and breakfast per day. As per the Supplementary Rules, reimbursement of rent in any State Guest House or accommodation provided by the registered societies like India International Centre and India Habitat Centre or any of the medium-range ITDC/State Government Tourism Hotel will be made subject to the above said ceiling. As for the boarding, breakfast is generally part of the room rent. Lunch will normally be served following the meeting of the Task Forces. The Members will be entitled to reimbursement for dinner as per actuals subject to a maximum of an amount of Rs. 600/- plus payable taxes.

4.3 Non-official members of the Task Forces (which includes retired Government officers) would be paid a sitting fee of Rs. 1500/=.

5. The receipt of this D.M. may kindly be acknowledged at either of the addresses given below:

Director, CCSR 23022098 (O) 23022159 (Fax) 23022147 (Fax)
director_ccsr@yahoo.com

Postal Address:
Commission on Centre-State Relations Room No. 280 (1st Floor) Vigyan Bhawan Annexe, Maulana Azad Road, New Delhi-110011

Mr. K.P. Mishra, Director, ISC 23022151 (O) 23022159 (Fax) . 23022147 (Fax) kp.mishra@inic.in

Postal Address:
Inter State Council Secretariat Ministry of Home Affairs Room No. 343 (2nd Floor) Vigyan Bhawan Annexe Maulana Azad Road, New Delhi-110011

(Verse Upadhyaya)
AS & Adviser, ISC
June 18, 2008
## COMPOSITION OF TASK FORCE NO. 6

### NATURAL RESOURCES, ENVIRONMENT, LAND AND AGRICULTURE

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Name and Address</th>
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| 1.    | Mr. Ramaswamy R Iyer (Chairman)  
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        New Delhi 110 076  
        Tel: 91-11-26940708/2697 2454/41402709  
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| 2.    | Prof. Kanchan Chopra  
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| 3.    | Dr. S.N. Rai, IFS  
        Former PCCF Karnataka  
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| 4.    | Dr. (Ms.) Ligia Noronha  
        Director  
        Resources & Global Security Division  
        The Energy Research Institute India Habitat Centre Complex, Lodhi Road New Delhi- 110 003. |
5. Principal Secretary  
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msarin@satyam.net.in
Dr. B. Sengupta,  
Member Secretary,  
Central Pollution Control Board  

Subject: Nomination as Member of Task Force No. 6 - reg.  

Sir,  

This is to inform you that you have been nominated as Member of Task Force 6 on ‘Natural Resources, Environment, Land and Agriculture’ constituted by the Commission on Centre-State Relations. Details will follow.  

With regards,  

Yours faithfully,  

(K.P. Mishra)  
Director  
ISCS/CCSR  

Copy for information to:  

PS to Hon’ble Chairman / Member (DS) / Member (V KD) / Member (NRMM) /, CCSR/Secretary, ISCS/CCSR / Consultant (SDS), CCSR/Adviser (VU), ISCS/ Director (TNS), CCSR  

Communicated to the Chairman, Task Force-6 through e-mail dated 5th September 2008
6.1 The Inter State River Water Disputes Act, 1956, provides for inter alia the constitution of a tribunal by the Central Government, if a dispute cannot be settled by negotiations within a time frame of one year after the receipt of an application from a disputant State; giving powers to tribunals to requisition any data from the State Governments, the water management agencies etc; a data bank and an information system being maintained by the Central Government at the national level for each river basin; empowerment of the Central Government to verify data supplied by the State Government; a time frame for tribunals to give an award and for the decision of the tribunal after its publication in the official gazette by the Central Government to have the same force as an order or decree of the Supreme Court. Broad principles for sharing of river waters are still under discussion between the Central Government and the States.

Are you satisfied that the measures taken so far have contributed effectively to the resolution of inter-State river water disputes? What additional measures do you suggest for strengthening the implementation of the existing Constitutional provisions and other laws? What in your view should be the role of the Central Government in implementing and monitoring the existing inter-State water sharing agreements and in ensuring compliance and implementation of the awards of tribunals, court decisions and agreements/treaties?

6.2 Water as a resource, particularly river waters, is an issue of great complexity and sensitivity in terms of ownership and control, conservation, optimal and sustainable use, sharing and distribution and it is apprehended that this may result in serious tension and possible civil strife in future. Proper management of the resource requires striking a balance between national interests and the interests of the States through which the rivers flow. In this context several proposals have been considered including the transfer of water from one river basin to another, more prudent use in intra-basin areas, sharper focus on rain water harvesting and water management strategies etc. What are your views in the matter to ensure better management of this valuable resource keeping in view both national interests and the interests of individual States? Can the concept of integrated planning and management of river basins under a joint authority be introduced on a larger scale?

6.3 Continuing from the foregoing, what in your view should be the nature of Centre-State cooperation in mitigating the effect of floods and management of drainage and irrigation particularly when these issues have inter-State and international implications?
6.4 Pollution of our rivers poses a serious threat to the quality of available water, biotic resources, human health and safety and our natural heritage. Adequate efforts to tackle the problem through technology oriented national and state level programmes backed by peoples participation have been lacking. Even Missions such as Ganga / Yamuna Action Plan(s) and other river action plans have yielded limited results. What steps - legal, administrative, technological, economic and financial - would you suggest for a resolution of the problem?

6.5 The subject of land improvement figures at Entry 18 in List-II of the Seventh Schedule under Article 246. Most of the States have not taken sufficient measures to optimally utilize the nutrients present in the residue of treated sewage or in the river waters by way of sullage and sewage flowing into them (part of the solid waste settles at the river bottom and is retrievable during the period of lean flow) and recycling the available water resource to improve the fertility of soil and increase the productivity of land.

In this context there is an increasingly perceived need to have in place a national strategy for control, regulation and utilization of sullage and wastewater to improve the quality of soil, land and other nutrients with the objective of augmenting agricultural yield, more so due to mounting water scarcity and changes in precipitation owing to climatic changes. What are your suggestions for countering the resulting loss to the nation?

6.6 Storage or reservoir or dam based projects are often conceived as multi purpose projects providing not only power but also irrigation, navigation, drinking water and flood control benefits. At the same time such projects have higher environmental and social externalities. The issue of fair sharing of social and environmental costs and benefits between downstream/command areas and upstream/catchment areas has been a major problem leading to suboptimal utilization of this valuable resource.

What role do you envisage for the Central Government for achieving greater cooperation among the various stakeholders in developing a consensus on such projects?

**Forests, Land and Agriculture**

6.7 With the adoption of the National Environment Policy 2006, greater powers have been delegated to the States to grant environmental and forest clearances for infrastructure and industrial projects having investment of upto a specified limit. While one body of opinion is of the view that it will have a harmful effect on ecology and disrupt the fragile equilibrium in our environment, others look upon this as a welcome initiative which will facilitate timely implementation of development projects.

Do you think that the existing arrangements are working satisfactorily? How do you think
the conflicting interests of development and environmental conservation can be better reconciled?

6.8 There is a view that the inadequacy of minimum infrastructure facilities for forest dwellers and general lack of economic opportunities has greatly contributed to the escalation of dissatisfaction and alienation among them. This also raises security concerns. The ‘Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Tribes) Act, 2006’ which confers land ownership rights on Scheduled Tribes and other traditional forest dwellers in the event of their being in occupation of the said land as on 13th December, 2005 is perceived as a major step towards containment of unrest and tension. Do you agree with this assessment? What further steps can be taken to build sustainable models of conservation by involving tribal and other forest dwelling communities?

6.9 Some of the States have contended that they have to maintain and conserve large tracts of forests and green cover for national and global benefit at the cost of the economic interests of the State. Similarly mountain States, particularly those that are a part of the Himalayan ecosystem have to constrict the economic exploitation potential of the region for the benefit of the ecosystem as a whole. In other words, these States provide ecological services essential for the nation as a whole as well as for the entire global community. These States have argued for compensation to them and the communities who perform the role of stewardship of these valuable ecological assets. What are your views in this regard?

**Mineral Resources including Hydrocarbons**

6.10 Regulation of mineral resources including hydrocarbons comes within the competence of the Centre by virtue of Entries 53, and 54 and 55 of List I of the Seventh Schedule. Entry 23 under List II similarly empowers the States to regulate the development of mines and minerals subject to the provisions of List I. The States have been seeking a greater role in the decision making processes relating to the regulation of mineral resources e.g. in the determination of the royalty rates, periodicity of rates revision etc. What steps, in your view, should be taken to evolve an integrated policy on the subject that would reconcile the interests of the States with the sustainable exploitation of mineral resources including hydrocarbons in the national interest?

**Ecosystems, Climate Change and Natural Disasters**

6.11 India’s vulnerability to the projected impacts of climate change is high, particularly
with regard to its effect on water resources, power, agriculture, forests, tourism, health and rural livelihoods etc. Most of these issues are dealt with primarily at the State and local levels.

In view of the problems and challenges posed by the phenomenon of climate change, how would you delineate the respective roles and responsibilities of the Centre, the States and the Municipalities and Panchayats?
Dear Shri Amitabha Pande,

Sub: Inter-State Council - inclusion of Agenda item “Interlinking of the peninsular Rivers” in the next meeting of the Inter-State Council - Sponsoring of - regarding.

I am to state that the Government of Tamil Nadu has been stressing the Government of India for inter-linking the rivers in India and for taking up immediately the implementation of peninsular component, the National Water Policy 2002 has also rightly emphasized that “water should be made available to water starved areas by transfer from other areas including transfer from one river basin to another, based on a national perspective, after taking into account the requirements of areas / basins”.

2. By inter-linking or diverting the surpluses in the Mahanadhi and Gothavari river basins down south will augment the water resources of the river basins of Krishna, Pennar, Cauvery and other rivers upto Gundar forming a chain. The National Water Development Agency has already completed the feasibility studies of all the links in this chain. It has assessed the benefits that would accrue as about 3 million hectares of additional irrigation and substantial additional hydro power, besides several other intangible benefits. In this context the Hon'ble Chief Minister of Tamil Nadu in September 2006 has written to the Hon'ble Prime Minister to facilitate a meaningful dialogue among all the Chief Ministers concerned under his leadership for the implementation of the peninsular component.

3. I am therefore to request you to kindly include the issue of “Interlinking of the peninsular Rivers” as an Agenda item in the forthcoming meeting of the Inter-State Council.

With warm regards,

Yours sincerely,

To

Shri Amitabha Pande,
Secretary,
Inter-State Council Secretariat,
Ministry of Home Affairs,
Government of India,
New Delhi.
From
The Additional Chief Secretary to Government

To
Sri. B. Jana,
Director,
Ministry of Home Affairs,
Govt. of India,
Inter State Council Secretariat,
Vigyan Bhavan, Annexe,
New Delhi.

Sir,

Sub: Water Resources Dept. - Problems and issues in sharing of river water - reg.

Please refer to the Office Memorandum cited. Regarding the questionnaire now communicated in the said Memorandum, State Government’s views are as follows: We suggest the following additional measures.

(a) Adoption of an integrated National Policy for sharing of water in Inter State rivers and its management.

(b) Develop consensus amongst the States through deliberations of Inter State Councils, rather than through administrative machineries.

(c) Explore ways and means to bring a paradigm shift in dispute reconciliation and resolution mechanism in sharing of water resources by involving users groups suitably and adequately.

(d) Proper information system to get correct reliable data. The settlement of disputes fails or indefinitely gets delayed in the present system. To find out a solution is the Constitution of a water dispute tribunal by the Government of India which has the following drawbacks:
(1) Undue delay in granting awards and clarifications. A time limit of 3 to 5 years and 5 to 9 months may be fixed respectively for granting awards and clarifications on them. Extension of time in exceptional cases shall be given only after careful consideration and mutual agreement.

(2) Prohibitive cost of Tribunals.

(3) Lack of definite guidelines to the Tribunals in settling disputes. Clear definition of certain terms generally used in arguments such as prescriptive rights, equitable distribution, balancing of social economical conditions, historical background etc.

Yours faithfully,

K. JAYAKUMAR,

Additional Chief Secretary to Government
Appendix-VI

Papers

Ramaswamy R. Iyer: ‘Water: Centre-State and Inter-State Relations’.

Dr. Ligia Noronha: ‘Minerals and Hydrocarbons’.

Dr. Kanchan Chopra: ‘Natural Resources and Centre-State-Local Relations: Implications from Policy Evolution in Agriculture, Environment, Forests and Infrastructure.’

Madhu Sarin: ‘Forests and Common Lands: Centre-State and Local Relations’.

Dr. S. N. Rai: ‘Forests and Centre-State Relations’.

Dr. B. Sengupta: ‘Major Interstate (Central/State) Issues in Water Quality Management’.
WATER: CENTRE-STATE AND INTER-STATE RELATIONS

Ramaswamy R. Iyer

I. Scope of the Paper

There are many policy and management issues relating to water and several of them have legal aspects, but this paper is concerned mainly with those that involve questions of Centre-State and Inter-State relations and the relations between those levels and that of local self-governance.

II. The Problems

The problems in respect of water in the context defined above are the following:

- a not wholly satisfactory division of legislative power between the Union and the States in relation to water in the Constitution;
- the prevalence of numerous and intractable inter-State river water disputes and the unsatisfactory functioning of the constitutional machinery for their resolution;
- the absence of a nationally agreed statement of principles of water-sharing between riparian States, between uses, between sectors and between areas, and of institutional arrangements for allocations, priorities, and the prevention and/or settlement of disputes;
- the extreme difficulty of institutionalizing any kind of holistic overview or coordination at the river basin level because of strong resistance by the State Governments;
- the much-discussed issue of long-distance inter-basin water transfers, and the inter-State implications;
- the absence of a national consensus on the complex and multi-dimensional nature of water, and in consequence, considerable divergence of perceptions of and approaches to water among the States, including divergences (or a lack of clarity) on issues such as the ownership of or control over water, and the relative positions of the state, civil society, markets, the private corporate sector, and citizens;
- the absence of an explicit constitutional recognition of the fundamental right to water as life-support;
the environmental, displacement and rehabilitation aspects of major water-resource projects, and their inter-State dimensions;

- the alarming depletion of aquifers in many parts of the country, the difficulties of regulation, and the Centre-State and inter-State aspects of that problem;

- the future role of PRIs in respect of local water management, and the State/PRI and PRI/community relationships;

- the Centre-State and inter-State aspects of the control of water pollution;

- the Centre-State and inter-State implications of climate change;

- and finally, inadequate consultations with the States concerned in the context of international understandings.

These are discussed in the following paragraphs.

III. Constitutional Division

The legislative powers of the Union and the States in respect of water are set forth in the following entries.

Entry 17 in the State List:

“Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of Entry 56 of List I”.

Entry 56 in the Union List:

“Regulation and development of inter state rivers and river valleys to the extent to which such regulation and development under the control of the Union is declared by parliament by law to be expedient in the public interest”.

(The executive powers of the Union and the States are of course coterminous with their legislative powers.)

Broadly speaking, it could be said that water is primarily a State subject in the Indian Constitution, but that the Constitution gives a potential role to the Central Government in relation to inter-State rivers to the extent that Parliament legislates for the purpose. The question is whether this is a sound division. The Sarkaria Commission thought so. The National Commission on Integrated Water Resource Development Plan, in its Re-
port (1999) expressed some doubts but did not recommend any change. The Report of the National Commission to Review the Working of the Constitution (NCRWC) is silent on this issue. Now the question is before the second Commission on Centre-State Relations.

There is a view that the structure of entries relating to water in the Constitution is not appropriate; that it limits the role that the Centre can play; and that water should be shifted to the Concurrent List. The Union Ministry of Water Resources has held this view for a long time. The present writer has argued against that view on two grounds: (a) that it would be politically very difficult if not impossible to enact a constitutional amendment to put water in the Concurrent List at this stage, though it might have made sense to do so at the time of the drafting of the Constitution; and (b) that it is not really necessary to do so because that would only enable the Centre to legislate on water, which the Centre can do even now under Entry 56 in the Union List relating to inter-State rivers. He still holds those views, but it must be noted that the argument is practical rather than legal. The Commission on Centre-State Relations need not consider itself bound by practical or political considerations, but could ask what the right course would be, i.e., what the right structure of entries would be if we were writing the Constitution now? From that perspective, the obvious answer is that water should be in the Concurrent List. There are two main reasons for saying so.

First, if we are thinking primarily of river waters and of irrigation, as the constitution-makers seem to have been doing, it might appear appropriate to assign the primary role to the States, and provide a specific role for the Centre in relation to inter-State rivers. However, even from that limited perspective, most of our important rivers are in fact inter-State and inter-State (or inter-provincial) river water disputes were an old and vexed problem even at the time of the drafting the Constitution: a primary rather than a secondary or exceptional role for the Centre might well have been warranted. Further, even in single-State rivers, interventions might have consequences beyond the boundaries of the State in question.

Secondly, Entry 56 in the Union List is only about inter-State rivers and does not enable the Centre to legislate on water per se. Water is larger than rivers; ponds and lakes, springs, groundwater aquifers, glaciers, soil and atmospheric moisture, and so on, are all forms of water and constitute a hydrological unity; and there is more to water than irrigation. Water is a basic need and right; an integral part of the environment and the ecological system, sustaining and being sustained by them; a part of society, culture and history; and in the eyes of many, a sacred resource as well. Water projects often involve issues of environmental impacts and social justice. If the environmental, ecological, social and
human concerns relating to water had been as sharply present to the makers of the Constitution as they are to us, it seems very probable that the entries in the Constitution would have been different. Besides, many laws and rules not directly about water have a bearing on water. The theoretical case for water being in the Concurrent List is very strong indeed. The practical and political difficulties remain, but these would need to be overcome. (Even if we settle for the second best course of greater use by the Centre of the legislative powers provided for in Entry 56 in the Union List, that would still entail considerable political effort.)

**IV. Inter-State River Water Disputes**

Article 262 runs as follows:

262. Adjudication of disputes relating to waters of inter state rivers or river valleys.

(1) Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any interstate river or river valley.

(2) Notwithstanding anything in this Constitution, parliament may by law provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in clause (1).

In pursuance of this Article, Parliament enacted the Inter-State Water Disputes Act 1956, and this was amended through an Amendment Act in 2002.

Initially the conflict-resolution mechanism provided by Article 262 and the ISWD Act seemed to be working well: the Krishna, Godavari and Narmada Tribunals’ Awards can be regarded as successful instances of the operation of this conflict-resolution machinery. The fact that new differences emerged later or that public interest litigation arose in some cases does not invalidate that statement. However, the system later ran into trouble. In the Ravi-Beas case, political difficulties in implementing the award led to a further reference being made to the Tribunal (as provided for in the Act) in 1987, and in the year 2008 the matter is still before the Tribunal. Meanwhile Punjab enacted a legislation terminating all water accords; this gave rise to some legal and constitutional issues; on these the Central Government made a Presidential reference under Article 143 to the Supreme Court; and at the time of writing (four years after the Reference), the Supreme Court has not yet given its opinion. In the case of the Cauvery Dispute, adjudication has been running a troubled course from the beginning. An Interim Order given by the Tribunal in 1991 generated a secondary dispute, which was never fully resolved. The Final Order
given on 5 February 2007 after 17 years of proceedings has been referred back to the Tribunal through clarificatory petitions, and at the same time, challenged in the Supreme Court through Special Leave Petitions under Article 136.

The history of operation of the ISWD Act, and in particular, the experience of that operation in the Ravi-Beas and Cauvery cases, has led to serious dissatisfaction with adjudication as a means of resolving inter-State river-water disputes. A suggested remedy is that the ISWD Act should be repealed, leaving inter-State river water disputes to the original jurisdiction of the Supreme Court as in the USA. Such a recommendation had been made by the National Commission to Review the Working of the Constitution. The eminent jurist Fali Nariman has also made the same recommendation in a paper titled ‘Inter-State Water Disputes: A Nightmare’.

The proposal emanates from a feeling of exasperation with the manner in which the adjudication process has been working. There are four elements in that exasperation: delays at every stage in the adjudication process; the adversarial spirit that characterizes the process; dissatisfaction on the part of one or more parties with the results of the adjudication; and, after the completion of the adjudication, the problem of non-compliance and the absence of finality. There can be no disagreement on these points. However, the remedy proposed is perhaps not the best. Leaving such disputes to the Supreme Court is an answer (perhaps) to the last-mentioned problem (namely that of non-compliance and the absence of finality) but to none of the others; and even for that problem a better alternative is available - that statement is elaborated below.

Delays: The 2002 amendments have substantially taken care of this problem. In future a tribunal can take only 3 years, extendable by 2 more, i.e, a maximum of 5 years, to give a final order. There is also a time-limit of a year for the clarificatory or supplementary order to be given by the tribunal in response to the reference back it that the Act provides for, but that limit can be extended, and there is no limit for such extension. That open-ended provision has to be closed with a limit of say, six months. A period of 10 days or two weeks has also to be laid down for the Government of India to notify the orders of the tribunal. Once these additional amendments are made, the problem of delays will cease to be a serious one.

On the other hand, leaving such disputes to the Supreme Court is not likely to speed up matters. Cases before the Supreme Court can take an enormous amount of time, and no time limits can be prescribed to it. Besides, if there are several inter-State water disputes at the same time, several tribunals can be set up, but if the original jurisdiction vests in the SC, it may not be easy for it to hear many cases in parallel or set up multiple benches.
Moreover, considering the number and persistence of river water disputes, there is a danger that these will take up a disproportionate amount of the SC’s time, crowding out other equally if not more important cases.

Further, detailed examination by some variant of a tribunal is inescapable. In the USA, when an inter-State river water dispute goes to the Supreme Court, the Court appoints a Master who does the detailed examination, holds hearings, explores solutions and reports the findings to the Supreme Court. That may not take less time than adjudication by a tribunal. There may be no particular advantage in substituting a Master for a tribunal. We have to see if our own system can be made to work better.

**Style of Functioning and Composition:** An adversarial spirit is a characteristic of all litigation. Proceedings before the Supreme Court will not be less adversarial than those before a tribunal. This characteristic arises from the fact that the tribunals have tended to adopt court-like procedures, though there is no reason why they should. The style of functioning of the tribunals has to change. They should function less like courts and more like committees; they should take on the role of conciliation in addition to that of adjudication; and they should explore possible solutions without giving up the power of ultimate adjudication. A transformation of the style of functioning of the tribunals is necessary. (No such transformation is possible in the case of the Supreme Court, which can function only like a court.)

A transformation is also needed in the composition of the tribunals. An ISWD tribunal should be a multi-disciplinary body presided over by a judge of the Supreme Court, with the other members (two or three) drawn from amongst the disciplines of hydrology, civil engineering, ecology, water management, sociology, and economics, as may be relevant in a given case; and the concept of *locus standi* needs to be redefined so that farmers and other water-users and civil society institutions are also empowered to appear before the Tribunal.

**Dissatisfaction on the part of one or more parties:** This arises from the fact that under the ISWD Act there is only a single, non-appealable decision. Even if the disputes were left to the Supreme Court, there will be once again a single, non-appealable judgment (except for a review, which is available under the ISWD Act also). The only answer – a partial one - to the problem of dissatisfaction is to provide a second hearing, i.e., an appeal. This does not exist now, and it will not exist even under a system of the SC’s original jurisdiction.

**Absence of Finality/Compliance:** There is in fact finality in law now. Under the ISWD Act the tribunal’s Award is final and binding. The 2002 amendment buttresses this by saying that the order of the tribunal has the status of a decree of the Supreme Court.
amendment was made in pursuance of a recommendation of the Sarkaria Commission. Exactly what this implies is debatable, but the intention is clear enough: it is only another and stronger way of saying that the tribunal’s order is final and binding. However, in practice there is no way of enforcing compliance by the State Governments. The Centre can issue directions but these too can be disobeyed. We are then left with Article 356, but that is an extreme measure, not to be lightly invoked. Besides, Central rule is only a temporary device. The next popular government, when it returns in due course, may take exactly the same line as the one that created the crisis. If federalism and respect for the rule of law break down, there can be no legal answers.

Bringing in the Supreme Court: The question is whether the problem of compliance is likely to become less serious if the final arbiter is the Supreme Court and not the tribunal. The answer is “On the whole, yes”, though one cannot be totally confident that the Supreme Court’s orders will not be disobeyed. It follows that the Supreme Court needs to be brought in to strengthen the finality of the final decision. In this one is in agreement with the NCRWC and Fali Nariman. However, it is not necessary for this purpose to repeal the ISWD Act and bring in the original jurisdiction of the SC. All that we need to do is to amend the ISWD Act to modify the provision of bar of jurisdiction of the courts and provide for an appeal to the Supreme Court, in the hope that the final decision of the SC will be complied with.

There can be two objections to this suggestion: (i) that this will add to the delays and (ii) that cases are going to the Supreme Court even now, and so nothing will be gained by this suggestion. In regard to the first point, the 2002 amendments (with the additional amendments suggested above) will substantially reduce delays in future cases, and even if we add 2 years for an appeal to the SC, the entire process can be completed in a total period of 7 – 8 years. As for the second point, the fact that cases are going to the SC even now means that no delays will be added by the present suggestion. Moreover, cases are now going to the SC despite the bar on jurisdiction. The suggestion is that the tendency of the parties to the dispute to go to the Supreme Court might as well be recognized and legitimised by being legally provided for.

(This subject was discussed at a meeting of Task Force 1 to which the present writer, as Chairman of TF 6, was invited. TF 1 is also likely to make recommendations on the subject.)

V. Water-Sharing Principles

In inter-State river water disputes, the disputing States tend to invoke different principles. The upper riparian usually asserts its right to use the waters flowing through its territory
and assumes a primacy, and the lower riparian often claims the right of prior use and insists on the maintenance by the upper riparian of undiminished flows in the river. Neither the former (similar to what is known as the Harmon Doctrine or the doctrine of territorial sovereignty, interpreted to include sovereignty over the waters that flow through the territory), nor the latter (the doctrine of prior appropriation or prescriptive rights or rights to historic flows) has found general approval in the international arena. What has commanded a fair degree of international acceptance is the principle of \textit{equitable sharing for beneficial uses}. That was the language of the old Helsinki Rules. The present UN Convention on the Non-Navigational Uses of International Water Courses (passed by the General Assembly in 1997, but still awaiting ratification by the stipulated number of countries) requires the watercourse States to “utilize an international watercourse in an equitable and reasonable manner” (Art 5, cl.1). Again, the next clause requires the Watercourse States to “participate in the use, development and protection of an international watercourse in an equitable and reasonable manner”. In doing so, the upper riparian is required not cause harm to the lower riparian, though the wording has changed from ‘substantial harm’ in the Helsinki Rules to ‘significant’ adverse effects in the UN Convention.

In the absence of a national statement of principles, the ISWD Tribunals have tended to cite such international documents as well as judgments in the USA and other countries. In general, they have invoked the principle of equitable apportionment for beneficial uses. The processes of adjudication or even of negotiation and conciliation might be assisted by the existence of a national declaration of water-sharing principles, though any such statement is bound to be in very general terms needing detailed application involving interpretation and negotiation in each case. Such a statement might also be very useful in the resolution of other kinds of water-related disputes such as inter-use or inter-sectoral ones. A draft statement of water-sharing principles was prepared some years ago by the Ministry of Water Resources for consideration by the NWRC, but differences among the States have stalled that effort. What is needed is in fact not just a statement but a national law. We shall return to this.

\textbf{VI. River Basin Organizations}

A river basin as a whole is a complex system, and any activity or intervention - minor or major, local or large-scale - at any point within it can have consequences elsewhere, and must be in harmony with the hydrology and ecology of the system as a whole. This calls for some kind of inter-State organization or other institutional arrangement at the basin-level, ensuring the representation and integration of diverse users and concerns, but
avoiding excessive centralization or bureaucratization. The makers of the Constitution might not have put it to themselves in precisely that language, but Entry 56 in the Union List enabled such arrangements; and Parliament did use that provision. In the same year as the ISWD Act (which was enacted under Article 262), Parliament also passed legislation under Entry 56 in the Union List, namely the River Boards Act 1956 (RBA). This provides for the establishment of River Boards for inter-State rivers. Unfortunately no River Board has been established under that Act, and RBA has been virtually a dead letter.

There are a few bodies established under separate Acts or Government Resolutions, and misleadingly called Boards or Authorities (e.g., the Betwa River Board, the Bansagar Control Board, the Cauvery River Authority), which are not really River Basin Organizations. The one body which was planned as such (prior to the Constitution), namely, the Damodar Valley Corporation, never developed on the intended lines and was over the years greatly reduced in scope and functions.

There are no river basin authorities or boards in India, of the kind that exist in France or Holland. The National Water Policy 1987 did talk about planning for a hydrological unit such as a basin or sub-basin and about ‘appropriate organizations’ for the purpose, but this (like most of the general statements in the NWP) was never operationalised. The reason for this is not legal or constitutional but political: the States are unenthusiastic about River Basin Organizations or about allowing the Centre to play a larger role. That political difficulty can be overcome only if the Centre can reassure the States that it is not seeking to impose its will on them, but building a truly representative body from the bottom up. The National Commission on Integrated Water Resources Development Plan (1999) recommended River Basin Organizations of a representative kind (in the hope that this will prove more acceptable), with a very large principal body of a ‘general assembly’ or ‘river parliament’ kind and a smaller (but still not very small) executive committee. One has some reservations on the workability of these recommendations, but the fact is that they have not been given serious consideration. In the NWP 2002 adopted on 1 April 2002, river basin organizations are mentioned, but their scope and powers have been left to the basin States.

The National Commission to Review the Working of the Constitution recommended that the River Boards Act, 1956 be repealed and replaced by “another comprehensive enactment under Entry 56 of List I”. The Commission goes on to say: “The new enactment should clearly define the constitution of the River Boards and their jurisdiction so as to regulate, develop and control all inter-State rivers keeping intact the adjudicated and the recognized rights of the States through which the inter-State river passes and their inhabitants. While enacting the legislation, national interest should be the paramount consideration as inter-
State rivers are ‘material resources’ of the community and are national assets. Such enactment should be passed by Parliament after having effective and meaningful consultation with all the State Governments.” Considering that the River Boards Act has remained a dead letter because of resistance by the States, it is not clear how a more comprehensive legislation is going to be passed, and if passed, how it is going to be more effective. The Commission has not dealt with any of the difficulties that have impeded action in the past, nor has it tried to visualize in any detail how river boards or other forms of basin organizations acceptable to the Centre and to the States can be constituted. Instead of attempting seemingly radical recommendations which have not really been thought through, it might be better to muster the political will to re-activate the RBA which may have some weaknesses but is on the whole a good Act.

(Incidentally, if the River Boards Act had been acted upon and River Boards set up for important inter-State rivers such as Krishna, Godavari or Cauvery, dispute-settlement could have taken the alternative route of arbitration under that Act. Without River Boards, that remains only a hypothetical possibility. However, it is not entirely clear that arbitration under the River Boards Act would have been significantly different from adjudication under the Inter-State Water Disputes Act.)

VII. ‘Rivers of National Importance’

From time to time, particularly when inter-State river water disputes become acute, there are calls for the ‘nationalization’ of major rivers. This is imprecise and misleading. In relation to industry ‘nationalization’ means the transfer of ownership of an entity from a private party to the state. That has no application to rivers. What ‘nationalization’ in this context means is the transfer of control from the State or States concerned to the Central Government. In other words, what is being advocated is a change in the relative roles of the Centre and the States with reference to major rivers. A variant of this is to suggest that some of our rivers should be declared to be rivers of national importance.

However, this is not a new idea. If it is felt that a certain inter-State river, say the Ganga or Godavari or Narmada, is a river of national importance warranting Central planning or control or management, one of two things can be done: Parliament can pass specific legislation under Entry 56 bringing that river within the purview of Central action, or the Centre can set up a River Board for the river under the River Boards Act, 1956. The fact is that the Centre has not made much use of Entry 56 beyond enacting the RBA and has allowed the RBA to remain a dead letter.

Against that background, the recent reports about the Ganga being declared a river of
national importance and a Ganga Basin Authority (GBA) being set up are not entirely clear. This idea has emerged essentially in the context of the heavily polluted state of the river, the failure of the Ganga Action Plan, and the need to think afresh on the subject. If that is the objective, action can be taken under the Environment Protection Act 1986. Apparently that is the intention. However, that is a limited perspective. We need to go beyond pollution control and make institutional arrangements which will be comprehensively and holistically concerned with the river as an ecological system and with all the various uses of its waters and all the aspects of our relationship with it, but avoiding the dangers of centralisation and bureaucratisation. For that purpose either specific legislation under Entry 56 or the establishment of a River Board under the RBA would seem to be necessary. Alternatively, appropriate provisions in this regard can be included in the national umbrella legislation on water that is recommended later in this paper.

VIII. Inter-Basin Transfers

The Constitution takes explicit note of inter-State rivers, but says nothing about what are known as ‘inter-basin transfers’ i.e., transfers of waters from one river-basin to another. Opinion is divided on the advisability of inter-basin or long-distance water transfers. These issues have acquired some prominence in the context of the ‘Inter-Linking of Rivers Project’. We are concerned here not with the merits of such transfers, but with the need, if any, for a constitutional sanction for them. The silence of the Constitution on this subject could be interpreted to mean that it permits such transfers or alternatively that it prohibits them. Be that as it may, a transfer of waters implies a judgment about the availability of a quantum of water (‘surplus’) in one area or basin for transfer, and about the need in another area or basin for that water (‘deficit’). Such a judgment necessarily requires the acquiescence of the State from which the transfer is proposed. Even if the Constitution were to be amended to permit such transfers explicitly, it is hardly possible to take water away from a State without the consent of that State. It is difficult to imagine a constitutional amendment that would empower the Central Government to impose mandatory water transfers on States deemed by it to have ‘surpluses’ to spare. Inter-basin transfers, if considered necessary and sound (techno-economically, ecologically and socially), can only be carried out with the consent of the States concerned. It follows that no enabling constitutional amendments are called for.

IX. A National Consensus on Water

The National Water Resources Council (NWRC), presided over by the Prime Minister and including all the State Chief Ministers and Lieutenant-Governors of Union territories,
as well as important Central Ministers, is a forum at the highest level for the discussion of water-related issues. It could have become a major element in Indian federalism in so far as water is concerned, but has failed to do so; it meets infrequently and has not been very effective. Besides, while its composition is such as to give it prestige, it lacks a statutory basis. Similarly, the National Water Policy 1987 (NWP), which was the outcome of the first attempt to bring about agreement among the States on a minimal set of basic statements about water, has no statutory status though it has the force of consent. Unfortunately it remained a brief enunciation of generalities and was never operationalised. The new NWP 2002 (also non-statutory) likewise remains a set of general statements that have not been made operational.

However, even if the NWRC and the NWP are provided with a statutory backing, that would not take us very far, because they arise from the limited thinking of the past and do not reflect a comprehensive and holistic understanding of water in all its dimensions and complexities. A broad national consensus on such an understanding of water is necessary. In the absence of such a consensus, widely divergent perceptions of and approaches to water are prevalent.

Several States are enacting laws on water and related issues. For instance, Andhra Pradesh has a Water, Land and Trees Act; Maharashtra has a Water Regulatory Authority Act. The former reflects an ecological point of view, whereas the latter is the outcome of the influence of the economic thinking of the World Bank. If different States take different views of the nature of water, the roles of the state, civil society, corporate entities, markets, etc. and embody them in laws, how can there be any coherence or convergence on a matter of such fundamental importance? Under a number of Projects and Programmes different States are obtaining World Bank or ADB funds for ‘reforms’ in the ‘water sector’. As a part of this they are required to formulate State Water Policies, and we have the Orissa Water Policy, the Tamil Nadu Water Policy, and so on. Here again, significant divergences are possible. Again, as mentioned earlier, different State Governments tend to adopt different positions on riparian rights in the context of inter-State rivers. If each State were to enact a law reflecting its own position, there would be utter confusion and inter-State river-water disputes would become even more intractable than they are now. All this points to the need for a national consensus of some kind.

This is not an argument for centralisation. The intention is not to strengthen the Centre *vitæ vitâ* the States. Indeed, water management ought to be primarily a local matter: the devolution to the Panchayat/ Nagarpalika must become real. What is being argued here is the need for a broad national consensus on certain basic questions about the nature of water, the vesting of control over it, principles of water allocation, assurance of equity
and fundamental rights and the protection of the resource and the ecological system. Within that framework there must of course be as much decentralisation as possible, or what the Dublin principles refer to as ‘subsidiarity’ (i.e. decisions at the lowest level, or at no higher level than necessary).

A national consensus on water has become even more important now because of the growing pressure on this scarce and precious life-support substance, the imperative of economy, conservation, equity and harmony in its use and the urgent need to foresee the likely impact of climate change on water and to make the necessary changes in our thinking and planning.

X. A Constitutional Declaration and a National Water Act

Such a national consensus could perhaps be given expression in two forms: constitutional statements about water which will provide a basis for water policy at the Central and State levels, and will declare the responsibilities of the state as well as the duties of the citizens in respect of water; and a national water law, i.e., an overarching or ‘umbrella’ legislation at the national level. That twofold proposition is explained further below.

(i) Constitutional Statements on Water: Given the nature and importance of water, its roles in our daily lives, in the economy, in history, culture and religion, and in ecology, the pressures on this finite resource and the gravity of the challenge before us in relation to it, the case for a special constitutional declaration on water seems persuasive. There are already certain provisions on related matters in the Directive Principles section: for instance, raising the level of nutrition (Art. 47), organization of agriculture (Art. 48), and protection and improvement of the environment and safeguarding of forests and wildlife (Art. 48A). Similarly, in the Fundamental Duties section, Art. 51A(g) runs as follows: “to protect and improve the natural environment including forests, lakes, rivers, and wildlife, and to have compassion for living creatures”. It is in fact surprising that there is no separate and special reference to water, which is more basic and fundamental than many of the matters actually mentioned. Perhaps the importance of water and the fact that it is integrally related to the ‘environment’ and other matters specified in the articles cited above were not adequately appreciated when those entries were put in.

It seems clear beyond question that in both the Directive Principles and the Fundamental Duties sections, there should be carefully drafted statements about water. These cannot of course be detailed discourses; they will have to be brief, compressed entries, which could then be elaborated in a separate Policy Statement or Law. The entry in the Directive Principles section will indicate the responsibilities of the State, and that in the Fundamental Duties will mention the responsibilities of the citizens.
Without trying to make a detailed statement of what the contents of those provisions should be, it can be said that ecological concerns as well as the basic right to water should figure prominently in them. By way of illustration (not exclusively confined to water), a few examples can be given.

(1) The preamble to the EU Water Framework Directive of 2000 begins with following ringing assertion:

“Water is not a commercial product like any other but, rather, a heritage which must be protected, defended and treated as such.”

(2) Article 24 of the South African Constitution of 1996 says that “everyone has the right…..to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that …..secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development”. Article 27 lays down that “everyone has the right to have access to….sufficient food and water”.

(3) In pursuance of these provisions, the South African National Water Act of 1998 states (Section 2) the purpose of the Act as being “to ensure that the nation’s water resources are protected, used, developed, conserved, managed and controlled in ways which take into account amongst other factors - (a) meeting the basic human needs of present and future generations; (b) promoting equitable access to water; ....(d) promoting the efficient, sustainable and beneficial use of water in the public interest;....(g) protecting aquatic and associated ecosystems and their biological diversity; and so on. Section 3 declares the National Government to be “the public trustee of the nation’s water resources”.

(4) Article 127 of the Venezuelan constitution runs as follows:

“Article 127: It is the right and duty of each generation to protect and maintain the environment for its own benefit and that of the world of the future….. It is a fundamental duty of the State, with the active participation of society, to ensure that the populace develops in a pollution-free environment in which air, water, soil, coasts, climate, the ozone layer and living species receive special protection, in accordance with law.”

Incidentally, the right to water (as life-support) is not an explicitly stated right in the Indian Constitution, but has been read into the Right to Life by judicial interpretation. In South Africa, it is an explicit constitutional right. That seems a good example to follow.

(ii) A National Water Act: For the same reasons as the ones stated earlier as warranting a
constitutional declaration on water, a National Water Act is needed. The constitutional statement will necessarily be very brief. It will need to be elaborated in a national law. It will ensure a minimal national consensus on basics. Many countries in the world have national water laws or codes, and some of them (for instance, the South African law mentioned above) are widely regarded as very enlightened.

If we are able to enact a National Water Act, it would cover such matters as the public trust doctrine (i.e., the state as the public trustee of water on behalf of the community); the right to water and the obligation of the state (at the appropriate level) to ensure that right; the role of the community or civil society not only in local water management, but also in relation to policy-making and project-planning (and implementation) at higher levels; the principles and priorities of entitlements and allocations (on the analogy of the General Authorisation concept in South African law); the principles of equitable sharing of inter-State river waters by the States concerned; institutional arrangements for the avoidance of inter-State, inter-sectoral, inter-area and inter-use disputes, and for mediation, conciliation or other means of resolving such disputes when they do arise; economy in water use and resource-conservation; principles of water-pricing for various uses; and so on; and would bring in by reference other related laws such as the Environment Protection Act, the Water (Prevention and Control of Pollution) Act, the Central Ground Water Authority Act, the National Rehabilitation and Resettlement Act (if the Bill becomes an Act), the Forest Conservation Act, and so on. The intention is not that water management should shift to the Centre; the National Water Act would be an umbrella legislation or code laying down general principles which would guide actual water policies, planning and management at various appropriate levels.

The enactment by Parliament of a National Water Act on the lines outlined above would be rendered easier if water were to be shifted to the Concurrent List as recommended earlier, but even without such an amendment there are ways and means of enacting national laws on matters falling within the sphere of the States.

If a National Water Act is passed, the existing National Water Policy (NWP) can be scrapped. If it is felt that the statements in the Act need to be elaborated in a Policy Statement, that can be done and the Policy Statement will derive its authority from the Act. However, it will have to be a new document and not the existing NWP.

XI. Major/Medium Projects

The section about inter-State river water disputes earlier in this paper has already covered riparian and related disputes generated by water resource projects. There is one more point to be mentioned, namely a minor Centre-State issue relating to such projects.
The national planning process requires a Central clearance for the inclusion of State projects (Major and Medium) in the Five Year Plan. Some states have questioned this requirement which has no formal basis. Whatever the merits of those objections from a federalist point of view, the scrutiny by the Central Water Commission serves a useful purpose in the case of those State Governments which do not have strong engineering departments. It also ensures among other things that inter-State aspects are not overlooked, and that dam safety has received adequate attention. Despite occasional arguments, the procedure has come to stay and is working. There seems to be no need to change it. Moreover, big water resource projects – like large industrial and other projects - are in any case subject to statutory clearances by the Ministry of Environment and Forests under the Environment Protection Act and the Forest Conservation Act.

The displacement, resettlement and rehabilitation aspects of such projects may have inter-State aspects in some cases. Some projects may be multi-State; or a project may be located in one state but may cause displacement in another. The rehabilitation policies and packages of one State may not be readily acceptable to a neighbouring state. The Sardar Sarovar Project is illustrative of all these features. The need for a national consensus on the basic resettlement/rehabilitation policy and a degree of commonality in the reliefs stands recognized in the National Rehabilitation and Resettlement Policy, 2007 and the two Bills – the Rehabilitation and Resettlement Bill, 2007 and the Land Acquisition (Amendment) Bill, 2007 – that are awaiting enactment. These relate to displacement not only in water resource projects but also in all other kinds of projects. There has been much discussion about these Bills and the debate is continuing. The environmental impacts of large projects and the statutory clearances mentioned earlier may also have some Centre-State issues, but these again relate to all projects and are not specific to water projects. These matters are therefore not discussed here.

XII. Groundwater

The importance of groundwater in our national life is evident: around 50% of irrigated agriculture is based on groundwater, and 85% of rural drinking water comes from groundwater. Earlier, irrigation in India meant largely surface-water irrigation (canals, tanks, ponds, etc.) but from the 1980s onwards there has been a dramatic increase in the use of groundwater. India is now the largest user of groundwater in the world, followed by China and the USA in that order. The two great problems in relation to groundwater in India are (a) reckless exploitation in many parts leading to an alarming depletion of aquifers, and (b) the pollution and contamination of aquifers. Regulation is urgently needed but there are three serious difficulties: legal (ownership of groundwater going with the ownership of land); practical (20 million tubewells, mostly small, privately owned and
operated for ‘self-supply’); and political (the political importance of tubewell-owners). There are different views on the possible ways in which regulation can be attempted, such as old-style direct state control, indirect control through the power-tariff, community management of aquifers through user groups, involvement of PRIs, etc. but no definitive or even moderately satisfactory answers have been found yet. Those matters do not fall within the ambit of this paper which is concerned with Centre-State and inter-State issues. From that perspective two questions arise: one, whether there are any inter-State issues at all here, and two, what, if anything, the Central Government can do in safeguarding groundwater from depletion and pollution.

While many of our rivers are recognizably inter-State, there is no such recognition in respect of groundwater, which is assumed to be an intra-State matter. However, aquifers like rivers can cut across State boundaries. The Inter-State Water Disputes Act deals with disputes over river waters. Disputes can also occur over other forms of surface water (lakes and ponds) and over aquifers; they have occurred elsewhere in the world. (For instance, the sharing of an aquifer is an element in the Israel-Palestine dispute.) The ISWD Act needs to be expanded in scope to deal with disputes over all forms of water. That Act deals with disputes after they have arisen. We need to obviate disputes and ensure cooperation. For this, some kind of institutional arrangements are needed not only at the river-basin level but also at the aquifer level. If the aquifer boundary coincides with that of the basin, then the River Basin Organization (discussed earlier) should be concerned with both the river and the aquifer.

As for the role of the Central Government, the constitutional position is not entirely clear. Groundwater does not specifically figure in the Constitution, and as mentioned earlier, both Entry 17 in the State List and Entry 56 in the Union List seem to be largely about rivers and irrigation. However, it seems reasonable to assume that ‘water’ includes groundwater, and if so, it comes under Entry 17 in the State List, i.e., it is a State subject; and the proviso about Entry 56 in the Union List (about inter-State rivers) cannot apply to groundwater. Nevertheless, we have the Central Groundwater Board (CGWB) and the Central Groundwater Authority (CGWA). The former, which is a development from the old Exploratory Tubewells Organization, presents no problem of Central intrusion into the State sphere as it merely carries out studies, surveys and mapping, and does not perform executive functions. The CGWA bypasses this question as it was set up under the Environment Protection Act under the directions of the Supreme Court. However, it has not been very effective in the task of regulation of the extraction of groundwater.

That crucial problem remains. Groundwater is part of the water resources of the country, and aquifers have to be protected from depletion and contamination. Regulation is essen-
tial but difficult because the ownership of land carries with it the ownership of ground-
water. That link has to be broken and groundwater has to be treated as a common pool
resource to be held in trust by the state for the community. This has to be one of the
elements of the National Water Act proposed earlier in this paper.

XIII. Local Self-Governance

We are concerned with Centre-State and inter-State relations, but Indian federalism now
stands enlarged to encompass the level of local self-governance, and we need to take
note of that level also. Panchayati Raj Institutions (PRIs) doubtless bring the government
closer to the people, but even at that level the distinction between the state and the
people does not disappear; the issue of State-civil society relationship still remains.

In so far as water is concerned, there are two parallel developments. First, water manage-
ment at the local level is among the subjects to be devolved to PRIs in terms of Schedule
11. This has not yet happened to any significant extent but it is bound to happen over a
period of time. In due course, it seems likely that PRIs will come to play an important role
in relation to water. Secondly, from the 1980s, there have been several instances of social
mobilization towards the local augmentation of the availability of water through rainwa-
ter-harvesting or micro-watershed development. Encouraging such civil society initia-
tives and promoting national programmes of water harvesting and the restoration of old
water bodies, are now part of official policy. Thus, both PRIs and voluntary local institu-
tions (informal or registered) have roles to play in water management at the local level. It
follows that a good working relationship between civil society institutions such as watersh-
d committees and PRIs is very necessary. At the same time, a constructive and harmo-
nious relationship between the community (or civil society or the people) and the State
Government is also important. As for the relationship between the State Government
and PRIs, the constitutionally mandated devolution has to proceed apace.

There is a potential for conflict between the doctrine of state control over water and the
encouragement of people’s initiatives. The conflict is not merely potential but has in fact
actually occurred in some instances. Two things are clear. First, in general (with excep-
tions) the Government at the bureaucratic level (and often even at the political level) is
not very comfortable with community/civil society initiatives and institutions or with
appeals to customary law and traditional practice. Secondly, community initiatives started
with the best of intentions and for laudable purposes can unwittingly run counter to the
formal law of the statute books. If it is the policy of the state to promote such initiatives,
then legal changes must be made to enable and facilitate the role of civil society; and
changes must be brought about in the thinking and attitudes of the bureaucracy.
XIV. Water Pollution

It would appear that this is largely an intra-State matter of administration of the pollution control law of each State and the effective functioning of the State Pollution Control Boards. However, industrial effluents and emissions, agricultural runoffs and the carriage of pollution and sediment by rivers are no respecters of boundaries, and groups of States may have to establish joint mechanisms for monitoring, control and concerted remedial measures. This is one more reason for institutional arrangements at the river-basin level (discussed in Section VI above).

As for the Central Government, it has important roles emanating from the Environment Protection Act. In addition it is also undertaking the cleaning up of polluted rivers such as the Ganga and the Yamuna, and has set up a National River Conservation Authority.

This paper does not go into these matters, as there is a separate paper on water pollution.

XV. Floods

Floods call for inter-State and Centre-State cooperation in many ways: backwater effects upstream or floods downstream resulting from interventions in rivers; operation of dams and barrages in such a way as to avoid causing harm to co-riparians; flood-forecasting and warning; real-time information-sharing; disaster-preparedness; disaster-response; minimizing damage; rescue, relief and rehabilitation operations; and so on. There is plenty of material on these matters, such as (for instance) the report of the National Flood Commission and subsequent committees. There is also a National Disaster Management Authority, as well as a National Institute of Disaster Management. This paper has no new recommendations to make in this regard.

XVI. Climate Change

The IPCC Working Group report of June 2008 on ‘Climate Change and Water’ makes some general predictions (increased precipitation in some areas, increased variability of precipitation, and increased incidence of droughts in some other areas), but we do not as yet know what exactly will happen, where and when. The impact of climate change may have inter-State and Centre-State implications, but at this stage it is not possible to foresee them clearly.

XVII. The International Dimension

Treaties and agreements with neighbouring countries over the waters of transboundary rivers fall within the domain of the Centre but they may have implications for certain
States or may require their cooperation. Consultation with the States concerned in such cases is of vital importance if the treaties and agreements are to work satisfactorily. This is known to the Central Government, and they do consult the State Governments. For instance, West Bengal was closely associated with Delhi’s negotiations with Dhaka on the sharing of Ganga waters leading to the Ganges Treaty of 1996. However, Bihar was not associated with those negotiations, and has a sense of grievance over the inadequate consideration of its interests. Such grievances can be avoided through proper advance consultations. Again, when an embankment breached in Nepal and heavy floods followed in Bihar, Nepal and India tended to blame each other and similarly, there was an exchange of blame between Delhi and Patna. However, beyond suggesting the there should be better consultation and coordination, and that these should involve not merely the governments but also the people likely to be affected, this paper has no new recommendations to make. (This also applies to international environmental negotiations.)

**XVIII. Recommendations**

The recommendations made in the various sections above are recapitulated below.

1. Water ought to have been in the Concurrent List and should now be put into that list by a constitutional amendment.

2. The Centre should also use more effectively the legislative power in relation to inter-State rivers given to it by Entry 56 in the Union List.

3. It should re-activate the dormant River Boards Act 1956.

4. (i) The Inter-State Water Disputes Act 1956, as amended in 2002, should be further amended to lay down that the time-limit of one year for the clarificatory or supplementary report by the Tribunal should not be extended by more than six months; and that the reports of the Tribunal, whether Interim or Final or Clarificatory/Supplementary, should be notified by the Central Government in the Gazette promptly, preferably within ten days.

   (ii) The bar on the jurisdiction of the courts laid down in the ISWD Act should be modified to provide for an appeal against the Tribunal’s Final Order to the Supreme Court.

   (iii) The ISWD tribunals should function less like courts and more like committees, should take on the role of conciliation in addition to that of adjudication, and should explore possible solutions without giving up the power of ultimate adjudication.
(iv) An ISWD tribunal should be a multi-disciplinary body presided over by a judge of the Supreme Court, with the other members (two or three) drawn from amongst the disciplines of hydrology, civil engineering, ecology, water management, sociology and economics, as may be relevant in a given case.

(v) The concept of *locus standi* needs to be redefined so that farmers and other water-users and civil society institutions are also empowered to appear before the Tribunal.

5. Using the River Boards Act or through other means, institutional arrangements of an integrated, holistic, representative and participatory kind should be set up at the river-basin level. The resistance of the State Governments to such arrangements should be overcome by persuasion and by ensuring that they are not imposed by the Centre or from the top down but built from the bottom upwards (i.e. from the village panchayats and watershed committees upwards), and are truly representative of all governmental agencies concerned as well as all categories of water users. Care should be taken to avoid centralisation and bureaucratisation.

6. Given the complexities and multiple dimensions of water (life-support, ecological, economic, social, historical, cultural, religious), its crucial importance in our lives, the growing pressure on this finite resource, the potential that this holds for conflicts, and the urgent need for ensuring harmonious sharing, economy in use, resource protection and conservation and ecological soundness, there should be constitutional pronouncements in the Parts on Directive Principles of State Policy and Fundamental Duties on the nature of water (covering among other things ecological concerns as well as the basic right to water), the responsibilities of the state and the duties of citizens. There should also be an explicit constitutional recognition of the right to water as a fundamental right.

7. In line with those constitutional pronouncements there should be a National Water Act. Without implying the shift of water management to the Centre, the National Water Act would be an umbrella legislation or code laying down general principles which would guide actual water policies, planning and management at various appropriate levels. The National Water Act would cover such matters as the public trust doctrine (i.e., the state as the public trustee of water on behalf of the community); the right to water and the obligation of the state (at the appropriate level) to ensure that right; the role
of the community or civil society not only in local water management, but also in relation to policy-making and project-planning (and implementation) at higher levels; the principles and priorities of entitlements and allocations; the principles of equitable sharing of inter-State river waters by the States concerned; institutional arrangements for the avoidance of inter-State, inter-sectoral, inter-area and inter-use disputes, and for mediation, conciliation or other means of resolving such disputes when they do arise; economy in water use and resource-conservation; principles of water-pricing for various uses; and so on; and would bring in by reference other related laws such as the Environment Protection Act, the Water (Prevention and Control of Pollution) Act, the Central Ground Water Authority Act, the National Rehabilitation and Resettlement Act (if the Bill becomes an Act), the Forest Conservation Act, and so on.

8. Groundwater is an important part of the water resources of the country, and aquifers have to be protected from depletion and contamination. Difficulties in the way of regulation should be removed by breaking the link between the ownership of land and that of groundwater. Groundwater, like other forms of water, has to be treated as a common pool resource to be held in trust by the state for the community.

9. The ISWD Act needs to be expanded in scope to deal with disputes over all forms of water including groundwater aquifers, lakes, ponds and other surface water bodies. Disputes should be not merely dealt with after they have arisen but obviated before they arise through appropriate institutional arrangements not only at the river-basin level but also at the aquifer level. If the aquifer boundary coincides with that of the basin, then the River Basin Organization (discussed earlier) should be concerned with both the river and the aquifer.

10. The constitutionally mandated devolution of local water management to PRIs must be expedited.

11. Both PRIs and voluntary local institutions (informal or registered) have roles to play in water management at the local level, and a good working relationship between them should be established and institutionalized.

12. The potential for conflict between the doctrine of state control over water and the encouragement of people’s initiatives should be removed or minimised,
and a constructive and collaborative relationship established between the state and civil society. Legal changes must be made to enable and facilitate the role of civil society, and changes must be brought about in the thinking and attitudes of the bureaucracy to make it supportive of that role.

13. If international understandings, whether with neighbouring countries or under multilateral negotiations, are to work satisfactorily, close consultations with (and where appropriate, the association of) the State Governments and the people likely to be affected are necessary.
Minerals and Hydrocarbons
Ligia Noronha, TERI

This paper examines Centre-State relations in the context of minerals and hydrocarbons. These natural resources have strategic and economic importance to the country as a whole, and are of key economic value to the states in which they are located. Their development involves environmental impacts on forests and water, and impacts on people and their lives at the local level. To examine Centre-State relations keeping in mind the development-environment trade-off that is often involved, the paper focuses on the following: the economic importance of the resources to the nation; the potential importance to the States in which they are located; the environmental and social externalities attached to their development; the power sharing between the Centre and the states; and the conflicts that have emerged from the way these powers have been actualized and the externalities have been addressed; and finally it ends with suggestions to evolve a more integrated people centric resource policy. ¹

Economic Importance

India produces as many as 90 minerals comprising 4 fuel, 10 metallic, 50 non-metallic (industrial minerals), 3 atomic minerals and 23 minor minerals (building and other materials). The country is self sufficient in case of 36 minerals and deficient in respect of a number of minerals. The country’s ratio of proven reserves to production at current levels of production is about 23 years for oil and 35 years for gas. Of the total oil reserves (of 1280.76 mt), 596.68 mt (44%) are onshore and 684.08 mt (56%) offshore. For the proven natural gas reserves (of 1075 bcm), offshore reserves of 745 bcm (69 %) are more than double the onshore reserves of 330 bcm (31 %).

The mineral states of the country include Andhra Pradesh, Chhattisgarh, Gujarat, Jharkhand, Madhya Pradesh, Orissa, Rajasthan, and West Bengal. The hydrocarbon rich regions of the country are Gujarat, Assam, Andhra Pradesh, Tamil Nadu, Bombay High (in western offshore) and Krishna Godavari basin (in eastern offshore). Rajasthan is emerging on the hydrocarbon map given the new finds. In India, the mining and quarrying sector constituted about 2.6% of GDP in 2007-08 and of about Rs.27483.71 crores in 2007-08 (excluding fuel, atomic minerals and minor minerals). The sector’s share has remained fairly constant in the last decade.

Fuel minerals – coal, lignite, crude petroleum & natural gas – constitute about 73% of the total value of minerals produced in the country. Of the non fuel minerals, metallic minerals are important, and the fastest growing segment of the mineral industry in India. Iron ore contributes three-fourth of the total value. Non metallic minerals are small in

¹ The paper draws on the study done by TERI in 2007 and 2008 for the Inter State Council on Compensation issues to resource bearing states
value terms but important in volumetric terms. At present, oil and gas together constitute about 45.26 per cent of primary commercial energy supply. However, a key concern for the hydrocarbon sector is the mismatch between demand and supply of both, domestic crude oil and natural gas in India. While the domestic production of crude oil has stagnated at around 32 Million Metric Tonnes (MMT) per year for the last 15 years, the demand for crude oil has been increasing steadily at an annual average rate of about 6%, resulting in a high import dependence. Against a total demand of 162 Million Standard Cubic Metre Per Day (MMSCMD) the availability of natural gas is only 81.17 MMSCMD resulting in a substantial gap of about 50%, consequently demand is limited by supply.

The oil and gas sector is one of the largest contributors to the Indian treasury and important sources of revenue to both the Centre and the States over the period 1980/81-2000/01, this was a significant share – rising to 35% of non tax revenues in 1990-91 at its peak; and about 7% of total revenues; post liberalization in 1990-91 and with the increased buoyancy of the economy, this share has become less important in central tax and non tax revenues, averaging about 10% of non tax and 2.5% of tax revenues by 2005-06. Oil royalty accounts for about 25.4% of Assam’s own revenue, 9.33 % in case of Gujarat and 8.64% in case of Arunachal Pradesh. Coal accounts for 65-90% of the royalty revenue in Chhastisgarh, Jharkhand, Orissa, and Madhya Pradesh. Other important minerals in terms of their contribution to royalty in these states are limestone, iron ore, bauxite, and chromite.

Mineral rich states, with a couple of exceptions, fare poorly in socioeconomic development, having both a lower Human Development Index (HDI) relative to other states and a lower Net State Domestic Product (NSDP) as compared to the Indian average. They also do badly in the infrastructure index, access to power, road connectivity, sewerage facilities. Jharkhand, a very rich mineral state, remains fiscally weak, West Bengal remains a poor performer in terms of almost all fiscal indicators. Chhattisgarh shows a revenue surplus and a fiscal deficit lower than the national average (3.2%).

Environmental & Social externalities

Resource development has associated social, resource, cultural and environmental costs. A list of minerals has been prepared by the Ministry of Environment and Forests, the mining of which is noted to have a serious impact on environment. These minerals include coal, iron ore, zinc, lead, copper, gold, pyrite, manganese, bauxite, chromite, dolomite, limestone, apatite and rock phosphate, fireclay, silica sand, kaolin, barytes and steatite.

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2 Planning commission 2006; Integrated Energy Policy
3 Ministry of Petroleum and Natural Gas, Basic Statistics, MoPNG, GoI, Delhi, 2005-06
4 World Bank, 2006
At the pre-mining stage, there could be displacement of people, clearing of forests, removal of vegetation and several other impacts due to the acquisition of land. Apart from the mining activity itself, these impacts are caused by the large-scale in-migration of construction workers and the transport of heavy mining equipment for construction, trial shipments of mine products and bulk samples. Vehicular emissions and dust contribute to air pollution even before active mining begins. The environmental impacts of mining during the operational phase are likely to be greater than those in the pre-mining phase. These range from the impact on land, ground water quality and levels, air and water pollution and solid waste generation. Cropland productivity loss is the outcome associated with the degradation of soil, either due to silting or due to desiccation. This leads to a creeping expropriation and a marginalisation of farming communities. The post-mining phase has long-term implications for the ecology of the area. Negligence in planning of long-term water management, safety and stability of mining voids, and final rehabilitation can render the mining area uninhabitable. Abandoned and closed mines are often associated with ongoing ground- and surface water contamination, which may continue for a long period. The Indian Bureau of Mines lists some 300 mines across the country that have been abandoned due to expiration of lease or the exhaustion of mineral (http://ibm.nic.in/frames.html). However the area under such abandoned mines is not available. Further, the list does not include the number of abandoned coal mines. It is reported that there are more than 500 abandoned mines in Jharia and Raniganj coalfields alone in Bihar and West Bengal respectively occupying more than 10,000 ha of land. In addition, overburden and spoil dumps occupy large area of land. A large number of fires have also degraded large areas (2330 ha) in these coalfields.

In the context of offshore oil and gas development, the issue of impact on maritime states and to local people will depend on the distance of these operations from the coast of the state and the fate of the producing water and drilling waste which can affect local fisheries, either pelagic species or the benthos in the surrounding areas. In many deltaic regions of the world, where oil is extracted, marine communities complain of loss of catch due to environmental pollution from oil spills, drilling waste, etc. The issue is insufficiently researched in India.

A well developed set of laws, rules and regulations are in place to address environmental and social impacts of mining. Despite this set of rules, considerable impacts are observed, often due to poor rule enforcement. Government inaction and poor environmental and social practices in many mining operations makes this a sector wherein it is increasingly becoming difficult to obtain a social license to operate from local communities.

Land is an important and highly volatile issue at many points during the lifecycle of the
resource project. Resource companies and operators need secure access to land and community consent, and communities need to ensure that land rights are properly recognized, that free and informed consent is obtained and appropriate compensation policy is in place where land is lost or affected. Very often, the land that is taken over is a common property resource. Even when property rights are bestowed on local people, these resources tend to be valued more cheaply in a deal, as negotiations depend on the distribution of information, power and influence, and these are typically asymmetrical. Conflict over land for resource development tends to essentially become a conflict between those to whom land is part of their lives (economic, social and cultural) and those who see the land as a factor in the production process. Valuing land in such transactions is not easy, as the yardsticks of measurement are not common. Local landowners will be losers on whose land, minerals/oil is vested when compared with commercial exploitation of the resource. Government does not pay heed to the cultural sensitivities peculiar to ownership of land in desert terrain and land loss has a psychological impact on displaced people. States have pointed out the issue of mining affected land in memos to the 12th Finance Commission. Fair resettlement and rehabilitation needs a strong State that will deliver. But this is often not the case.

**Constitutional provisions with respect to mineral and oil resources and their development**

Different aspects of different resources are administered by either Central or State Government depending on where they are placed in the Schedule VII of the Constitution of India. Resources are owned by states in which they are located, and States have the right to grant licences, leases, receive royalty and a few other rents. However, this ownership is not absolute. The Centre has jurisdiction over regulation of mines and mineral development, oil fields and mineral oil resources. The Constitution while recognizing the rights of States to regulate mines and mineral development does so with a rider – that it has to be in conformity with the Centre’s power to do exactly the same through legislation, the Mines and Minerals Development and Regulation Act (MMDR). While the state has the right to allow exploitation of minerals, it has to take prior approval of the Central Government in case of some major minerals specified by Central legislation. Although a state has a right to the share of revenues from mining in the form of royalties and dead rents (indicative of ownership), it has no right to decide on the rate or method of fixation of these or levy any additional tax for which it may see a requirement.

Under the Indian Constitution, decentralization until the level of the Gram Sabha is recognized. But most of this decentralization is left to be defined by the states. All the powers, whether regulatory, administrative, fiscal ‘may’ be provided for by the states in

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5 Letter to ISC on this issue dated August 21, 2007  
6 [http://fincomindia.nic.in/pubsubg/memo_jkhand.pdf](http://fincomindia.nic.in/pubsubg/memo_jkhand.pdf)  
7 See, K M Reddy, The Political Economy of Compensation, Chap 3, in Jain and Bala, 2006  
8 Item 53 & 54, List I, Schedule VII, Constitution of India
their state laws on Panchayats. This is especially problematic in Schedule V areas, (key to the mineral rich states) where, there are provisions under a special Act giving special powers to the Gram Sabha in the scheduled areas. The steps taken by the states for the purposes of this Act have not been adequate in strengthening the concept of self-governance as envisaged by this legislation.

Specific fiscal powers are recognized under the Constitution. States levy sales tax, royalty, dead rent, cess, environmental protection, prospecting and mining lease fees etc. There is an implicit assumption that the assignment system creates surplus with the Centre and this is transferred to the states through tax devolution and grants in aid. After the Eightieth amendment to the Constitution, all the taxes levied by the Centre are brought under the purview of sharing. Lower levels receive allocations from Central Government budgets based on some pre-defined criteria as decided by the Finance Commissions.

**Petroleum resources** of the country can be broadly classified into onshore and offshore oil and gas resources. Based on the Constitution, subsequent amendments to it and the laws made there under, rights of states and the centre on these two categories of petroleum resources are different from each other. Oil and gas on land belong to the states and those lying under the area extending from the baseline to the continental shelf are owned by the Union. Thus the 12 Nautical miles from baseline to territorial waters, the next 12 Nautical miles, i.e., the contiguous zone and the 200 Nautical miles from the baseline in the form of exclusive economic zone are all under the Union of India. These limits are currently laid down by the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976. Regulation and control of petroleum all over the country, whether found under land or sea, vests with the Union of India. The Constitutional basis for the same is Article 246 read with List I, which lays down the principle that only the Parliament has exclusive powers to make laws with respect to any of the matters enumerated in List I of the Seventh Schedule. Central Government has taken under its control all the matters relating to development of mineral Oil and gas through the Oilfields Regulation and Development Act (ORDA).

The Petroleum and Natural Gas Rules, promulgated in response to the powers under the ORDA, lay down the terms and conditions for grant of exploration licenses and oil development leases in respect of petroleum and natural gas. In accordance with these rules, a licence or lease is granted by the State or Centre depending on where the exploration or extraction has to take place, whether on land or offshore. The rules made in exercise of power to regulate and develop petroleum products apply to natural gas as well. In particular, these rules may provide for inter alia, collection of royalties, and the levy and collection

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9 Normally, the baseline is determined by the lowest tide of the coastal state or area
of fees or taxes, in respect of mineral oils mined, quarried, excavated or collected. Ownership and regulation of natural gas is very similar to petroleum as same legislations apply for ownership, regulation and development of both. Natural gas found on or under land owned by states belongs to states and if found under the ocean, territorial waters, contiguous zone or exclusive economic zone, belongs to the Union. Ownership of natural gas may sometimes be a complex issue to address as natural gas is usually found along with some thing else and most often oil. Under Entry 53 of the Union List, Centre has the exclusive rights to legislate on mineral resources, petroleum and petroleum products. Although gas and gas works is a state subject under the Constitution, it does not include natural gas. Natural gas, when found along with oil is treated as a petroleum product and when found un-associated is a mineral resource. Therefore, in either case it is under the Central Government’s purview rather than states’ under gas and gas works.

Land is a State subject. Certain states including the north eastern hill states of Nagaland and Mizoram have been granted a special status under the Constitution whereby their control over land and resources thereupon are preserved. Accordingly, no Act of Parliament in respect of ownership and transfer of land and its resources is applicable in Nagaland and Mizoram unless their Legislative Assemblies decide and pass a resolution to that effect. The tribal areas in Assam, Meghalaya, Tripura and Mizoram have certain autonomous districts and autonomous regions. Acquisitioning and requisitioning of land is a concurrent subject in the constitution and therefore both the Parliament and Legislature of States have the power to legislate on it. This power of the states is derived from Article 246(2)(3) where the States are empowered to make a law on a concurrent subject. Their power is further recognized in Article 31A which gives immunity to a law for acquisition of any estate or any right.

The Constitution of India provides specific protection to tribal rights over their customary resources, particularly in Schedule V and Schedule VI areas. Other tribal tracts, categorized as ‘Partially Excluded Areas’ were christened Scheduled areas placing them under the Fifth Schedule of the Constitution. The object of Fifth and Sixth schedules to the Constitution is to ensure that the tribal people remain in possession and enjoyment of the lands in Scheduled areas for their economic empowerment, social status and dignity of their person. However, exploitation of mineral oil and gas located in these lands is seen as necessary for the development of the nation. These contrasting rationalities can and do become a source of conflict in this area.

10 Entry 25, List II
11 Entry 18, List II, Schedule VII, Constitution of India; land is included in this discussion as there is always conjunctive use of land when minerals or oil, gas are being developed.
12 Article 371A & 371G, Constitution of India
13 Entry 42, List III, Schedule VII, Constitution of India
Indian mining and oil and gas rules in themselves have provisions to regulate environmental behaviour of mining companies. A number of provisions in such laws effectively serve to reduce pollution at source through the adoption of good practice mining. However, in addition to these rules and regulations, there are a number of environmental rules which take care of the pollution and degradation that may occur despite good practice mining. Environmental protection is clearly provided for in the Indian Constitution and judicial interpretation has strengthened this mandate. In many cases, the courts have recognized the right to a wholesome environment as being implicit in the fundamental right to life guaranteed in Article 21 of the Indian Constitution.\(^\text{15}\)

There are four main statutory acts that regulate environmental impacts of mining activity: The Water Pollution Act, 1974 provides for the prevention and control of water pollution and the maintaining or restoring of the wholesomeness of water. It vests the authority in Central and State Pollution Control Boards to establish and enforce effluent standards in mines and processing plants. Prior to amendment in 1988, enforcement under the Act was achieved through criminal prosecution. After 1988, the authorities can close down a defaulting unit or withdraw infrastructural support services if found to be transgressing. The Air Pollution Act, 1981 is similar to the Water Act. It is an act to provide for the prevention, control and abatement of air pollution. It lays down air pollution standards and is administered by Central and State Pollution Control Boards. It also empowers the authorities to close down an unit or to withdraw support services if found violating the law. The Air and Water Acts are the two main legal instruments used by the Central and State Pollution Boards to protect water and air quality. The Forest (Conservation) Act, 1980 prohibits state governments from allotting any forest land, or any portion thereof for any nonforest purpose without approval from the Central Government. It is a Central Act applying to the whole of India, other than the state of Jammu and Kashmir. Approval of the Central Government is necessary for the following: a mining lease to be granted in respect of any forest land;\(^\text{16}\) for the resumption of operations on the expiry of a lease; for information relating to rehabilitation of mine sites, damage to trees, distance of the site from important ecosystems and highways, reclamation procedures. Compensatory afforestation is one of the most important conditions stipulated by this Act, and detailed schemes have to be submitted when seeking prior approval for forest clearance. The Environment Protection Act, 1986 is applicable to the whole of India and overrules

\(^{15}\) A number of public interest litigation (PIL) such as that of destructive limestone quarrying mining in Mussoorie and Dehradun in the state of Uttar Pradesh, and of the mining of marble and limestone around the Sariska Tiger Reserve in Rajasthan, point to the evolution of a new kind of court-aided environmental protection in India. For details on the standing and emergence of PIL in environmental actions in India see Rosencrantz et al, 1991, pp 118-130; for a description and a discussion of the court's directive on the Dehradun Quarrying case from a policy perspective, see pp 227-232

\(^{16}\) Forest land includes reserved forests, protected forests and any other area recorded as forest land in the government records
other legislation, including local laws. Under Section 5, it grants the Central Government the power to close down any industry if found violating the law. The Act allows for Public Interest Litigation for the purpose of protecting the environment. Consequent to the Act, the Environment Ministry has, among other requirements, laid down the following: i) the standards of emissions for the discharge of environmental pollutants ii) the procedures and safeguards for the prevention of accidents. iii) the requirements of environmental clearance from the Ministry of Environment and Forests for projects involving areas in excess of 5 ha. This has been a requirement since 1994 for all new projects or those that are to be expanded/ modernized. The EIA process requires public participation in the form of a public hearing. The EPA is implemented in India through the various regional offices of the Ministry of Environment. In those states where there are no such offices, the Department of Environment has to perform this function. The other environmental rules that have been framed in the last decade are the Hazardous Waste (Management and Handling) Rules 1989; the Manufacture, Storage and Import of Hazardous Chemicals (Amendment) Rules 1994 and the Public Liability Insurance Act 1991.

Contentious Issues between the Centre and States

The following are key issues of contention between the Centre and States on matters relating to minerals, oil and natural gas development.

Revenue sharing

Minerals, oil and gas resources present clear revenue sources for States in which they are located and if legal rights are clearly established, from which they are able to meet their expenditure commitments. In some States, these may be the only revenue sources that they possess, and hence become key to moving them away from fiscal stress or fiscal dependency situations. However, central legislation (through the Mines and Minerals (Regulation and Development) (MMRD) Act 1957 and the Oil Development and Regulation Act (ODRA) has taken over much of the space available for States to raise revenues from mineral oil wealth. The ownership right in minerals, oil and gas by States is a qualified and conditional one given that while the resource owning States have a right to the share of revenues from minerals, oil and gas extraction in the form of royalties and dead rents to reflect ownership, they have no right to decide on the method of fixation of royalty, its rate or its periodic revision, are unable to tax mineral, oil and gas resources in any way they see fit and to enter into production sharing contracts in case of oil and gas and receive profit petroleum directly.

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17 EPA Notification dated 10 April 1997
18 See TERI, 2007, 2008; also see the following memos to the 12th FC at http://fincomindia.nic.in/pubsugg/memo_ori.pdf; http://fincomindia.nic.in/pubsugg/memo_jkhand.pdf; http://fincomindia.nic.in/pubsugg/memo_chattis.pdf
Compensation for environmental and social externalities

Environmental and social externalities of mineral and oil development are required by law to be taken into account by the operator by the rules regulating resource development, and also as part of good practice resource development projects. Compensation is normally paid either to state agencies for environmental impacts or directly to project affected people. Although the compensation paid is supposed to go down to the State and sub-State level, it is the Centre, which fixes and levies most of them. Whether it is the payment for one’s ownership rights or for environmental clearance, all of these are as affixed by the Centre.

However, even when there are environmentally and socially responsible operators, there will be impacts that escape and are not accounted for, but which cause local damage and reduced well-being. So despite the fact that rules exist for environmental management and Resettlement & Rehabilitation (R & R) for resource developers, despite the existence of socially responsible packages by companies, States and local governments need to have access to funds to address social impacts and rehabilitate environmental damage that no one takes responsibility for, the residual impact.

The management and distribution of royalties and of payments for forest clearance that are made are not clear. Since minerals, oil and gas are finite resources, the State need to be able to provide for sustainable development of the local area once these resources are depleted. This can be either through investing in new human skills, or creating new economic opportunities for the people of the State. This argument becomes even stronger for the people in the mineral producing region, as their lives are changed, positively and negatively, through the new developments. This goes beyond just closure planning for oil and gas companies. It involves a State responsibility to plan for this time.

Failure to have explicit and fair compensation to project affected people and to resource bearing States, and poor management of the revenues or compensation payments collected by the State creates a sense of disadvantage and unfairness at various levels. Resource based conflict both at the local level as well as the Union-State level can well destabilize the federal and political order, if States and local communities begin to feel that they are getting a raw deal relative to those who are benefiting from development of the resources that belong to the State. Evidence of political protests around the unfairness of rent distribution in resource projects is already common. There already is a rapidly increasing resistance of people who have been displaced and stand to be displaced from development projects. The sense of unfairness involved in the absolutely asymmetric distribution of benefits and losses from such development and the failure to address this–frontally will only lead to greater protests.
Although externalities created by way of mineral and hydrocarbon development are mostly region specific, there are certain externalities, especially in the long run, which have a much broader scope extending to national and international levels. One such impact could be in the form of Climate Change. Methane emissions from coal mining, mine fires etc. entail high GHG emissions. Since the impact of climate change is bound to spread across interstate borders, it becomes a national problem rather than local. Resource statism/regionalism can greatly complicate responses to climate change. While national Govt(s) may want a reduced production of a carbon emitting resources, e.g., coal, state and local Govts. may not agree, as it will affect employment, revenues, investments etc. Climate change policy arguments may then morph into debates over regional distribution of wealth and resource use, rather than reducing GHG emissions and may lead to Center-State tensions.

Conclusions
Natural resource endowments will only convert into wealth for the States and for India as a whole, when growth based on such resources, and the governance of their development is designed to be inclusive.

Balancing national and resource rich states’ interest
As the Sarkaria Commission commented in the case of Centre-State relations in the minerals context:

Neither the Union nor the States have questioned the competence of one another. The dispute is only regarding the manner in which these powers should be utilized (13.5.11)

Further,

The controversy is therefore, not of legal interpretation of their respective jurisdiction, but one of evolving an understanding in regard to the extent to which these sources of revenue can be exploited keeping in view the overall national interest. (13.5.12)

The key to interpreting this statement in the spirit in which it was intended, lies in the definition of national interest and in operationalizing natural resource federalism. Part of the current tension that is evident in the Centre-State relations on this score is that national interest seems to have been understood as mostly being “in the consumer interest”. These resources, however, are seen as sources of wealth or revenues for the resource bearing states. Perhaps if “national interest” were to be redefined as also to include producer state (and project affected people) interest, we have may have a more equitable and acceptable policy that will benefit both producers and consumers.
An argument is made in the literature that federations should ensure that the benefits of natural resources be distributed to other states, as this a key cause of regional disparity. But if we examine the economic status of resource bearing states in India, the majority of the states rich in mineral resources are way below the national average on many economic indicators such as fiscal deficit, revenue deficit and per capita NSDP. At this point in time, therefore, there may be a case for reducing regional disparities in India by actually giving more powers to the States to use the minerals as revenue and development handles. The control of the Centre over States in resource development is in place in order to ensure that resources are used in the national interest. While this is reflected in the fact that regulation and control over the major minerals needs to be vested in the Centre, as discussed earlier, the control over decisions that relate to revenue augmentation for the States should be by an independent body, such as the Finance Commission or some other third party mechanism, that is neither linked to the Centre or the States.

Addressing Externalities

Compensation and revenue sharing involves clearly going beyond just resource bearing states, to the people of the state, and more so to the project affected people. Payments need to go beyond being just for resource use and for incremental costs to include both a share in economic rents, as well as in sharing of project benefits. Involuntary displacement related to resource development, for example, cannot be compensated by just money payments, a these are one off payments, and fail to take account of the sense of deprivation that grows on seeing the gains to the “other”. Development of extractive resources involves a finiteness and a time of closure. Royalty payments to governments are expected to reflect both use and depletion factors. We would argue that local people should have a share in royalty payments, not directly, but through special dedicated expenditure programmes from this share, that is aimed at re-skilling them. The resource development process involves profound changes in the lives of people in the resource bearing region. A whole generation unlearns its skills, its life world changes, it gets dependent on the resource development. At the time of project closure, if adequate planning has not been put in place, locals are just expected to go back to whatever lives they led, with few opportunities now that their key resource is depleted, and their traditional occupation prior to the resource development is lost to them. This gives local people a moral right to a share in the depletion component of the royalty payment.

Resource funds or foundations are good examples of public-private arrangements to manage resource revenues. While the former can be used to convert resource wealth into financial assets, the latter lend themselves to investment in human and community capital when
funds are earmarked for purposes of skill building and diversified development. The work of foundations should be linked to the larger development plans of the area or region. These need to be multi-stakeholder, and include not only local government bodies, state government representatives, local communities, experts, but also the industry to ensure accountability and transparency. The funding for such a foundation can be based on a share of the royalty payments with matching grants from the Centre to reflect the depletion aspect of resource development.

States that hold forest areas in excess of the national average of 33% and are also foregoing rights to resource development on account of forest or “no go” areas should be compensated through special Finance Commission provisions.

**Rights and Responsibilities of States, local governments**

To strengthen resource federalism, we would argue, requires more decentralization and clarity on Central, State, and Local roles in resource exploitation to ensure speedier processes, greater transparency and accountability. Institutional strengthening is key to reduce benefit capture by elites, and to address externalities at local levels. Bestowing states and local governments with the rights on their resources should also be in proportion with their capability to manage their resources in a sustainable manner. The states should be enjoined with a duty to have adequate mechanisms in place for using the funds to deal with the adverse impacts of mining on both the environment as well as people. Management may often be inadequate, either because of corruption, low accountability, and/or low capacity to implement activities that benefit the local people or redress the costs imposed by resource development. So delivery and delivery practices become key to meeting distributional objectives of a federation.

To conclude, “National Interest” in the context of minerals and hydrocarbon development should reflect a concern with the business of mining and national resources security interests but with a clear focus on rights of local people, communities; the proactive avoidance of negative environmental and health impacts and the creation of sustainable income streams for the mining region from a depleting resource. An integrated resource policy needs to be people centered; have a “representation strategy” that incorporates multiple dimensions of resource valuation of key groups; the rights and responsibilities of the various stakeholders should form the underlying ‘perimeter’ of planning; the ‘Criticality’ of some resources in terms of uniqueness and future uses has to be acknowledged; This is especially important and urgent as the National Mineral Policy 2008 provides security of tenure to the prospector to obtain mining leases in areas prospected by him. Hence there
is need to legislate or place critical areas that host entities of incomparable value (EIV), as “no go” areas prior to giving out prospecting licenses to ensure that the economic value does not trump the non-economic value of other entities in the region. Policy should also recognize role and value of land and share project benefits with owners, beyond compensation for replacement value of land.

**Recommendations**

1. The control over decisions that relate to royalty and other revenue issues for the States should be by an independent body, such as the Finance Commission or some other third party mechanism, that is neither linked to the Centre nor the States.

2. Compensation and revenue sharing involves clearly going beyond just resource-bearers states, to the people of the state, and more so to the project affected people, who need to have both restitution and benefit sharing in the projects.

3. The finiteness of natural resources and the fact that in specific locations, they will not be available in the future, while at the same profoundly changing the lives of local people during their development cycle, gives local people a moral right to a share in the royalty that the state receives.

4. There is need for greater transparency in the management and distribution of royalties and in the use of the funds generated through payments for forest clearance.

5. Resource foundations are good examples of public-private arrangements to manage resource revenues. The work of foundations should be linked to the larger development plans of the area or region. These need to be multi-stakeholder, and include not only local government bodies, state government representatives, local communities, experts, but also the industry to ensure accountability and transparency. The funding for such a foundation can be based on a share of the royalty payments with matching grants from the Centre to reflect the depletion aspect of resource development.

6. There is need for free, prior, informed consent: (Source: ethicalfunds.com) where consent must be freely given and not coerced, and it must be obtained prior to significant project decisions; Companies and governments must acknowledge that communities have the right to withhold their consent; Com-
Communities must be fully informed, with access to accurate and comprehensive project-related economic, social, and environmental information; Companies must also provide communities with time and access to the technical expertise necessary to acquire a complete understanding of project impacts and benefits.

7. Most mining takes place in pristine or tribal areas, is disruptive of human life and settlements, and has severe environmental/ecological impacts. These impacts must be minimized by adopting good practices followed elsewhere in the world. Good practice mining is needed to reduce the environmental footprint of mining to where it is absolutely necessary. Environmental rules need to be enforced to ensure that this happens and where environmental degradation takes place, remediation is put in place effectively.

8. The recently announced National Mineral Policy 2008 needs to ensure that a sustainable development framework is in place before any major new mining activity is undertaken. To address these, there is need of a framework that sets out the following: (a) Clear roles and responsibilities for actors – governmental and non governmental and a process for responding to these challenges and concerns; (b) An agreed set of broad principles for the industry; (c) An integrated set of institutions and policy instruments to ensure fair R & R policies, minimum standards of compliance as well as responsible voluntary actions; and (d) Verifiable measures and tools to evaluate progress and foster consistent improvement. Such a framework needs to respect “no go areas” and ensure that people in mining areas affected by the project have a share in the project.
1. Introduction

The Indian Constitution originally envisaged two tiers of governance: one at the level of the Union and the other at the State level. From the functional viewpoint, this two-tier structure was meant to be a dynamic process, “constantly striving for change in consonance with the changing socio-economic conditions and the state of knowledge” (See introduction to the Sarkaria Commission report). It is in this spirit that a third tier was formalized with the 73rd and 74th amendments, albeit, as has been documented, in a somewhat limited sense.

Within the context of this tiered governance structure, this paper examines newly emerging issues relating to conservation and development of natural resources in the context of agriculture, infrastructure creation and forests. In particular, issues relating to land rights and acquisition attain special significance in the course of the new trends in agricultural policy and the large scale development of infrastructure projects in the country. The paper also takes a re-look at the evolution of environmental policy in the country. In all cases, the objective is to determine whether any underlying trends in the evolution of policy in these sectors have implications for Centre-State relations in all their different ramifications.

To recapitulate the current constitutional provisions, agriculture has been placed in the State List as Entry 14, though some agriculture related items appear in the Union and Concurrent Lists. Forests were placed originally in the State List. The Forty Second Amendment to the Constitution (1976) transferred it to the Concurrent List (Entry 17A of List III).

2. The changing focus of developmental policy

A review of the last sixty years or so with respect to approaches to development and the relative significance of different levels of governance of natural resources indicates the following phases of transition in Indian economy and society:
a. The Fifties and Sixties were the decades in which national development and self sufficiency received considerable emphasis; a broad framework of division between different levels of governance was set up. At this stage in the development of the economy, natural resources were viewed as resources mainly for use, except in the context of wildlife, national parks and perhaps, to a limited extent, forests. Conservation was mentioned as an objective of policy in these two instances.

b. From the mid-sixties came the Green revolution era in agriculture during which the focus was on increasing production. The euphoria over self-sufficiency pervaded and issues of sustainability did not get much attention. After the Forest Conservation Act (FCA) of 1980, a degree of emphasis on conservation together with centralization of decision making vis-a-vis forest conversion for other use also took place.

c. The late eighties and early nineties witnessed the emergence of stakeholders’ voices at local levels and an understanding of wide differences between interests of different groups. The outcome of these trends is that today, civil society has an emerging voice even if it is divided and somewhat confused.

d. It is important to point out that several pieces of legislation undertaken within existing structures have taken note of the changes referred to above. A third tier of governance was formalized way back (though in a limited manner by the Panchayati Raj Act (73rd Amendment). In more recent times, the Right to Information Act (RTI), and the Scheduled Tribes and Forest Rights Act have in different ways resulted in recognition of diversity of interests within our polity. The NREGA altered the implications of the Minimum Wages Act (1948) which had existed for a long time. A new approach to labour in rural areas including agriculture. All this can be said to mean the introduction of participatory governance in a limited way.

3. Agriculture in India: Concerns, the way forward, and implications for Centre-State relations and Decentralisation

The deceleration in growth rates of agriculture seen since 1994-95 has been a source of concern. Such a deceleration in growth of agricultural output had not been witnessed for such a long period. Some would interpret this as the visible face of the long overseen and neglected issues with respect to management of land and water in a sustainable manner. The Hanumantha Rao Committee (2008) identifies degradation of the natural

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19 See Prakash Kashwan and Viren Lobo (2008)
20 Report of the Steering Committee on Agriculture and Allied Sectors for formulation of the Eleventh Plan (2008)
resource base, lack of adequate incentives and institutions and rapid and widespread decline in ground water table threatening sustainability as causes for concern in the context of planning for agriculture in the Eleventh Plan.

Partly as a consequence of this understanding, one of the significant initiatives of the Eleventh Plan has been a focus on rainfed areas with watershed development as one of the focal points. Further, the NREGA stresses linkages with local water and land based programmes and trying to ensure convergence between diverse departments and agencies in the course of its implementation. Convergence across government departments in the interest of integrated management of land and water is one of the new initiatives for increasing agricultural production in the next phase. This has led to the adoption of local level approaches including the ‘watershed’ approach. What does this imply for new institutions for governance?

3.1 Integration with watershed planning: Institutional Change for watershed and “watershed plus” approaches:

The focus on rainfed area development and extensive funding for watershed based resource use creates the necessity to bring about institutional change which incorporates the learnings from earlier implementation efforts. Additionally to watershed management there is need for watershed plus interventions such as input supply, value addition of crops, credit and market linkages etc. integration of ‘on-farm’ and ‘non-farm’ activities. There is the need to raise the watershed agenda in planning for subsistence livelihoods to a market linked inclusive growth. Such an agenda is indicated because studies have shown that, in its absence, the traditional watershed development activities are good for drought mitigation, at most for two to three consecutive years. In drought or even semi drought conditions for the fourth consecutive year, there is hardly any difference between a watershed and a non watershed village.

To be successful, such a Watershed Plus approach shall have to take on board all institutions existing within a certain local context. A variety of such institutions currently exist in different parts of the country. These are: watershed committees, community based organisations and joint forest management committees. It is proposed that the process of integrating different options for livelihoods such as tree crops and animal-husbandry by groups and individuals take on board all significant institutions in a certain locale. These may function under the overall governance purview of the Panchayati Raj Institutions.

The dominant institutions within each watershed then interact to determine the components of the planning for the watershed. In other words, experience has shown that panchayat bodies have not always been efficient watershed managers largely because
they are territorial units, not related to ecological entities and not technically equipped. The structure suggested for institutional integration corrects for this and makes use of the comparative strengths of all institutions while placing the PRIs in the role of legally constituted governance structures.

Another significant institution to be re-examined and perhaps brought into the fold under this institutional integration are the JFM Committees. Since 1990, JFM Committees have been set up in most states on the basis of different State Governments’ Orders. By March 2005, 99,868 committees covering 28.17% of forest area in India had been constituted. It is not possible to ignore these committees. There has been considerable criticism of the manner in which their constitution keeps power in the hands of the Forest department while transferring responsibility to the people. These committees have only partly fulfilled their mandate of carrying forward the participatory forest management agenda. Community Based Organisations for forest management perform better in many states. Further conflicts between PRIs and JFMCs are an emerging concern in some states.

The proposed institutional integration will link JFMCs to PRIs through common members and make them more accountable to representative bodies, rather than Forest departments. In other words, all institutions or organisations functioning within a certain Panchayat shall be held accountable to it. To deal with overlapping areas issues, federations of panchayats need to be created as well so that this federation, if not one panchayat, deals with the watershed or the larger JFMC.

We give below an example of how such an approach works between the watershed committees and the PRI.

The watershed committee should focus on programmes for:

* ♦ Enhancing rural livelihoods through
   a) on-farm interventions such as watershed management, productivity enhancement etc. and
   b) non-farm interventions such as value addition, dairying, market linkages etc.

* ♦ Integrated planning of the catchment and command areas as per the drainage system. For this, the following steps shall be necessary: an Intensive Base line survey of
   1. Physical resources such as land, rainfall, water bodies, animal stock etc.
2. Issues – problems faced by the community vis-a-vis water availability, agriculture, fodder availability etc.

3. Property rights – actual ownership and user rights to all lands, forest produce etc.

4. Existing Institutions – affinity groups, dairy co-operatives in addition to PRIs: links between the two.

The above base-line survey should be done in co-ordination with PRIs. The same holds for preparation of Activity Maps which are now treated as one of the Priority areas for effective Panchayati Raj Institutions. These Activity Maps determine the devolution of functions clearly.

The oversight role given to PRIs in the above mentioned schema is in line with the (PESA) Panchayat Extension to Scheduled Areas Act of 1996. However, PRIs need strengthening in order to make the above possible. Some of the ways in which this can be done are listed below

1. **Devolution of Finances and Functionaries** to PRIs is necessary. Steps are being taken in this direction in some states. Kerala has shown the way to nearly 40% devolution of its Plan outlay to the Panchayats for planning and implementation. In Karnataka, financial devolution to the Panchayats is of the order of Rs. 7,500 crore per annum. There is reason to believe, in terms of commitments made by State Governments, that there will be a fair measure of devolution of functions, finances and functionaries all over the country by the end of the next fiscal year, 2007-08. Meanwhile, States that are already well advanced in respect of such devolution are undertaking reviews to further improve their patterns and content of devolution.

2. **Assignment of Functionaries**: In conformity with the pattern of devolution of Functions and Finances, the devolution of Functionaries to that level of the Panchayati Raj system to which any given activity has been assigned in the Activity Map is also called for to ensure that the devolution is meaningful.

3. **Panchayat Sector Windows in State Budgets**: Based on the Activity Map drawn up by Panchayats and in conformity with that pattern of devolution of functions, the opening of a Panchayat sector window through the insertion of an appropriate budget line in the budgets of relevant line departments of the State government to ensure the flow of funds for undertaking devolved activities to the panchayats at the level to which any given activity had been devolved.
Role of PRIs in Institutional Integration

The following guidance principles are to be followed:

- PRI as governance body
- All other institutions i.e. Watershed Committees, JFMCs, CBOs, have Panchayat members on them
- Overall coordination of activities for rural livelihoods with PRI
- Federations of PRIs to be created for watershed and any other relevant non-administrative unit levels so that activities in the entire area are covered
- PRI Strengthening necessary for such Institutional Integration

From the above, it is clear that the direction taken by ‘economic planning’ for agricultural growth at the national level necessitates a careful look at local issues from the perspective of ‘ecological and environmental planning’. A strengthening of the third tier of governance is indicated by these developments. This reinforces its significance from parallel considerations of equity and stakeholders interests, which have received attention earlier. To provide a legal framework, it is recommended that the scope of Entry 20 in the Concurrent List be extended and a new entry, say 20A, entitled ‘Environmental and Ecological Planning for natural resource use and management’ be introduced.

3.2 Demand Management as part of Water Policy and its Implications

Rapid expansion of water exploitation for surface and ground water irrigation has been the cornerstone of the relatively high growth of agriculture between the mid-sixties and the late eighties. But the possibilities of future water policy being based on supply augmentation alone are dim. The scope for expansion of surface irrigation is limited and evidence of over exploitation of ground water in large parts of the country is well-documented. At the same time, demand for water from various sectors, including agriculture itself is increasing. The prospects for increasing the growth of agricultural output at sustainable rates depends crucially on making more prudent and efficient use of water by reducing all avoidable waste and adopting measures—both institutional and economic—to get more output per unit of water used. A recent study from the International Water Management Institute (IWMI) reiterates that several aspects of demand management will have to be a critical component of future water policy. Among them are mentioned; water pricing, water markets, water rights, energy regulations, water saving technologies
One of the key recommendations is that a mix of policies centering on pricing, rationing of water and energy pricing is indicated. The appropriate mix is location specific with details needing to be worked out at sub-national, local sometimes watershed levels. It requires a paradigm shift in policy moving toward local solutions albeit with a global mindset.

Major emphasis is needed on water conservation and recharging schemes, including restoration and renovation of traditional water bodies, as an integral part of watershed development with the involvement of local communities and NGOs.

In the context of over-extraction of groundwater, the tariff charged on electricity supplied to agriculture is of the essence. Increasing these rates is an important economic instrument which successive Committees of the Government as well as independent studies have recommended. The present understanding is that this has to be done in conjunction with other measures as indicated above. Political expediency however compels state governments to move in the reverse direction as we see free power being promised to farmers. There is an urgent need to arrest this trend in the interest of long term sustainability of Indian agriculture. Currently, Taxes on the Consumption or sale of Electricity fall in the State List as Entry 53. This should be moved to the Concurrent List.

### 3.3 Evolution of Environmental Policy and its implications

The subject areas relating to environmental protection fall within the ambit of several entries in the Union and State lists. However, several provisions under Articles 251, 252, 253 and 254 give a dominant role to the central government on matters relating to environmental protection. The 42nd Constitutional Amendment (1976) inserted specific provisions for environmental protection in the form of Directive Principles of State Policy and Fundamental Duties. However, several legislations undertaken from time to time constitute the main components of environmental policy direction. These include: The Wild Life Protection Act (1972), the Water (Prevention and Control of Pollution) Act 1974, The Forest Conservation Act (1980), the Air (Prevention and Control of Pollution), 1981, The Environment Protection Act (1986). The setting up of regulatory bodies and the determination of environmental standards was one outcome of these. However, incomplete and faulty implementation has been the hallmark of environmental regulation consequently; judicial activism and public interest litigation has played a significant role in environmental protection since the nineteen nineties.

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21 See Saleth edited. (2009), Strategic analysis of the NRLP of India: Promoting Irrigation Demand Management in India, Potentials, Problems and Prospects, IWMI.

22 See Report of the Steering Committee on Agriculture and Allied Sectors for formulation of the Eleventh Plan (2008)

Aspects of the national policies for environmental management are to be found in the National Forest Policy (1988), National Agricultural Policy (2000), National Water Policy (2002) and the National Population Policy (2000). The National Environmental Policy (2006) seeks to place all these in perspective, “extend coverage and fill gaps that exist, in the light of present knowledge and accumulated experience”. It is a statement of purpose like all policy guidelines and takes account of existing state of the knowledge.

From the perspective of this paper, it is important to note that in laying down principles, which are to guide the actions of different actors in relation to the environment, it clearly states the following as principles:

“Decentralisation involves ceding or transfer of power from a Central Authority to State and Local Authorities, in order to empower public authorities having jurisdiction at the spatial level at which particular environmental issues are salient, to address these issues.”

“Integration refers to the inclusion of environmental considerations in sectoral policy making, ………and the strengthening of relevant linkages among various agencies at the Central, State and Local self-government levels, charged with the implementation of environmental policies.”

At several points in the NEP (2006), there exists a reference to the need for preparation of Action Plans on identified themes by the concerned agencies at all levels of government; central, state and local. The scheme of Centre-state relations envisaged needs to take these into account as well.

3.4 Recommendations for Centre-State Relations:

1) It is recommended that the scope of Entry 20 in the Concurrent List be extended and a new entry, say 20A, entitled ‘Environmental and Ecological Planning for natural resource use and management’ be introduced.

2) The above analysis of directions in agricultural policy, water policy and environmental policy indicate the paramount significance of the introduction of and recognition of the significance of the third tier of governance as an integral part of the federal polity. The flow of funds from state to local panchayat levels on specific heads should simultaneously be ensured.

3) To ensure demand management for water at local levels, a mix of policies centering on pricing, rationing of water through markets and otherwise,

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*See Preamble to the National Environmental Policy (2006).*
recognition of water rights, energy pricing, water-saving technologies and community organizations is indicated. The appropriate mix, both in urban and rural areas is location specific and should be worked out through the involvement of local communities and NGOs.

4. Infrastructure Development, Land Acquisition and Forest Land Conversion

India’s future medium term and long term development is critically dependent on an expansion of infrastructure, defined as roads, (including national and state highways, border roads and rural roads) railways, power and telecom related infrastructure and land for urban expansion, (including requisite water, sanitation and roads). Land, in large and small measure, is a basic input to projects in these sectors. Industry too needs land. Such projects may at times require large land areas and acquisition of these has of late become contentious. We argue in this section that the sources of conflict could be understood better with more complete information. Such information would need to relate both to the many roles that land plays in different contexts and the many sources of rights, concessions and privileges on it which exist. Further, once the issues and rights are understood, appropriate processes set in place and built into project implementation procedures unanticipated delays in implementation at later stage can be avoided. In other words, it is in the interest of infrastructural and industrial project implementation to examine the network of rights existing and their implications when land use conversion is contemplated.

In other words, people with ownership, shareholding or user rights to land need to be viewed as stakeholders in the process of development. Not doing so leaves out of the reckoning the large variety of rights in land and the regional variation in these arrangements. The hierarchy of interests in land with legal sanction (recorded from pre-independence times) ranges from rights to privileges to concessions. The Indian Constitution acknowledged, in part, these variations when Schedule V and Schedule VI designated tribal and other regions were designated as “excluded and partially excluded areas”. Similar variation exists in other regions as well. In sum, a centrally determined land acquisition process, overriding all regional differences in tenure, use and land type will simply not work. While uniformity in process is outlined, case by case implementation to account for regional variations is in order. The Land Acquisition (Amendment) Bill (2007) together with the Rehabilitation and Resettlement Bill (2007), both of which are before Parliament seek to address some of these concerns.

The broad categories of land in the country with ownership status are indicated below. It must however be remembered that in specific contexts these categories may be subject to
variation.

1. Area under cultivation usually classified as net sown area: This area has remained more or less constant at 142-143 million hectares since the 1970s; some estimates it may even have decreased in the last decade. Cultivation in the country is carried out under several kinds of contractual and ownership arrangements, many classified under the broad rubric of ‘private ownership’. However, exceptions may exist and regional variations are many. Of these, two cases which could be mentioned are: Cultivation within forest lands under historically sanctioned rights and collective tenurial forms in “excluded and partially excluded areas falling under Schedules V and VI: these may be under shifting cultivation

2. Forest Land: This is in the main under government ownership but private common and village forests exist. About 2.5 to 3% of forest area is with corporate bodies defined as ‘municipal and corporate bodies such as village panchayats’. About 75 million hectares with different kinds of forest cover, is under Forest Department ownership. These include reserve forests, national parks and sanctuaries, protected forests and unclassed forests with different kinds of tree cover.

3. Pasture and other grazing lands: These may be privately or commonly owned but user rights of different groups on these exist by law.

4. Fallows (current and other than current) and cultivable waste: Current fallows are owned by the entity owning the sown land within which they fall. However, user rights, partial or complete to all kinds of fallow land and culturable waste exist and are practiced by groups of people in different contexts and with varying mutually arrived at arrangements

5. Revenue land is usually under the ownership and control of government, usually local bodies, both in rural and urban areas

6. In urban areas, private ownership is usually specified and documented; in the land records, all urban settlements would come under the category of area put to non-agricultural use.

Infrastructural projects, in particular highways (including national and state highways, border roads and rural roads) railways, power and telecom related infrastructure and land for urban expansion, (including requisite water, sanitation and roads) create demands for one or other of these kinds of land. What are the issues to be kept in mind by developers
in such situations? The paper, in the sections to follow examines the following considerations important for developers:

a. Can and should all land required anywhere be used for ‘development’ projects? Prior rights of use for ecologically sensitive uses such as national parks and sanctuaries are recognized by policy and practice and should be respected.

b. How is multiplicity of rights on forest land to be taken into account? We could illustrate with several examples including that of Himachal Pradesh.

c. What about sources of rights to cultivated land at times within forest land? Should they too be taken into account? Here, examples from Gujarat and the North-east are focused on to.

The paper then goes on to delineate a generic process for acquisition of land which takes account of these issues and recommends taking a case by case approach to avoid counter-productive delays and legal complications.

4.1 Prior rights of non-use for ecologically sensitive areas

Ecologically sensitive areas are understood to be regions rich in biodiversity, both from the animal and plant life viewpoint. Recent advances in the science of ecology and its improved understanding reinforce the understanding that biodiverse, ecologically critical habitats be maintained in the interest of ‘life on earth’. In India, the National Environmental Policy (2006) states that these “environmentally sensitive zones may be defined as areas having ‘incomparable values’, which require special attention for their conservation”. Further, the Supreme Court’s judgment of September 2005 states, “The Court held the notion that the public has a right to expect certain lands and natural areas to retain their natural characteristics.” Such areas need to be identified and given special legal status as ‘no-go areas’ for conversion for any kinds of projects, whether infrastructural or mining or industry.

Meanwhile, certain areas within forests are designated by law as National Parks and certain others as Wild Life Sanctuaries. To begin with, National Parks may be considered as areas which are inviolate and must be kept outside the domain of conversion to any kind of use. These are understood to be regions rich in biodiversity, both from the animal and plant life viewpoint. Meanwhile, efforts could be made to arrive at more scientific definitions of “critical habitats” which are to be treated as ‘no-go areas’.

This issue becomes particularly contentious when large areas of prime forests are involved. In the context of road and rail projects, alternative routes can easily be adopted.
All road projects need to take this into account in determining their alignment. Costs may increase but that is a part of the cost of preservation of critical habitats and to be considered unavoidable.

4.2 Forest Land and Multiplicity of Claims to it

A multiplicity of claims on forest land by different stakeholders exist and are accepted by states in different parts of the country. The subject “forests” falls under the concurrent list of the Constitution of India. This means that both Centre as well as the States can legislate on it. There are Central Legislations on the forest such as the Indian Forest Act, 1927 and the Forest Conservation Act, 1980. The latter is a Central Law i.e. the States have to adopt it as is without making any changes in it. This is not the case with the Indian Forest Act as States can adopt this law and can make relevant amendments to the Act. The Indian Forest Act has been termed as a consolidation Act. Further the Indian Forest Act empowers the States to make rules under the Act on different aspects relating to forests in the State. Since forests are included in the concurrent list States can also bring in legislation pertaining to forests but the only thing which is to be taken care is that the State Act should not be in violation of any of the Central Acts.

In this context, the documentation of rights, privileges, and concessions is crucial. Further the importance, in the legal hierarchy, of such rights and privileges needs to be understood. Each of these claims entails a different nature of legal consequences and they differ in their weightage. These differences imply differential evaluation of a person’s claims differently when it comes to grant of compensation. Thus for example, a right holder is definitely placed higher in the legal hierarchy when compared to a person who has privilege over a forest land. Similarly a person who has certain concessions alone has no legal right over forest land. Sometimes the State through the Forest Department also grants certain favors of usage on humanitarian grounds which do not automatically transfer into a claim.

Further there are issues of perceptions which also shape the nature of claims. While a person may assume that s/he has a right over a forest land or its produce historically it may be recorded as a privilege. Jhum or shifting cultivation in the tribal areas, haqdar or right over bhajhar grass for ban or rope making in the proposed Rajaji National park are few cases in point.

The guidelines issued by the MoEF clarify the impact of FCA or the National Forest Policy on the recorded rights or privileges. It is stated that the provisions of the Forest

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*This section is based on S. Upadhyaya, A. Misra and Shephali Mehta (2006), a report submitted to the Committee constituted by the Supreme Court to look into issues in the conversion of forest land to non-forest uses.*
(Conservation) Act, 1980, do not interfere in any manner or restrict the Nistar, recorded rights, concessions and privileges of the local people for bonafide domestic use as granted by the State Governments under Indian Forest Act, 1927 or State Forest Acts/ Regulations. The guidelines further clarify that it has to be ensured that while allowing such rights, concessions and privileges to be exercised, the right holders do not resort to destruction of forest land. The Guidelines discourages commercial collection of forest produce including its transportation.

As regards the Protected Areas (PAs) the guidelines state that rights and concessions cannot be enjoyed in view of an order of the Supreme Court dated 14.02.2000 which has banned removal of dead, diseased, dying or wind-fallen trees, drift wood and grasses etc. from any National Park or Game Sanctuary. Whether the interpretation of the Supreme Court order is correct or not is another point of view but the significance point made is that rights and privileges generally are prohibited in PAs. This stand of the Ministry goes contrary to the existing laws on PAs. There are numerous provisions under the Wild Life Protection Act which provides for continuance of rights, rights to grazing, bonafide rights of tribal communities relating to forest produce and specified plants.

There were certain rights provided to the individuals because of the unique social or demographic conditions of the state. One of the most contentious rights is the Timber Distribution Right. As per these rights a family owning a piece of land in Himachal Pradesh is permitted to fell a tree once in every five years to build or repair a house. This Right has even been recognised and upheld by the Hon’ble Supreme Court in the ongoing Godavarman case. As this right is appended to the land owned by a family or an individual, hence it becomes pertinent to briefly discuss this right.

These rights date back to the forest settlements held in the late 19th century. Since then the Forest Department has regularly issued detailed guidelines for distribution of timber under these rights. Further, there exists diversity in the process of distribution of timber under the mechanism through out the state. This diversity is mainly because of the varied demography of the State. In Kullu the min khata holders of the land who have acquired ownership of land under the tenancy law or under any other scheme of the government enjoy the concession of getting timber for their bonafide domestic use. The timber so granted is for bonafide domestic use, which is mainly construction or repair of houses, for marriages or cremation ceremonies etc. Lahaul, one of the tribal areas of Himachal, is

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26 See Section 1.2 (iii) regarding Clarifications under “A Comprehensive Hand Book of FCA, FC Rules 2003 and Guidelines and Clarification revised as on 20th Oct. 2003, MoEF, Paryavaran Bhawan, New Delhi
27 See 1.2(3) Clarifications of application of FCA.
28 WP No. 202/1995, TN Godavarman vs UoI
29 See Sections 24(2)(c), Section 33, Chapter IIIA, Section 35(6) of the Wild Life Protection Act.
30 Order dated 12.12.1996
snow covered for about more than six months in a year and can hardly sustain any vegetation. Since Lahual is very close to Kullu hence such a diversified approach is adopted in timber distribution within this region. The reasons for diversification through out the state are quite similar.

In a similar vein, rights over Non Timber Forest Produce (NTFP) flow from the settlement record and are practiced as prescribed. The State of Himachal Pradesh has enacted few legislations and regulation on some of the NTFPs i.e. resin and some of the medicinal plants. But there is no uniform legislation on NTFPs applicable through out the State. The Acts or Regulations so enacted concentrate more on the strengthening of the state’s control on regulation of trade of such NTFPs rather than regulating the collection. The permit for movement of minor forest produce is issued by the Pradhan of the Gram Panchayat. The regulations that exist take care of trade and provide for granting of permits and licenses to deal in non-timber forest produce and medicinal and aromatic plants. The forest department has also imposed royalty fees on collection apart from the permit fees. The rights to NTFP form an important source of livelihood and thus any methodology that is developed has to take into account the volume and costs of NTFP that is harvested from forest land.

In sum, diversion of forest areas to infrastructural projects impacts the livelihoods and rights of large numbers of people. The settlements underlying these conventional uses from which the livelihoods emanate often illustrate the kind of care and attention to detail that forms the basis for some of the user rights in existence over long periods of time. They cannot be ignored easily. Doing so may have implications for social and economic well-being of the people. Section 4.4 outlines a process by which such variations can be taken account of when conversions of forest land are indicated.

4.3 Agricultural Land and Rights to Cultivation within Forests

The general perception is that most cultivated land area in the country is under private ownership and clear titles (or ‘pattas’) to such land exist. There exists extensive documentation to prove now that several lands within forest areas have been cultivated by tribals from time to time with land title having been the consequence of mandates given by tribal chieftans, at times legalized by state acts in the early years of independence. Subsequent settlements, at times, unintentionally or otherwise, allowed cultivation within forests, sometimes even reserve forest areas. At others, they left out some cultivators and these lands may be disputed in practice. Lands deemed to be forests can in fact be under cultivation.
The Indian Constitution acknowledged, in part, these variations when Schedule V and Schedule VI designated tribal and other regions were designated as “excluded and partially excluded areas”. Another very relevant case of misspecified classification is that of fallow lands falling within areas designated for shifting cultivation. “Fallows play a critical role in the shifting cultivation cycle; the productivity of such systems depends critically on the length of the fallow cycle, which allows natural biological processes to re-establish. Even when tree cover may come up temporarily on such fallows, they cannot be classified as forests. The tangible values generated by them must be looked at as part of the productivity of the systems of shifting cultivation”.\textsuperscript{31} Be that as it may, a conversion of these lands to use by infrastructure or industry related projects will need to take into account the impact on stakeholders including communities engaged in shifting cultivation.

In sum, the first step in any bid at acquiring it for infrastructural or industrial projects is a careful understanding of the different contributions of land to human well-being and the complex nature of rights and entitlements in it. Ignoring this will only open the doors for conflict and for different political groups to fish in troubled waters. And this can easily be avoided; as stated at the outset, the total demand for land by industrialization is not large.

\textbf{4.4 Procedures for Land Acquisition and Conversion from forest land.}

Two Bills before Parliament are examining the issues surrounding land acquisition and conversion and Resettlement and Rehabilitation. (R&R). The procedures they suggest, while trying to be time bound, also envisage the setting up of multiple Committees to examine rights and rehabilitation issues. These are at different levels of governance, the local, the state and the Central. While some of the committees are dispensable, we understand that the most important of these Committees is the local Committee at the project level which must ensure representation of all stake and right holders in it.

Sections 4.2 and 4.3 make it abundantly clear that this “Local Level Committee” shall need to evolve a common step by step procedure, which when followed initially and uniformly,

(a) sets in place an institution to recognize the differences it comes across at the grass roots

(b) enables adequate and timely compensation for services received by all stakeholders.

In this context, a step-by-step procedure is suggested below. It is based on that recommended by the The Expert Committee on Net Present Value set up by the Supreme Court. \[32\] Similar steps are feasible even when the area to be converted is not ‘forest’ but ‘cultivated’ land.

The NPV payment is “a compensation payable to stakeholders for diverting forest land to non-forest uses”. The NPV of a tract of forest and the claims by the stakeholders existing thereon are therefore, entirely site specific. The Committee referred to above recommended therefore that whenever a tract of forest land is to be diverted to non-forest use, the following process should be undertaken at the range level:

**Step 1:** Only lands defined as forests fall within the purview of this exercise. Taking into account the bio-physical, ecological and legal status, the first step is to ascertain if this land falls in the category of forest or not.

**Step 2:** Ask if the area proposed to be diverted contains a tract, which falls within the legal definition of “Protected Areas”. If so, in the view of the Committee, that part cannot be considered for diversion at all, under any circumstances.

**Step 3:** List the following for the area under consideration:

- Kind of forest as per classification of Champion and Seth\[33\]
- Density cover as per SFR 2003
- Main species of trees and under storey
- Altitude, slope and aspect of forest
- Soil depths, streams and water bodies

**Step 4:** From the above parameters, divide the area to be diverted into the following forest land use categories:

- Dense Natural Forest
- Lopped Dense Forest
- Open Tree Savannah
- Monoculture Plantations
- Mangroves and Coastal forests
- Snow-bound Forests

\[32\] Report Of The Expert Committee on Net Present Value Constituted by Institute of Economic Growth, Delhi as mandated by the Supreme Court of India vide judgment dated September 26, 2005 in IA No. 826 in IA No. 566 of 2000 in Writ Petition (Civil) 202 of 1995

**Step 5:** The following products and services from the land being diverted to be valued using the methodology given below: timber, carbon storage value, fuelwood and fodder, non-timber forest products and watershed services. It felt that, given the current state of knowledge these could be valued, using appropriate valuation methodologies.

**Step 6: Account for Forest Departmental costs** – These include certain costs that cannot be apportioned across different goods and services within each range including costs incurred in construction and maintenance activities and expenditure on wages and salaries. These have to be deducted from the total benefit to arrive at net benefit for the range.

**Step 7:** Calculate annual value of goods and services accruing to categories of forests listed in Step 4.

**Step 8:** Calculate NPV as present value of the net flow accruing over 20 years at 5% social rate of discount. Considering the fact that forest resources provide long term goods and services and ecosystem benefits and, interest rates in India are going down, the Committee recommends a 5% social discount rate for forest resources. The time horizon for NPV calculations is recommended to be 20 years, considering the plausible mix of species and their different maturity periods.

**Step 9:** Account for biodiversity related services at the range level based on relative weighting pattern between biodiversity and other goods and services.

The Committee recommends that NPV be revised every five years, keeping in line with the pace of change in flows of goods and services from forests.

**Step 10: Determine legal status of forests and rights, concessions and privileges of stakeholders:**—MoEF guidelines state that the provisions of the Forest Conservation Act do not interfere in any manner with or restrict the Nistar, recorded rights, concessions and privileges of the local people for bona fide domestic use as granted by the state governments under IFA 1927 or State Forest Acts/regulations, for all non-protected areas (even after the Supreme Court judgment of 2000 which restricts them in PAs). Since this method of NPV computation is for non-protected areas, the following is recommended.

Ascertain legal status of land to be diverted in accordance with site specific categories and determine rights, privileges and concessions there-on. Categories of stakeholders to whom these accrue be also identified. There is wide variation even within a state.

**Step 11: Settle rights, privileges and concessions of stakeholders:**— The diversion of forest land for non-forestry purposes is preceded by inquiry and recording of rights, privileges and concessions of all stakeholders. After the demarcation and completion of record,
the District Collector will issue a proclamation inviting claims and objections of the right holders pertaining to their rights in the said forests. After the expiry of the stipulated period, the Collector shall hold an enquiry into the rights of government and private persons at a place, which is in or close to the concerned forest. This process shall determine the rights and claims of all stakeholders. It shall also take account of special privileges and concessions, including those accorded to communities in Schedule V and VI areas.

Steps 1 to 11 complete the range level calculation of NPV and the listing of the claims of all relevant stakeholders for forests to be diverted for non-forest use.

Step 12: Determination of Compensation to major stakeholders: — locals, state forest departments and central government can then be determined as per predetermined norms. It is a general principle for sharing the NPV between different stakeholders is recommended as follows:

- Local stakeholders should get 100% of NTFP, fuelwood and fodder values; 50% of watershed services and 45% of biodiversity values
- State governments should get 100% of eco-tourism and timber values, 50% of watershed services, 90% of carbon and 45% of biodiversity values.
- National should get – 10% of biodiversity and 10% of carbon values

4.5 Management and Sharing of Compensations Received for Land Conversion or Acquisition

It is understood that whenever a permission is granted by the Government of India to use forest land for non-forest purposes, the permission is not unconditional. Quoting from the Supreme Court’s judgment of September 2005, “The Court held the notion that the public has a right to expect certain lands and natural areas to retain their natural characteristics. The Court upheld the applicability of public trust doctrine and held that it was founded on the doctrine that certain common properties were held by the government in trusteeship for the free and unimpeded use of the public.” Further the Order went on to say, “It is held that our legal system includes the public trust doctrine as part of its jurisprudence.”

The compensation be paid to existing stakeholders for the loss of their rights to the services that this forest earlier provided to them, and towards the fundamental ecosystem values, services that forests provide. It is therefore imperative to ensure a division of the total NPV among the stakeholders concerned.
However, at present, it is to be paid by the user agency into a centralized fund called “CAMPA”. The CAMPA has been created by the Government of India’s Ministry of Environment and Forests, in exercise of the powers conferred by Section 3(3) of the Environment (Protection) Act of 1986. It issued a notification on April 23, 2004, constituting the CAMPA for managing the money received on account of compensatory afforestation, NPV and any other money recoverable in pursuance of the Supreme Court of India’s order in this regard and in compliance of the conditions stipulated by the Government of India while according approval under the Forest (Conservation) Act of 1980 for non-forestry uses of the forest land.

There is an underlying basic assumption behind the operations of CAMPA at present: the environmental benefits are purely public benefits at the national level and are therefore amenable to be compensated for through a centralized, national body like CAMPA. This assumption ignores the actual dynamics of environmental benefits from forests and the fundamental rule of natural justice, which says that those who lose from an activity should be compensated for the loss on a site specific basis and on time. At the same time, the critical dependence of the livelihoods, subsistence and environmental services associated with millions of Indian citizens living in and close to forests are not taken into account, and the losses that they suffer on account of forest diversion are ignored in the current framework. The maximum impact of forest diversion is on local populations, which live near and depend on forests. The impact is even more serious where tribal populations, scheduled castes and landless are affected, as forests provide a substantial chunk of their livelihood and subsistence.

Principles of public finance and natural justice indicate that any fund created as a Special Purpose Vehicle for collection of NPV or any other compensation should ensure speedy and least cost payment of compensation to the different kinds of stakeholders. There exists extensive documentation of the delays in allocation and use of plan and non-plan outlays on the forestry sector. Funds collected under CAMPA are also underutilized, partly due to the sheer cumbersome nature of processes involved. In sum, the ill-effects and huge administrative costs of distributing centralized funds point towards the imperative for setting up a process for ensuring appropriate division of the “NPV or any Land Acquisition Fund” between tiers of governance, local, state and central.

Amounts collected in lieu of NPV or Land Acquisition Funds and other charges are to be divided between those accruing to local, state and national level stakeholders.

1. Amounts accruing as compensation to local level stakeholders are to be deposited in a fund called the **Local Forest Fund**, to be administered by the District Collector,
with due authorization by the State. The District Collector shall be responsible for transfer of the Fund to the following institutions in areas where diversion of forests for non-forest activity has taken place:

- To panchayats constituted under Part IX of the Constitution including their extension to scheduled areas in accordance with the PESA Act of 1996. This shall ensure that they are used to create and protect regeneration of natural forests and afforestation “in consonance with customary law, social and religious practice and traditional management practices”.

- To autonomous District Councils in the North Eastern states. The Apex Court has earlier expressed the view that the management of reserve forest can be entrusted to the Councils by the Governor of the state.

- In JFM areas where JFM activities are going on, NPV should be shared between the JFM village protection committees and the Gram Panchayats using the same rules as for other benefit-sharing activities.

- Panchayats and other recipient bodies in turn shall determine its sharing between the losers and to create additional eco-system valued investments on village lands.

2. Amounts accruing as compensation to the state level stakeholders should accrue to the State Government within which land diverted is located. The State shall create a separate State Forest Fund into which these amounts shall be deposited. It shall be used exclusively for plantation, protection and forest development activities (not inclusive of expenses on building forest offices, rest houses and such other administrative matters).

3. The amount accruing as compensation to the Centre may be deposited in a centrally designated fund (such as the CAMPA). This can be used by the national government to promote forestry research and development at the national scale. This shall be called as National Forest Development Fund.

A technical institution, funded by the National Forest Development Fund be created under the MOEF to conduct regular training programmes with an objective of capacity building for determining site specific NPV and other similar exercises. This institution be one which has the power to collect all necessary data and information from all sources regarding such exercises.

4. Further, amounts due as ground rent be collected by the District Collector, with due authorization by the State Government, and deposited in the State Forest Fund, on a
quarterly basis. This amount be used by the State Forest Departments exclusively for forest land conservation programmes such as soil conservation, retention check dams and such other measures as deemed fit.

5. Each of these three components of Funds sharing the compensation payments should have similar legal status as the existing CAMPA. Further, they shall be subject to audit by the Comptroller & Auditor General (C & AG). Such detailed audit is consistent with sound public finance principles.

6. In no case should the compensations collected under NPV and related payments be treated either as part of the Consolidated Fund of the Union or of the relevant State, or as Special Funds under sub-clauses of Article 371.

7. The forest departments should collect the compensating NPV on a site specific basis, and transfer the same to the three-tier Fund institutions within not more than three months. The entire matter of such transactions shall come under Right to Information Act. Hence the same should be publicly notified.

4.6 Recommendation for C-S Relations

1. Land acquisition for infrastructural projects is an overarching need of the present and a time bound process for it should be put in place. However, in the interest of the same projects, the process must take account of ground reality and rights, privileges and concessions of stakeholders under different land rights regimes. The Land Acquisition Bill and the R& R Bills (2007) move in that direction, trying to ensure that right based livelihoods are protected. Our recommendations include: Setting up of a Committee at the local level to determine these rights following due process but with prior knowledge and informed consent of all affected persons.

2. For ecologically sensitive areas, a “no-go” policy for all kinds of development or infrastructural be announced and implemented with care. To begin with, national parks be treated as such ‘ecologically sensitive areas’.

3. After the value of land acquired for infrastructural projects (convertible forest land for example is determined, on the basis of net present value of ecosystem services, appropriate parts of it be deposited in specially created Local, State and National Forest Funds. This would do away with the contentions surrounding allocations of a central fund such as CAMPA. It would also be more transparent in terms of needs for locals and state governments to know what they benefit from retaining forest lands.
5. Summing-up: Consolidated Recommendations for Centre-State-Local Relations

This paper has examined issues and concerns confronting the country and the consequent direction that agricultural, water and environmental policy points out towards in these contexts. It has also examined increasing demand for land for infrastructural and development projects in the light of diverse patterns of rights, privileges and concessions to land that prevail in different parts of the country. An attempt has been made to lay out a uniform process for land acquisition which gives due recognition to these diversities and ensures an appropriate share for stakeholders at the local, state and central levels. The major recommendations which emerge are listed below:

1. It is recommended that the scope of Entry 20 in the Concurrent List be extended and a new entry, say 20A, entitled ‘Environmental and Ecological Planning for Natural Resource Use and Management’ be introduced.

2. The analysis of directions in agricultural policy, water policy and environmental policy indicate the paramount significance of the introduction of and recognition of the significance of the third tier of governance as an integral part of the federal polity. The flow of funds from state to local panchayat levels on specific heads should simultaneously be ensured.

3. To ensure demand management for water at local levels, a mix of policies centering on pricing, rationing of water through markets and otherwise, recognition of water rights, energy pricing, water-saving technologies and community organizations is indicated. The appropriate mix, both in urban and rural areas is location specific and should be worked out through the involvement of local communities and NGOs.

4. Setting up of empowered Local Level Committees for land acquisition and R&R with representation of all stakeholders and linkages with state level committees is recommended.

5. Ecologically sensitive “no-go” areas in which land can not to be converted for use by any development project should be determined by law. For the present, National Parks can be treated as such areas.

6. National, State Level and Local “Forest and Environment Funds” be set up to facilitate retention of locally collected taxes or payments in lieu of con-
vation or conversion for accrual to legitimate stake and right holders. This would do away with the contentions surrounding allocations of a central fund such as CAMPA. It would also be more transparent in terms of needs for locals and state governments to know what they benefit from retaining forest lands.
FORESTS AND COMMON LANDS: CENTRE-STATE AND LOCAL RELATIONS
Madhu Sarin

1. Preface

The Centre-State-Local relations concerning forests and forest land management, and how these impinge on tribal areas and other common lands, are riddled with acute conflicts due to unaddressed contradictions in the constitutional, legal and policy framework. These are rooted in a history of massive misclassification of diverse kinds of land as ‘forest’ without following the due process of law, and often, even any ecological rationale; superimposition of increasingly stringent forest laws and centralised management control in tribal areas governed by Schedules V and VI of the Constitution; unaddressed anomalies between customary, state and central laws aggravated by Supreme Court orders under the ongoing Godavarman PIL; continuing conversion of non-forest common lands and customary community lands into state forests through dubious legal processes lacking transparency and local consultation, and the continuing dilution, erosion and/or deprivation of the resource and livelihood rights of local communities resulting in their progressive marginalisation and alienation. The Scheduled Tribes & Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA for short) has emerged as a legislative instrument to rectify some of the major contradictions resulting from ancestral tribal and other lands being classified as state forests. The FRA has the potential for democratizing forest governance and making it compatible with the Constitutional provisions governing Schedules V and VI tribal majority areas and the 73rd amendment. This paper is mainly concerned with the issues that involve questions of Centre-State relations and the relations between those levels and the institutions of local self-governance in the above context.

2. The Problems

♦ The Indian forestry estate has a long history, starting in the colonial period and continuing after independence, of a massive misclassification of large areas of ecologically diverse lands, including common community lands under diverse customary tenures and multi-functional uses, as government forest lands or ‘waste’ lands;

♦ This has resulted in vast areas of such lands being brought under the control of the Forest Department or the Revenue Department, riding roughshod over
Following state control, the primary focus of the government till recently was on maximizing revenue through commercial forest exploitation leading to the destruction of large areas of natural forests and the reduction of biodiversity through mono-cropping;

The emerging and well-intentioned environmental concerns since the 1980s have unfortunately taken the form of exclusionary forest and wildlife conservation, ignoring India's rich cultural heritage of community conservation respecting the vital inter-connectedness of all forms of nature, including humans, wildlife, forests, mountains and rivers;

The aggravation of many of these already complex problems by well-meant but inappropriate judicial interventions, based on inadequate understanding and poor advice, and the consequently reduced space for resolving Centre-State-Local frictions related to forest land through negotiations.

The negative impact of the above on the citizenship and livelihood rights of the people living in, or dependent on, the areas classified as forests, wildlife sanctuaries and national parks, including the non-forest areas being brought under ‘compensatory afforestation’ (CA) (and the questionable nature of that concept itself), due to the resulting de-legitimization of traditional livelihood systems;

With sixty percent of the country’s forest land falling in Schedule V and Schedule VI areas, the continuing violation of the Constitutional protection for the resource rights, cultural traditions and governance systems of tribal communities by the enforcement of contrary forestry legislation in them.

The unaddressed environmental, displacement and rehabilitation aspects of centralised diversion of forest land for major development projects;

And finally, neglect of the role of PRIs/gram sabhas/traditional institutions in local forest governance, and the State/PRI and PRI/ community relationships;

These are discussed in section 4 below.
3. Constitutional Division

With growing environmental concerns, the subject of forests was moved from the state list to the concurrent list in 1976 by the 42nd Constitutional amendment (Entry 17A of List III, Seventh Schedule to the Constitution). Till then, the states had a free hand in forest management although the colonial Indian Forest Act (IFA), 1927 provided the basis for most state forestry laws. Under the 1952 forest policy objective of bringing 1/3rd of the country’s area (2/3rd in mountainous states) under forest cover, (which incidentally has no ecological or scientific basis), many states notified large areas as forests after independence. Moving forests to the concurrent list centralised regulatory control over these lands in the hands of the centre. In 1980, the Centre enacted the Forest Conservation Act (FCA) under which states have to seek central permission before diverting any forest land for non-forestry use. This made notification of forests a one way street for the states. While it is only the states which have the power to notify any land as a Reserved or Protected Forest or a Wild Life Sanctuary or National Park, they no longer have the power to reverse the same on their own.

Despite land being a state subject, the FCA effectively deprived states of land use control over large land areas notified or recorded as forest. No provision was made to review whether all such lands were really suitable for the forestry purpose, the FCA's compatibility with Constitutional provisions governing tribal areas given that the majority of such lands are in tribal areas, or the implications for the states with larger areas (often arbitrarily) classified as forests. Consequently, the FCA 1980 has been a source of considerable conflict between the States and the Centre since its inception.

As the Sarkaria Commission was set up soon after enactment of the FCA, the change in Centre-State relations affected by the 42nd Amendment was raised before the Commission by the states. Two state governments wanted the subject transferred back to the state list by restoring Entry 19 which was deleted by the 42nd Amendment. The main complaint of the other state governments related to the restrictions imposed under Section 2 of the FCA on the executive powers of state governments. The inordinate delays in receiving Central permission for the diversion of even tiny areas of forest land needed for essential development activities was articulated as a major grievance. The Commission recommended that power should be delegated to the states to divert, to a small extent, not exceeding about 5 hectares of reserved forest lands urgently required for specific public purposes. The Commission also recommended that as a rule, the states should arrange for afforestation of an equivalent area of diverted forest land. This is possibly the basis for the Ministry of Environment & Forests’ (MoEF) current mandatory
requirement for Compensatory Afforestation (CA) specified in the Rules issued under the FCA. The problems inherent in extension of the FCA to all kinds of non-notified lands ‘recorded’ as forest or for which only preliminary notifications had yet been issued with the legal requirement of settlement of rights still to be completed, had not yet surfaced clearly.

With progressively stricter enforcement of the FCA and the Wildlife Protection Act (WPA), 1972 since then, and the Supreme Court becoming a major actor in issuing all India directives for forest and wildlife conservation under the ongoing Godavarman PIL since 1995, far more acute problems and conflicts have now become evident. The most significant among these has been the drastic impacts of this approach to conservation on forest dependent tribal and other communities at the local level, a dimension which had received limited attention in the Centre-State tussles over the FCA. Besides enactment of the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, (FRA for short) to remedy the deprivation of forest rights, the critical exclusion of local self-governance institutions from decision making related to forest land management has also been recognised. These issues are elaborated in the following sections.

4. Discussion

4.1 Extensive misclassification of diverse types of land as ‘forest’

Despite the common perception of lands classified as forests actually harbouring real forests, many such lands neither had nor can have forests. Many consist of inhabited forested landscapes under multiple uses and diverse customary as well as statutory tenures. Others consist of lands ecologically incapable of supporting forests such as alpine grasslands above the tree line and snow covered peaks. This is because the classification of land as forests has been the outcome of two major historical processes.

During the colonial period, while valuable natural forests were notified as Reserve Forests (RF) for commercial exploitation, vast areas of both cultivated and uncultivated commons were declared state forests not because of the quality of forests they harboured but as a means of asserting state proprietorship over non-privatised lands. Many such lands were also labelled ‘the wastes’ mainly because they did not yield land revenue. Declaration of these lands as wasteland or state forests was done without any ecological surveys or settling the rights of their pre-existing users and occupants. During the survey and settlement of revenue villages, however, significant areas were recorded as nistari,
gramya, khesra, etc., forests for meeting the villagers’ bona fide needs. In undivided Madhya Pradesh, for example, at the time of independence, 94,78,000 hectares consisted of such common lands and forests in which the villagers had extensive recorded common property rights (Garg, 2005).

Post-independence, the net area of state forest land increased by 26 million ha between 1951 and 1988 (from 41 million hectares to 67 million hectares), largely as reserve forests (RFs) in which there are limited or no rights (Saxena 1995 & 1999). This was done by ‘vesting’ in the state diverse categories of non-private land of the ex-princely states and zamindars by a stroke of the pen without surveying their vegetation/ecological status, and declaring them reserve, protected or ‘deemed’ state forests irrespective of their existing users or uses. In Orissa and Madhya Pradesh, an amendment to the Indian Forest Act (IFA), 1927 in the form of Section 20A was used to circumvent the requirement of settling pre-existing rights by declaring the vested forest lands as ‘deemed’ Reserve or Protected Forests. However, in each case it was mentioned that such declaration (as Reserve or Protected Forests) shall be subject to recognising the existing land rights and usage customs of individuals and communities.

4.2 The legal requirements for notifying forests

This post-Independence expansion of the national forest estate was done using the Indian Forest Act (IFA), 1927. Chapter II to V of IFA clearly provide that no forest or land should be so notified unless the existing rights of individuals and communities have been fully enquired into and taken into account. Sections 3 and 29 allow only lands that are government property or where government has some proprietary rights to be declared PF or RF. Sections 7 and 29 require an inquiry into pre-existing rights of villagers before such declaration. Sections 6, 21 and 31 specify that a vernacular notification of intent is essential. All these sections were violated in the creation of new reserve and protected forests in most tribal areas after independence (and in many areas even before independence).

4.3 Transfer of common lands to Forest & Revenue Departments as State property

With the abolition of tenurial intermediaries and land reforms after independence, the record of rights created during the pre-independence land survey and settlement operations carried out by the British and Princely rulers in the plain areas were used to formalize the land rights of settled cultivators. However, village forests and common lands, with extensive recorded rights were simply ‘vested’ in the state and reclassified as ‘na-
tional' forests. Diverse types of common lands and community forests, recognised even by the British, were delegitimized in the process. These were either handed over to the revenue or forest departments fairly arbitrarily, converting both into huge bureaucratic edifices. Both departments have evolved a plethora of laws, records and regulations to govern their respective land and forest estates. Large land areas which are forest lands today were earlier revenue lands. In Orissa, almost half the total legal forest land still remains with the Revenue Department and is recorded in revenue records as different types of village forests. In addition, the records of both departments are in a state of spectacular disarray (Garg, 2005).

Owing to both practical difficulties in taking into account the different types of land tenure records at the time of the ‘vesting’ of private forests in the state, as well as the fact that in many cases there were no proper land survey records (especially in the erstwhile Princely states), the forest settlements in them, in particular, are far from being completed\textsuperscript{35}. These settlements are also characterized by serious deficiencies in process and recognition of pre-existing rights. Orissa’s Board of Revenue simply decided to not record the rights of the state’s large population of shifting cultivators, leaving them deprived of legal rights till today.

While Zamindari abolition freed tenant cultivators in the plains from landlord oppression, declaration of zamindari forests as state forests often illegally deprived them of their community forest rights. In poorly surveyed hilly forested landscapes, it threw millions of predominantly tribal forest dwellers in the clutches of a far more powerful (and oppressive) Zamindar – the Forest Department, which today claims ownership and/or management control over 23% of the country’s territory. Through the above processes, large numbers of the most vulnerable Scheduled Tribes (STs) and other forest dwellers were disenfranchised of their customary resource rights without even their knowledge. Even in areas with good records of rights, the wholesale re-classification of legally recognised community lands and forests (including grazing/pasture lands) into ‘national’ forests delegitimized access to critical livelihood resources for local communities leading to increased poverty and perpetual conflict with forest departments.

Thus overall, through the ‘vesting’ of the non-private lands of Princely states and intermediary tenure holders in the state after independence, lands with a complex diversity of customary and legal common property tenures and land uses were converted either into revenue ‘wastelands’ or state forest lands and replaced by centralized management by large bureaucracies. Forest boundaries were arbitrarily defined with poor co-relation with the ecological characteristics of the land; even legally recognised rights were eroded,

\textsuperscript{35} A major problem being encountered during implementation of the Forest Rights Act in Orissa is that the Forest Department has no maps for most Reserve Forests under its jurisdiction as these have never been surveyed.
diluted or extinguished often without following due legal process, and community resources reclassified as ‘national’ forests. State take over resulted in two critical changes in governance – 1) local users and their institutions with the maximum stake in sustainable management of common lands were divested of the authority to manage them and 2) the objective of management was changed from satisfying local needs to revenue generation for the state by a centralized bureaucracy. The requirement under Section 4 of the IFA while declaring state intention to reserve an area as forest that a settlement officer be appointed to settle the claims of its pre-existing occupants and users, was often dispensed with. Many of these lands have still not been surveyed with the land and forest rights of their pre-existing occupants and users remaining unrecognized. Large numbers were converted into ‘encroachers’ on their ancestral lands, with even their unsurveyed villages notified as state ‘forests’. In many cases, these lands are yet to be finally notified as forests under Sections 20 and 29 of the IFA. Because of this, their legal status as state ‘forests’ remains open to challenge. Despite this, over time, state forest departments have de facto extinguished the pre-existing rights of forest dwellers and established their exclusive legal jurisdiction over such ‘forest’ lands.

4.4 The 1952 Forest Policy and Commercial Forest Exploitation

The 1952 national forest policy reflected a contempt for local rights and livelihoods by stating that "the accident of a village being situated close to a forest does not prejudice the right of the country as a whole to receive benefits of a national asset." (cited in Saxena, 1999).

The post-independence policy of commercial forest exploitation for industry and urban markets changed the nature of the forest itself through replacement of natural vegetation by commercial plantations, further reducing forest based communities’ access to forest resources while simultaneously destroying rich biodiversity under the rubric of ‘scientific’ forest management. During the 1970s, even important NTFPs were nationalized. In 1976, by when most natural forests had been exhausted, the National Commission on Agriculture (NCA) announced that “Production of industrial wood would have to be the raison d’etre for the existence of forests.” As pointed out by Saxena (1999), “the entire thrust of forestry during the first four decades after Independence was towards the production of a uniform industrial cropping system, created after clear felling and ruthless cutting back of all growth, except of the species chosen for dominance.” Forest Development Corporations set up for raising commercial plantations turned themselves (in the words of Dr. Salim Ali and Mrs. Indira Gandhi) into Forest Destruction Corporations and clear felled huge tracts of rich natural forests without ensuring their replacement. Forest based industries were made

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36 In Andhra Pradesh alone, over 100,000 ha of tribal lands were notified as RF under section 4 of the IFA over 2 decades ago for which settlement officers have been appointed only recently for settling the rights of their pre-existing occupants and users.
available bamboo, or huge trees for pulpwood, at throw away prices and promptly exhaussted these resources. Forest departments did not spare even the sacred groves protected by communities since generations. Plywood industry was provided access to giant wild mango trees, which yielded fruit famous for pickles worth hundreds of rupees every year for local communities, for as little as sixty rupees. (Gadgil, 2008).

While seriously undermining their livelihood systems, this brought local communities in perpetual conflict with forest departments. A wave of protests in Uttarakhand (the Chipko movement), Bastar, Jharkhand and other areas against commercial fellings and replacement of natural forests by monocultural plantations swept the country during the 1970s.

4.5 Environmental concerns accompanied by centralization of control from the 1970s

Growing environmental concerns from the 1970s led to 2 new Central laws.

4.5.1 Wildlife (Protection) Act, 1972 and declaration of Protected Areas (PAs)

The Wildlife (Protection) Act (WPA), 1972, and its subsequent amendments require all legal and customary rights in national parks to be extinguished while severely restricting them in wildlife sanctuaries.

Besides importing the alien exclusionary approach to wildlife conservation, the WPA is remarkable for the unfettered powers it vests in wildlife authorities to declare ‘any area considered necessary’ as a Protected Area (PA) without any process of public consultation, or giving the people likely to lose their rights an opportunity to file their objections. The initial Act did not provide for any settlement of the rights of PA inhabitants. A 1992 amendment rectified this by providing for a preliminary notification to be followed by a final one after rights had been settled. However, a further amendment in 2003 effectively negated this by empowering PA managers to stop the exercise of rights from the day of the preliminary notification by providing alternatives till rights are settled. With little awareness among forest dwellers about provisions of the law, the inaccessibility of judicial recompense for the average non-literate villagers living in such areas, combined with the immense powers and authority enjoyed by forest officials, there has been de facto illegal extinguishment of even legally recorded rights in most PAs from the day of the initial notification. To date, the settlement of rights envisaged in the WPA has not been done in over 60% of protected areas.

An estimated 3 to 4 million people living within PAs have been subjected to the most extreme and illegal, deprivation of their development and resource rights by the manner
of implementation of the WPA. Recent Supreme Court orders have made it next to impossible for the affected people to seek any legal remedy as all decisions related to PAs must now be approved by the Supreme Court as well as by the National Board of Wildlife.

4.5.2 42\textsuperscript{nd} Constitutional amendment and the Forest Conservation Act (FCA), 1980

The Forest Conservation Act (FCA), 1980, enacted after forests had been moved from the State to the concurrent list in 1976, made central government permission mandatory for diverting even small parcels of forest land to non-forest uses irrespective of the diversity of contexts across the entire country. Hailed by conservationists for dramatically reducing the rate of forest destruction (at least till recently), its drastic impacts in the states, particularly on the forest dwelling people at the local level, have remained unattended.

The FCA froze legal land use for lands declared ‘state forests’ through the highly deficient processes described above. Initially considered applicable only to finally notified reserve forests, over time its mandate was extended even to lands with preliminary notifications where rights are yet to be settled, in addition to ‘any area recorded as forest in the government records’. This is when the quality of government records is notoriously poor and the word ‘forest’ has been used generically in them for recording even community grazing and other common lands. Unlike the Land Acquisition Act (LAA) or IFA, the FCA does not require inviting objections from those likely to be adversely affected by it. Although the FCA has nothing to do with the settlement of rights, it brought even the slow and inefficient forest survey and settlement processes in different states to a near halt. Even the recognition of rights started being treated as diversion of forest land to non-forest uses requiring central clearance and compensatory afforestation (CA). In so doing, the FCA effectively converted several million long standing forest dwellers as illegal occupants of their ancestral lands.

4.6 Notification of additional lands as forests through Compensatory Afforestation (CA)

Adding to the acute hardship and deprivation caused by the WPA, FCA and court orders in tribal and other forest areas, additional common lands are being notified as forests under the requirement for compensatory afforestation (CA). CA is based on the simplistic premise that forests destroyed for non-forest uses can be ‘compensated’ by planting on an equivalent non-forest area elsewhere (or on double the area of degraded forest land)\textsuperscript{37}.

\textsuperscript{37} It needs to be noted that the FCA itself has no requirement for CA. The Supreme Court has now added the payment of ‘net present value’ (NPV) of the diverted forest by user agencies to the requirement of CA.
MoEF now requires that non-forest land on which CA is undertaken must be notified as a reserve or protected forest and mutated in the name of the forest department. In the process, the already depleted common lands available to villagers for meeting diverse livelihood needs, including grazing and pasture lands, are continuing to be notified as state forests. Neither the villagers enjoying customary or legal rights in the diverted forests, nor those whose common land is allocated for CA, have any say in the matter as these have largely been classified as revenue ‘wastelands’. Centrally controlled diversion of forest land thus results in dual displacement of two different sets of people from their CPRs without either being consulted, compensated or provided alternatives. Even the Revenue Department which allocates ‘wasteland’ for CA receives no compensation for the land with the user agency effectively receiving common lands free of cost. During the notification of such so called government ‘wasteland’ or even customary community land as forests, the legal procedure of settling rights laid down in the IFA is once again being circumvented. In most North-Eastern states, neither the forest nor revenue departments own much land due to the complex diversity of customary tenures governing land use and/or ownership. Several reports indicate that customary community lands are being converted into reserve or protected forests under the requirement for CA without either informing or obtaining the informed consent of the tenure holders in total violation of the law.

The notion of compensatory afforestation is also related to the 1952 forest policy objective of bringing 33% of the country’s geographic area under forest/tree cover. It needs to be noted that there is no scientific or ecological basis for this objective. Those drafting the 1952 forest policy had arrived at this ad hoc figure on the basis of the forest cover existing in many of the western countries. The 1988 forest policy retained this objective without reviewing its basis. The result is that it has become a pillar of the country’s land use policy without any consideration of its impact on the availability of land for other uses. Thus, to achieve the 33% tree/forest cover target by the end of the 12th Five Year Plan, MoEF plans to ‘afforest’ about 43 million hectares of land. Out of this, only 5-6 mha are available within existing forest land. The remaining 37 mha to be targeted consists of ‘cultural non-forest wastelands’, Panchayat lands and large areas of assumed to be ‘abandoned/highly degraded shifting cultivation lands’ primarily in the north-east (MoEF presentation to the CCSR on 15.1.09). No consideration is being given to the impact this huge land use change will have on local livelihoods and rights or to the fact that these lands in the North East are under constitutionally protected customary tenures. Despite the increasing conflicts caused by displacement for development projects, the unquestioned assumption is that land under other uses may continue to be reduced to maintain the existing area of forest land.
The very notion of compensatory afforestation as currently practiced and the forest policy objective of 33% tree/forest cover require urgent re-examination.

4.7 Impact of the Godavarman PIL

Matters were further complicated by the Supreme Court order of December 1996 under the Godavarman PIL which, in addition to non-notified lands recorded as forest in government records, extended application of the FCA even to all lands conforming to the dictionary definition of forest, irrespective of ownership. All such ‘forest lands’ now have to be managed in accordance with working plans/schemes prepared by FDs and approved by the MoEF.

State forest departments have been identifying such ‘forest like lands’ to bring them under their management control with little discussion about the legal processes to be followed, the livelihood impacts on people dependent on such lands or how to deal with the legal rights of communities in these lands under other existing state laws or constitutional provisions. Under the Santhal Parganas Tenancy Act (SPTA), 1949, for example, traditional village heads are legally empowered to settle scrub village forest lands in the name of ryots. The interim court order has effectively overruled this without the state legislature amending the law. The situation is equally contradictory in the North Eastern states where community rights and customary tenures enjoy constitutional protection. Proactive Interlocutory Applications (IAs) filed by the Amicus Curiae in the case have led to further interim court orders with drastic impact on the rights and livelihoods of impoverished tribal and other forest dwellers.

Besides staying regularisation of even eligible pre-1980 ‘encroachments’ (Order dated 23.11.2001) and de-reservation of forest land or protected areas, irrespective of whether these have been finally notified after due settlement of rights (Order dated 13.11.2000 in WP(C) 337/95), the Court has also stayed the “removal of dead, diseased, dying or wind fallen trees, drift wood and grasses, etc” from all National Parks (NP) and Wild Life Sanctuaries (WLS) (Order dated 14.2.2000). MoEF and the Central Empowered Committee (CEC) set up by the Supreme Court, interpreted this to mean that “no rights can now be exercised” in PAs and have banned the collection and sale of all non-timber forest produce (NTFP) from them. This is when only preliminary notifications declaring government intention of constituting them as NP or WLS have been issued in most cases and people have legally admitted rights in many. Ironically, an earlier order of the Supreme Court had itself ruled that exercise of rights in a PA could not be stopped till its final notification had been issued after the settlement of rights. In one stroke, between 3 to 4 million of the poorest forest dwellers living inside protected areas (PAs) since long
before their notification as forests or PAs have been deprived of access to critical livelihood resources without due legal process or any scientific studies substantiating the view that all such collection is harmful to wildlife habitats or biodiversity. In Orissa’s infamous ‘starvation deaths’ forest belt, impoverished tribals are being driven to giving their children in bondage and resorting to large scale distress migration. While the Court’s focus on holding the executive accountable for protecting forests and wildlife may be laudable, its orders have totally overlooked, and in fact reinforced, the even more grave failures of the executive in enforcing the constitutional protection to tribal rights and governance systems in the same areas. The rights and survival livelihoods of forest dwelling tribals have been severely impacted without their being represented in the ongoing court proceedings or their getting an opportunity to be heard. The CEC assisting the Court does not reflect the inter-sectoral nature of the tribal-forest interface as it has no representation of either the constitutional authority or the ministry responsible for tribal affairs, instead being dominated by members believing in an exclusionary approach to forest and wildlife conservation which has lost favour in most parts of the world. (Sarin, Lawyers collective, 2005).

Bringing community lands with diverse tenurial status and livelihood functions under the FCA’s purview due to their being ‘recorded’ using the term ‘forest’ or conforming to the dictionary definition of forest irrespective of ownership, has confused their management objectives, diluted or erased legal and constitutionally protected community rights, created jurisdictional conflicts between forest and revenue departments, panchayats and traditional community institutions, while being difficult to enforce. As pointed out by the CEC itself in it’s recommendations to the Court on how to deal with ‘encroachments’ on ‘forest’ lands, “In respect of deemed forest area, unclassed forest and areas recorded as forest in Government records, which are not legally constituted forests, the provisions under which an offence can be booked are not clear”. (pt 12 (v) of CEC recommendations for evicting encroachments, 2002).

The above court orders have also effectively negated MoEF’s 1990 circulars while making a mockery of MoEF’s flagship ‘participatory’ Joint Forest Management (JFM) programme. JFM microplans meant to be prepared with villagers’ participation now have to conform to ‘Working Plans’ prepared by forest departments and approved by MoEF.

The biggest beneficiary of the Court’s 1996 judgement and subsequent orders has been the forest bureaucracy ironically against whose mismanagement the Public Interest Litigation was filed by Godavarman with more powers to control land and forest use. Many of the interim orders of the court issued under this PIL have reshaped forest management in the country and effectively re-written the law with significant changes in Centre-State-Local relations concerning control over land and land use.
The Supreme Court orders have created an anomalous situation by extending Central control over large areas of lands in the states governed by different state laws as well as the provisions of Schedule V and VI of the Constitution governing tribal areas. Despite land being a state subject, due to lands under diverse owners, tenures and uses being brought within the extended forest boundary by the Supreme Court orders, MoEF is now responsible for enforcing their management in accordance with forest ‘working plans’ without having any legal control over them! The resulting situation is particularly bizarre in the North Eastern states under Schedule VI of the Constitution or where customary tenures and rights are protected by other state laws or other constitutional provisions. This is because most of the land used for shifting cultivation under diverse customary tenures was classified and recorded as ‘unclassed state forest’ during colonial rule for claiming state proprietorship over such lands.

The Forest Advisory Committee (FAC) constituted by MoEF for diversion of forest land to non-forest uses under the FCA has no accountability to the local people whose lands and forests it is empowered to permit for diversion. Extension of the FCA’s ambit to non-notified lands and forests irrespective of ownership has empowered the FAC and MoEF to deprive people of their rights over community/common lands classified or recorded as ‘forest land’ without due legal process without even informing them, leave aside seeking their consent or compensating them. This is a serious violation of democratic principles and federalism. While court proceedings have tended to negatively equate all references to the rights of forest dwellers with ‘encroachment’, both MoEF and the court have been increasingly liberal in permitting the destruction of rich forests and tribal and wildlife habitats for mining, industry and hydro projects (Khanna, 2008).

4.8 Dissonance between tribal and conservation laws

Due to repeated tribal rebellions against forest reservation and the establishment of intermediaries in their homelands, even the British and Princely states were compelled to grant tribal areas considerable political autonomy in continuing with their traditional governance systems. In the partially-excluded tribal areas governed by an agent of the Crown (also known as the agency areas), tribal local self-governing institutions were left fairly untouched. In the excluded areas in the north east, there was even lesser interference by figurehead representatives of the Crown and tribal chiefs or tribal councils continued to govern their people.

The Indian Constitution continued similar protection for the partially excluded and excluded areas through Schedules V and VI of the Constitution under Article 244. Any government interventions in tribal areas need to be in harmony with the constitutional
provisions and other policy directives for safeguarding the culture, resource rights and livelihoods of tribal communities. Schedule V of the Constitution provides for withholding laws considered detrimental to tribal interests from Scheduled Areas. Article 338(9) of the Constitution requires that the National Commission for Scheduled Castes and Scheduled Tribes (now bifurcated into separate commissions for SCs and STs) must be consulted by the Union and State Governments on all major policy matters affecting SCs and STs.

Yet, massive legal expansion of the national forest (and revenue ‘wasteland’) estate in Schedule V areas after independence has violated all the above constitutional provisions. Due to the poor recording of adivasis’ customary rights and tenures, Schedule V areas bore the brunt of the post independence statization spree. By extending all its coercive laws to them, the state has been the biggest violator of the spirit of the Constitution through ‘vesting’ huge areas of customary tribal lands in itself as state ‘forests’, protected areas (PAs) or ‘wastelands’, without recognizing their ancestral rights. At best, rights only over lands under settled cultivation were recognised, largely leaving out shifting cultivators and nomadic and extremely vulnerable pre-agricultural hunting-gathering communities. The poor recognition of communal tenures in Indian statutory law has decimated their economies and cultures. Instead of the LAA, IFA, FCA and WPA being withheld or adapted to accommodate the adivasis’ customary tenures and governance systems, their indiscriminate application in Schedule V areas has progressively negated even the hard fought for rights tribals had gained during colonial rule. These have been converted into fast vanishing ‘concessions’ and ‘privileges’ with even their legally recognised rights in national parks and wild life sanctuaries being extinguished illegally.

Loss of their customary resource rights, holistic land use systems without rigid forest-non-forest boundaries and a rich diversity of resource management traditions and institutions has pauperized and disenfranchised tribal communities and their being labelled ‘encroachers’ on their ancestral lands.

Most of Orissa’s ‘forest’ land, for example, lies in Schedule V areas where lands with over 10 degree slope were left unsurveyed simply because the cost of surveying them was too high. Consequently, the FD and RD ‘own’ 50 to 80% of the lands in Schedule V areas, while the vast majority of the tribals are left legally landless. Hundreds of adivasi villages on lands declared to be state forests have never been surveyed depriving them of access to basic development facilities and effectively of their citizenship and fundamental rights. A similar situation prevails in Andhra Pradesh where over 60% of Schedule V areas have been declared Reserved Forests.

As discussed above, the apparently protected Communal Tenurs under customery laws in Schedule VI areas are easily overruled by statutory laws and Supreme Court orders.
Implementation of the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (PESA) has met the same fate. PESA makes the Gram Sabha (the body of all adult voters of a self-defined community) ‘competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution’ (Clause 4d). Every Gram Sabha is also empowered to approve the plans, programmes and projects for its social and economic development before their implementation, besides having ownership of minor forest produce (MFP). PESA effectively mandates community based management of their customary forests by Gram Sabhas. Yet, due to MoEF claiming exclusive jurisdiction over forest lands, it has continued to enforce its unilateral interpretations of PESA in the absence of any other agency forcefully protecting tribal interests.

4.9 A frame for resolving tribal-forest conflicts and MoEF’s 1990 guidelines

Over the years, several government committees and commissions have expressed concern over the drastic impact of forest and land acquisition laws on the tribals.

In his 29th report (1987-89) to the President of India, the Commissioner for SCs and STs brought the disquiet prevalent in tribal-forest areas to the government’s notice and recommended a framework for resolving disputes related to forest land between tribal people and the State. This was discussed and approved by a committee of Secretaries and in a conference of state forest ministers. Based on the Commissioner’s recommendations, the Ministry of Environment & Forests (MoEF) issued a set of 6 circulars on September 18, 1990.

Only the first of these related to regularising pre-1980 ‘encroachments’ on forest lands. The second circular required resolution of disputed claims over forest land arising out of incomplete, faulty or non-existent forest settlements. Given the abysmal state of government land records, particularly for the vast areas vested in the state after independence, jurisdictional disputes between revenue and forest departments are widespread across the country. Under earlier land re-distribution policies, the Revenue Department has issued pattas and leases to lakhs of farmers on land which is also recorded as forest land in

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39 Circular No. 13-1/90-FP of Government of India, Ministry of Environment & Forests, Department of Environment, Forests & Wildlife dated 18.9.90 addressed to the Secretaries of Forest Departments of all States/Union Territories. The six circulars under this were:

1) FP (1) Review of encroachments on forest land
2) FP (2) Review of disputed claims over forest land, arising out of forest settlement
3) FP (3) Disputes regarding pattas/leases/grants involving forest land
4) FP (4) Elimination of intermediaries and payment of fair wages to the labourers on forestry works
5) FP (5) Conversion of forest villages into revenue villages and settlement of other old habitations
6) FP (6) Payment of compensation for loss of life and property due to predation/depredation by wild animals.
FD records. Instead of penalising villagers for the government’s own failures, the 3rd circular required recognition of such pattas/leases issued under due legal authority by a government department. The 5th 1990 circular required conversion of an estimated 2,500 to 3,000 ‘forest villages’, created by FDs themselves in the past for ensuring availability of bonded labour for forestry operations, to revenue villages. This has been GoI policy since the mid-1970s. On paper, their land continues being recorded as ‘forest’, on the ground, these are legally constituted villages whose residents have no titles to their land, cannot obtain domicile certificates or benefit from social welfare programmes as other departments cannot work on ‘forest’ land leaving them at the FD’s mercy for most of their basic needs.

No state government (other than Maharashtra in 2002) took any meaningful action on these circulars. Millions have remained trapped in a semi-state of non-citizenship ever vulnerable to brutal evictions and displacement without any entitlement to compensation or rehabilitation. MoEF only pursued enforcement of the circular related to ‘encroachments’ without emphasizing the distinction between ‘encroachers’ and those with disputed claims and pattas Indeed, the Ministry admitted the same in an affidavit filed in the Supreme Court in July 2004, where it stated that “the State/UT governments could not maintain a distinction between the guidelines for regularization of encroachments and the settlement of disputed claims of tribals over forest lands... the State/UT Governments have mixed up the whole issue.” Not surprisingly, all forest dwellers with long pending disputed claims have become equated with ‘encroachers’ on forest land in the public mind reflected in the vitriolic attack on the FRA by elite wildlifers and conservationists and MoEF itself. Unfortunately, the Supreme Court has displayed the same bias in the Godavarman case hearings.

Schedule V areas have suffered the most acute violation of the Constitutional protection for tribal rights and traditional institutions through the indiscriminate declaration of vast areas as state forests or revenue wastelands without proper recognition of customary tribal rights. Further notification of large tribal areas as wildlife sanctuaries and national parks through a totally non-consultative process has aggravated the problem. Instead of protecting tribal lands, both the Centre and the States have permitted disproportionate tribal displacement, largely without any rehabilitation, through land acquisition and/or diversion of forest land for large development projects. The FCA is inherently undemocratic as it has no requirement for consulting or compensating those with customary rights or dependent on forest lands prior to their diversion. Similarly, the WPA has no provision for soliciting the affected people’s views before the notification of a PA. All these have been major factors responsible for the progressive impoverishment of tribal communities and the growth of Naxalism in tribal areas.

40 Unofficial estimates suggest their number to be much larger
4.10 The situation in Schedule VI and other areas with constitutionally/legally protected customary tenures and traditional institutions in the North-Eastern states

A highly conflictual and ambiguous legal situation has similarly been created by the Supreme Court order of December 1996 in Schedule VI and other areas with constitutionally/legally protected customary tenures and traditional institutions governing tribal lands in the North-Eastern states. Extension of the FCA to all lands ‘recorded’ as forest or conforming to the dictionary definition of forest irrespective of ownership, and the requirement that all such lands must be managed in accordance with working plans/schemes prepared by forest departments and approved by MoEF has, in one sweep, diluted, confused or negated the constitutional/legal protection enjoyed by tribal lands in the region. This is because large areas of customary tribal lands in the NE, including those in the Autonomous Districts and Regions under Schedule VI of the Constitution, are also recorded as ‘Unclassed State Forests’ (USF) apparently based on the colonial Assam Forest Regulation of 1891. These lands are not legally notified as forests under the Indian Forest Act, 1927 and the Forest Department does not have either jurisdiction or control over them. In most cases, land revenue laws do not apply to them and they are outside even the Revenue Department’s jurisdiction. While constitutionally protected traditional institutions are managing these lands for diverse uses, including for shifting cultivation, the Supreme Court order now requires MoEF clearance (instead of the consent of their customary tenure holders) for diverting them to non-forest uses. Further, user agencies have to deposit funds for CA and NPV for diversion of community lands with CAMPA instead of the tenure holding communities.

This constitutionally and legally untenable situation must be remedied by clearly recording such lands as customary community lands by removing the overlapping and contradictory USF classification from the records.

Management of secondary regenerating forests in shifting cultivation fallows, included by the Forest Survey of India in it’s assessment of ‘forest cover’ based on satellite imagery, must remain with traditional community institutions as these form an integral part of the shifting cultivation cycle involving rotational land use. Enforcement of the FCA on regenerating shifting cultivation fallows implies freezing their land use for uni-functional and FD controlled forestry, effectively de-legitimization of the rotational land use based agro-forestry system of shifting cultivation. This will deprive communities of their long established livelihood system resulting in widespread hardship and unrest as shifting cultivation is intimately linked to social organisation and communitarian cultural values.
4.11 Origins of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA for short)

Origins of the Forest Rights Act lie in the injustice heaped on already marginalized STs and other forest dwellers by the increasingly stringent and one-sided enforcement of conservation laws in tribal areas. Things came to a head with MoEF’s circular of May 3, 2002 asking all states and UTs to summarily evict all forest ‘encroachers’ within 5 months citing the Supreme Court’s concern over growing forest encroachments in its 23.11.2001 order. This order only directed the Union and State governments to report the steps they had taken to prevent encroachments and removal of post-1980 ones. The ensuing spate of brutal evictions across the country, including with the use of elephants to destroy the huts and crops of impoverished tribals during a drought year, led to an uproar of protests. As the Constitutional Authority under article 338(9) for policy matters affecting STs, the Chairman of the ST Commission wrote to the Prime Minister objecting to not even being informed, leave aside being consulted by MoEF and the CEC (which had made draconian recommendations to the court for ordering eviction of forest ‘encroachers’), in a matter drastically impacting an estimated 10 million tribals. MoEF was compelled to issue a clarification order in October 2002 that the 1990 circulars remained valid and that not all forest dwellers were ‘encroachers’. Despite this, by the MoEF’s own admission in Parliament on 16.08.04, just between May 2002 and August 2004, evictions were carried out from 1.52 lakh hectares of forest land. The Court itself has remained silent on the issues of disputed claims over forest lands and non-recognition of rights while staying the regularisation of even pre-1980 occupation of forest lands.

In February 2004, just before the last parliamentary elections, MoEF issued 2 new circulars: one titled “Regularisation of the rights of the tribals on the forest lands” which extended the date for regularisation of forest land occupation by tribals to December 1993 (instead of October 1980 under the 1st 1990 guideline) and the other titled “Stepping up of process for conversion of forest villages into revenue villages”. These were promptly stayed by the Supreme Court in response to an IA filed by the Amicus that these were a violation of the earlier court orders staying both regularisation and de-reservation of forest land. The Court’s stay on the conversion of forest villages into revenue villages is particularly ironic as this has been GoI’s stated policy since the 1970s. In its affidavit to get the Court’s stay vacated, MoEF admitted that during the consolidation of state forests “the rural people, especially tribals who have been living in the forests since time immemorial, were deprived of their traditional rights and livelihood and consequently, these tribals have become encroachers in the eyes of law” and that “It should be understood clearly that the lands occupied by the tribals in forest areas do
It further asserted that its February 2004 circulars “do not relate to encroachers, but to remedy a serious historical injustice” and that “(this) will also significantly lead to better forest conservation”.

Although the Court is still to vacate the stay on MoEF’s February 2004 circulars, stopping evictions of forest dwellers was included in the UPA Government’s Common Minimum Programme. Persistent lobbying by tribal movements under the banner of ‘Campaign for Survival & Dignity’ and other groups eventually resulted in enactment of the FRA in December 2006.

As a result of all the factors discussed above, a terribly confused and complicated situation with respect to forests and forest land exists on the ground, the resolution of which is fraught with great difficulty. A major contradiction which has developed due to the super-imposition of stringent conservation laws on lands which are not legally constituted as forest but are only ‘recorded’ as forest or conform to a ‘dictionary definition’ of forest; or which are yet to be finally notified as forest, is that large land areas which should really be under State or local control have been brought under central control due to forests being brought on the concurrent list. Further, although notification of land as forest falls in the domain of states, the States are being compelled to notify additional non-forest lands as forests under the requirement of compensatory afforestation. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 has the potential of restoring some of the misclassified land and community forests to the legitimate tenure holders provided the Central Government ensures its proper implementation by the states.

5. Recommendations

5.1 The following measures should be undertaken to remedy the large scale misclassification of diverse kinds of cultivated and multi-functional communal/community lands as ‘forests’ which has resulted in their coming under central purview through the Forest Conservation Act, 1980:

5.1.1 Ensure proper implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of forest Rights) Act, 2006 (FRA for short), in particular, the resolution of disputed claims over forest land.

5.1.2 Initiate a systematic review of all lands ‘recorded’ as forest in Government records to exclude inappropriately recorded forest land.
5.1.3 Remove the anomalous recording of customary community lands under diverse tenures and uses in the north eastern states as ‘Unclassed State Forests’ (USF) and stop the questionable preparation of forest ‘Working Plans’ for such lands.

5.1.4 Amend the FCA to restrict its application to legally notified forest land.

5.1.5 Petition the Supreme Court to review its interim order of December 1996, which extended application of the FCA to lands conforming to the dictionary definition of forest irrespective of ownership, due to the legal and jurisdictional anomalies it has generated in many areas.

5.2 There must be an explicit recognition of common property rights in forest and other common lands and compensating/replacing the same when such lands are diverted for other uses must be made mandatory. The FCA should be amended to incorporate this democratic requirement.

5.3 For ensuring the above, a Judicial Commission should be set up for undertaking a comprehensive census and recognition/recording of common property rights on all forest lands not covered by the FRA, and on other common lands (including those classified as revenue ‘waste lands’) through a transparent gram sabha based process as provided for in the FRA.

5.4 The Centre must ensure that application of land acquisition, environmental, forest conservation and wildlife laws in Schedule V, Schedule VI, and other tribal majority areas is in conformity with the constitutional and statutory protection of tribal rights and does not abridge or override that protection by undertaking the following measures:

5.4.1 Ensure compliance with the spirit of the Samata judgement in Schedule V areas.

5.4.2 Strengthen the Ministry of Tribal Affairs, the Commission for Scheduled Tribes, the offices of the President and State Governors and State Tribal Welfare departments for implementing their primary mandate of ensuring implementation of the constitutional provisions governing tribal areas.

5.4.3 Empower and enhance the capacity of gram sabhas under PESA and traditional community institutions in the North Eastern states, to manage their customary community resources (lands, forests, water) in accordance with their customs, traditions and priorities. Replace centrally sponsored schemes such as for Joint Forest Management (JFM) requiring creation of new Forest Department controlled JFM committees with ones which work directly with Gram Sabhas in Schedule V areas and existing traditional community institutions in the NE.
5.5 Replace the exclusive and segmented approach to forest and wildlife conservation by a more inclusive and holistic one that recognizes the nature-human interrelatedness. For this, forest and wildlife governance must be democratized by devolving power and authority to gram sabhas, PRIs and/or traditional institutions to function as forest and protected area managers supported by the concerned official agencies in line with the constitutional mandate for decentralization, Schedules V & VI and the FRA. There is no legal requirement that all forests must be managed exclusively by forest departments.

5.6 The current requirement of ‘compensatory afforestation’ for diversion of forest land must be urgently reviewed. While being a poor replacement for the loss of rich natural forests, CA is compelling State Governments to notify additional, already depleted, common lands as state forests.

5.7 No community lands should be used for compensatory afforestation without the free, prior and informed consent of the tenure/right holders. Management control over such lands brought under CA must remain with local community institutions in accordance with the Constitutional mandate. MoEF guidelines requiring notification of such lands as state forests mutated in the name of the FD through a non-transparent process must be withdrawn.

5.8 The first charge on NPV and CA funds should be for mitigating environmental damage and replacement of lost livelihood resources and ecosystem services in the areas where forests are diverted. A substantial part of the funds should go to the gram sabhas/traditional institutions of the affected people. The centralised control over such funds envisaged in the Compensatory Afforestation Fund Bill is regressive and should be reviewed.

5.9 Cultural and natural heritage areas have an irreplaceable value for which any NPV calculation is inappropriate. Adopting the Precautionary Principle, all such areas must be identified urgently and classified as ‘No Go’ areas where neither forest diversion nor land acquisition should be permitted.

5.10 In all interventions that have an impact on land, habitats and livelihoods, particularly of tribal communities, the principle of ‘Free, Prior and Informed Consent’ of the affected people must be followed. They must also have the right of refusal of exploitation of their resources by external parties.
References


Sarin, M. 2005a *The Scheduled Tribes (Recognition of Forest Rights) Bill 2005; Undoing Historical Injustice to Tribals*, Cover story in ‘From the Lawyers Collective’, June 2005


FORESTS AND THE CENTER- STATE RELATIONS

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Forests are a pointer to the growth of civilization. A French saying expresses it thus:

« Les forêts précèdent les peuples, les déserts les suivent »
[Chateaubriand]

‘Forests precede civilization and deserts follow’.

Forests are a vital part of civilization – and the highest form of grace that civilizations can bestow on posterity is to nurture this precious heritage.

In India, historically forests have remained one of the most important natural resources and their use constituted a major land-use. Ownership of the forests remained both with the State as well as with the people.

FOREST POLICIES AND ACTS

Forest legislation in the country has rather an unusual origin. Generally a country has a policy proclamation in the first place and then it is followed by an Act. In our case it was first the Government Forest Act of 1865 followed by the Forest Policy of 1894. This shows a kind of regulatory expediency. Of course later on this Policy was followed by the Indian Forest Act of 1927. After Independence the country came up with the National Forest Policy of 1952. The NFP 1952 provided a much wider connotation of the term forest by addressing the protective and ameliorative functions and added an important spatial dimension by prescribing maintenance of 1/3rd of the geographic area of the country under forests. The Wildlife (Protection) Act 1972 used an ecologically inseparable term ‘habitat’ to include land, water or vegetation that is natural home of any wild animal. The Forest Conservation Act 1980 categorically stated its objective for conservation of forests but has not defined the term ‘forest’. The National Forest Policy, 1988 mandates protection of forest and forest land and considers these as national assets to be managed for environmental stability, ecological balance and maintenance of biological diversity. The Panchayats (Extension to Scheduled Areas) Act 1996 provides communities with ownership of Minor Forest Products. The Biological Diversity Act, 2002 seeks to strike a balance between protection and utilization through sustainable practices for
equity in benefit sharing. The Scheduled Tribes and Other Traditional Forest Dweller’s (Recognition of Forest Rights) Act, 2006 is enacted for providing forest rights and occupation on forest lands for Scheduled Tribes and other traditional forest dwellers residing in forests for generations.

**Forests and its Implications for Center and States**

Land is intrinsically a subject of the State and not of the Center. Forests are on the land and therefore states have the basic responsibility for their management and have the prerogative to use them. Till 1976 forest was a subject on the State List and thereafter it was moved to the concurrent list of the constitution. Till then forest management was basically guided by the National Forest Policy. Before this date, the concurrence of the State Governments was required to legislate on matters relating to forests. By moving the forest to the concurrent list the center got the upper hand. The states have power to constitute a land into a Reserved Forest, Protected Forest or any other type of forest or a Wild Life sanctuary or National Park. But once having done that the State Exhausits its powers to reverse the same on its own. In order to put a forest to a non-forest use the State needs approval of the center. The center has no real role in constituting a forest. Once the land is declared as RF or PF or forest of any sort, both the State and Center have their roles in managing and nurturing it sustainably but in practice it is only the regulatory role of the center which is seen more. The FCA, 1980 has been seen as a source of conflict between the states and the center. The passing of Tribal Act, 2006 is a case in point. There is feeling that but for the forest being in the concurrent list the center could not have got this Act passed so easily. Effects of the forests are felt more at the local level and center need to take care that the states are not put in a subordinate position in issues related to forest. Center is seen by the states as road block in the development process. The FCA is said to be only regulatory and not restrictive, but there are always grievances by the states regarding inordinate delays in processing the cases. There has been some liberalization in this process but still it is not reflected as an urgency of the same measure as felt by the states.

State Governments are nearer to people. Livelihood issues are critically important. State has the responsibility for the livelihoods of its people, while the center has welfare of the people at large. This is causing conflict. Some states feel that by conserving large tracts of forests, they are sacrificing for the people of the country at large and are not being adequately compensated. We must aim at a balance between livelihood and conservation. Any legislation should take care of all the issues. In the present scenario center is seen as regulatory and policy pronouncement agency and the states feel that they are left to achieve the policy aspirations. The case in point is the Forest Policy goal of
bringing 33% land area of the country under forest and tree cover. In order to achieve this there has to be appropriate financial back up and also requisite institutions and required support.

**ECOLOGICAL IMPERATIVES OF FORESTS**

Forests provide soil and water security, ameliorate the climate and therefore, are fundamental to the quality of human life. The succinct statement of the National Wildlife Action Plan (NWAP) 2002 need only be reiterated here:

“Natural processes, forests and other wild habitats recharge aquifers, maintain water regimes and moderate the impact of floods, droughts and cyclones. Thereby, they ensure food security and regulate climate change. They are also a source of food, fodder, fuel and other products supplementing the sustenance of local communities. Natural vegetation, both forests and grasslands, are the prime conservers of soil and the providers of nutrients and humus.”

India remains at the core an agrarian economy. A number of rivers emanate in mountains and crisscross its face, quenching fields and throats. It is wishful to believe that even if the mountain ranges are denuded and all vegetation is shaved off, the water will flow unhindered in the same quality and quantity. When one speaks of water regulation, therefore, the concern is wider than biodiversity or forest conservation. The concern extends to the economy and is central to the lives of the masses. The National Forest Commission, 2006 observed:

*Water and fertile soil are the two most important pre-requisites of our food security. Both are irrevocably linked with forest and watershed conservation. The gravity and consequences of India’s water scarcity are as yet not fully realized and hence it has not yet been universally acknowledged that the greatest product of our forests - both qualitative as well as quantitative is water’.*

There is a case for forests to be treated as water reserves and developed accordingly.

**Biodiversity**

India is the seventh largest country in the world and second largest in Asia. With only 2.4% of world’s land area, India accounts for 7-8% of the recorded species of the world. Surveys conducted so far in 70% of the land area have inventoried over 47,000 species of plants and over 89,000 species of animals. Approximately, 5.2% of the total geographical area of the country has been earmarked for extensive *in-situ* conservation of habitats and ecosystems. A Protected Area network of 94 National Parks and 501 Wild Life sanctuaries has been established. The country also has 13 biosphere reserves (Arora S. & V. Ahuja,2006).
Bio-diversity conservation is a very important aspect. The central government has enacted Bio-diversity Act which in a sense is overtly regulatory. It expects biodiversity to be conserved by the local people and by maintaining the inventory of species. In this process we have to reckon with the fact that even today nearly 62% source of fuel wood and nearly 90% medicinal plants are collected from the wild. Forestry sector which is a lost refuse for biodiversity needs to be provided considerable support and finances.

HISTORICAL AND PRESENT CONTEXT

Forests have borne the brunt of the civilization definitely for the past five centuries, which got more accentuated since 1850 and still continues to be so, although there is change in philosophy and thinking about the forests and wildlife particularly after self sufficiency in food. Forests are adversely affected due to rapid increase in human and livestock population, insufficient infrastructure, inadequate investment and diversion of forestland for agriculture and developmental activities. In addition there is inadequate public awareness about multiple functions of forests, under valuation of forest and its contribution to GDP, technological weakness, insufficient funds and lack of capacity of the communities to take forward the conservation issues mainly due to livelihood issues being the paramount consideration. Sustainability of forests ecosystem is an essential component of the environmental conservation efforts and any degradation of forests will have an adverse impact on various systems such as water resources, agriculture, biodiversity, environment, climate change and human health besides the subsistence and livelihood opportunities of forest-dependent communities living in and around forests.

Writings about forests

The early Indian writings are rather scanty on the subject of forests or its management. Some detailed descriptions on the management aspect of forests, wildlife and water are seen in Kautilya’s Arthashastra, which is credited to be around 400 B.C. The origin of development of forestry as a state dominated subject is believed to have started around 543 B.C. with king of Magadh (Bihar). Subsequent to that, there are detailed descriptions of forest management during the period of Ashoka; in the writings of Chinese scholar Hiuen Tsang in the mid 7th century who wrote that major parts of the land between Varanasi and Kapilavastu were well forested. The Ain-e-Akbari indicates the awareness of commercial timber [Ghosh A.K., 1993]. Kautilya set aside forests for different purposes, namely royal hunt, abode for all animals, plantation for producing timber, bamboo and other materials. Forests were also set aside for the breeding of elephants. There was an established supervisory system in each village to look after the forests. It was envisaged to appoint a superintendent of forests who along with the forest guards and forest
dwellers would manage the forests. Tax was collected for use of forests and water bodies [Gairola Vachaspati, 1984]. It is interesting to note that after Kautilya, there has not really been any notable writing on the art and science of forest management, till the writings by the British.

**Forests in British India**

The need for consolidation of forest laws in the British period was political and economic. Provisions of the existing legislation namely the Bengal Settlement Rules 1859 and the Land Acquisition Act 1894 were inadequate to bring vast tract of forest land under the government control. Land records existed barely for 15-20% of the area in some parts of the country; part of which could have been taken over under the due powers of law. Therefore, there was need to proclaim a forest law under which forest estates could be constituted. The jurisprudence of forest law was thus based on the policy of taking over vast forest tracts. It is for this reason that the concept of *res nullius* (nobody's goods) developed by Roman lawyers was found very handy in proclaiming the right of the sovereign in all un-surveyed and un-demarcated lands and wastes. This principle further brought old hunting grounds and forests of erstwhile rulers in India at the hands of the crown as they were the *de jure* successor of the previous governments. The real task of the Indian forest law was to enable the government of the day to constitute a series of forest estates under forest department after settlement of rights and privileges of the users at large. This methodology also saw the evolution of the idea of servitudes (like easements under English law) in the domain of vast forest areas in the country. The right holders at will in India became privilege holders and later as license holders.

In the words of Chaturvedi “The foundations of the forest management in India go back to the turn of the nineteenth century when the Malabar teak and the Bengal tiger attracted the attention of the British. For long years, both were considered inexhaustible. The myth of sufficiency naturally engendered a sense of complacency. Taking a cue from their predecessors, the East India Company contended itself by declaring some valuable species like sal, shisham, teak and sandalwood as ‘royal trees’ – trees that required a permit to fell. Otherwise everyone was at liberty to fell what he liked and where he liked. The forests were regarded as an inexhaustible reserve for the extension of cultivation. It was a planter’s paradise, a hunter’s dream, and a logger’s monopoly. The notion of inexhaustibility of the forest widely held sway for about the best part of fifty years before it was dispelled.” (Chaturvedi M.D. 1961)
Forests after the Independence

Forests played a vital role in supporting the livelihood of people and also the economy of the states during at least the first 25-30 years after the independence by tiding over to some extent the food crisis in the country. It is a common knowledge that due the extremely poor economy of the country soon after independence forests and mines were the two resources which were exploited by all states without exceptions. When the country became Independent, a National Forest Policy was formulated in 1952, which a comprehensive proclamation was covering various aspects of forest conservation like reining in the indiscriminate extension of agriculture at the cost of forests, regulating forest production for industrial purposes, etc. It was also envisaged to maintain 33 percent area of the country under forests. The Forest Policy of 1952 considered forests of the country that covered diverse tracts of land. It is stated as:

“Forests in the Indian Union naturally reflect reaction to diverse range of climatic, biotic and edaphic factors, and exhibit corresponding varieties as typified by snow deserts, alpine vegetation, Himalayan conifers, subtropical and tropical deciduous forests, moist evergreens, mangroves along the deltas of large rivers, xerophytic plant communities, and sand deserts.”

In view of the growing importance of forestry, and performance of the States in this regard, the Government through a constitutional amendment in 1976 transferred the subject of forests and wildlife from the state list to the concurrent list of the Constitution. This enabled the Central Government to deal with issues relating to forestry and wildlife conservation which subjects hitherto were within the purview of the state government only. The 1980 Forest Conservation Act (FCA) anchored the conservation intent of the earlier Acts and policies. It is therefore, marked a watershed legislation that moved the concern for conservation of forests to the forefront of national interests. In a land mark judgment in 1996, the Supreme Court laid down certain principles which further strengthened the Forest Conservation Act and provided unprecedented legal status for protection of Wildlife Sanctuaries and National Parks. The 1988 National Forest Policy further strengthened the conservation goal of forest management with a strong emphasis on conservation of biodiversity and maintenance of ecological security. For the first time this policy clearly mandated that local communities would be the primary beneficiaries of forest goods and services. In a land mark judgment in 1996 the Supreme Court laid down certain principles which further strengthened the Forest Conservation Act and provided unprecedented legal status for protection of Wildlife sanctuaries and National Parks.
The forestry sector is impacted directly by the policies of other sectors such as agriculture, rural development, Panchayati Raj, education, energy, and water resources and indirectly by the policies of petroleum, chemical & fertilizers, and industry & commerce. The newly enacted Schedule Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 assigns right to protect around 40 million hectare community forest resource through village level democratic institution. The fine tuning of other forest related legislations are needed with respect to the said Act.

Forest in North-East India

The forests in the North East region are amongst the richest in biodiversity and contain endangered and endemic species of fauna and flora. The land tenure systems are unique and communities and individuals own the large majority of forests. The forests are not mapped and the politico-social system is such that if there is any doubt about the ownership of a particular piece of land or forest, the claims of the community or individual will prevail in the absence of records. About 54% of the total forest area of the region is unclassed. As it is termed as forests, the Forest Conservation Act should apply, but it is not applicable for some reason. This category of land is most vulnerable. Nearly half of the land in Arunachal is under this category.

ISSUES CONCERNING WILD LIFE MANAGEMENT

Settlement of rights within sanctuaries and national parks: Under the Wildlife (Protection) Act 1972 a State/UT government can declare its intention to constitute any area other than area comprised within any reserve forest or territorial waters respectively as a sanctuary or national park. The Act has laid down the process of settlement of rights of people residing inside and around such area intended to constitute a sanctuary. The implications are that once an area is notified under the Act, the affected people have to abide by the resource use regulations/prohibitions till the rights of all the claimants are finally settled. The livelihoods of the local people are thus significantly affected. What has happened over the years is that the settlement process in case of the majority of PAs has still not been completed. Consequently significant difficulties were created for local people as well as for the managers.

Rationalization of PA boundaries: It follows that settlement of rights would involve, though not necessarily in every case, redrawing the PA boundaries by leaving out areas that have no conservation values. Redrawing PA boundaries may also be necessary because suitable habitats have originally been left out and now deserve to be included. Thus in some cases the area might get reduced and in some cases the area might increase. The most important aspects in context of the current want of settlement of rights and as
relevant, the rationalization of PA boundaries in general across all States and UTs need consideration is that there is evidence of considerable erosion of the credibility of conservation ethos which this country has painstakingly constructed over the years.

**Declaration of Conservation Reserves and Community Reserves:** Under the WLPA declaration and management of conservation reserves and community reserves is provided. Barring very few States and very few examples there is little attempt at making use of these excellent opportunities. There is also a vital need to allay the misplaced fears about such areas in minds of the local people, vis-à-vis the restrictions applicable under sanctuaries and national parks. To strengthen matters in favour of these categories of PAs it is necessary to create a series of innovative benefits/incentives for the local people/communities through the existing programmes under the large number of government agencies that directly work for the welfare of people. Such encouragement is currently absent.

**Implementation of the Tiger Task Force Report 2005:** As a consequence to the tiger crisis in 2005, the Government of India had appointed a Task Force to go into the details of problems faced in the field. For the first time a focused analysis has been undertaken and a series of recommendations have been made in the report that is submitted by the Task Force to the GOI during September 2005. While these focus on tiger conservation, by ecological and practical implications these are most relevant to the overall practice of wildlife conservation in the country. Further the recommendations need to be viewed as applicable to the greater canvas of all PAs, if not to the recorded forests, rather than restricting their scope to the tiger reserves and forests that currently have presence of tigers in 17 States. It is felt that it would be worthwhile to consider some monitoring mechanisms via the State Boards of Wildlife for the purpose.

**FORESTS AND THE CONSTITUTION OF INDIA**

As part of the natural environment and life-support systems, forests have engaged the attention of all sections of society. The Constitution of India has given due recognition to forests and wildlife. Under Section 10 of the Constitution (Forty-second Amendment) Act 1976, amendments were made in Article 48, which reads as under:

48 A- Protection and improvement of environment and safeguarding of forests and wildlife -

‘The State shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country’.
Similarly, under Section 11 of the Constitution (Forty-second Amendment) Act 1976, a new Article 51 A under Part V-A, was added to the Constitution in 1976. This Article reads as under:

'It shall be the duty of every citizen of India - (g) To protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures'.

In addition to the above two Articles, the Honorable Supreme Court of India has also adjudicated cases concerning forest and environment under Article 14 – Equity before Law, and Article 21 – Protection of Life and Personal Liberty. Article 21 of the Constitution has provided “Right to Life”, which includes right to clean environment as a Fundamental Right. Therefore, Constitution has provided constitutional duty for protecting and improving the environment to State Government and at the same time, it has also provided fundamental duty for each and every citizen for protection and improvement of forest and wildlife.

Comments on the Concurrent List Provision: Constitution of India is normally known as federal in character. But in effect it has predominant unitary powers with some federal features. Environment, forests and wildlife were earlier part of the state list under the constitution. But 42nd Amendment to the Constitution brought these subjects to the concurrent list. Therefore, both Central Government and State Government may legislate on this subject. Much before environment, forests and wildlife were brought to the Concurrent Lists the Supreme Court of India had given wide ranging orders impacting the environment and forests sector of the country. Therefore, there are two approaches to the centre-state relation on environment and forests of this country:

♦ The first approach is based on the fact that environment and forests is a resource for the state and therefore, power to intervene primarily lies with the state government. Any intervention by the central government or its institutions would amount to interference with the centre-state relations.

♦ The second approach is based on the belief that environment and forests are in concurrent list therefore intervention by the central government or its institutions and the higher judiciaries are constitutionally correct measures not vitiating the established norms of centre-state relations.

RECOMMENDATIONS OF THE NATIONAL FOREST COMMISSION

The National Forest Commission recently reviewed forest-related policies and legislations. The Commission has given certain recommendations for sustainable development
of forests without suggesting any amendment in the National Forest Policy, 1988. The major task before the country is to rehabilitate the degraded forests and increase their productivity, augment the contribution of forests towards poverty alleviation of the people living in and around forests, and extend the area under forest and tree cover to 33%. The lack of capacity of the community and inadequate investment are the big challenges for the country.

Some of the salient recommendations of the National Forest Commission, 2006 which have overall bearing on the future imperatives of forest management are reproduced below:

[218]: The country’s forests must now be looked upon as ecological entities; as regulators of water regimes, watersheds and catchments, gene pools, habitats of wildlife, providers of the needs of the neighboring communities and as treasure troves of the nation’s natural heritage. The country’s needs of timber, fuelwood, fodder, industrial wood, and medicinal plants must mainly be met by plantation forestry and agro-forestry, which must receive much greater attention and support.

[6]: The Indian Forest Act, 1927, needs revamping, taking into account current requirements, inter alia:

a. The revised version must give emphasis to the conservation of forest lands and not only forest alone. It must address itself to the ecology, biodiversity and overall significance of forests including grasslands and wetlands and to forests as a biotic community and as a life–supporting factor to the local communities and to the populace downstream.

b. The term ‘forest’ needs to be defined for the purpose of the Act.

[191]: The traditional rights of the North-eastern people’s forest and land must be honoured. They should have the right to conserve, manage and utilize their forest.

THE EMERGING VIEW AND CORE ISSUES

It is important to have a clear picture of the ground situation. The NCF report is fairly candid on the problems of the forests and conservation of biodiversity. It can be summed up in few sentences; Over 40% forests of the country are already degraded; 72% of them have no natural regeneration; 55% are affected by fire; and grazing occurs in 78% of our forests. Furthermore, almost 40% Protected Areas are subject to traditional grazing and 45% have public thorough fare through them. Despite concerted conservation measures country has lost 4 million ha of forest land due to diversion for non-forest use, encroachments and shifting cultivation. The situation of forest records and land settlement situation across the country is not uniform and as a result forests in certain areas particularly in the North East have not been properly surveyed.
The Central Government in the past one decade has made determined efforts and sent advisories to the state governments to fill up the vacant posts of the lower cadre of forest department. For variety of reasons this has not happened. The entire country put together may have less than 2.5 lakh employees who hold the rank of the Range Forest Officers and below. It will not be a big burden on the Central Government to take care of their training, salary, uniform and other needs. The world over experience has been that although it looks attractive to hand over the management of the forest areas to the local communities but in the long run it is the state control which will ensure the long term survival of the forests.

Some other issues are discussed below:

a) Forest Conservation and Management issues: There may be hardly any state in the country which may be in the zone of comfort as regards forest management and conservation issues are concerned. In order to get at the core of the problem we may have to examine two key questions: the first can poverty and conservation co-exist and the second can forest and terrestrial biodiversity be looked at separately?

b) Socio-Political Issues: The problems being faced by the forest departments of the country are many-fold. There is heavy pressure on the forests because of livelihood needs of the people. In addition there is considerable pressure for grazing on forest lands. There is also considerable disinterest among the people regarding existing or proposed Protected Areas/Reserves. Part of the country is ridden with strife and insurgency and the law of land is practically not present there to protect the natural wealth. Encroachment on forest lands and thereby honey-combing of the areas and fragmentation of the habitats is a very serious problem. There is no political will at the state level for prevention of encroachment and there is lack of support for eviction of encroachments.

c) Financial Investments: There is tremendous pressure on forests to meet the subsistence needs of the people; global warming is a reality being experienced; glaciers are melting fast; water scarcity is becoming a recurrent phenomenon; dry land agriculture is one of the major national problems and there is steep rise in timber prices (70-80 fold increase in the price of teak wood since 1975 in Karnataka). Under such situations increasing forest and vegetation cover may be of some help. This calls for much higher investments in forests and agro-forestry and forest being treated as infrastructure.

d) Administrative Issues: Despite orders from the Central Government and also directives from the Apex Court of the country the protections of the forests still remains a major issue. On a rough estimate all cadres of protective forest staff for the entire
country may be only around 2.5 lakhs. With this man power the Forest Departments are managing nearly one–fourth land area of the country. On a very rough estimate it can be said that at least 25% of the subordinate staff positions are vacant due to various reasons. An over arching issue is consolidation of the boundaries of forest lands, its proper demarcation, availability of appropriate maps and also such issues which become a legal necessity to establish the right over the land.

c) Tenure Issues of North east: Forests in Northeastern India have separate land tenures than the rest of the country. Around 35% forests belong to the Government and the remaining is held by District Councils, village communities and by private people. There are political, social and ethnic issues impacting the society in various parts of North-East and elsewhere in India, in different ways and naturally forests also bear the brunt of it.

POINTS FOR RECOMMENDATIONS

- Having brought the forest and wild life in the concurrent list of the constitution there are certain responsibilities which the Central Government may consider to discharge. It is extremely important that appropriate monetary incentives are provided for conservation of forests, for rehabilitating the areas and for promotion of agro-forestry and also provide for training, salary etc. of the staff of the level of Range Forest Officers and below.

- The Center may consider specially providing compensation to the states which are holding large areas of forests and also to those who are managing their forest sustainably.

- There is enormous pressure on the forests of the country. And there are deeply concerning reports regarding rapidly receding glaciers and with the rising temperature due to global warming there will be further depletion of water resources and change in the seasonality of flow of rivers.

- It is extremely important that appropriate incentives are provided by the Center for conservation of forests and for rehabilitating the degraded forest areas and for promotion of agro-forestry.

- Protection of forest and wild life is a fundamental duty under Article 51 A. We may consider it to bring this as Fundamental right under Article 21 of Constitution on the principle of Public Trust doctrine. Once this is agreed, upon then subject Forest and Wild life which is at present under Item 17A and 17B in Concurrent list [Article 246] may be considered to be brought under Union list for enactment of legislation on this subject by Union.
The countries economy has been growing and therefore it is essential that the vital forestry sector and wild life is taken care of appropriately. The sector may be considered as part of infrastructure and funded accordingly. It may be worth while to create a substantial corpus from which the state governments can borrow funds for implementing their forestry related programmes.
Bibliography:


Major Interstate (Central/State) Issues in Water Quality Management
Dr. B. Sengupta

1. Water being State subject under the Constitution of India, regulation of any aspect at National level is not possible.

2. While industrial effluents are significantly regulated under the law, discharge of untreated domestic waste water continue to be the major cause of water quality degradation. The concerned municipal authorities are responsible for collection and treatment of wastewater. However, due to paucity of resources, they are not able to address this issue adequately. As per the latest report (CPCB, 2006), 423 class I cities and 498 class II towns of the country harboring population of about 206 million (as per 2001 Census) generate about 33000 million litre per day (mld) of wastewater. Out of 33,000 mld of wastewater treatment capacity exists for only about 7000 mld. It was also observed that Maharashtra, Delhi, Uttar Pradesh, West Bengal and Gujarat are the major contributors of wastewater (63%). The efforts of Government of India through National River Action Plan resulted in increase of treatment capacity. However, due to fast urbanization, increase in sewage quantity is nullifying the efforts. Thus, massive efforts are required for augmenting sewage collection and treatment facilities in the country, which needs massive investment looking to the future scenario of urbanisation. Such investment may not be possible from government's funding. Therefore, “polluter pays” principle has to be implemented in order to generate funds for massive task of sewage management in the country. States should take initiatives in this direction in order to protect our precious water resources.

3. Water demand is steeply increasing in our country leading to most of rivers dry. This is a big challenge in achieving the water quality targets in most of the rivers. Due to interstate disputes in water sharing, the problem is further aggravated.

4. Maintenance of ecological flows in most of the rivers in India is seriously affected due to interstate disputes.

5. In majority of cases, even if the MINAS is met, the targeted water quality can not be achieved due to lack of adequate dilution in the river. This leads to large interstate conflicts.
6. Lack of adequate and trained manpower in many state pollution control boards is another important problem leading to interstate disputes.

7. Interstate pollution particularly episodic pollution is a major issue in water quality degradation.

8. Lack of financial resources for effective monitoring of water resources.

9. Lack of uniform procedure for water quality monitoring and management leading to more disputes.

10. While large and medium industries have adopted adequate pollution control measures in the country, the small scale industries continues to be a big problem.

11. In case of industries like distilleries, small paper and pulp industries, drug and pharmaceutical industries, pesticides industries etc enforcement of effluent standard in some state is not up to the mark. Due to this large discharge of toxic effluents in the surface water takes place which sometimes affect the river water quality in downstream states/towns.

12. Due to lack of proper transport facilities for wastes (liquid and solid), it stagnate in the place of generation e.g. city or industrial premises leading to pollution of groundwater, which is only source of drinking.

13. Steep increase in application of agrochemicals for getting more production in agriculture leads to pollute the water resources.

RECOMMENDATIONS

1. Sewage generated in states (423 class I cities and 498 class II towns) should be collected and treated as per CPCB standard. No untreated/partially treated sewage should be discharged in river/water bodies. State may follow polluter pay principle to generate fund for sewage management.

2. States must ensure proper environmental flow in rivers so that adequate dilution is available in rivers to meet water quality criteria as prescribed by CPCB.

3. Untreated or partially treated effluent generated from distilleries from paper and pulp, dye and dye industries, pesticides which are considered highly water polluting industries should not discharge in water bodies/rivers.
4. States should prepare and implement water quality management plan to protect river/water bodies from water pollution as per guidelines as given by CPCB (www.cpcb.nic.in)

5. Major emphasis should be given to decentralized waste water treatment for large commercial establishment.

6. Rain water harvesting and other water conservation plan including waste water recycling should be given priority by states.
TASK FORCE REPORT

INFRASTRUCTURE DEVELOPMENT
AND MEGA PROJECTS
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### III Recommendations

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INTRODUCTION

1.1 Task Force 7 on Mega Projects and Infrastructure met 9 times including 2 visits by some Members to selected state capitals. The Task Force decided to focus on physical infrastructure and the enabling mechanisms that can help better resolution of Centre-State issues.

1.2 As physical infrastructure, the Task Force decided to look at the following:- Roads, Railways, Ports, Civil Aviation, Inland Water Transport, Special Economic Zones, Power, Oil and Gas, Water. We noticed that there is no uniform definition by Central government, Planning Commission, Reserve Bank of India and State governments, of what constitutes physical infrastructure. We feel that such a definition is necessary.

1.3 The Task Force looked at the following issues: Land, Rehabilitation and Resettlement, Environment and Forest clearances, Institutional Mechanisms, Regulation, Public-Private Partnerships and Viability Gap funding, and Technology and Information.

1.4 Each section has a short background on the problems of centre-State relations relating to it and our recommendations for dealing with them. In most Sections there is also an Annexure that provides more detailed background. Our suggestions range from desirable constitutional changes (very few are suggested), some legislative changes, establishing new institutional mechanisms or improving the functioning of existing ones, improving present procedures, and capacity building through augmenting skills.

1.5 We have given detailed recommendations, including innovative mechanisms adopted in some states who have been at the forefront of speedy and cost efficient implementation, and which could be usefully considered by other State governments. What struck us was that most of the problems were due many times to the absence of detailed advance planning, lack of frequent mutual consultation, unilateral decisions by the Centre, procedural bottlenecks, absence of coordinated working, and too much authority concentrated in top decision-making echelons.

1.6 We saw a real and urgent need for reviving regular meetings of the Inter Ministerial Council and its Committees, to make greater use of special purpose vehicles in new
projects between Centre and States even in the absence of private partners, and to institutionalize regular coordination meetings between concerned officials at Centre and State in the different departments concerned. We noticed that States which had strong political leadership, had created institutional structures for decision making, and provided freedom to administrators to get on with projects after they were approved, implementation was speedy.

1.7 We saw repeatedly that a major reason for poor implementation was the varying quality of the administration and the lack of well-defined accountability of individuals. We commend the Reports of the present Administrative Reforms Commission that has tried to set out an objective performance evaluation system and has made suggestions regarding promotions and incentives.

1.8 In order to ensure that work progresses according to plan on all projects, every ministry connected with any project, even indirectly, should have a website on the projects on which the progress should be recorded every month. Complete details and reasons should be given for any slippage and how the time will be made up.

1.9 It is essential that all nominees on the Boards of Special Purpose Vehicles (SPVs) should receive training on all aspects of corporate governance including essential knowledge of accounting standards.
HIGHWAYS & ROADS

Background to Centre-State issues

In the highways sector, the following factors mainly impact the execution of projects, and, consequently, are responsible either for speedy implementation or for delays:

2.1 Institutional capacity & capability of owners of projects

2.1.1 Once Phase IV of National Highways Development Programme (NHDP) is approved, National Highways Authority of India (NHAI) will have to award bids and complete construction of a total length of 54,454 km. As per the data available, only 8,488 km. length had been completed by March 2008. This means that 45,966 km. length remains to be completed by December 2015, or more than 6,000 km. every year from now. Also, as on 31.10.2008, the balance length for award of contracts was 36,351, which means that NHAI will have to award almost 7000 km. length every year for the next 5 years. This appears well-nigh impossible considering that only about 1200 km. was awarded in 2007-08. NHAI, in its present shape, is in no position even to award the projects, leave alone complete them, within the stipulated time because it does not have the required institutional capacity.

2.1.2 An Inter-Ministerial Committee has submitted a report on restructuring of NHAI and its recommendations have been accepted by the Union Cabinet on 20.7.2007. The NHAI Act now needs to be amended to give effect to these recommendations, which, inter alia, include proposals to fix the tenure of the Chairman to 3 years, increase the number of full time Members from 5 to 6 and part-time Members from 4 to 6, and creation of more posts and specialized cells. Although the recommendations are welcome, they are incomplete. Measures need to be explored to make NHAI truly independent of the Minister/Ministry/Government. Further, a transparent method of selecting the best candidates for the posts of Chairman, Members and other top functionaries needs to be evolved.

2.1.3 The institutional capacity of the Ministry of Road Transport and Highways (MoRT&H) to award projects and monitor their execution is much more limited than that of NHAI and yet it continues to function like an executive agency. This is an anachronism and needs to be done away with. The Ministry should focus only on policy and regulatory issues.
2.2 Efficacy of the enabling environment

2.2.1 An enabling policy environment and institutional framework is necessary for attracting private investment and for the success of Public-Private-Partnerships (PPPs) in the highways sector. The Central government has taken a number of steps in this direction. Standard bidding documents have been drafted; model Concession Agreement (MCA) for Public Private Partnership (PPP) in national highways and MCA for PPP in O&M of highways have been finalized; MCA for PPP in State Highways has also been finalized to act as a model for State Governments; MCA for PPP (Annuity) is due to be approved shortly; the Viability Gap Funding (VGF) window in the Union Finance Ministry has given a strong push to the success of PPP projects in the highways sector.

2.2.2 However, it is the institutional framework that leaves much to be desired. Over and above the MoRT&H and the Finance Ministry (for VGF and PPPAC), enabling policy matters are decided and coordinated by the Committee on Infrastructure, headed by the Prime Minister and serviced by the Planning Commission. Since the Committee on Infrastructure is basically an inter-ministerial body, an empowered sub-committee of the Committee on Infrastructure has been created to “formulate/review/approve policy paper and proposals for submission to the Committee on Infrastructure”. Despite this arrangement, delays continue to occur. In the wake of the liquidity crunch which emerged due to the global financial turmoil, when many bidders started withdrawing from bids due to stiff bid conditions and high interest rates, there was an urgent need to make quick changes in the bid conditions/VGF procedures. However, the structure of the enabling policy institutional framework itself became a stumbling block in quick decision making.

2.2.3 At state level, the states that have created enabling policy environment have surged ahead. Gujarat was the first state to finalize an institutional arrangement for PPP projects by establishing the Gujarat Infrastructure Development Board (GIDB) in 1995. It then followed up with a law on PPP – the GID Act – that regulates all PPP transactions. The Act also provides the mechanism for dealing with unsolicited PPP proposals viz., the Swiss Challenge Route from private parties. Gujarat also has a state VGF scheme. A Road Policy is in place and a Highways Act will also be passed shortly. Two pioneering PPP road projects – the Vadodara - Halol Road Project and the Ahmedabad – Mehsana Road Project – were completed in 2000 and 2003 respectively. Similarly, Andhra Pradesh has also formulated a Road Policy and is in the process of enacting the Andhra Pradesh Road Act. Few other states have also created PPP cells. However, in general, most states
are way behind Gujarat in creating an enabling environment and institutional arrange-
ment for PPP projects.

2.3 Operational Factors

2.3.1 Land Acquisition: This has been a major factor of delay in the execution of projects. Land being a state subject, land records are maintained by State governments and, therefore, despite land acquisition being a concurrent subject, land acquisition proceedings are controlled by State government officials. Non-cooperation from state governments, inade-
quate compensation, divergence between the provisions of the National Highways Act, 1956 (under which land is acquired for national highways) and those of the Land Acqui-
sition Act, 1894, court cases, disputes between NHAI/Central Govt. and state govern-
ments over rehabilitation packages for the displaced and also disputes between the two set of governments over the issue of compensation for State government owned land, have been the main reasons of delay on account of land acquisition. It has now been acknowledged that because of the way land transactions are taxed and recorded, under-
valuation of land has become the norm and inadequate compensation based on such undervaluation is resisted very strongly by those whose lands are acquired. Realizing this basic fact, forward looking states like Gujarat and Andhra Pradesh have modified their valuation procedures and started offering market determined compensation amounts to the landowners, leading to almost 90% of their acquisitions being carried out smoothly through consent awards.

NHAI has also moved the central government for amending the NH Act, 1956 to bring in provisions like payment of interest and solatium on compulsory acquisition of land and return of excess land to land owners. The Government of India has also introduced the Land Acquisition (Amendment) Bill, 2007, in Parliament recently, to plug various valuation/compensation/rehabilitation related loopholes in the original law. The Government has also introduced a companion bill in the Parliament – the Rehabilitation and Resettle-
ment Bill, 2007 – which details the process of rehabilitation and resettlement of the affected people. The Central government needs to push these two bills in the Parliament expeditiously so that the country can take advantage of the far reaching changes introduced by these Bills quickly. The Committee on Infrastructure should also quickly decide as to what particular purpose is served by using the NH Act, 1956, for acquiring land for national highways when a far better law (the amended LA Act) is expected to come into operation soon.
2.3.2 **Shifting of Utilities**: Even though the NHAI now compensates the State governments in full for the replacement cost borne by them, the process of shifting of utilities takes a long time and leads to delays. Sometimes the states demand replacement costs for upgraded facilities (e.g., cost for 33KV against the replacement of 11 KV lines) and such irrational demands lead to further delays. This is purely a coordination issue.

2.3.3 **Permission to cut trees standing on Right-of-Way**: This is done by the contractor after the State government issues permission to cut the trees. Delays in such permission have led to delays in implementation of projects. This is also purely a coordination issue.

2.3.4 **Environment and Forest clearances**: Unlike (i), (ii) and (iii) above where the action/permission takes place at state level, the environmental and forest clearances are given by the Ministry of Environment & Forests (MoEF), Govt. of India, and both NHAI and State governments complain that these take a long time. The MoEF has indicated that it has put in place a new set of regulations for giving environmental and forest clearances and though a certain delay is inbuilt in the procedures, proposals are not delayed at the Central government level. Though this claim may not be entirely true, an incontrovertible fact that has emerged is that most proposals, particularly for forest clearance, are delayed at the state level before being forwarded to the MoEF. This again, therefore, is a coordination issue.

2.3.5 **Clearance from Railways for ROBs/RUBs**: Expenditure on rail over-bridges and under-bridges in highway projects is shared on a 50-50 basis between NHAI/states and Railways. Not only are they to be reflected in the Rail budget but the designs are to be approved by the railways authorities. This is a constant source of delay which needs critical attention.

2.3.6 **Implementation capabilities of the contractors**: Contractors in India are still not able to mobilize resources or use best practices that cut time delays. Various instances of such contractor incapacity are available. Though Supervision Consultants are engaged for stretches under construction, the road sector badly needs an independent Regulator.

2.4 **Lack of Regulation - Post-Construction Issues**:

2.4.1 These are issues relating to the management, control and operation-maintenance of the highways and affect the 'user experience' much more than the surface of the highway. Issues like unchecked ribbon development, uncontrolled access to highways, encroachment and illegal parking on highways, unauthorized state check-posts on national high-
ways, overloading, absence of road safety measures, absence of advance passenger information system and advance traffic management system destroy all good work that might have been done in constructing the highway.

2.4.2 The basic problem here is legal-constitutional. While ‘national highways’ (Entry 23) figure in the Union List (List I of Seventh Schedule), it is the State List (List II of Seventh Schedule) which contains the entries that govern management, control and operation-maintenance – police (2), right in and over land (18), taxes on lands and buildings (49), taxes on entry of goods (52), taxes on goods and passengers carried by road (56), taxes on vehicles (57), tolls (59) and offences against laws with respect to any of these matters (64). It is easy to see that while the Centre owns the national highway stretches, it cannot control or manage them without the active support and cooperation of States. A lot of traffic related management issues are dealt with by the Motor Vehicles Act, but their enforcement is through different state authorities. The MoRTH piloted the legislation of “The Control of National Highways (Land and Traffic) Act, 2002”, which has come into effect from 2005. This Act provides for setting up of ‘Highway Administrations’ and ‘National Highway Tribunals’. Although the Act wants to create some kind of a regulatory structure for national highways, it has led to setting up hundreds of ‘Highway Administrations’, without giving them any original or appellate powers under the Motor Vehicles Act and other legislations having a bearing on these issues. There is a crying need to study the legislations in this area afresh, amend them or repeal them and enact fresh legislation with a view to putting an effective and credible regulatory structure in the highways sector in place.

3. RECOMMENDATIONS

Institutional

3.1 A permanent structure for putting enabling policy in place must be created in place of the stop-gap arrangement of the Committee on Infrastructure and the Empowered Sub-Committee of the Committee on Infrastructure. A Ministry/Department of Infrastructure Policy should be created under the direct charge of the Prime Minister to replace the existing Committee on Infrastructure. The intention behind placing the Committee on Infrastructure under the direct control of the Prime Minister was to give a signal to all that the government accords the highest priority to infrastructure. This Task Force agrees with this view and accordingly, it recommends that the Ministry/Depart-
ment of Infrastructure Policy be put under the direct charge of the Prime Minister. Broadly, its functions will be what the Committee of Secretaries is doing at the moment. The advantages of a Ministry/Department are that the processes and procedures will be better defined than those of a Committee and there will be a dedicated secretariat. While the individual infrastructure Ministries will continue to lay down policies in all other areas of their domain, the Ministry/Department of Infrastructure Policy will be the final policy making body for Public-Private Partnership (PPP) in all areas of infrastructure.

3.2 MCAs and standard bidding documents (RFQs and RFPs) which have been evolved should not be treated as sacrosanct for all times. The proposed Ministry/Department of Infrastructure Policy should be able to quickly approve changes to RFQs and RFPs or to VGF procedures necessitated by changes in the environment (financial or institutional), on proposals made by owners of the projects viz., Ministries/Authorities/State governments.

3.3 The capacity for undertaking PPP projects varies considerably across states. The formulation of the MCA for PPP projects in states by the Committee on Infrastructure and the opening of the VGF window in the Ministry of Finance to state PPP projects are good initiatives to incentivize the states. The Committee on Infrastructure or the proposed Ministry/Department of Infrastructure Policy should come up with a JNNURM type scheme for enforcing PPP reforms in the states through scheme based incentives.

3.4 The proposal for the restructuring of NHAI, approved by the Union Cabinet, needs an urgent fresh look before it is put into operation. The present proposal is deficient in that it does not suggest concrete steps to make NHAI independent of the Minister/Ministry/Government in its day-to-day working. Giving a fixed tenure to the Chairman is a good step but this alone does not ensure autonomy of the Authority. Parliamentary accountability does not justify interventions by the Minister on contractual/technical/personnel matters. The restructuring proposal also does not propose a transparent method of selecting the best candidates for the post of Chairman, Member and CGM. Ideally NHAI should be corporatised under the Companies Act. It should have a holding company and a central subsidiary to implement bigger projects (above a certain TPC) and expressways. It should have regional subsidiaries responsible for implementing all other projects pertaining to the states under their respective jurisdiction.
3.5 The Ministry of Road Transport & Highways should gradually cease to be a direct implementing agency and should gradually transfer all national highway projects to the NHAI as its capacity is built up. It should have only three functions – policy making in domain areas (except PPP), monitoring of projects and coordination with states. The Minister should not get involved in awarding contracts or in technical or personnel matters.

3.6 Since delays on account of most operational issues are due to lack of coordination and regular follow up, it is necessary to create Empowered Steering Committees for national highways consisting of stakeholders and permission/approval granting authorities. There should be a maximum of four or five of such Empowered Committees and each committee should meet once every three weeks. The Ministry of Road Transport & Highways must ensure that these Empowered Committees meet regularly.

3.7 NHAI should enter into comprehensive MoU with each state for time-bound action on all operational matters in advance – land acquisition, tree cutting permission, shifting of utilities, signing of state support agreements for BOT projects, forwarding of environmental clearance and forest clearance proposals to the MoEF. The Empowered Steering Committees will monitor whether the NHAI/states are fulfilling their respective responsibilities under the MoU.

3.8 At present, part of the Central Road Fund (CRF) is allocated to the Railways towards 50% share of the expenditure on ROBs/RUBs. This leads to unnecessary documentation and delay as the ROBs/RUBs have to be reflected in the Rail budget also. This should be discontinued and no money from the CRF be allocated to the Railways. This amount should be distributed between NHAI and the states. As to the requirement of approval of designs of ROBs/RUBs by Railways, the Empowered Committees will ensure timely approvals.

3.9 An independent Regulatory Authority for roads, bridges, highways and expressways must be established as soon as possible, so that the issues relating to the management, control and operations-maintenance of the highways are handled effectively on a unified pattern across the country. At present, while the centre owns the national highway stretches, the states control the management and operations-maintenance issues and where adversarial conditions exist the ‘highway experience’ turns into misery even on highways with excellent top-surface. The Control of National Highways (Land and Traffic) Act, 2002 creates hundreds of ‘Highway Administrations’ without giving them any
original or appellate powers under the Motor Vehicles Act and other legislations having a bearing on these issues. This Task Force is of the view that there is a crying need to study the legislations in this area afresh, amend them/repeal them and enact fresh legislation with a view to putting an effective and credible Regulatory structure in the highways sector to oversee the following issues:

- Ribbon development
- Access to and from highways
- Encroachment and illegal parking
- Unauthorized state check-posts (police, excise, sales-tax, forest, mining, octroi, entry-tax, overloading etc.)
- Road safety issues
- Advance Traffic Management System
- Advance Passenger Information System
- Tolling

**Legislative:**

3.10 There is no need for two legislations on land acquisition –The National Highways Act, 1956 and The Land Acquisition Act, 1894 – particularly after broad-based amendments to the Land Acquisition Act, 1894 are carried out. The Committee on Infrastructure should issue a mandate to proceed under only one legislation, preferably the amended Land Acquisition Act.

3.11 The proposed corporatisation of NHAI under the Companies Act will necessitate changes in The NHAI Act, 1988.

3.12 The CRF Act be amended, if need be, for doing away with the allocation of CRF funds to Railways.

3.13 The entire set of legislations in the areas of right-of-way management [e.g., The Control of National Highways (Land and traffic) Act, 2002] and traffic management [e.g., The Motor Vehicle Act] should be reviewed/amended and a fresh legislation be enacted, if need be, for creating an effective Regulatory Authority in this sector.
ANNEXURE

HIGHWAYS AND ROADS

The Highways Scenario

1. The highways scenario in the country presents a highly mixed picture despite the initial momentum given by the National Highways Development Programme (NHDP). Out of a total road length of approximately 33 lakh km. in the country, national highways account for about 66,754 km. At present about 27,000 km. of national highways are with the National Highways Authority of India (NHAI) under the NHDP, while the Ministry of Road Transport & Highways (MoRT&H) looks after the development and maintenance of the remaining portion. The NHDP, launched in the year 2000, has now been expanded very ambitiously (Phase I to VII) and will cover 47,000 km. Phase IV (20,000 km.) has now been approved. The target for the completion of the later approved phases is December 2015, by which time an estimated expenditure of Rs. 2,35,690 crore is to be incurred on the NHDP. However, not only is the progress painfully slow, but there are wide variations in the level of progress across states.

2. The NHDP was expected not only to give a fillip to the development of national highways but also to usher in a ‘highways culture’ and act as a model before the states for their highways’ programmes. After all, all state highways are not supposed to be converted into national highways. Rather, they are supposed to become as good as national highways on their own. It must be conceded that the NHDP did bring about a qualitative change in the national expectation and attitude towards highways, forcing many states to start their own State Highways Development Programmes. However, as is to be expected in a federal polity like India, there is high degree of regional variation, with the result that states like Gujarat and Andhra Pradesh are way ahead compared to laggards like U.P. and Bihar. The capacity for undertaking PPP projects also varies substantially across states.

3. The scenario relating to the management, control and operation-maintenance (O&M) of highways is even more striking. There are a number of national highways that boast of top surfaces of high riding quality and yet they lack in traveler safety. Most states are still not aware of the concept of corridor management which includes issues such as Advance Passenger Information System, Advance Traffic Management System, weigh-in-bridges, electronic tolling, road safety, wayside amenities, right-of-way management and removal of encroachments etc.
The Issue

4. Lack of infrastructure is perhaps the most important constraint on India’s ability to achieve 9 to 10% GDP growth rate. The Planning Commission has estimated that for the economy to continue to grow at 9%, the total investment in infrastructure during the eleventh plan would have to be of the order of Rs. 2,056,150 crore or US$ 514 billion, out of which investment on roads and bridges will have to be around Rs.3,14,152 crore or US$ 78 billion. The ten year projection (XIth and XIIth plan combined) for investment in infrastructure is a mind boggling Rs. 60,86,498 crore or US$ 1521 billion, out of which investment on roads and bridges will have to be around USD$ 225 billion (at 2006-07 prices), assuming a 15% share. Though the current global economic slowdown will bring this figure slightly down due to the downward revision of growth rate, the absolute necessity of investment in highways and roads will increase as it is a major plank of jumpstarting the economy during a downturn.

5. However, the issue is whether our institutions and economy are in a position to spend this amount (even if it was available) quickly and effectively. Can the country spend US$ 200 billion or even US$ 150 billion on roads in the next 10 years? Can NHAI spend US$ 50 billion on the seven phases of NHDP by December 2015? It is, therefore, necessary to identify those factors that speed up or delay the execution of projects.
RAILWAYS

Background to Centre-State issues

3.1 In the case of the Dedicated Rail Freight Corridor, issues of alignment appear to be unilaterally decided by the Centre, without consultation with the concerned state.

3.2 34% of the dedicated freight corridor passes through Gujarat. Gujarat is planning 6 major roads along this corridor. There are no major issues as of now with the Government of India. However, from the outset, the corridor must be made attractive for private investment.

3.3 Railways have many departments each of which has to approve overbridges, underbridges, railway crossings, etc. These clearances take far too much time and required to be speeded up. The Railways need to consider developing a standard railway clearance procedure available to all developers.

3.4 In case of Hyderabad Metro Rail, gauge decision was a problem between Ministry of Urban Development and Railways. Railways wanted broad gauge, the Hyderabad Metro preferred standard gauge which is the common gauge the world over and for which wagons and other equipment is commonly manufactured.

3.5 In the bidding for Hyderabad Metro Rail, the value of land development was not clear. There was no basis for a reasonable estimate of future value of land development, required when applying for Viability Gap Funding (VGF) for such projects.

Other areas of concern

Land acquisition

3.6 As per the Land Acquisition Act, 1894, the payments for land have to be made as prevailing at the time of publication of Section IV under the Act. It has been observed that the land cost increases considerably during the period between carrying out the initial survey and starting of proceedings for land acquisition. The following details of some land costs as per the initial survey and later assessed at the time of preparation of detailed estimate/final payment shows clearly that there is considerable variation that needs to be taken into consideration:
<table>
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<tr>
<th>Sr. Project No</th>
<th>Lands</th>
<th>Length (Km)</th>
<th>Year of</th>
<th>Original Land Cost</th>
<th>Revised Year</th>
<th>Revised Land Cost</th>
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<tr>
<td>1</td>
<td>Maharajganj-Masrak new line</td>
<td>36</td>
<td>2002</td>
<td>24.25</td>
<td>2005</td>
<td>56.11</td>
<td></td>
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<tr>
<td>2</td>
<td>Rewari-Rohtak new line*</td>
<td>81.26</td>
<td>2003-04</td>
<td>19.07</td>
<td>2008</td>
<td>156.63</td>
<td></td>
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<tr>
<td>3</td>
<td>Kitchha-Khatima</td>
<td>51.48</td>
<td>1999</td>
<td>165.00</td>
<td>2008</td>
<td>240.00</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Ramganjmandi-Bhopal</td>
<td>270.00</td>
<td>-2000</td>
<td>18.95</td>
<td>2007</td>
<td>111.98</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Tarkeshwar-Bishnupur</td>
<td>84.75</td>
<td>1999</td>
<td>4.16</td>
<td>2006-07</td>
<td>17.46</td>
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<td>6</td>
<td>Darbhanga-Kusheshwarstan</td>
<td>70.13</td>
<td>2005-06</td>
<td>5.68</td>
<td>2008-09</td>
<td>14.00</td>
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*50% Cost sharing with State Government*

3.7 Land acquisition takes 1 year and in cases, up to 3 years. When forest land is unavoidably involved it can take 2 to 3 years. There is escalation of cost and contractual time. Even simple lines like by passes have been held up due to land acquisition, causing movement problems. A clear example is the Bellary bye pass for iron ore movement.

3.8 The Union Cabinet gave approval for an amendment to the Railways Act of 1889, granting the Railways powers similar to those of the National Highways Authority of India (NHAI) viz., to notify and acquire land on its own for special projects. With three of its projects held up due to alleged non-cooperation from Bihar and Uttar Pradesh governments in acquiring land, the Railway Ministry can heave a sigh of relief when this amendment is passed as it will no longer be dependant on state governments for land acquisition. Once it gets these powers, the Ministry hopes to expedite the land acquisition process for its ambitious dedicated freight corridor as well.

3.9 Land issues are becoming more difficult, with cost escalation and demands for higher tariffs, and considerable delays. Quantum of compensation has been fixed in the past at prevailing market prices at the time of Section 4 notification, above the average price of last year (for a few transactions) as provided in the new national rehabilitation policy.
3.10 While the announcement to set up a rail coach factory at Rae Bareli and a diesel locomotive factory at Chhapra, was made in the Parliament in August 2006, the decision to set up an electric locomotive factory at Madhepura was made public in February 2007. (Indian Express, January 11, 2008)

**ROB/RUB**

3.11 Road Over/Under Bridges works are undertaken by Railways in lieu of existing level crossings on cost sharing basis if the traffic density at the level crossing is one lakh or more TVUs (TVU- a unit obtained by multiplying the number of trains to the number of road vehicles passing over the level crossing in 24 hours); Otherwise, it is done on ‘Deposit Terms’ basis. Proposals are sponsored by state governments concerned duly fulfilling certain prerequisites required under extant rules.

3.12 State Government/Road Authorities sponsor the proposal by completing pre-requisite formalities like:

   i) Undertaking for closing of the Level Crossings,

   ii) Provision of funds in the State’s Budget and

   iii) Advance action for land acquisition etc.

Cost of land in such cases is borne by State Government. State Government/Road Authorities may also raise their share of cost through collection of toll, commercial exploitation of space under Road Over Bridges outside the railway boundary, etc.

**GRP/RPF**

3.13 The Railway Protection Force (RPF) and the Government Railway Police (GRP) are the two security agencies of Indian Railways. The RPF’s task is to protect railway property and assets, while the GRP handles crime and law and order along the network. Where they cannot deal with a crime or an act of sabotage, the State police concerned take over the investigations. GRP is controlled by the State Government while RPF comes under the control of the Central Government.

3.14 The RPF is headed by a Director General who is from among the senior-most IPS officers in the country. The Security Directorate at the Rail Bhavan in New Delhi is the apex policymaking body of the Force. At the Zonal Railway level, the Force is headed by the Chief Security Commissioners (CSC) of the rank of IG or DIG assisted by the DSCs in each Division.
3.15 The GRP has an almost identical organizational structure in each state. The Director General of Police of the State also controls the GRP, which is one of the several wings of the State Police. The GRP chief is normally an ADG or IG/Railways assisted by a DIG/Railways. The Railway area in each state is under the control of one or more Superintendents of Railway Police (SRP). The non-gazetted cadre for both the Forces is along a similar structure.

**Dedicated Freight Corridor**

3.16 At a macro level, the Dedicated Freight Corridor represents a good example of Centre-State coordination. To support and leverage this corridor, the Delhi Mumbai Industrial Corridor Development Corporation (DMICDC) has been set up with participation from states coming under the influence zone of the Dedicated Freight Corridor. Industrial development, logistic parks and investments regions are being planned in the influence zone.

**4. RECOMMENDATIONS**

The following items were discussed with the representatives of Railways and RPF; Dedicated Freight Corridor; Land Acquisition; Over and Under Bridges; Interface with Waterways; Port Connectivity; Gauge Conversion; Security.

4.1 In case of Dedicated Freight Corridor, railways are going parallel to existing lines to save on land acquisition. Gujarat would like alignments to be agreed with the state. We recommend that alignments should be mutually discussed and agreed upon.

4.2 At a macro level, the Dedicated Freight Corridor represents a good example of Centre-State coordination. To support and leverage this corridor, the Delhi Mumbai Industrial Corridor Development Corporation (DMICDC) has been set up with participation from states coming under the influence zone of the Dedicated Freight Corridor. Industrial development, logistic parks and investments regions are being planned in the influence zone. This idea should be carried forth for all new railway lines and existing railway lines that have scope for traffic, including Konkan Railway Corporation (KRC). KRC in fact has four states participating in its ownership. There is scope for them to view their role more proactively to support and leverage KRC.

4.3 Land acquisition takes 1 year and in cases, up to 3 years. When forest land is unavoidably involved it can take 2 to 3 years. There is escalation of cost and contractual
time. Even simple lines like bye passes have been held up due to land acquisition, causing movement problems. We recommend that all railway projects involving new lines, gauge conversion etc. must build in bye pass construction as part of the project itself wherever required.

4.4 Temporary land acquisition (including forest permission where necessary) for approach roads during construction should be part of the detailed project report, since approach roads are becoming critical for modern construction technologies.

4.5 Some State governments have declared trees alongside railway tracks on railway land as protected trees. This hits operations. Essential that the state consults Railways prior to such actions.

4.6 There is uncertainty on agreed over bridges and there is need for stability for these agreements. Perhaps the agreement should have a clause forbidding changes without prior consultation and agreement.

4.7 Centre provides larger share from diesel levy of the road cess but states do not match and find it difficult to give even the smaller share they now do. There must be prior agreement between Centre and State, the total cost and the share to be paid by the State with a time line for payments.

4.8 Whenever the construction is on behalf of NHAI, the road cess can be directly channelized to NHAI rather than through railways when NHAI/states are bearing the total construction cost.

4.9 Each level crossing to be bridged becomes a local political issue with Railways not too interested in some cases and the State government not interested in others. But there has been no problem with crossings with NHAI. All over and under bridges over level crossings and others must be agreed as a package in advance and then put into one SPV for a PPP or similar vehicle for purposes of funding.

4.10 Illegal (not permitted) mining has begun to endanger bridges especially in sub-mountainous areas. It is essential that states have a mechanism to prevent illegal mining and stringent penalties are levied when it takes place within a specified number of kilometers from the bridge.

4.11 Port authorities are unable to find resources for all port connectivity projects.
Therefore private investment should be encouraged. The new Model Concession Agreements for ports has been evolved which can help attract private investment.

4.12 Hinterland connectivity would be as part of future port projects. If the Project does not need to be subsidized by Railways, there is greater scope for state involvement. At present, state has no say even when it is a 50% partner.

4.13 Where state has projected low traffic, connectivity must be funded by the project developer.

4.14 The issues are similar for rail connectivity for SEZ. SEZ developers and State governments must take a proactive role in JVs.

4.15 There is need to demarcate responsibility between RPF, State government, railway police and regular police of the location. Since track policing is the responsibility of the state government concerned, only people’s security on train should be with RPF, with state police taking responsibility for baggage and crime. However a drugged passenger in a train must be responsibility of RPF since the origin of the passenger might be from another state through which the train passed.

4.16 There are also costs to Railways in providing security in states like J & K, North-East and Jharkhand and there must be prior agreement on the bearing of these costs.
ANNEXURE

RAILWAYS

Introduction

1. Indian Railways (IR) is under the Ministry of Railways, referred to as the Central government in the Indian Railways Act. The Railway Minister (who heads the Ministry of Railways) acts as a link between the Government of India and IR. The Railway Board heads the executive arm of IR and is also the secretariat to advise the Railway Minister on all matters concerning railway management.

2. IR derives its right of way from the Central Government. IR is not obliged to pay any tax to State governments for transportation across states. Hence, in terms of liabilities of IR, there is no interaction between individual states and IR. However, an initiative has begun to make states participate in the investment activities of IR.

3. The current legal framework under the Railways Act 1989 allows private railway systems in all forms. However, the government policy enunciated under Industrial Policy Resolution of 1991 as amended from time to time, reserves railway transportation for the public sector. It means that train operation can only be done by the public sector, while all other activities of design, construction, financing, and maintenance can be undertaken through private participation through award of concessions by Government of India. Presently, the IR is managed through 17 Railway Administrations which are legal entities. In addition there are six railways at ports and other locations. These railway systems are members of the Indian Railway Conference Association. Indian Railway Conference Association deals with issues of inter-railway movement of wagons and locomotives in terms of levy of hire charges for use of rolling stock belonging to other railways, neutral train examination for ensuring that one railway does not pass on deficient wagons to other railways. The Railway Board was constituted under the Railway Board Act 1905 and it is also a railway regulator, dealing with a large number of issues including tariff regulation. Railway Board and the Commissioner of Railway Safety, whose office is under administrative control of Ministry of Civil Aviation, jointly work as safety regulator.

4. Indian Railways-Strategy of the Eleventh Five Year Plan

a. Capacity enhancement in the short term
♦ Maximum utilization of existing capacity by addressing directional and seasonal variations in demand.
♦ Investment in automated signaling

b. Significant enhancement of capacity

♦ Construction of Dedicated Freight Corridors (DFCs) and separating freight from passenger traffic
♦ Increase in capacity utilization
♦ Route-wise planning and capacity augmentation on the high density capacity network
♦ Augmenting production capacity for locomotives, coaches and wagons

c. Achieving higher maintenance standards

♦ Renewal, rehabilitation and replacement

d. Technology upgradation

♦ Extending the Freight Operation Information System to all loading points
♦ Interface with customer information system
♦ Switch over to 22.9-tonne axle load wagons and special wagons for movement of automobiles and bulk commodities, etc.

e. Establishment of logistic parks and terminals

f. World class quality passenger amenities

g. Public-private partnerships for building and operation of rail infrastructures

h. Restructuring of IR to focus on core activities

i. Establishing a Rail Tariff Regulatory Authority
### Infrastructure Development and Mega Projects

#### Sources of Funds

<table>
<thead>
<tr>
<th>Sources of Funds</th>
<th>Rs. crore</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Outlay</td>
<td>230,000</td>
</tr>
<tr>
<td>Internal Generation</td>
<td>75,000</td>
</tr>
<tr>
<td>(33%)</td>
<td></td>
</tr>
<tr>
<td>Extra Budgetary</td>
<td>60,000</td>
</tr>
<tr>
<td>(26%)</td>
<td></td>
</tr>
<tr>
<td>Gross Budgetary</td>
<td>95,000</td>
</tr>
<tr>
<td>Support</td>
<td>(41%)</td>
</tr>
</tbody>
</table>

*[Source: The Eleventh Five Year Plan – Executive Summary]*

#### Major Investments

<table>
<thead>
<tr>
<th>Plan Head</th>
<th>X Plan</th>
<th>XI Plan</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Expenditure</td>
<td>Percent</td>
</tr>
<tr>
<td>1 New Lines</td>
<td>9,202</td>
<td>10.9</td>
</tr>
<tr>
<td>2 Gauge Conversion</td>
<td>6,240</td>
<td>7.4</td>
</tr>
<tr>
<td>3 Doubling</td>
<td>3,461</td>
<td>4.1</td>
</tr>
<tr>
<td>4 Rolling Stock</td>
<td>26,807</td>
<td>31.7</td>
</tr>
<tr>
<td>5 Track Renewal</td>
<td>15,363</td>
<td>18.1</td>
</tr>
<tr>
<td>6 Investments in PSU’s</td>
<td>3,723</td>
<td>4.4</td>
</tr>
<tr>
<td>Total (1-6)</td>
<td>64,796</td>
<td>76.6</td>
</tr>
<tr>
<td>Total Investments</td>
<td>84,708</td>
<td>100.0</td>
</tr>
</tbody>
</table>

*[Source: The Eleventh Five Year Plan – Executive Summary]*

#### Physical Targets

<table>
<thead>
<tr>
<th></th>
<th>2011-12</th>
</tr>
</thead>
<tbody>
<tr>
<td>Originating Freight Traffic (mt)</td>
<td>1100</td>
</tr>
<tr>
<td>Freight ton kms (billion)</td>
<td>702</td>
</tr>
<tr>
<td>Originating Passengers(million)</td>
<td>8,400</td>
</tr>
<tr>
<td>Passenger km (billion)</td>
<td>880</td>
</tr>
</tbody>
</table>

*[Source: The Eleventh Five Year Plan – Executive Summary]*

**Vision 2015**

- Doubling and port connectivity ~6000 Kms.
- Gauge conversion-12,000 Kms.
- Dedicated Freight Corridors-11,500 Kms.
- Upgradation of feeder routes of DFC-15,000 Kms.
- Asset renewal/upgradation–All HDN routes
- Modernization of passenger and freight terminals
- Augmentation of manufacturing capacity of rolling
Approximate investment – Rs.3,50,000 crores (provisional) including work in progress

Current/Proposed Projects

- Development of Dedicated Freight Corridors
- Development of Rail-side Warehouses (22 in pipeline)
- Private Container Trains
- Multi Modal Logistics Parks (11 sites identified along DMIC)
- Rolling Stock Manufacturing
- Commercial Development of Land and Air Space (RLDA)
- Catering Services, Budget Hotels and Food Plazas (IRCTC)
- Modernization of Major Stations
- Wagon Investment Scheme (WIS)
- Road Over Bridges (ROBs) on BOT
- Uneconomic Branch Lines (UBLs) and Hill Railways
- Telecom Network
- New Passenger Terminals
- Suburban Railway Projects

Financing

CIDCO-IR

- Cost of construction of the railway line, station building, operational and commercial area was shared in 2:1 ratio between CIDCO and IR. Ownership of the line and land remained with IR.
- CIDCO had the right to commercialize the air space and other parts of the station area. During operation, non-operational maintenance costs were to be borne by CIDCO.
- IR levied a surcharge of Re. 1 per ticket for the journeys touching any part of the rail network so developed. Money so collected was transferred to CIDCO.
- Rolling stock was provided by the Central Railway.
Infrastructure Development and Mega Projects

- O&M responsibilities were fulfilled by Central Railway.
- Operational losses were to be borne by Central Railway

Table 1 gives the details of the other IR projects.

<table>
<thead>
<tr>
<th>S. No</th>
<th>Project/SPV</th>
<th>Length (km)</th>
<th>Project Cost (Rs Crore)</th>
<th>Debt Equity Ratio</th>
<th>Equity (Rs Crore)</th>
<th>Equity Partners</th>
<th>Equity Share %</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Konkan Railway Corporation Ltd</td>
<td>760</td>
<td>3555</td>
<td>806</td>
<td>Ministry of Railways Government of Maharashtra Government of Karnataka Government of Goa Government of Kerala</td>
<td>51.0 22.0 15.0 6.0 6.0</td>
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<tr>
<td>2.</td>
<td>Pipavav Railway Corporation Ltd</td>
<td>271</td>
<td>373</td>
<td>46-54</td>
<td>Ministry of Railways Gujarat Pipavav Port Ltd</td>
<td>50.0 50.0</td>
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<tr>
<td>3.</td>
<td>Hassan Mangalore Rail Development Company</td>
<td>193</td>
<td>311</td>
<td>64-36</td>
<td>Ministry of Railways</td>
<td>40.0</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Govt of Karnataka New Mangalore Port Trust Mineral Enterprises Ltd K-Ride</td>
<td>40.0 9.0 9.0 2.0</td>
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<tr>
<td>4.</td>
<td>Kutch Railway Company Limited</td>
<td>301</td>
<td>500</td>
<td>60-40</td>
<td>RVNL Kandla Port Trust Gujarat Adani Port Limited Govt of Gujarat</td>
<td>50.0 26.0 20.0 4.0</td>
<td></td>
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<tr>
<td>5.</td>
<td>Haridaspur-Paradip Railway Company Limited</td>
<td>82</td>
<td>598</td>
<td>54-46</td>
<td>RVNL ESSEL Mining &amp; Industries Ltd Rungtra Mines Ltd POSCO Paradip Port Trust MSPL SAIL Jindal Steel &amp; Power Govt of Orissa</td>
<td>48.4 10.9 10.9 10.0 10.0 5.5 1.0 9.0 0.7</td>
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</tr>
<tr>
<td>No.</td>
<td>Location</td>
<td>Railway Company Limited</td>
<td>113</td>
<td>588</td>
<td>50-50</td>
<td>270</td>
<td></td>
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<tr>
<td>6.</td>
<td>Krishnapatnam</td>
<td>RVNL</td>
<td>30.0</td>
<td>30.0</td>
<td>27.0</td>
<td>13.0</td>
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<td></td>
<td>Railway Company</td>
<td>Krishnapatnam Port</td>
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<tr>
<td></td>
<td>Limited</td>
<td>Company</td>
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<td></td>
<td></td>
<td>National Mineral</td>
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<td></td>
<td></td>
<td>Development Corp</td>
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<td></td>
<td></td>
<td>Govt of Andhra Pradesh</td>
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<tr>
<td>7.</td>
<td>Bharuch Dahej</td>
<td>Rail Vikas Nigam Limited</td>
<td>62.0</td>
<td>23.0</td>
<td>95.0</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>Railway Company</td>
<td>Gujarat Maritime Board</td>
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<td></td>
<td>Limited</td>
<td>Adani Petronet (Dahej)</td>
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<tr>
<td></td>
<td></td>
<td>Port Pvt Limited</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>Dahej SEZ Limited</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>Jindal Rail Infrastructure</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>Hindalco Industries</td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td>Limited</td>
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</tbody>
</table>
PORTS

Background to Centre – State Issues

4.1 Connectivity is an issue especially for new ports. It relates to intra port connectivity and hinterland connectivity. Railways and GOI have policies that vary between different ports, between centre and state, and for different developers. Proximate connectivity (connection within port area) is the responsibility of the Port Authority, presently the Port Trust in major ports. Hinterland connectivity is the responsibility of the state. However the hinterland could extend to more than one state and not be confined to within one state. There is need in both cases for straight connections in order to minimize time taken and costs. Centre does not play a sufficiently active role in this area. In Andhra the State government provides connectivity for ‘minor’ ports (roads, power, water, fiscal incentives); Centre comes in when railways participation and environment clearances are required. Private developer lays down the rail lines, thus saving time.

4.2 In the case of private (‘minor’) ports there is no national policy and plan for providing connectivity. Dedicated freight corridor, national transport corridor, and the Investment Regions Policy, do not go far enough in dealing with issues relating to ports.

4.3 There is an inadequacy of deep sea ports in India, despite India’s long coast line. This prevents larger vessels from coming to India, and also diminishes possibility of competition between ports.

4.4 Private participation in creating ports, or intra port facilities (like terminals) are delayed because of procedural delays and ineffective tariff determination. The model of private operation of terminals now in vogue in some ports, must be encouraged. Bottlenecks must be reduced.

4.5 Protection of mangroves and other such environmental protection to aquatic life and bio-diversity in the sea are necessary but there is no finality of time frame today for this purpose.
4.6 The present drafting of tender documents needs to be improved to provide for many contingencies.

4.7 There is no clear policy, only precedent, on captive use of a port or its facility by one private entity, or erection of captive ports. Existing major ports have few dedicated berths for products.

4.8 Port Trusts and Terminals handled by Ports need a commercial and enterprise orientation.

4.9 Regulation of tariffs by TAMP is mechanical. Why should only tariffs of major ports be regulated? There is need to use tariffs to stimulate competition between ports. There is a view that in case of imports like fertilizers, sold at subsidized prices, some central intervention is essential in tariff setting. However, this should not be an insuperable issue in eliminating Central government role in tariff setting. There is also the question of the present distinction between major and minor ports. The Centre controls major ports and the states the minor ones. However, there are already ‘minor’ ports that are larger than some ‘major’ ports. We seem to have concurrence from the Central Ministry that the distinction between major and minor is irrelevant.

4.10 There is conflict between states in some cases; e.g., Orissa has notified ‘minor’ ports but made no progress. Now there is a conflict with Haldia port and West Bengal government. GOI has the responsibility of clearing ports on grounds of security, customs, and environment. There is presently no standard approach to clearing proposals for new ports, tough the Centre has clearances it has to give before every new port is established.

4.11 After 26/11, Security has become a major issue for all ports; adequate funds, training, responsibility, etc, are to be ensured.

4.12 The Ministry of Shipping and the Director-General, Shipping, GOI, have highly centralized responsibilities. Decentralization to State governments would improve decision-making and efficiency.

4.13 There is a Tariff Authority for Major Ports that sets tariffs for them. In the case of minor ports, the operator determines the tariff and the state government concerned usually notifies it. At the same time, many other responsibilities of regulation are centralized.

4.14 The distinction that separates inland water transport and coastal shipping (not coastal security) is artificial and it is necessary to look at them as one so that for example, the same vessels can operate in both.
5. Recommendations

5.1 Private operation of ports requires regulation on many aspects and an independent regulator would be useful, replacing TAMP and covering all ports. A national Ports Regulation and Development Authority as an independent regulator needs to be created that will deal with port regulations, tariff principles for all ports, dispute resolution, captive ports and terminals, etc.

5.2 The distinction between major and non-major ports is no longer relevant since some minor ports are bigger than some major ports. They should all be dealt with by this one regulatory body. The distinction between major and minor ports must be replaced by treating them alike and under the same regulatory authority. States notify tariffs determined by the private operator of minor ports and must be persuaded to surrender this authority to the new regulatory authority. Since the authority will develop tariff principles, State governments might find such an authority useful.

5.3 Centre can use the powers it has for clearances of customs, environment, etc., to give advance sanction or rejection in the case of any new port notified by a State government. A clear policy in this regard is essential. This power can be used to disallow state notifications of new ports when they are in conflict with other proposals more in the national interest as determined by the Centre.

5.4. Ports connectivity must be negotiated in advance between all the parties concerned. Centre must devise a policy that ensures backward/forward linkages including to inland water transport, as well as to roads and rail. This policy should spell out cost sharing principles as well and be developed in consultation with states.

5.5 Gujarat has a state maritime board and, unlike GOI, a state maritime policy, since 1995. We need to delegate these powers to maritime states, each of which must have State Maritime Boards that take over much of the work of the present D-G Shipping. However capacity must be built in state maritime authorities to enable them to take on these responsibilities.

5. 6 a) A Model Concession Agreement has been prepared and in use in Gujarat with private parties. It could serve as a model for other states for local ports.

b) The Centre has prepared a Model Concession agreement and this could be used as a model for Centre-State projects.
5.7 The ppp model should be encouraged for new ports, while the present policy of allowing private terminals should be pushed forward. A study to identify the procedural hurdles and loosen them is essential.

5.8 The problem of excessive delays due to slow environmental and forest clearances is common to most infrastructure projects and is covered in detail in a separate section. The recommendations there will benefit ports as well.

5.9 In order to develop a commercial and enterprise orientation in Port Trusts, they must be converted into autonomous companies. Private participation in them explored for their management. The present policy of leasing terminals to private parties within a port should continue to be encouraged and enhanced.

5.10 We were given to understand by a state maritime board that it is subject to tax while NHAI is not. Is such anomaly exists, it needs to be corrected and both bodies must be subject to the same principles.

5.11 Security is an issue for (a) intra-port (b) hinterland and (c) offshore. Intra-port security must be the responsibility of the port under the legislative control of the state with the centre laying overriding policy. Hinterland security is the responsibility of the state; and offshore security must remain with the central government. There must be a seamless transition between all the three levels of security.

5.12 Container security is an important issue in these days of terrorism and must be dealt with by the Centre under a national policy.

5.14 Standards and regulations for coastal shipping and for inland water transport must be combined so that there is scope for seamless movement between the two.
ANNEXURE

PORT SECTOR

1. A strong seaport is the backbone of any country’s economic development and growth. India has 12 major ports and 200 non-major ports and a long coastline of 7517 Kms. The 12 major ports among themselves handle more than 75% of the trade in terms of quantity and 90% in terms of value. During 2006-07, traffic handled by all ports is estimated at 650 MT. The strong economic growth witnessed by the country calls for improving port infrastructure. Consequently a National Maritime Policy has been evolved.

2. According to a recent study by Ernst and Young, Indian ports are operating at more than 90% capacity utilization. The reason is that capacity has remained stagnant. Demands for cargo are rising and has led to intense congestion at the ports, with consequent delays in cargo handling.

3. A benchmark analysis of India’s major ports in the Kandla-Kolkata (KK range) with Hamburg-Le Havre (HH) range in Western Europe is revealing. The following table presents the comparison:

<table>
<thead>
<tr>
<th>Details</th>
<th>KK Range</th>
<th>HH Range</th>
</tr>
</thead>
<tbody>
<tr>
<td>Coastline</td>
<td>7517 KMs</td>
<td>1000 KMs</td>
</tr>
<tr>
<td>No of major ports</td>
<td>12</td>
<td>11</td>
</tr>
<tr>
<td>Cargo handled 2006</td>
<td>420MT</td>
<td>1020MT</td>
</tr>
<tr>
<td>Hinterland population</td>
<td>1100 million</td>
<td>200 million</td>
</tr>
<tr>
<td>Competition</td>
<td>Limited</td>
<td>Strong</td>
</tr>
<tr>
<td>Port management</td>
<td>Public service ports with private terminals</td>
<td>Mostly landlord ports</td>
</tr>
<tr>
<td>Role of private sector</td>
<td>Weak</td>
<td>Strong</td>
</tr>
<tr>
<td>Port capacity</td>
<td>Almost at capacity</td>
<td></td>
</tr>
<tr>
<td>Spare capacity available</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hinterland connections</td>
<td>Road, rail – insufficient supply</td>
<td>Road, rail, inland water transport, and pipeline</td>
</tr>
<tr>
<td>Logistic clusters</td>
<td>SEZ (in the offing)</td>
<td>Available within ports</td>
</tr>
<tr>
<td>Industrial port clusters</td>
<td>Absent</td>
<td>Many (Rotterdam, Antwerp)</td>
</tr>
</tbody>
</table>

Source: Consolidated Port Development Plan, Indian Ports Association, September 2007
4. It is evident from the above that vast potential is available for development of Indian ports. In the development of ports, three stages are envisaged. The first generation ports have cargo handling as their core activity; the second generation ports are those where apart from handling cargo, industrial clusters are also developed so that the port could handle the import of raw material and export of the finished goods from the industrial cluster; and the third generation ports are where besides cargo handling and facilitating activities of the industrial cluster, the port is transformed into an integrated hub for logistics and distribution.

5. In India, the major ports have cargo handling as their main line of activity compared to ports in developed economies. For instance, Port of Rotterdam Authority employs 1200 persons compared to 66,000 persons employed by 11 Port Trusts in India. Although Rotterdam Port is a land lord port, it is highly mechanized and the cargo handling system is automated and limited number of persons are employed. Further, Rotterdam Port has set up 3 Distriparks which are advanced logistics parks with facilities for cargo handling and multimodal transport for transit shipment. The Distriparks have facilities for warehousing, forwarding, stuffing and stripping of containers and various valued added services like packaging, labeling, assembly, sorting and import and export documentation.

6. The National Maritime Development Programme (NMDP) has projected the traffic in ports at 877 million tonnes by 2011-12, of which the projected traffic in major ports is 800 million tonnes. To achieve this, the NMDP has envisaged an investment of Rs55,800 crore. Of this, as much as Rs34,505 crore is expected from private sector sources and state governments.

7. To facilitate private sector participation in major ports, the Model Concession Agreement (MCA) has been put in place. As many as 38 port development projects are under implementation through PPP model with a total contract value of Rs60,487 crore. Out of these, in 13 cases, there has been foreign participation.

8. Although the Jawaharlal Nehru Port Trust (JNPT) has established itself as a modern port and features among the top 50 ports in the world, other Indian ports need to move up the value chain. One of the suggestions in this regard has been corporatisation of the ports. Of the 12 major ports, Ennore Port is the only port which has been corporatised and does not fall under the Tariff Authority for Major Ports (TAMP). It operates as a Landlord port with a mix of public and private orientation. Under this model, the port authority acts as a regulator and as a landlord, while port operations like cargo handling...
are carried out by private companies. There is need for more operational autonomy of ports and this could be best achieved through corporatisation. If the port trusts could be bestowed the same operational autonomy as other public sector undertakings, significant gains could be achieved.

9. The need for modernization of India’s ports can not be overemphasized. Particularly, as India globalizes and integrates with the world economy, the port infrastructure needs to be world class. There has been consistent improvement in port operations. Average pre-berthing time on port account has come down from 24 hours in 1999 to 11.13 hours in 2007-08, while the average turn around time has declined from 5.7 days to 3.68 days during the same period. The emergence of smaller private ports is leading to inter-port competition which is a healthy sign. With 100% foreign direct investment allowed, the port sector has attracted foreign participation. At the same time, mechanization of ports and increasing the level of automation is important. Improving rail and road connectivity to the ports is vital as this would greatly help in decongesting the ports. Development of coastal and inland waterways also needs a thrust.
CIVIL AVIATION

Background to Centre-State issues

5.1 As per the Constitution, Aviation is in the Central List (Point 29, Article 246).

“The role and functions of the Central Government as contained in the various statutes and the preceding sections extend to the following matters:

- Investment in airport infrastructure
- Clearance of Greenfield airport projects
- Airspace management, safety and security of airports
- Bilateral air services agreements, including those involving international cooperation for modernization and upgradation of airports
- Licensing of airports and ATC personnel
- Environmental aspects and removal of obstructions around airports
- Approval of aeronautical charges

The State Governments will deal with the following aspects:

- Acquisition of private land and allotment of government land
- Supply of water and power, and provision of sanitation and sewage services
- Provision of surface access through multi-modal linkages
- Prevention of environmental pollution
- Maintenance of law and order
- Protection of airports from encroachments and vandalism.

In case government land is allotted by a state government for an airport owned by a private party, it may be made available at the same rate as is charged from other industrial ventures in the State. The government will ensure that legislative and administrative mechanisms for speedy acquisition of land are devised.
The Ministry of Civil Aviation will try to facilitate the speedy clearance of projects from different Ministries. Further, the Ministry will liaise with the state governments in order to ensure provision of all these essential services and basic facilities. The State Civil Aviation Secretaries will act as coordinating officers for single-point liaison with all the State-level departments and authorities.”

**Centre and State Issues**

**State participation in Airports**

5.2 In 2007, the State Government of Andhra Pradesh signed MoU with the Airports Authority of India (AAI) for development of Madhurapudi (Rajahmundry), Gannavaram (Vijayawada), Kadapa and Warangal.

5.3 AAI and Maharashtra Airport Development Company Limited (MADC) jointly have taken steps for upgradation of the airport at Nagpur.

5.4 AAI will sign MoU with the Orissa government very soon for the development of a second airport at Jharsuguda. The draft MoU has already been submitted to the state government.

5.5 In Karnataka, five Airports of Bijapur, Hassan, Shimoga and Gulbarga, Bellary are being developed on PPP basis.

**Land acquisition**

5.6 During the Second World War, the British had developed over 400 airfields in the country. While this makes it easier for land acquisition for airport development, expansion and greenfield projects do face problems.

5.7 The state government of Tamil Nadu refused to provide land free of cost to AAI, except for the expansion of Chennai airport. This would impact development work because AAI needs close to 900 acres for expanding Coimbatore airport and 616 acres for developing Madurai airport. The state government has suggested that AAI convert each airport into a company and allow them to acquire stakes in it depending on the quantum of land handed over for development. But AAI is against the proposal.

5.8 Representatives of various political parties and voluntary organizations opposed the Karnataka government’s move to acquire 1,000 acres of irrigated land near Siriwar for the proposed Bellary airport.
Greenfield Airports

5.9 As per the new Greenfield Airports Policy declared on April 24, 2008, a greenfield airport can be set up after getting the required permissions from the ministry of Civil Aviation and the Home Ministry. Earlier, a cabinet clearance was required to do so.

5.10 A steering committee, headed by the civil aviation secretary, will examine the proposals for new Greenfield airports.

5.11 In case, a greenfield airport is proposed within 150 kms of an existing airport, the government will clear on a case-by-case basis. For example, the proposed airport at Greater Noida will require a cabinet clearance since it is within 150 kms of the Delhi airport.

5.12 The government also empowered the aviation ministry to give clearance to private air strips strictly meant for private use.

5.13 Another issue is regarding existing airports when greenfield airports come near them. While contracts provide for commercial closure, there would be scope for alternate use of such airports, in which state governments wish to have a say, as for example in the case of Bengaluru and Hyderabad airports.

Security

5.14 The Director General of Civil Aviation (DGCA) has sought security from either state police forces or central paramilitary forces at all helipads, including make-shift helipads which come into vogue mostly during elections. Following the Mumbai serial terror strikes, the civil Aviation Ministry, Indian Air Force, Bureau of Civil Aviation Security, CISF, Directorate General of Civil Aviation, State Governments through their Police and other related agencies have been assessing the threat perceptions on a regular basis and taking necessary measures.

5.15 A detailed list of 326 unmanned, abandoned or mostly unused airports and airstrips has been sent by the Civil Aviation Ministry to all State Governments with the instruction that district administrations be directed to “closely monitor and regularly check all such airstrips in their respective jurisdiction”. A separate list of 32 airports, managed by the Airports Authority of India but not operational, has also been circulated.

5.16 Included in the list of abandoned or unused airstrips are those owned by IIT Kanpur, Indian Institute of Science, Bangalore, Banaras Hindu University and the Sri Sathya Sai Trust of Puttaparthi. Of the 326 airstrips, around 100 belong to the Indian Air Force,
while 58 are private. The rest are owned by either Central or State Governments, paramilitary forces, Army or Navy. One in Cuttack belongs to the Aviation Research Centre of the R&AW.

**Taxation on ATF for Airlines**

5.17 The ATF sales tax structure between different states varies greatly. Andhra Pradesh has slashed the ATF tax rate to 4 percent. Maharashtra has also reduced the tax to 4 percent, but this is not applicable in Mumbai and Pune, which are its major airports. The sales tax on ATF is highest in Gujarat at 30 percent. This effectively means that Hyderabad is the only major metro in India where the state sales tax on ATF is at an acceptable rate, as per the airlines.

**Comparison of ATF tax structure in different states**

6. **Recommendations**

**Land acquisition**

6.1 In case of development of airport in public sector, it may be appropriate to have state government participation by way of equity. However, in case of PPP projects, both centre and state should not own equity in the project to avoid conflict of interest.

**Airport vicinity**

6.2 As per the guidelines of Ministry of Civil Aviation for safety of aircraft operations, no building or structure shall be constructed or erected or no tree shall be planted on any land with the specified limits. As per the guidelines, the state government should be notified for deciding the cases of aircraft glide path. Consultation and agreement therefore, are essential to ensure speedy and effective implementation.
Airport connectivity

6.3 Many airports suffer for want of appropriate connectivity to the areas served. Connectivity projects should invariably be structured along with the airport project. Bengaluru and Hyderabad are examples of airports where connectivity issues are being addressed reactively, at cost and inconvenience to passengers.

Regulator

6.4 The proposed Airports Economic Regulatory Authority (AERA) should be operationalized at the earliest. The Regulator should have responsibility for tariffs at the airport, berths for airlines, etc. Air Traffic Control remains a separate technical body under the Civil Aviation Ministry.

Small and remote airports

6.5 Small and remote airports, which might be financially unviable, should be developed under PPP, but with viability gap funding (VGF).

ATF tax

6.6 The tax on ATF by states needs to be rationalized. This can also achieved by ATF being classified a declared good. This will have revenue impact on concerned state governments and will need careful consideration. The Finance Commission may be requested to give a decision as part of its recommendations.

Security at airports

6.7 This requires a high level of attention and coordination among various agencies at the Centre and States, airlines and airport authorities. Consideration must be given to having a single security agency in charge, with overriding authority over all agencies at the airport whenever there is a security alarm.
ANNEXURE

CIVIL AVIATION

1. “Civil aviation is the fastest growing arm of India’s transport infrastructure and it plays an increasingly important role in providing connectivity. The projections for both passenger and cargo traffic growth, coupled with the deficient and lagging airport and allied infrastructure, calls for an urgent need to build and augment India’s Aviation Infrastructure.

2. There is an urgent need for India to have world-class gateway airports providing aviation services and passenger/cargo facilities of global standards, in a safe and secure environment.

3. The aviation climate in India needs to ensure the healthy growth of airlines, together with the airport operators and allied service providers; while also building the avionics and aviation equipment capabilities of Indian industry. The government and the statutory authorities have a critical role in achieving this vision.”

Traffic Trends

4. India has demonstrated double digit traffic growth consistently over the past five years (Tables 1.1, 1.2 and 1.3). In passenger traffic and aircraft movement, the growth has been over 20% per annum, stretching airport capacity significantly. Cargo traffic has been growing at over 10% per annum.

Airports Authority of India

5. Airports Authority of India (AAI) came to existence on 1st April 1995. It was formed under the Act of Parliament (Airports Authority of India Act, 1994) by merging the erstwhile International Airports Authority of India and National Airports Authority of India with a view to accelerate the integral development, expansion and modernization of the air traffic services, passenger terminals, operational areas and cargo facilities at the airports in the country.

6. It is managing 127 airports including 16 international airports (including Delhi and Mumbai airports), 8 customs declared airports, 79 domestic airports and 24 civil enclaves at the defence airfields. In addition, AAI has been providing CNS-ATM facilities at Cochin international airport, Aizwal (Lengpui), Diu, Puttaparti, Bellary and Jamshedpur.
Airport Infrastructure Development – Policy Framework

7. Airport development in India has traditionally been in the public sector. The AAI Act and Aircraft Rules were amended in 2004 to enable private participation. Public Private Participation (PPP) models have now become the basis of airport development. 100% FDI has also been permitted for greenfield airports since February 2006. Further, the development of new airports has been permitted entirely in the private sector.

8. Table 2 gives the funding pattern of the five non AAI managed airports, one under the Kerala government (Cochin) and four under PPP. Of these four, two (Bengaluru and Hyderabad) have investments by the respective State Governments. The planned investments in the aviation sector during the 11th five year plan is given in Table 3.

Development of Airport Infrastructure

9. **Metro Airports**: Delhi and Mumbai, the two major international airports were restructured through joint venture route (2006). The construction of first phase of Delhi airport started in January 2007 and is likely to be completed by March 2010. The cost of first phase of development is about Rs 8900 crores. The construction work of Mumbai airport also started in January 2007. The airport will be saturated by 2014. The cost of development is Rs 7000 crores.

10. Kolkata and Chennai airports are to be modernized by the state owned Airports Authority of India. The project span for Kolkata is March 2010 and investment is of Rs 1943 crores. Ministry of Civil Aviation has also approved an action plan for development of Chennai airport. An estimated cost is Rs 1808 crores and will be completed by 2010.

11. **Greenfield Airports**: New greenfield airports at Hyderabad and Bengaluru have been implemented on a BOOT basis for 30 yrs with PPP, at a cost of Rs 2478 and 2470 crores respectively.

12. GOI has given in-principle, approval for the setting up of an airport through PPP at Navi Mumbai. A steering committee has been set up to monitor the implementation.

13. Many State governments have also proposed greenfield airport projects. A few airports have also been proposed for private use. The status of greenfield airports as on December 1st, 2008 is shown in Table 4.

14. **Non Metro Airports**: AAI is taking up select 35 non-metro airports for modernization through PPP. These are Agra, Agatti, Ahmedabad, Amritsar, Aurangabad, Bhopal,
Bhubaneshwar, Chandigarh, Dehradun, Indore, Jaipur, Jammu, Khajuraho, Lucknow, Madurai, Mangalore, Nagpur, Pune, Ranchi, Trichy, Thiruvananthapuram, Agartala, Coimbatore, Dimapur, Goa, Guwahati, Imphal, Patna, Port Blair, Raipur, Rajkot, Vadodara airports. Work on most of these has been taken up.

**Establishment of Airport Economic Regulatory Authority**

15. The government has decided to set up an Airport Economic Regulatory Authority (AERA) to create a level playing field, to foster healthy competition amongst all airports and to encourage investment in airport facilities.

**Airport Connectivity**

16. The ministry has also taken up the issue of improving connectivity to major airports and selected 12 airports in the first phase. These are, CSI Mumbai and the proposed Navi Mumbai, IGI Delhi, the proposed greater Noida (at Jewar), Chennai, Bengaluru, Kolkata, Hyderabad, Ahmedabad, Cochin, Coimbatore and Jaipur. The ministry has firmed up various connectivity plans for four of the above airports and is working on similar proposals for the remaining airports.

**Airport Security**

17. The objective of airport security will be to safeguard the passengers, crew, ground personnel, the general public and the airport infrastructure against unlawful acts as per ICAO Standards and Recommended Practices laid down in Annexure-17 to the Chicago Convention. The level of security will be calibrated by the BCAS according to the threat perception at any point of time. Security will have to be cost-effective when compared to internationally accepted norms. New staffing patterns, different from the normal police stations, will have to be innovated for airports. There will be greater accent on modern technology and mechanization, so as to reduce the need for manpower and increase the effectiveness of the force deployed.

18. Airport security will be looked after by specialized police agencies, state police and airport security organizations, depending on the internal security conditions prevalent in a particular area. BCAS will continue to coordinate the working of the various agencies to ensure that all security norms are followed by them.

19. Govt. recognizes the urgent need to develop an airport security organization, in order to have a quietly efficient, specialized, commercially conscious, passenger-friendly force,
at the international airports to begin with. Private security agencies will also be allowed at certain airports, if the threat assessment so permits.

20. There will be constant training of security personnel posted at airports in order to improve their effectiveness and passenger-friendliness. The present training centre at BCAS Headquarters will be upgraded and strengthened for this purpose.

Table 1.1: Passengers Handled at Airports

<table>
<thead>
<tr>
<th>Year</th>
<th>International</th>
<th>Domestic</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>million</td>
<td>% Change</td>
<td>million</td>
</tr>
<tr>
<td>1999-00</td>
<td>13.29</td>
<td>2.90</td>
<td>25.74</td>
</tr>
<tr>
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<tr>
<td>2001-02</td>
<td>13.63</td>
<td>(-)2.70</td>
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<tr>
<td>2002-03</td>
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<tr>
<td>2003-04</td>
<td>16.64</td>
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<td>16.70</td>
<td>39.86</td>
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<tr>
<td>2006-07</td>
<td>25.78</td>
<td>15.20</td>
<td>70.62</td>
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<tr>
<td>2007-08</td>
<td>29.80</td>
<td>15.60</td>
<td>87.07</td>
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Table 1.2: Cargo Handled at Airports

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<th>Year</th>
<th>International</th>
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<tr>
<td></td>
<td>'000 tons</td>
<td>% Change</td>
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<tr>
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<td>1146.64</td>
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Table 1.2: Aircrafts Movement

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<th>Year</th>
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<th>Domestic '000</th>
<th>% Change</th>
<th>Total '000</th>
<th>% Change</th>
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<td>1059.48</td>
<td>22.91</td>
<td>1308.00</td>
<td>21.38</td>
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Table 2: Funding Pattern of Major International Airports

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<tr>
<th>No</th>
<th>Name of the Project</th>
<th>Project Cost (Rs in Crore)</th>
<th>Stake Holders (Equity Share)</th>
<th>Equity (%)</th>
<th>Debt-Equity (%)</th>
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<tr>
<td>1</td>
<td>Cochin International Airport</td>
<td>315</td>
<td>Investor Directors and Relatives, Govt of Kerala</td>
<td>37.0</td>
<td>33-67</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>35.0</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>(AI, BPCL, SBT)</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Bengaluru International Airport</td>
<td>2470</td>
<td>Siemens Project Ventures, Germany Unique (Flughafen Zürich AG) -Zurich Airport, Switzerland Larsen &amp; Toubro, India Airport Authority of India KSIIDC (an agency owned by the state of Karnataka, India)</td>
<td>40.0</td>
<td>33-67</td>
</tr>
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<td></td>
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Table 3: Capital Expenditure in Aviation Sector During 11th Five Year Plan

Past Capex on Metro/Non-Metro Airports by AAI

<table>
<thead>
<tr>
<th>Year</th>
<th>Non-Metro Airports</th>
<th>Metro airports</th>
<th>Total</th>
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<tbody>
<tr>
<td>2000-2001</td>
<td>237</td>
<td>112</td>
<td>349</td>
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<tr>
<td>2001-2002</td>
<td>249</td>
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<td>319</td>
</tr>
<tr>
<td>2002-2003</td>
<td>283</td>
<td>162</td>
<td>446</td>
</tr>
<tr>
<td>2003-2004</td>
<td>444</td>
<td>122</td>
<td>566</td>
</tr>
<tr>
<td>2004-2005</td>
<td>442</td>
<td>164</td>
<td>606</td>
</tr>
<tr>
<td>2005-06 (RE)</td>
<td>606</td>
<td>346</td>
<td>952</td>
</tr>
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</table>

Source: Planning Commission
Planned Capex on Thirty five Non-Metro Airports

<table>
<thead>
<tr>
<th>Phase</th>
<th>Terminal Building, Carpark, Cargo</th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
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<tr>
<td></td>
<td></td>
<td>Air Side</td>
<td>City side</td>
<td>Total</td>
<td></td>
</tr>
<tr>
<td>Phase-I</td>
<td>1,496</td>
<td>420</td>
<td>1,050</td>
<td>2,966</td>
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<tr>
<td>Phase-II</td>
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<td>682</td>
<td>300</td>
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<tr>
<td>Phase-III</td>
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<td>294</td>
<td>150</td>
<td>974</td>
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<tr>
<td>Total</td>
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<td>1,396</td>
<td>1,500</td>
<td>6,162</td>
<td></td>
</tr>
</tbody>
</table>

*Source: Planning Commission*

Funding of Development of Airside and Terminals for Non-Metro Airports

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Source</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Internal resources of AAI</td>
<td>3,116</td>
</tr>
<tr>
<td>2.</td>
<td>Upfront payment from JVCs</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Delhi &amp; Mumbai</td>
<td>300</td>
</tr>
<tr>
<td></td>
<td>- Kolkata &amp; Chennai</td>
<td>175</td>
</tr>
<tr>
<td>3.</td>
<td>Borrowings</td>
<td>1,000</td>
</tr>
<tr>
<td>4.</td>
<td>Min. of Defence &amp; AP Govt. for Vizag project</td>
<td>71</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
<td>4,662</td>
</tr>
</tbody>
</table>

*Source: Planning Commission*

Planned Capex on Equipment and Instrumentation

<table>
<thead>
<tr>
<th>Year</th>
<th>CNS-ATM Equipment for greenfield airports</th>
<th>CNS Equipment</th>
<th>Other Equipment</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2006-07</td>
<td>180</td>
<td>191</td>
<td></td>
<td>371</td>
</tr>
<tr>
<td>2007-08</td>
<td>350</td>
<td>50</td>
<td>100</td>
<td>500</td>
</tr>
<tr>
<td>2008-09</td>
<td>250</td>
<td>50</td>
<td>100</td>
<td>400</td>
</tr>
<tr>
<td>2009-10</td>
<td>140</td>
<td>30</td>
<td>87</td>
<td>257</td>
</tr>
<tr>
<td>2010-11</td>
<td>150</td>
<td>150</td>
<td></td>
<td>300</td>
</tr>
<tr>
<td>2011-12</td>
<td>150</td>
<td>150</td>
<td></td>
<td>300</td>
</tr>
<tr>
<td>2012-13</td>
<td>150</td>
<td>150</td>
<td></td>
<td>300</td>
</tr>
<tr>
<td>2013-14</td>
<td>150</td>
<td>150</td>
<td></td>
<td>300</td>
</tr>
<tr>
<td>Total</td>
<td>1,520</td>
<td>130</td>
<td>1,078</td>
<td>2,728</td>
</tr>
</tbody>
</table>

*Source: Planning Commission*
Funding of Delhi and Mumbai Airports

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Source</th>
<th>Funding (Rs. in crore)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Equity contribution by AAI</td>
<td>302</td>
</tr>
<tr>
<td>2.</td>
<td>Private equity</td>
<td>1,200</td>
</tr>
<tr>
<td>3.</td>
<td>Internal resources of JVC</td>
<td>2,298</td>
</tr>
<tr>
<td>4.</td>
<td>Borrowings of JVC</td>
<td>7,600</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>11,400</strong></td>
</tr>
</tbody>
</table>

*Source: Planning Commission*

Approved Funding Plan for Bangalore and Hyderabad Airports

<table>
<thead>
<tr>
<th></th>
<th>Hyderabad</th>
<th>Bangalore</th>
</tr>
</thead>
<tbody>
<tr>
<td>(In Rs. cr.)</td>
<td>Capital of Total</td>
<td>Percentage</td>
</tr>
<tr>
<td>AAI share</td>
<td>49</td>
<td>3%</td>
</tr>
<tr>
<td>State support</td>
<td>422</td>
<td>24%</td>
</tr>
<tr>
<td>Equity of private promoters</td>
<td>330</td>
<td>19%</td>
</tr>
<tr>
<td>Loans from lenders</td>
<td>961</td>
<td>54%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>1762</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Bangalore</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>(In Rs. cr.)</td>
<td>Capital of Total</td>
<td></td>
</tr>
<tr>
<td>AAI share</td>
<td>43</td>
<td>3%</td>
</tr>
<tr>
<td>State support</td>
<td>350</td>
<td>25%</td>
</tr>
<tr>
<td>Equity of private promoters</td>
<td>284</td>
<td>20%</td>
</tr>
<tr>
<td>Loans from lenders</td>
<td>735</td>
<td>52%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>1412</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>

*Source: Planning Commission*

Projected Investments from PPPs in Airports

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Airport</th>
<th>Private Investment (Rs. in crore)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Delhi and Mumbai</td>
<td>11,400</td>
</tr>
<tr>
<td>2.</td>
<td>Bangalore and Hyderabad</td>
<td>4,000</td>
</tr>
<tr>
<td>3.</td>
<td>Chennai and Kolkatta (to be decided)</td>
<td>5,700</td>
</tr>
<tr>
<td>4.</td>
<td>Five greenfield airports</td>
<td>8,500</td>
</tr>
<tr>
<td>5.</td>
<td>City side development</td>
<td>1,500</td>
</tr>
<tr>
<td>6.</td>
<td><strong>Total</strong></td>
<td><strong>31,100</strong></td>
</tr>
</tbody>
</table>

*Source: Planning Commission*
Table 4: Status of Greenfield Airports - December 1st, 2008

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Name of Airport</th>
<th>State</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Bangalore International airport</td>
<td>Karnataka</td>
<td>Commissioned on 24th May, 2008</td>
</tr>
<tr>
<td>2</td>
<td>Hyderabad International airport</td>
<td>Andhra Pradesh</td>
<td>Commissioned on 23rd March, 2008</td>
</tr>
</tbody>
</table>

**Projects commissioned**

**Proposal granted approval of the Central Government**

- **Mopa airport**
  - Goa
  - A Committee comprising of Chief Minister, Goa, MP (Goa), Chief Secretary and Joint Secretary (MoCA), GOI was constituted to look into all aspects relating to the airport and advise GOI on the existing airport. The Committee finalized the report and submitted to PM. The State Government has been asked to intimate status of project implementation.

- **Navi Mumbai International airport**
  - Maharashtra
  - CIDCO is undertaking various project related activities. Technical and Legal Consultant has been appointed by CIDCO.

- **Kannur airport**
  - Kerala
  - Government of Kerala is undertaking project related activities. Government of Kerala have identified Kerala Industrial Infrastructure Development Corporation as a Nodal Agency to provide support services for the development of Kannur Airport.

- **Bijapur airport**
  - Karnataka
  - Government of Karnataka had invited Expression of Interest on 9th April, 2007 for construction of the airport through Public Private Partnership (PPP). Government of Karnataka has awarded the work of establishing the Greenfield Airport to M/s Marg Ltd. on PPP-BOT basis.
<table>
<thead>
<tr>
<th>Airport Location</th>
<th>State/Region</th>
<th>Status/Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shimoga airport</td>
<td>Karnataka</td>
<td>Government of Karnataka has awarded the work of establishing the Greenfield airport to consortium of M/s Maytas Infrastructure Limited and VIE India Project Development and Holding LLC on BOT basis. The State Government has been asked to intimate status of project implementation.</td>
</tr>
<tr>
<td>Hassan airport</td>
<td>Karnataka</td>
<td>GoK has awarded the work of establishing the Greenfield airport to M/s Jupiter Aviation &amp; Logistics Ltd. to construct the Hassan airport on BOOT basis. The State Government has been asked to intimate status of project implementation.</td>
</tr>
<tr>
<td>Gulbarga airport</td>
<td>Karnataka</td>
<td>Government of Karnataka has awarded the work of establishing the greenfield airport to the consortium of M/s Maytas Infrastructure Limited and VIE India Project Development and Holding LLC on BOT basis. The State Government has been asked to intimate status of project implementation.</td>
</tr>
<tr>
<td>Sindhudurg airport</td>
<td>Maharashtra</td>
<td>“In-principle” approval accorded with certain conditions. MIDC has engaged India Infrastructure – a joint venture between IDFC and Feedback Ventures for project development and partner selection for the project.</td>
</tr>
<tr>
<td>Dabra airport, Gwalior</td>
<td>MadhyaPradesh</td>
<td>“In-principle” approval accorded with certain conditions.</td>
</tr>
<tr>
<td>Durgapur airport</td>
<td>WestBengal</td>
<td>“In-principle” approval accorded with certain conditions.</td>
</tr>
</tbody>
</table>

**Proposals under consideration with the Government**

<table>
<thead>
<tr>
<th>Proposal</th>
<th>State/Region</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Greater Noida international airport</td>
<td>UttarPradesh</td>
<td>A Group of Ministers (GOM) has been constituted for the project. The matter is under consideration of the GOM.</td>
</tr>
</tbody>
</table>
## Infrastructure Development and Mega Projects

<table>
<thead>
<tr>
<th>Airport</th>
<th>State</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chakan international airport</td>
<td>Maharashtra</td>
<td>Site inspection has been carried out by AAI. Government of Maharashtra has been asked to submit the proposal for “in-principle” approval.</td>
</tr>
<tr>
<td>Karaikal airport</td>
<td>Puducherry</td>
<td>Site inspection has been carried out by AAI. Feasibility Report yet to be forwarded.</td>
</tr>
<tr>
<td>Airport at Jhajjar</td>
<td>Haryana</td>
<td>Site inspection has been carried out by AAI. Proposal for “in principle” approval yet to be forwarded by the promoter.</td>
</tr>
<tr>
<td>Ludhiana</td>
<td>Punjab</td>
<td>Bengal Aerotropolis Projects Limited has sought site clearance. Site inspection carried out by AAI. Comments of Ministry of Defence have been sought and are awaited.</td>
</tr>
<tr>
<td>Paladi-Ramsinghpur</td>
<td>Rajasthan</td>
<td>Proposal is under examination</td>
</tr>
<tr>
<td>Ankleshwar, Bharuch</td>
<td>Gujarat</td>
<td>Proposal is under examination</td>
</tr>
<tr>
<td>Ramnad, Rameshwaram</td>
<td>Tamil Nadu</td>
<td>Proposal is under examination</td>
</tr>
<tr>
<td>Itanagar</td>
<td>Arunachal Pradesh</td>
<td>Proposal is under examination</td>
</tr>
</tbody>
</table>

### Proposals for setting up of airports for private use

<table>
<thead>
<tr>
<th>Airport</th>
<th>State</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Saswad at Pune</td>
<td>Maharashtra</td>
<td>Application pending with DGCA</td>
</tr>
<tr>
<td>Sonepat</td>
<td>Haryana</td>
<td>Application pending with DGCA</td>
</tr>
<tr>
<td>Pernem accorded by the</td>
<td>Goa</td>
<td>In principle approval DGCA</td>
</tr>
<tr>
<td>Singhrauli (Sasan)</td>
<td>Madhya Pradesh</td>
<td>Proposal being referred by MoCA to DGCA for issue of NoC</td>
</tr>
<tr>
<td>Adarsh PalmRetreat, Bangalore</td>
<td>Karnataka</td>
<td>Proposal is under examination</td>
</tr>
</tbody>
</table>
INLAND WATER TRANSPORT

Background to Centre-State issues

6.1 The subject of inland waterways is mentioned in all the three lists of the Constitution namely Union list, State list and Concurrent list. Shipping and navigation on inland waterways declared by Parliament to be National Waterways (relating to the mechanically propelled vessels) is mentioned under the Union list. Accordingly, development and regulation of waterways which are declared by Parliament as National Waterways (NW) come under the purview of Central government. All other waterways therefore are primarily in the domain of respective State governments.

Centre and State Issues

6.2 It may be noted that when the proposal for declaration of any waterway is considered by Inland Water Authority of India (IWAI)/ Department of Shipping (DoS), it is invariably preceded by Techno Economic Feasibility Study and clear concurrence of concerned state government for declaration of the waterway as a National Waterway and its subsequent development and regulation by the Central government.

6.3 IWAI takes up projects of development of these waterways through the grant received from Department of Shipping (DoS) from time to time. In development of these waterways, the cooperation of State government is sought and received as and when required particularly for matters such as land acquisition and developmental works in which State governments show interest, based on mutually agreed terms and conditions between IWAI and the concerned State governments.

6.4 Since the development of waterways and the activity of shipping and navigation do not involve any consumption of water resources, there had been no instance of discord between IWAI and any of the State governments in development of National Waterways.

6.5 The key issue here is of investments in national waterways and associated infrastructure. The proportion of traffic carried by National Waterways is very small as compared
to river-canal system in Goa, which saw unprecedented growth and where some 40.50 million tonnes of iron ore moved by barges on the Mandovi - Zuari - Cumbarjua system in 2006-07.

6.6 The declaration of Goa waterways as National Waterway is being discussed with Government of Goa. Although the 230 km of Hoogly river in Kolkata is like inland water, it is treated as Kolkata Port’s water.

6.7 All riverine states should develop waterways as feeder routes to National Waterways by adopting the fishbone model of development. Major waterways of the states should be identified and classified as “State Waterways” for priority funding. More funds will be required during 11th Plan as response of CSS during 10th plan has been encouraging.

With increasing saturation and congestion of rail/road modes, there is need for policy dispensation to facilitate movement of bulk commodities preferably by IWT.

6.8 Undertaking river training work for providing bank protection and giving predetermined fairway is important, though it involves heavy investment.

6.9 Central Inland Water Transport Corporation (CI WTC) vessels can be repaired and put into use by leasing them to private operators.

6.10 Viability gap funding for operations of IWT services, therefore, need to be considered till infrastructure is fully developed and commercial viability is established.

6.11 Ports are facing congestion due to problems in evacuation. There is need to promote IWT, wherever possible /feasible, may be in partnership with ports and a viable model has to be developed in this regard.

6.12 There are 14,500 km of potentially navigable Inland Waterways, but the modal share of IWT in organized sector is very small, corresponding to freight movement of 55.82 mt (or 3.376 billion tonne km) only.

6.13 There are three National Waterways (Ganga, Brahmaputra and West Coast canal) totalling up to 2,700 km, but the infrastructural facilities (fairway with assured Least Available Depth (LAD), terminals, cargo handling equipment, night navigation facility, inter-modal linkages etc) available here is grossly inadequate. As a result, National Waterways are yet to become fully functional to provide an alternate and viable mode of transport.
6.14 Although considerable emphasis has been laid on development of rail and road infrastructure in the successive plans, the IWT sector has been neglected. Consequently, investments in IWT mode have been far below the levels attained in other modes. Yet, IWT can be compared with road and rail to judge its viability. To illustrate, while development / maintenance cost of roads are about Rs 5 crore/km, the money spent so far on development of 2,700 km of potentially navigable National Waterway is only about Rs 300 crore, i.e. Rs 0.11 crore per km only. IWT can not become viable at this rate of investment.

6.15 At present both the operating cost and time taken in IWT voyages are very large which makes commercial operations unviable and unattractive.

6.16 In order to improve the cargo availability, the earlier request to Central PSUs for adopting IWT mode for at least 5% of their cargo may be reiterated.

6.17 The fleet strength in IWT sector is 430 only, of which more than 50% is obsolete and non-operational.

6.18 Low value, high volume cargo like coal and fly ash, fertilizer raw materials, building materials, food grains etc is being carried for long distances by rail and road, despite original destination points lying on National Waterways, IWT protocol route (in the case of North-East) and other developed Inland Waterways.

6.19 Desirability of organic integration of coastal shipping with IWT where the development strategy for these two waterborne modes are similar hence perhaps it is IWAI has made responsible for Coastal Shipping as well.

7. RECOMMENDATIONS

Legislative

7.1 It is necessary to have national legislation on standards for bridges, etc., for canals, rivers to enable future development of inter state and intra state inland water transport. Notwithstanding this position, the State governments ought to ensure that inland waterways related development projects (for example, dams, barrages etc.,) do keep the navigational requirements in view. Accordingly, necessary IWT related infrastructure such as navigational lock etc., be provided.
Institutional

7.2 Inland and coastal water transport should be treated as one to enable better regulation and standards of vessels to cover both.

7.3 As regards National Waterways which are developed through 100% funding by the central government/IWAI, State governments can complement the efforts of IWAI by providing assistance for land acquisition and other administrative issues on priority basis since ultimately the IWT development will be helpful in overall development of the State. In addition, the states can also take up the work of development of the National Waterways through the state agencies like irrigation department, PWD etc.

7.4 As regards waterways other than National Waterways, though the Central Government/ IWAI cannot invest directly in creation of infrastructure, it can invest through IWAI, provide guidelines/assistance in formulating the schemes (which it had been doing regularly) or any other guidance pertaining to IWT sector as and when sought by the State governments.

7.5 One of the key areas for overall development of IWT sector is that most of the State governments do not have strong organizational set up to conceptualize and implement projects for IWT development. Therefore, if the State governments concentrate on formation of such organizational set up it will go in a long way in development of IWT sector in the states as in well as entire country.
ANNEXURE

Inland Water Transport

1. Inland Water Transport (IWT): Water based transport is effective as generally speaking, operating costs of fuel are low and environmental pollution is lower than for corresponding volumes of movement by road, rail or air. A major advantage is that the main infrastructure – the waterway – is often naturally available, which then has to be ‘trained’, maintained and upgraded. Transport over waterways is especially effective when the source and/or destination are waterfront locations.

2. Inland Waterways in India: India has about 14,500 km of navigable waterways which comprise of rivers, canals, backwaters, creeks, etc. About 55.82 million tons (mt), (translating to 3.4 billion ton kilometers (btkm)) of cargo (2006-07) is being moved annually by Inland Water Transport (IWT), a fuel efficient and environment friendly mode.

3. National Waterways: Six important Waterways have been designated as National Waterways:

NW 1: Ganga – Bhagirathi - Hooghly River System from Allahabad to Haldia (1620 km - in UP, Bihar, Jharkhand and West Bengal) - declared as National Waterway in 1986

NW 2: River Brahmaputra from Dhubri to Sadiya (891 km – in Assam) - declared as National Waterway in 1988

NW 3: The West Coast Canal from Kottapuram to Kollam along with Champakara and Udyogmandal Canals (205 km - in Kerala) - declared as National Waterway in 1993

NW 4: Godavari and Krishna rivers along with Kakinada - Pondicherry canals (1095 km – in Andhra Pradesh, Tamilnadu and Union Territory of Pondicherry) (Bill passed in the Lok Sabha on 23rd Oct 2008)

NW 5: East Coast Canal along with Brahmani river and Mahanadi delta (623 km – in Orissa and West Bengal) (Bill passed in the Lok Sabha on 23rd Oct 2008)

NW 6: Barak river (121 km in Assam) (Bill introduced in Parliament in 2007 - yet to be passed).

Goa Waterways

4. The Goa Waterways comprise of 41 km stretch of Mandovi River from Usgaon to Arabian Sea mouth with Panaji located on its south bank, 64 Km stretch of Zuari River
from Sanvardan to Marmugao and 17 Km long Cumberjua Canal running north-south and connecting the two rivers.

Its linkage with Mormugoa and Panji ports forms more than 90% of the commercially viable freight inland water movement in the country.

**Inland Waterways Authority of India**

5. The problems of IWT were studied in the past by several Committees. These Committees considered the difficulties and problems of river transport and made various suggestions and recommendations for improvement of the declining IWT system. As a follow-up action, Inland Waterways Authority of India (IWAI) was set up in October 1986 under the IWAI Act, 1985 for the regulation and development of Inland Waterways in the country. The Authority primarily undertakes projects for development and maintenance of IWT infrastructure on National Waterways through grant received from Ministry of Shipping, Road Transport and Highways.

All policy matters relating to National Waterways are decided by the Ministry of Shipping under the advice of the IWAI. Action plan of IWAI for development of National Waterways & Protocol route by 2006-2010 has been given in Table 1.

**Indo-Bangladesh Protocol**

6. An Inland water transit and trade protocol exists between India and Bangladesh under which inland vessels of one country can transit through the specified routes of the other country. The existing protocol routes are (i) Kolkata-Pandu-Kolkata, (ii) Kolkata – Karimganj- Kolkata, (iii) Rajshahi –Dhulian - Rajshahi and (iv) Pandu – Karimganj - Pandu. For inter-country trade, four ports of call have been designated in each country namely; Haldia, Kolkata, Pandu and Karimganj in India and Narayanganj, Khulna, Mongla and Sirajganj in Bangladesh. Under the protocol, 50:50 cargos sharing by Indian and Bangladeshi vessels is permitted both for transit and inter country trade.

This protocol was to be renewed every two year. But now it is being renewed on piece-meal basis.

7. Besides the existing Indo-Bangladesh protocol route, opening of the new inter country IWT routes namely (i) River Tizu – Chindwin - Irrawady system - this will make interconnectivity between Nagaland and Myanmar to the port of Yangoon (Rangoon) (ii) River Nengpui – Chimtupui - Kolodyne system – this will make interconnectivity between
Mizoram and Myanmar to the port of Sittwe and (iii) River Gumti - Meghna system - this will make interconnectivity between Tripura and Bangladesh to Dacca and other locations, will accelerate trade and commerce between India and its neighbouring countries.

**Inland Vessel Building Subsidy Scheme**

8. In order to reduce the capital burden on the IWT operators, and to enhance their profitability, an inland vessel building subsidy scheme has been introduced from 1st April 2002 for a period of 5 years under which 30% cost of an inland vessel is subsidized by the Central Government. This is applicable to both cargo and passenger inland vessels meant for operation in National Waterways, Sunderbans waterways or Indo-Bangladesh Protocol routes. This is for vessels acquired from a Shipyard in India.

The scheme, however, has ended on 31.03.07 and IWAI requested the Department of Shipping for extension of this scheme on a long term basis.

**Cargo Movement**

9. The Cargo movement for NW-1, 2 & 3, Goa, Mumbai and Kolkata Waterways is given in Table 2.

**Policy Directions and Investments in Inland Water Transport**

10. With a view to providing an impetus to development of inland water transport mode, the Government of India had approved Inland Water Transport Policy in 2001, which includes several fiscal concessions, and policy guidelines for development of this mode and to encourage private sector participation in development of infrastructure and ownership and operation of inland vessels. IWAI is also authorized for joint ventures and equity participation in BOT projects.

11. IWAI had been making concerted efforts to attract private sector investment in IWT sector through Joint Venture route. For exploring possibility of such PPP projects, some priority projects were short listed through a consultant (M/S IFCI Ltd) and for some of these projects, bids were invited by IWAI. A sustained effort of four years has resulted in significant success and, four Memorandum of Understanding (MOU)'s have been signed between IWAI and respective successful bidders. These are shown in Table 3

**11th Five Year Plan**

12. In outlay of Rs 5812 crores is proposed under Ongoing Schemes, out of which the Budgetary Support would be Rs 3642 crores and the EBR component Rs 2170. For New
Schemes Rs 3188 crores is proposed, out of which the Budgetary Support would be Rs 1938 crores and the EBR component Rs 1250. Grants to IWAI under 11th five year plan for ongoing schemes and the new schemes has been projected as Table 4 & 5".

National Maritime Development Programme (NMDP)

13. The NMDP, which has 15 projects in the IWT sector, was launched in December 2005. These projects require an investment of Rs 10,500 crore till 2014-2015 (Table 6). As per the constitution, Central Government can develop and regulate only National Waterways. Consequently, under NMDP it is proposed that while the National Waterways will be developed, maintained and regulated by the Central Government, states would be encouraged and provided financial assistance through centrally sponsored schemes (CSS) for development of other waterways.

14. While national waterways are developed by Central Government through IWAI, for overall development of IWT sector, it is necessary that State Governments also develop waterways. For encouraging states to develop IWT sector, funding pattern of CSS was revised in Nov 2002. In the revised pattern, 100% grant for NE States including Sikkim and 90% grant for other states is provided under the CSS. 35 projects of 15 states (Andhra Pradesh, Assam, Bihar, Goa, Himachal Pradesh, Karnataka, Kerala, Maharashtra, Madhya Pradesh, Manipur, Nagaland, Orissa, Tripura, Uttar Pradesh and West Bengal) a total cost of Rs 52.84 crore has also been released to these states from 2003-04 to 2006-07. Out of these, 4 projects of 4 states (Assam, Manipur, Nagaland and West Bengal) at a cost of Rs 11.88 crore were sanctioned and an amount of Rs 12.00 crore in previous years by Department of Shipping during 2006-07.

Table 1: Action plan of IWAI for development of National Waterways & Protocol route by 2006-2010

<table>
<thead>
<tr>
<th>Sr No</th>
<th>Project Activity</th>
<th>NW -1</th>
<th>NW -2</th>
<th>NW -3</th>
<th>Others</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Development of Channel</td>
<td>78.91</td>
<td>27.19</td>
<td>97.30</td>
<td>-</td>
<td>203.40</td>
</tr>
<tr>
<td>2</td>
<td>Night navigation</td>
<td>59.27</td>
<td>19.88</td>
<td>2.20</td>
<td>-</td>
<td>81.35</td>
</tr>
<tr>
<td>3</td>
<td>Terminals</td>
<td>148.64</td>
<td>52.24</td>
<td>21.55</td>
<td>-</td>
<td>222.43</td>
</tr>
<tr>
<td>4</td>
<td>Acquisition of vessels</td>
<td>99.13</td>
<td>140.18</td>
<td>21.21</td>
<td>-</td>
<td>260.52</td>
</tr>
<tr>
<td>5</td>
<td>River training works</td>
<td>7.50</td>
<td>2.59</td>
<td>-</td>
<td>-</td>
<td>10.09</td>
</tr>
<tr>
<td>6</td>
<td>Construction of Regional Office</td>
<td>3.00</td>
<td>5.00</td>
<td>4.10</td>
<td>-</td>
<td>12.10</td>
</tr>
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</table>
Report of the Commission on Centre-State Relations

<table>
<thead>
<tr>
<th>7</th>
<th>Other Schemes</th>
<th>-</th>
<th>-</th>
<th>-</th>
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<th>0.00</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a)</td>
<td>NINI</td>
<td>7.06</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>7.06</td>
</tr>
<tr>
<td>(b)</td>
<td>IT Activities</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>0.81</td>
<td>0.81</td>
</tr>
<tr>
<td>(c)</td>
<td>PPP Projects</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>28.22</td>
<td>28.22</td>
</tr>
<tr>
<td>(d)</td>
<td>IWT promotion</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>6.43</td>
<td>6.43</td>
</tr>
<tr>
<td>(e)</td>
<td>Technical studies</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>4.00</td>
<td>4.00</td>
</tr>
<tr>
<td>(f)</td>
<td>LISS/IVBSS</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>19.73</td>
<td>19.73</td>
</tr>
<tr>
<td>8</td>
<td>CSS</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>80.00</td>
<td>80.00</td>
</tr>
<tr>
<td>9</td>
<td>New National Waterways</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>25.50</td>
<td>25.50</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>403.51</td>
<td>247.08</td>
</tr>
</tbody>
</table>

Source: Inland Waterway Authority of India, http://iwai.gov.in/

Table 2: The Cargo movement for NW-1, 2 & 3, Goa, Mumbai & Calcutta Waterways

<table>
<thead>
<tr>
<th>Stretch</th>
<th>2002-03</th>
<th>2003-04</th>
<th>2004-05</th>
<th>2005-06</th>
<th>2006-07</th>
<th>Type of cargo moved</th>
</tr>
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<tbody>
<tr>
<td>National Waterways</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>NW 1 mt</td>
<td>0.632</td>
<td>0.786</td>
<td>0.887</td>
<td>1.001</td>
<td>1.317</td>
<td>Cement, general cargo, rice, wood logs, packed and bulk edible oil, petroleum oil lubricants, fly ash, pulses, stone chip &amp; iron dust</td>
</tr>
<tr>
<td>The Ganga btkm</td>
<td>0.160</td>
<td>0.312</td>
<td>0.411</td>
<td>0.580</td>
<td></td>
<td></td>
</tr>
<tr>
<td>NW 2 mt</td>
<td>0.098</td>
<td>0.796</td>
<td>0.810</td>
<td>0.804</td>
<td>1.086</td>
<td>Cement, building material, fertilizer, petrocoke, food grains, coal, plant &amp; machinery general cargo etc. inter-district &amp; inter-state cargo &amp; HSD</td>
</tr>
<tr>
<td>The Brahmaputra btkm</td>
<td>0.029</td>
<td>0.038</td>
<td>0.032</td>
<td>0.173</td>
<td></td>
<td></td>
</tr>
<tr>
<td>NW 3 mt</td>
<td>1.188</td>
<td>1.362</td>
<td>1.159</td>
<td>1.173</td>
<td>1.022</td>
<td>Sulphur, rock, phosphate, liquified ammonia, zinc, Phosphoric Acid Gas, furnaceoil, concentrated petroleum products, zinc &amp; drinking water etc</td>
</tr>
<tr>
<td>West Coast Canal btkm</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>States</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The Goa mt</td>
<td>19.009</td>
<td>22.877</td>
<td>35.000</td>
<td>36.271</td>
<td>40.500</td>
<td>iron ore, iron ore pellets, coal &amp; pig iron</td>
</tr>
<tr>
<td>ore btkm</td>
<td>1.144</td>
<td>1.700</td>
<td>1.761</td>
<td>1.966</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
## Table 3: Public Private Partnership Projects

<table>
<thead>
<tr>
<th>Sr No</th>
<th>Name of the Company</th>
<th>Project</th>
<th>Total Project Cost</th>
<th>Equity Stake Holders</th>
<th>Equity Share %</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Royal Logistics (Ship) Ltd</td>
<td>6 inland barrages b/w Kolkata &amp; Pandu</td>
<td>Rs 33 rores</td>
<td>SKS Logistics Ltd</td>
<td>70</td>
</tr>
<tr>
<td>2</td>
<td>Vivada Logistics Pvt Ltd</td>
<td>2 inland barrages b/w Kolkata &amp; 4 Dhubri</td>
<td>10</td>
<td>Vivada Inland</td>
<td>70</td>
</tr>
<tr>
<td>3</td>
<td>SKS Waterways Ltd</td>
<td>8 inland barrages b/w Kolkata &amp; Mongla</td>
<td>44</td>
<td>SKS Logistics Ltd</td>
<td>70</td>
</tr>
<tr>
<td>4</td>
<td>Share holder agreement is yet to be signed</td>
<td>3 floating jetties</td>
<td>3</td>
<td>ICM Pvt Ltd</td>
<td>90</td>
</tr>
</tbody>
</table>


### Table 3: Public Private Partnership Projects

### Table 4: Grants to IWAI under 11th five year plan: Ongoing Schemes

<table>
<thead>
<tr>
<th>Sr No</th>
<th>Ongoing Schemes</th>
<th>BSRs in crores</th>
<th>EBR in crores</th>
<th>Total Rs in crores</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Grants to IWAI (NW 1, 3, JV)</td>
<td>1620</td>
<td>1050</td>
<td>2670</td>
</tr>
<tr>
<td>2</td>
<td>Technical Studies and R &amp; D</td>
<td>50</td>
<td>-</td>
<td>50</td>
</tr>
<tr>
<td>3</td>
<td>IVBSS</td>
<td>480</td>
<td>1120</td>
<td>1600</td>
</tr>
<tr>
<td>4</td>
<td>CSS</td>
<td>650</td>
<td>-</td>
<td>650</td>
</tr>
<tr>
<td>5</td>
<td>NE Area (NW 2, Protocol, CSS)</td>
<td>842</td>
<td>-</td>
<td>842</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>3642</td>
<td>2170</td>
<td>5812</td>
</tr>
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</table>
Table 5: Grants to IWAI under 11th five year plan: New Schemes

<table>
<thead>
<tr>
<th>Sr No</th>
<th>Name of project</th>
<th>BS Rs in Crores</th>
<th>EBR Rs in Crores</th>
<th>Total Rs. in crores</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>New National Waterways</td>
<td>1488</td>
<td>-</td>
<td>1488</td>
</tr>
<tr>
<td>2</td>
<td>Incentives for IWT Operators</td>
<td>100</td>
<td>-</td>
<td>100</td>
</tr>
<tr>
<td>3</td>
<td>Mechanizations of country crafts (Bhut-bhuties)</td>
<td>50</td>
<td>50</td>
<td>100</td>
</tr>
<tr>
<td>4</td>
<td>Vessel Leasing Special Purpose Vehicle (SPV)</td>
<td>100</td>
<td>525</td>
<td>625</td>
</tr>
<tr>
<td>5</td>
<td>Dedicated IWT Development Fund (JV for vessel)</td>
<td>100</td>
<td>525</td>
<td>3125</td>
</tr>
<tr>
<td>6</td>
<td>Funding for composite transportation projects</td>
<td>100</td>
<td>150</td>
<td>250</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td>1938</td>
<td>1250</td>
<td>3188</td>
</tr>
</tbody>
</table>

Thus a total support of Rs 9000 crores has planned to IWAI for 11th five year plan. Source: The Working Group and Sub Group report on Shipping and Inland Water transport for 11th five year plan.

Table 6: The details of the projects in IWT under NMDP

<table>
<thead>
<tr>
<th>Sr. no</th>
<th>Name of project</th>
<th>Cost Rs in Crores</th>
<th>Funding Rs in Crores</th>
<th>Pattern</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Public</td>
<td>Private</td>
</tr>
<tr>
<td>Phase-I</td>
<td>Making NW -1 fully functional</td>
<td>225</td>
<td>225</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Making NW -2 fully functional</td>
<td>200</td>
<td>200</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Making NW -3 fully functional</td>
<td>75</td>
<td>75</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Sub Total Phase-I</td>
<td>500</td>
<td>500</td>
<td></td>
</tr>
<tr>
<td>Phase-II</td>
<td>Upgradation of NW -1</td>
<td>800</td>
<td>800</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Upgradation of NW -2</td>
<td>500</td>
<td>500</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Upgradation of NW -3</td>
<td>200</td>
<td>200</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Development of NW -4</td>
<td>550</td>
<td>550</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Development of NW -5</td>
<td>1500</td>
<td>1500</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Development of NW -6</td>
<td>50</td>
<td>50</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Infrastructure Development and Mega Projects

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Phase-I</th>
<th>Phase-II</th>
</tr>
</thead>
<tbody>
<tr>
<td>10</td>
<td>Development of extended NW -3 from Kottapuram to Kasargode in North and Kollam to Kovalam in South</td>
<td>350</td>
<td>350</td>
</tr>
<tr>
<td>11</td>
<td>Development of training facilities and strengthening of IWAI and State IWT setups</td>
<td>100</td>
<td>100</td>
</tr>
<tr>
<td>12</td>
<td>Development of State Waterways</td>
<td>1000</td>
<td>1000</td>
</tr>
<tr>
<td>13</td>
<td>Development of IWT infrastructure on Indo Bangladesh protocol routes including Sunderbans</td>
<td>95</td>
<td>95</td>
</tr>
<tr>
<td>14</td>
<td>Vessel for Cargo and passenger transport under modal shift programme</td>
<td>4000</td>
<td>1700</td>
</tr>
<tr>
<td>15</td>
<td>Viability gap funding under modal shift programme</td>
<td>855</td>
<td>855</td>
</tr>
</tbody>
</table>

**Sub Total Phase-II** 10000 7700 2300

**Grand Total** 10500 8200 2300

*Source: [http://shipping.gov.in/writereaddata/linkimages/NMDP9290454966.doc](http://shipping.gov.in/writereaddata/linkimages/NMDP9290454966.doc)*
SPECIAL ECONOMIC ZONES

Background to Centre-State issues

7.1 Special Economic Zones (SEZs) have continued to expand globally and the international trade they are generating has been increasing steadily. SEZs have been seen as hubs for generation of employment, promotion of industrialization and to augment export surplus. However, the costs and benefits of the SEZs have generated intense debates. Whether SEZs are beneficial to economic activity remains inconclusive.

SEZs vis-a-vis land acquisition

7.2 Large tracts of land need to be acquired for setting up SEZs. This has raised opposition from the affected persons. In most cases, the states have become main facilitators and the task of acquiring land has been taken up by the government authorities. This is done under the “public purpose” clause of the Land Acquisition Act.

7.3 Suggestions of Standing Committee of SEZ

(i) State government and Gram panchayat should verify the type of land and hold a public hearing for objections to the stated type of land to prevent manipulation of land records.

(ii) Use of only waste and barren land should be made for SEZs. If unavoidable, only single-crop, rain-fed land should be acquired. Double cropping or multi-cropping land should not be acquired for SEZs.

(iii) Private developers should be prevented from acquiring more land than required; 50% of the land acquired should be used as “processing area”.

(iv) Consent of landholders should be compulsory.

(v) The displaced persons should be properly informed of the purpose of acquisition, implication thereof, and the resettlement provisions.

(vi) Instead of purchase of land, the land could be leased from the land owner so that he may receive periodic rent. If the SEZ fails to come up, the land should be returned to the land owner.
(vii) Land wherever acquired by the government should not be sold to the developer; instead it should be leased.

(viii) Market rates should be used for calculating compensation; for the purpose, state governments need to undertake periodic market surveys and accordingly determine the market rates.

(ix) Equity shares in the SEZ developer’s company be offered to those displaced.

Land Acquisition & Compensation

7.4 The Land Acquisition (Amendment) Bill 2007 which has been referred to a Parliamentary Panel has advocated more power to states in land acquisition. The Panel has rejected the most important proposed amendment - that a state can acquire upto 30% of the land required if the private player has been able to buy 70%. However, the government’s view has been that most of the issues in land acquisition are at the State government level.

7.5 The amendment bill has also proposed to expand the term “Public Purpose” to include states’ role in setting up of private industries. The Panel has not agreed to this proposal. The Panel has suggested that the option of using agricultural land for industrial purposes should be left to the states. However, in states like UP, Bihar, West Bengal, most of the land available is agricultural land only. The Panel has suggested that highest price in a sale deed in the last three years plus 50% of such price should be used to assess the market value of land.

7.6 Generally the market value is adopted for arriving at compensation. However, in practice, market value may be perceived as insufficient compensation by the land owner when compared to future market value. Although present market value may be considered a satisfactory measure, yet there are views that additional payment (say a certain percentage over the solatium value) should be paid to property owners.

Haryana model

7.7 To promote setting up of Special Economic Zones, the Haryana government has come out with a policy regarding acquisition of land for private development under the PPP model. The salient features of the policy are:

(i) State government will leave it to the private sector to purchase land directly from the land owner and the government would assist them in acquiring leftover pockets to ensure contiguity of SEZs;
(ii) State government has fixed floor rates in line with the prevailing market rates for purpose of compensation to land owners;

(iii) The developer shall pay to the government, total cost of acquisition of land;

(iv) Provide to the satisfaction of the government, rehabilitation of affected persons by way of built up houses or residential plots along with cost of construction in case of relocation of a village abadi (settlement);

(v) Provide essential services including roads, street lights, drainage, sewerage, drinking water, medical care and schooling in such village abadi which are relocated.

(vi) Where relocation is not involved, but 25% of the total land of the village is acquired, the above facilities will be provided;

(vii) Set up industrial training institutes and vocational training centres to train the children of the affected population;

(viii) Give employment to at least one member of the family whose land is acquired

7.8 In a further move, the Haryana government has incorporated the following features:

i) Land owners would be paid an annuity of Rs15,000 per acre per annum over and above the usual land compensation for 33 years. The same would be increased by a fixed sum of Rs500 every year.

ii) In case of SEZs, in addition to R & R package, a sum of Rs30,000 per acre per annum would be paid for a period of 33 years by private developers and this annuity would be increased by Rs1000 per year.

Essentially, the issues in land acquisition and compensation in SEZ are similar to those of other large projects which led to displacement.

Some Other Models in land acquisition for SEZs

7.9 Innovative models have been adopted in land acquisition and some of these are provided below:

Land acquisition for Jaipur SEZ

7.9.1 The Jaipur model of land acquisition for a 3000 acre SEZ involved bartering. The land compensation package included award of 25% developed land in lieu of land “surrendered” by the farmers.
7.9.2 The whole process evolved over a long period beginning 1992 when the land acquisition was initiated. However, as many farmers resorted to litigation against the compensation package, mutual consent was adopted as a strategy. As part of this, government announced that farmers surrendering land would be provided 12% of developed land. A Negotiating Committee under the chairmanship of the urban local body was formed for negotiations. This compensation package failed and the percent of developed land was raised to 15% in 1999.

7.9.3 In 2005, the government further raised the offer of developed land to 25% and out of this, 20% would be in the form of residential plots and 5% in the form of commercial plots. Further, such land was to be allotted in the same scheme for which the land was being acquired. Wherever, it was not possible, cash compensation was to be provided.

7.9.4 To further sweeten the deal, the government allowed that after allotment of residential land, the land owner could get the land use changed to commercial use. The announcement for acquisition was issued in 2006 and cash compensation was to be paid to those who did not “surrender” the land.

The progressive policy of compensation has helped in the acquisition of land, although the process have been protracted.

**SEZ at Pune**

7.9.5 Around 1000 farmers who sold their land to Maharashtra government for the development of SEZ at Khed, have formed a company which will go into business with 250 ha of developed land inside the SEZ as principal asset. Of these, 187 ha belong to the farmers and the remaining 63 ha have been contributed by the SEZ promoters. The farmers’ land kitty has been made from pooling small pieces of developed land that have been “bought back” from the SEZ developer at a pre-fixed rate. It is expected that the property of the company would be developed further or leased out so that the farmers could have permanent income.

**SEZ at Tamil Nadu**

7.9.6 In Tamil Nadu, one SEZ promoted by GVK group is in the process of acquiring 2700 acres of land from local land owners. The SEZ company engaged with the land owners in matters relating to land price and terms of rehabilitation. The engagement proved successful and land acquisition is progressing. The state government did not have to acquire even a single bit of land. The terms of offer included
♦ Rs 3 lac per acre as compensation to all land owners;
♦ Promise of job and allocation of developed plots.

SEZ at Khed, Maharashtra

7.9.7 The multi-product SEZ at Khed in Maharashtra promoted by Bharat Forge Ltd., has helped form a company by around 1000 farmers which will have 250 hectares of developed land within the SEZ as principal asset. Of this, 187 hectares belong to the land owners while the rest is contributed by Bharat Forge and the Maharashtra government. The company could either develop the land further or lease it, thereby ensuring permanent income to the owners.

8. RECOMMENDATONS

Institutional

8.1 SEZ may be provided “infrastructure” status as this will facilitate easier funding by banks and other lending institutions and lead to generation of employment at the regional level.

8.2 Govt of India has enacted the SEZ Act 2005 and SEZ Rules 2006. States need to evolve suitable policies regarding SEZ development. In the absence of statutory provisions, fiscal benefits extendable by State governments under SEZ Act cannot be availed by the developer.

8.3 Rule 5, SEZ Rules 2006 provides that State governments should endeavour to provide electricity and water to SEZ developers. States need to ensure that such services are provided to the developer so that the development process is not hampered. Further, as per Rule 5, before recommending any proposal to set up SEZ, State governments shall endeavour that exemption from state and local taxes, levies, duties including stamp duty and taxes levied by local bodies. Further, the amendment to the Stamp Act provides exemption to any instrument executed by or on behalf or in favour of a developer carrying out the purpose of SEZ. States need to exempt from stamp duty on land acquired by the developer also as SEZ are meant to promote exports and generate employment.

8.4 SEZ should be normally exempt from land ceiling. States should notify the SEZ, once it is approved by the Central government, to take care of such exemptions.

8.5 It is imperative that the developer should not be allowed to dilute their equity in the SEZ till the time the SEZ is fully developed and becomes operational.
Land Acquisition

8.6. SEZ developers may be asked to first acquire at least 30% of the land before approval is granted for the SEZ. This would avoid a situation where the approval has been granted and the progress of land acquisition is too slow.

8.7 Where the project developer has been able to acquire 70% of the land, for the remaining 30%, the government should help in acquisition.

8.8 SEZ be set up away from metro or city area and only on waste and non-arable land.

8.9 States may identify suitable land parcels and create a land bank which in turn could be provided for setting up of SEZ or any infrastructure projects.

8.10 State governments need to be proactive and ensure that developer is able to acquire the required contiguous area of land of 1000 hectares and above in case of multiproduct SEZ.

8.11 The land acquired should be only to the optimum level and acquisition of more than required land should be discouraged.

8.12 States could adopt the “Haryana Model” of land acquisition and compensation.

8.13 In order to arrive at an acceptable compensation package, states may consider engaging independent assessors and surveyors.

Provision of Infrastructure at SEZ

8.14 Since most SEZ are outside municipal area, no infrastructure services are provided by the states. States need to ensure that the required infrastructure facilities are provided to the developers.

8.15 Till such time the demand picks up, captive power upto 49% of generation be allowed to be sold outside the SEZ area.

Regulatory

8.16 Set up an independent regulator for SEZ. The regulatory authority would deal with issues relating to SEZ, particularly, relating to approval of SEZ, fiscal issues, monitoring of SEZ, land use etc.

Legislative

8.17 States could align their R & R bills in line with the national bill.
ANNEXURE

SPECIAL ECONOMIC ZONES

1. Setting up of Special Economic Zones (SEZs) received a major boost with the passing of the **Special Economic Zones Act, 2005**. Subsequently, in 2006, the central government issued the SEZ Rules 2006 which made further advancement of the SEZ Act. The role of centre and states as described there in are:

2. Central government may

   a) Set up a SEZ alone or jointly with any person.
   b) Suo moto set up and notify SEZ
   c) Prescribe the minimum area of land and other terms and conditions
   d) Can approve more than one developer in an SEZ where one developer does not have in his possession the minimum area of contiguous land.
   e) Prescribe the processing area, the area for trading and warehousing and non-processing area
   f) Appoint Development Commissioner of the SEZ
   g) As a Single window clearance, may constitute an Approval Committee with members from the state government

3. State government may

   a) Send a proposal directly to the Board of Approval.
   b) Before recommending any proposal for SEZ, the state government shall endeavour that the following are made available to the SEZ and Developer:

      1. Exemption from state and local taxes, levies, duties, including stamp duty and taxes levied by local bodies on goods required for authorized operations by a unit or developers;
      2. Exemption from electricity duty or taxes on sale of self generated or purchased electric power for use in the processing area;
      3. Allow generation, transmission and distribution of power with the SEZ;
4. Provide water, electricity and such other services as may be required by the developer;

5. Delegation of powers to the Development Commissioner under Industrial Disputes Act 1947 and other related acts in relation to the unit;

6. Delegation of powers to the Development Commissioner under Industrial Disputes Act in relation to the Workmen employed by the developer;

7. Provide single point clearance system to the developer and unit under the state acts and rules.

4. In 2006, the Central Government issued the SEZ Rules 2006 which made further advancement of the SEZ Act. The salient features are:

a) SEZ means for multi-product means SEZ where units may be set up for manufacture of two or more goods. Such SEZ shall have a contiguous area of 1000 hectares or more;

b) SEZ for specific sector means an SEZ meant exclusively for one or more products in a sector or one or more services; Such SEZ may have a contiguous area of 100 hectares or more;

c) SEZ in a port or airport means an SEZ in an existing port or airport for manufacture of goods in two or more goods in a sector or goods falling in two or more sectors; Such SEZ to have a contiguous area of 100 hectres or more;

d) At least 50% of the area in SEZ shall be earmarked for developing processing area;

e) The land or built up space in the processing area or Free Trade and warehousing zone shall be given on lease only to the entrepreneurs holding valid letter of approval;

f) The developer shall allot land in the processing area on lease basis to a person desiring to create infrastructure facilities for use by prospective units;

g) The developer shall not sell the land in an SEZ.

5. Till now, 531 SEZs have been given formal approval by the Central Government. 270 SEZs have been notified. Total land in India is 29.73 lac sq KMs, of which agricultural
land constituted 55% (16.20 lac sq KMs). The total area for the proposed SEZs is 1885 sq KMs which would not be more than 0.063% of the total land area and not more than 0.116% of the total agricultural land of the country. Total investment in the notified SEZs is Rs83,40 crore, while the investment in state/private SEZs set up before 2006 was Rs5,626 crore. Along with government SEZs, the total investment so far has been Rs93,507 crore. Total employment to 3.63 lac persons has been generated by the SEZs, while exports in 2007-08 from the SEZ were Rs66,638 crore. As per estimates, SEZs would attract an investment of over Rs2,00,000 crore and provide employment to over 8 lac people by 2009 end. The tax free SEZs have increased their share of India’s total exports from just 4% in 2002-03 to 10.6% in 2007-08.
ENERGY

8.a POWER

Background to Centre-State issues

8.1 The power sector is plagued by shortages, dominated by Central and State Government ownership, in overall terms financially unviable, average tariffs below costs, heavily subsidized consumer groups, inefficiencies, indiscipline among staff, an administrative rather than a commercial work culture, and collusion by employees in thefts of electricity. The major problems are in distribution that has been a monopoly of State governments. States like Gujarat and Andhra have demonstrated that state ownership need not come in the way of efficient and effective operation of the electricity sector in India but requires real autonomy to the management of the distribution enterprises. The Electricity Act, 2003 and the Accelerated Power Reform and Development Programme of the Central Government have tried to overcome the constraints of electricity being a concurrent subject in the Constitution, with varying success.

Issues in Centre State relations

8.2 Electricity prices are below cost in most states due to heavily subsidized sales, technical and non technical losses including theft and considerable inefficiencies. Coal is a Central Government monopoly. Coal prices are fixed by the government, and while being cheaper than equivalent gas is not done transparently. At present gas is also supplied for power generation, from central government owned enterprises, which are facing declining reserves. Fuel availability, whether of coal or gas, is uncertain and the Central Government monopoly suppliers have framed contracts in a way that they are not liable for loss of profit due to lower power generation.

8.3 Fuel is an important element but not the only one element in coal or gas thermal generation cost. States get most of their power from their own generation and the rest from Central Government owned generating companies, and other states. Once they have bought the power, it belongs to them. They must have freedom to sell what is surplus to their requirements, at a price that the customer is willing to pay.
8.4 The central government now gives incentives for ultra mega power projects to help them generate power at lowest costs. This includes allocation of captive coal mines to them so that the tariff based price for the ultra mega power project is kept low. Where a coal mine allocated to an ultra mega power project has extra coal over its commitment, it is permitted to sell the extra power it can generate from the surplus coal. This price should be left for determination by what the customer is willing to pay, subject to what the regulatory commission in the buyer’s state will allow.

8.5 When a new power project is to supply power to more than one state, delays affect all of them. The host state and the Central Government must ensure that all necessary clearances (land, environment and forests, etc.,) are given speedily to prevent time and cost escalation.

8.6 Almost all electricity regulators (both central and state) have till now been appointed primarily from those with service in government or the government owned electricity sector. While CERC has been relatively free of government influence, many state regulatory commissions are subject to State government policy directives, sometimes given verbally, and have an inclination to safeguard the interests of the state distribution monopoly. Some have been slow to encourage renewable energy and most have delayed the introduction of open access. None has tried to collect base line data on losses and leakages so that the assumptions made in their tariff orders have almost never been achieved. There has been a tendency among some to overdraw power from the Grid, resulting in severe frequency fluctuations. Others have used the unscheduled interchange surcharge available to utilities who supply extra power to the Grid when there is frequency fluctuation, to make extra income by starving their customers.

8.7 There are also problems in the use by the Centre of the unallocated power of central generating plants. Freedom to state utilities in using transmission capacities allotted to them by the central monopoly for interstate transmission, (Power Grid Corporation), is another issue. state utilities lose considerable revenues due to unchecked increases in fuel (coal or gas) prices without corresponding rise in power tariffs.

8.8 Electricity is a concurrent subject and the maximum inefficiencies are in the state government owned enterprises in generation, transmission within the state, and especially in distribution. The Central Government also operates generating companies and owns the interstate transmission monopoly. The central government has passed the Electricity Act 2003 and initiated the Accelerated Power Reform and Development Programme (APRDP) to move the states towards electricity reforms and improvement.
9. RECOMMENDATIONS: POWER

9.1 States must be free to trade without hindrance by government or CERC, both in spot and long-term contracts, from electricity allocated under long term power purchase agreements to them from central generation plants.

9.2 Similarly, interstate transmission capacity allocated under long term contracts by the Central Government monopoly Power Grid Corporation must be permitted to be sold if in excess of state requirements.

9.3 Unallocated capacity from Central Government owned generating plants was in past years allocated pro rata between states. Gujarat has pointed to us that it is now allocated on ad hoc basis and Gujarat is getting less than it did under pro rata basis. Unallocated power should be:

   a) Allocated pro rata, or
   b) Sold to the highest bidder at best available prices, or
   c) If it is to be allocated according to need, this must be done in a transparent way so that the principles are known to all.

9.4 Some states from where coal originates demand free power in lieu of royalty. A charge might be levied to create a carbon emissions fund and used for carbon mitigation programmes by the state. CERC should be asked for a ruling on the percentages to be allowed.

9.5 Mr. G. Haldea argued that one state should be barred from selling power to another at higher prices than within its own state. If the power belongs to the state by contract and it is meeting the demand projections in the state, there should be no such bar.

9.6 Regulators are expected to penalize states that take advantage of the penal Unscheduled Interchange surcharge to supply power to the Grid for maintaining frequency while depriving their state customers from supplies. They do not seem to implement this rule. Regulators must be required to examine each such transaction for violation.

9.7 Normally, there should be no bar on a generating state from selling what it considers as surplus to its requirements to another state at best available price.

9.8 Electricity Act 2003 might be amended to compel regulators (if so established on judicial review), who do not take steps to permit open access to do so.
9.9 Load Despatch Centres must be neutral between generators, distributing companies and consumers, traders and exchanges at the Centre and the States. They must be separated from their existing sponsors who also supervise them, Power Grid Corporation, the central transmission utility, and transmission monopolies in each state that are designated as state distribution utilities. Load despatch centres should be funded by all users, and function as non-profit companies. Necessary amendments to the Electricity Act 2003 must be introduced to enable this.

9.10 Different agencies deal with fuel linkage or other clearances, with delays at many points, MOEF, the Supreme Court environment and forest clearances committee, Central Electricity Authority, Coal Ministry which will not look at coal linkage till the project is in an advanced stage; Defence Ministry, Airports Authority, Water linkage, etc. There is need for inter-Ministerial Committee to be transparent and effective to ensure coal linkages.

9.11 Fuel use, allocation and pricing now decided by the Central Government, must be in consultation with the states or the private utilities through an inter state mechanism for ensuring consultation and transparency or to an independent regulator.

9.12 The different Ministries whose approvals are required for different purposes in the case of ultra mega power projects should be represented on the Boards of the special purpose vehicles formed at the outset to bring the project to a stage where it can be opened to bidding.

9.13 Fuel linkages for coal based power plants are allotted with considerable delays by the Central Government causing delays in financial closures of new projects, and losses to operating power plants because of coal shortages. A transparent process for allotting coal linkages must be decided, preferably an independent regulatory body.

9.14 Since decisions on linkages for new projects also applies to rail linkages for new generating plants which have to get coal from across the country by rail, the presence of the railway representative on the board of the special purpose vehicle is necessary.

9.15 Andhra told us that for supplies of coal for power generation, linkage was unilaterally given for 75% plant load factor, though supplies are given only at 60% (of 75% plf), leading to the state having to import large quantities of coal, raising the average price of coal from Rs 2000 to 7000 per tonne, and hence also raising average cost of power. Domestic coal must be made available as promised in the agreement. Such fuel supply
agreements are one sided since penalty on Coal India is applicable only if supplies fall below 60% of 75 plf. Consultation and transparency must be introduced.

9.16 Central government must announce a coal utilization policy to ensure that existing power generation gets priority with existing power plants getting first priority in coal linkage and supply.

9.17 Renewable energy must be encouraged. Connectivity to the Grid of wind power must be made easier and faster and approvals of projects must include connectivity of Transmission provided by the generating company, the state transmission company or another private developer.

9.18 Many State governments give free or cheap power to some consumer groups. Four issues need to be dealt with:

   i) The beneficiary must be clearly defined and identified;
   ii) Leakage through excess usage by beneficiaries must be avoided.
   iii) The concerned governments must reimburse the cost of the subsidies to the operating enterprises in advance. The poor financial health of state enterprises makes it difficult for them to pay the bills of central suppliers of services like Railways, Coal India, central generating companies, etc. and has already led once to over Rs 4000 crores of outstanding dues being securitized.
   iv) ERC's should have powers to make State governments reimburse dues on this account to the distributing utilities.

9.19 Power projects are given enormous amounts of land, in many cases from forests and agricultural lands. Coal based thermal plants have to dump the ash from burning high-ash Indian coal for which technologies are available to utilize most of the ash for making high quality cement. New coal based generators must:

   a) Concurrently develop cement production themselves or by another enterprise to be located near the power plant.
   b) CEA must reexamine the land requirements for thermal plants and give directions to all new generating plants accordingly.
   c) CEA must minimize land requirement for each Project especially since all ash except “deep ash” is capable of being mixed for cement.
9.20 The re-examination of land requirement for power plants by CEA should cover the land required for hydroelectric plants as well.

9.21 The Gujarat government told us that the Mundhra UMPP has had no land acquisition problems or on relief and rehabilitation of displaced people. They felt that this was possibly because the project is sited in low quality agricultural cropland. The Gujarat government said that as a matter of policy, they picked sites for projects on lands which had weak agriculture. Gujarat Industrial Development Corporation has developed a policy which has a generous compensation policy. The Land Acquisition Act provides for a mediator in the Land Acquisition Officer. For the SPV, the State Government identifies land, location, quantum of the generated power that will be supplied to the state (1900 MW from Mundhra). Case studies of these projects might be prepared and distributed to states to identify best practices that allowed speedy decisions and execution.

9.22 The UMPP is bid on competitive tariffs with fixed and variable elements with escalations for the latter being decided at six monthly intervals by the CERC. The variable component accounts for 65% on account of coal, transport, etc. This rapidly raises the tariff. State governments must be involved in determining the tariff formula from the outset.

9.23 UMPP tariffs have elements whose cost escalations are allowed. Escalable components in tariff include capacity, coal price, handling charges and freight. There is no cap on these escalations and CERC notifies escalations every 6 months without consultation. Centre and states should examine whether the fixed component should be raised and the escalatable charges capped. Further, coal prices used by CERC are spot prices but should be long term contract prices and also take account of tie ups by the UMPP developer of coal on a long term basis. The formula used must have the agreement of the concerned State Government.

8. b OIL AND GAS

Background to Centre-State issues

10.1 Gas is a central subject. However there are gas fields onshore and offshore in some states. State governments might also own leases on gas fields. Domestic gas fields produce gas for the public sector and for the private sector. There is also LNG which us usually more expensive because of costs on gasification, shipping and regasification. Government already gives lower prices to gas from the public sector fields. Thus differen-
tial prices are in operation even for the same use, depending on the source of supply. It is therefore not difficult to charge different prices for gas for different uses - power, fertilizer, transportation, domestic use and petrochemicals. Gas in quantity moves along pipelines and transferring gas supplied for one use to another is largely unfeasible. In this way priority users (where end consumer prices are regulated) could get preferential prices while others could pay higher prices. This could optimize the revenues to the lessors and also add profit to the Central Government.

Centre-State issues

10.2 As in other sectors, we found constant complaints about lack of consultation on central decisions that affect states, and lack of transparency in central decisions. This can be easily corrected.

10.3 The Gas allocation policy announced by the Central Government was disputed by states. Gujarat pressed the need for consultation; for example, they do not agree to power being given a lower priority over fertilizer as is the case in the present Gas Allocation Policy. Gujarat wants priority for Power. Andhra Pradesh felt that priority be given to

a) unused generation capacity for want of gas, followed by new projects, and

b) a given percentage of the gas must be reserved for the originating state.

We feel that gas should have priority in use for power generation. Within that, we feel that the priorities suggested by Andhra Pradesh are correct. However, we are not in favour of reserving a proportion of gas to the originating state, as desired by gas producing states.

10.4 In the context of the large portion of rural India that has no electric power and the high cost of supplying rural habitations from the Gird, distributed power is an option that must be seriously examined. This requires that as a priority in gas allocation, gas should be also reserved for distributed power.

10.5 On Gas found in or out of offshore Gujarat, royalty to state has been 20% in past years. Gujarat has stated they had been informed that the Centre now plans to reduce it to 12.5%, the same level as in NELP. The point was pressed that this is being done unilaterally, without consultation with the State Government whose revenues on royalty will fall steeply as a result. Gujarat argued that it is already distributing gas to households in Gujarat and would like to do so as a monopoly. While the Task Force would prefer, competitive sanctions of circles for domestic gas distribution, it is a plea from the state in relation to the Centre.
10.6 An important point that was made about gas distribution is that the State Government should set the priorities for the circles to be supplied gas. Presently this authority is with the Oil and Gas Regulatory Board. Gujarat argued that the state must have the authority to determine customer priority areas. For example, Gujarat would like to focus on tribal areas and this may not fit with the Board’s priorities. We think this point deserves recognition.

10.7 Reliance had signed with Andhra Pradesh (and with others like Maharashtra) agreeing to supply gas for some of their projects. However, the tariff was to be negotiated later. The quantity was 8 CMD to Andhra Pradesh at a price to be determined by GOI. However Reliance Industries Ltd., (RIL) shows no indication of wanting to honour the agreement. Andhra Pradesh would not like to take it to court for fear of retributive action. Andhra Pradesh would like such agreements to have the force of law.

10.8 Gas Authority of India Ltd., (GAIL), a central government enterprise, follows a freight equalization policy for Gas. Gujarat has argued that a similar policy must be developed for coal so that user states that are distant from coal mines do not suffer undue high cost.

11. RECOMMENDATIONS

11.1 The Centre needs to examine a differential pricing for gas based on use, for example, differently for power, fertilizer, domestic use, transportation, petrochemicals.

11.2 Producing states and user states must be consulted on pricing so that there is transparency and all views are taken into account than only that of the monopoly owner viz., the Central Government.

11.3 The Central government’s gas allocation policy must have the consent of the states and major project developers. The Task Force feels that gas as a non-carbon emitting fuel, must have first priority for power generation.

11.4 Gas should also be supplied for distributed power generation in rural areas.

11.5 Royalty rates for gas to producer states should not be changed unilaterally but in consultation with the state.

11.6 Priorities for domestic gas distribution should be set by the State government.

11.7 It has been argued that there should be freight equalization for gas. Since this is a concept being given up for other products, we are not in favour of it gas.
9

WATER RESOURCES

Background to Centre-State issues

9.1 Water available is getting scarce in terms of quantity as well as of good quality in view of its high variability in space and time. Scarcity value of water is increasing and the issues involved are becoming more and more sensitive, complex and difficult to find amicable solutions. National Water Policy begins by stating that Water is a prime natural resource, a basic human need and a precious national asset. Planning, development and management of water resources needs to be governed by national perspectives. Development is to be based on river basin as a hydrological unit. This involves various issues under Centre - State relations. It is becoming more and more difficult to achieve the objectives in water resources regulation, development and management in the existing scenario for various reasons. Water issues are getting critical, sensitive and more difficult to find acceptable solutions. As the pressure on available supplies increased, disputes on sharing of river waters become bitterer. Disputes relating to water are on the increase and existing legal and institutional mechanisms and existing set up for settlement need critical review.

9.2 Water sector requires major structural changes and rearrangement towards holistic and co-operative approach. The reform/restructuring may not be without upheavals in the existing system, but has to be faced. There is no single process or prescriptions for the whole country, immediate and unique solutions to the problems in view of the highly varying hydrologic, agro-climatic conditions, socio-economic set ups, linguistic divisions, people groups, religious practices and political compulsions. Perhaps the time is now ripe to consider drastic steps and pressures are on, to consider bringing water under Concurrent list in the Constitution.

9.3 The maladies are known and some remedies also get advocated, but in the absence of a will for implementation, there is no fruitful outcome and the water scarcity continues to be on the increase as also the miseries of the people at large. Specific action plans require to be drawn up towards paradigm shift in water governance, institutional mechanisms,
administrative changes, policy issues, legal instruments, economic drivers, social change initiatives towards integrated water resources development, regulation and management. The measures recommended are enumerated here below:

**National Commission to Review the working of the Constitution (NCRWC)**

9.4 NCRWC has suggested that river water disputes should be brought within the original and exclusive jurisdiction of the Supreme Court. The NCRWC recommendations have not been acted upon so far.

**Implementation of Sarkaria Commission Recommendations:**

9.5 Inter-State River Water Disputes have been discussed in the earlier Report of the Commission on Centre-State Relations: Part-I (Pages 487 to 493) and recommendations were made for amendments to the Inter-State River Water Disputes Act.

a. A Tribunal was to be constituted within one year from the date of receipt of application from a disputant State.

b. A data bank and information system at the national level was to be established and adequate machinery was to be set up for the purpose of ensuring that up-to-date data was given to it on time. The States were required to give necessary data and the Tribunal was to be given the powers of a Court to ensure this.

c. It was to be ensured that the award of a Tribunal becomes effective within five years from the date of constitution of the Tribunal and the Union Government may extend the time on a reference from the Tribunal.

d. Tribunal's award has the same force and sanction behind it as an order or decree of the Supreme Court to make the award really binding.

e. The Union Government was to be empowered to appoint a Tribunal, suo moto, when it is satisfied that such a dispute exists in fact.

9.6 The ISRWDT has been amended effecting recommendations (a) to (d) in the amended Act adopted in 2002.

**Principal Issues discussed:**

1. Are existing arrangements under the Constitution, Inter-State River Waters Disputes Act 1956 adequate and take into account the varying views of the States?
2. Present situation is more a case of non-use of a given power by the Union than one of want of the same.

3. The unduly long time the process of the Tribunals have taken. The development of irrigation and power must not wait for such lengths of time for such matters to be decided.

4. Even when certain agreements are arrived at, they are questioned later.

5. Some States use more water than what could be equitably given to them. There is a tendency for States to start projects to establish their preemptive rights.

6. Prevention of uncontrolled storage, diversion and use of water by upstream States to the detriment of downstream States, depriving them of rightful demands, resulting in friction among the States and inter-State disputes, leading to references being made to the Union Government/Courts.

7. Negotiated settlement between States has merit. In some cases this became the basis of the decision. There should be a time limit for negotiations.

8. Once an award becomes effective, enforcement becomes a question if any State refuses to give effect to the award fully or partially. The Union Government has no means to enforce the Award.

9. Any agency such as establishment of an authority cannot really function without the cooperation of the States concerned. The Authority should have the same force and sanction behind it as an order or decree of the Supreme Court.

10. Single purpose endeavors extensively being followed now in respect of hydro development in the Himalayas, loses forever the possibility of multi-purpose infrastructure/storages and minimizing waste.

11. National Water Resources Council should as a policy making apex body have adequate technical support to:
   - Develop a national outlook in relation to water resources,
   - Infuse a spirit of accommodation in inter-State relationships,
   - Create a favourable atmosphere for settlement of inter-State water disputes.

12. It is of great national importance to conserve and utilize water most judiciously and economically.
13. Need for proper institutional infrastructure to assure this.


**10. Actions Recommended:**

10.1 While it is desirable to have Water under Union list, at this juncture it could be difficult to bring about this change. However, the option of enacting suitable laws is the next option available, the need for which needs no emphasis.

10.2 The Task Force is unable to agree with the suggestion that Entry 56 List I should be deleted.

10.3 Creation of appropriate and empowered River Basin Authority (RBA) and Water Regulatory Authority (WRA) is an urgent need and the Centre must initiate action immediately. Maharashtra has set up a Water Regulatory Authority for the State.

10.4 There is a need to create a reliable data base for all the river systems of the country. Data collection network has to be strengthened to meet the requirements for a reasonable and reliable assessment of the resource. The process was improved under Hydrology Project Phase–I, but the actual data is not being recorded in the master data centre. There are considerable difficulties in sharing the data by the States. More over, data of Ganga and Brahmaputra River systems are treated as classified and sufficient data required are not being made available to stake holders easily. For example, the hydropower projects taken up on a large scale in the Himalayan region are being planned with scanty data, which may lead to sub-optimal development or even failures. These impediments must be removed through a policy on data collection and sharing.

10.5 The river basin plan should present a comprehensive outline of the development possibilities of the land and water resources of the basin, establish priorities in respect of water use for various purposes, indicate the need for earmarking water for any specific purpose and indicate inter-se priority of projects. Uncontrolled storage, diversion and use of water by upstream States to the detriment of downstream States depriving their rightful demands results in friction among the States and inter-State disputes, leading to references being made to the Union Government/Courts. Present process of clearing of individual projects should be done away at the earliest and integration into the basin level requirements and deficient areas shall be looked into. Time dependant releases (even during the initial filling period) are to be built in to protect the needs of downstream and distress sharing shall be an essential part.
10.6 Available resources, of both surface and ground water are to be assessed for each river basin on a continuing basis keeping in view the dynamic nature of water availability year to year. Augmentation of utilizable water by addition of surface storages, and recharge and water harvesting methods for underground water are essential. This should be a task for the RBA.

10.7 A systematic plan to link all possible river basins and transfer from surplus to deficit areas can augment water availability substantially. This involves technical problems, environmental issues and requires political agreements between States. This needs to be pursued further by the Centre with all concerned States in view of its large benefits.

10.8 Water accounting of each basin is important but there are difficulties in compiling the data on existing water utilization, as the States do not come forward to share the data. This reinforces the need to make the giving of correct, comprehensive and timely data an urgent necessity. Water balance study of each basin is important for better planning, regulation and management of water. There has to be legislative compulsion for this purpose. Considering the fact that inter-state rivers comprise 83% of the geographical area of the country, this has to be a Central government function through the River Basin Authority. Section 16 on Technology and information gives specific recommendations relating to use of IT and these need to be implemented.

10.9 Equitable Water allocation, distribution/sharing between various States, stakeholders and various uses in a river basin/sub-basin have not been made for any of the river systems or in many of the water infrastructures already developed. This is an enormous task both technically and politically, which requires goodwill and national perspective. Centre has to take the initiative.

10.10 Environmental and ecological issues are to be addressed adequately in the planning processes and adverse effects are identified for satisfactory mitigation.

10.11 Measures for minimizing delays in statutory clearances shall be implemented and monitored. Land acquisition problems have delayed a number of projects and this has been addressed separately.

10.12 Maintenance of water quality at acceptable standards over the entire river basin must be ensured and is to be the function of an empowered Central monitoring authority with State subsidiaries.
10.13 Maintenance of minimum flows in any river for ecological considerations must be kept in mind. The authority suggested above will do this.

10.14 Improvement of water use efficiency in all sectors of water use, particularly in irrigation being the major user (over 80%) of all waters utilized must be ensured by the River Basin Authority.

10.15 Monitoring of ground water and regulation; augmentation of water resources by measures such as artificial recharge, rainwater harvesting etc needs to be undertaken by the State governments.

10.16 Creation of adequate mass awareness and education of masses for informed decision making must be initiated by the State and Central governments.

Capacity building and training of water managers is an urgent task. WALMIS and other institutions need to be brought under a network for mutual benefit and effectiveness. The Central government must plan and allocate resources for the purpose, defining some State share also.

10.17 (a) Floods and droughts are frequent and lead to inter-State issues. Suitable Institutional arrangements are to be devised at the national level. the National Disaster Management Authority and Disaster Management Institute need to be empowered with adequate specialized staff.

(b) Coordination mechanisms as in recommendation 10.24 below between different ministries must be ensured.

10.18 Ground and surface water development and regulation need better coordination. Adoption of traditional systems and watershed management for local needs due attention. State water departments must be trained for this purpose.

10.19 Financing mechanisms and water pricing need review with due consideration of its use such as for drinking/domestic use, irrigation, flood/draught management, industrial use etc. All Central assistance (such as AIBP and Restoration, Rehabilitation of Water bodies) extended shall be linked with required reforms, particularly improve water use efficiency and recovery of water charges to meet the operation and maintenance of water infrastructure and systems. Perhaps funding similar to JNURM could be devised or an incentive scheme like APRDP in Power.
10.20 Stake holder’s / People’s participation, evolving Community based organizations for water management, and suitable legal instruments for the same need action by all the State governments.

10.21 Rehabilitation and resettlement policies for project affected persons are addressed by the R & R bill, which is before the Parliament now.

10.22 Considerable dam infrastructures have been created and there is need for more. Safety issues are to be regulated through promulgation of a Dam Safety Act by the Centre.

10.23 NWRC must have more frequent meetings for resolution through mutual accommodation. There is the political factor also and when a State is not willing to run a political risk, intervention by the Union Government and consideration of the various issues in a national perspective would help in clearing the way for fruitful negotiations and resolution.

10.24 Water related issues are handled in various Ministries and there is need for creation of an umbrella mechanism for effective coordination. The Centre could set up a coordinating Committee of Secretaries.

10.25 In respect of dispute resolution by Tribunals under ISWRD Act, four of the five recommendations have been given effect by suitable amendment. Option for an appeal to the Supreme Court is available. If the outcome in implementation is not satisfactory, recommendations of NCRWC may have to be considered.

Most of these issues involve interstate implications, friction between States and require interventions from Union Government. They need to be duly addressed, which will help in saving of water, that could be made available to meet the downstream requirements, demands from other priority sectors and increase in irrigated area in keeping with the fast changing times and technology.
10

URBAN TRANSPORT

Background to Centre-State issues

Projects

10.1 The centre and state have been involved in planning and implementation of various projects. The list of project feasibility studies completed and under development, since 1998 is provided on http://urbanindia.nic.in/moud/programme/ut/ut_studies.pdf.


Existing and Proposed Roles

10.3 Various transport activities for investment and the expected role of agencies at central, state, and urban level are shown in Table below:
Table: Role of Various Agencies in Different Urban Transport Components

Centre State Issues - Complementing

Financial Support

10.4 The central government provides up to 40% of the cost of any study on issues related to traffic and transport improvement in a city. Many of the states/local bodies, who would not have been able to carry out a holistic study of their problems, were/are able to do so.

10.5 The central government’s initiative of providing grant up 40% of the project cost for construction of heavy mass transport systems have also helped larger cities which need to augment their transportation network.

Development of guidelines and capacity building initiatives

10.6 Policy guidelines developed by the Ministry of Urban Development regarding traffic and transportation strategies and policies, accessibility of public transport to transport disadvantaged, promoting pedestrian and non motorized transport, guidelines for BRT, guidelines on nodal department at state level, reports on selection of alternative technologies for urban transport, and parking management etc have worked as capacity builders for the state governments and consultants.

10.7 Conferences on various issues related to traffic and transportation have also worked as capacity enhancing exercise for the State governments.

Centre State Issues - Conflicting

Distortions due to Funding

10.8 On the negative side, partial funding by Central Government has distorted the kind of transport system a city starts demanding. Seeing the initiative as one time opportunity, most of the cities start planning for larger/huge transport network keeping far future in mind. Sometimes, it is easy to justify the same by modifying the land use patterns perceived for future without realizing the overall cost that cities may have to bear as a result of such imposition.

Design Conflicts

NHAI within City Limit

10.9 Most of the medium and large cities face this problem. The national highways (NH) pass through the city. The design guidelines of NH are driven by mobility concerns of
motorized traffic while urban road designs are governed by accessibility and mobility of persons. Non motorized traffic and pedestrian do not get any attention in case of NH. Hence, while implementing urban transport projects, the design for the section on NH, needs the approval of NHAI. This delays the process and even creates design distortions eg, Ahmedabad BRT was delayed for this reason.

10.10 The land use pattern also gets distorted and the city gets divided into two parts. State governments do not want it to be denotified due to financial considerations.

Railways

10.11 Railways underpass/over bridge also face similar problems of clearances from multiple agencies. Design standards are also different from each other.

Environmental consideration

10.12 One of the Supreme Court rulings stated that any land, irrespective of its prevalent use, would be considered as forest land, if the land records consider them under the forest area. This has forced extra approval requirements even if there are no trees cut, resulting in delay in the process.

10.13 The decision of the Supreme Court appointed committee (Bhure Lal Committee) to go for CNG buses in all future projects have also created financial viability issues. The quote for CNG buses were Rs 10/km higher than diesel buses for Ahmedabad BRT, hurting the financially viability of the project.

City Land Use Planning and Central Land Ownership

10.14 Many Central Government agencies (such as railways, post office etc) have land ownership (which have been partially utilized) at prime locations within city limits. Given the cost of prime land, these may need to be revisited.

10.15 Also the planning of these areas (e.g., railway station area circulation) affects the city traffic movements in the vicinity and the same needs to be taken care while planning.

Multiple Acts and Organization

10.16 For provisioning services, there are multiple Acts and organizations both at the state and central level. Since provisions of existing Acts are not repealed while new Acts are passed, sometimes there are conflicts between the state and central Acts. Even if
there are no conflicts, sometimes, confusion prevails because the ownership lies with multiple organizations.

11. Recommendations

11.1 Capacity should be built up for urban transport administrators and frontline staff at the local/institutional level and relevant state officials. This is especially important since newer technologies and policies are coming in and hence issues such as (i) choice of technology/mode/fuel/gauge, and related operation and maintenance and (ii) socio economic impacts, land acquisition, funding etc., need understanding.

11.2 Central government should enact overarching Acts to facilitate the development of different transport systems in the cities.

11.3 Funding initiatives such as JNNURM have been able to drive the transport developments in the city in appropriate directions guided by the centre. Such initiatives should be continued. Some cities/states have acted with the perception that funding would get exhausted soon and have submitted over ambitious proposals. Confidence may be reinforced that such funding would be available on a sustained basis.

11.4 Funding such as JNNURM should also be extended to drive policy guidelines with increased scope. Integration of transport modes at different levels (complementary routes, schedule integration, fare integration, physical integration of stations/stops and information sharing) should be promoted by providing adequate incentives of the cities which are able to carry out such integration.

11.5 To leverage scale in technology related costs including manufacturing/supply of equipment, use of technology and standards (design specifications, gauge etc.,) should be driven by the centre.

11.6 Cities should be given preference on the use of National Highways as separate road infrastructure can be built bypassing the city. The ownership with regard to land and other assets should be resolved with better coordination between city/state and centre.

References

Annual Report, MORTH 2004-05, Government of India

Infrastructure Development and Mega Projects


Globalis, Retrieved on December 9, 2008 from http://globalis.gvu.unu.edu


Working Group Estimates, 11th Five Year Plan for Urban Transport including MRT

TERI (2001). Restructuring Options for Urban Public Transport in India. TERI, New Delhi, 7-79

Exhibit 1: Projects Where both Centre and State Have Been Involved

<table>
<thead>
<tr>
<th>No</th>
<th>Project</th>
<th>Project Cost (Rs million)</th>
<th>Equity Share (%)</th>
<th>Debt -Equity (%)</th>
<th>Current Status</th>
<th>Major Highlights and Issues</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Delhi Metro Rail</td>
<td>107,510</td>
<td>64:36</td>
<td>Phase II in</td>
<td></td>
<td>DMRC incorporated on 5th March 1995 under Metro Railways Act,</td>
</tr>
<tr>
<td></td>
<td></td>
<td>86,760 (Phase 2)</td>
<td></td>
<td>(Phase II)</td>
<td>Progress</td>
<td>Phase 1 completed on 11th Nov 2008</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>GoI: 50%</td>
<td>66:34</td>
<td></td>
<td>Phase 2,3, and 4 expected to be completed by 2010, 2015, and 2020 respectively</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>GoNCTD: 50%</td>
<td></td>
<td></td>
<td>Long term loan from OECF Japan at less than 3% p.a and JBIC Japan for 3rd phase with purchase of technology and equipment riders</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Controversy over gauge, BG decided in 2000</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>An under construction bridge section collapsed leaving 2 dead in an accident on October 19th 2008</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Controversy over coach purchase, ICF claimed that they could have designed and prepared the coaches at 1/5th the price given to Rotem-Mitsubishi. DMRC claimed that India does not have required technology</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>GoI approved the project in June 2004</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Mumbai Metro One Pvt. Ltd (SPV) incorporated in 2006</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Works began in February 2008, with a promise to complete in 3 yrs</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Controversy over gauge, finally decided in favour of SG</td>
</tr>
<tr>
<td>2</td>
<td>Mumbai Metro Rail</td>
<td>23,560 (Phase I)</td>
<td>On PPP with VCF of 30% of the Total Cost (6500 Million) by MMRDA</td>
<td>70:30 (Phase I Underway)</td>
<td></td>
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<tr>
<td></td>
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<td></td>
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<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
## Infrastructure Development and Mega Projects

### 3. Kolkata Metro Rail Project
- **Veolia Transport France 26%**
- **GoI 74%**
- In 2006, GoI declined to fund the project (under VGF scheme) as bidding was done before the GoI scheme came into existence.
- **Completed 1984**
- **East West Corridor**
- **Under Progress**

### 4. Bangalore Metro Rail Project
- **GoI 50%**
- **GoK 50%**
- **BMRTL established in 1994**
- **DMRC prepared DPR for the project in 2003**
- **In April 2006, GoI approved**
- **Similar funding pattern as Delhi Metro**

### 5. Hyderabad Metro Rail Project
- **Consortium to hold 52% equity share, till 5 years from commercial operation date**
- **Project approved in April 2008**
- **Project qualified for VGF but was not required after competitive bidding, as the winning bidder agreed to pay a negative grant of Rs 12,500 million at NPV (@ 13.5%)**
- **Contract awarded on 23rd July 2008 to Maytas consortium**
- **Land was used as an alternate source of revenue**
- **Works was to start in August 2008**

<table>
<thead>
<tr>
<th>No.</th>
<th>City</th>
<th>Cost</th>
<th>Funding Details</th>
<th>Status</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>Kolkata</td>
<td>18250</td>
<td>GoI: 50% GoW: 50%</td>
<td>Completed 1984</td>
<td>East West Corridor Under Progress</td>
</tr>
<tr>
<td>4</td>
<td>Bangalore</td>
<td>63,950</td>
<td>GoI 50% GoK 50%</td>
<td>Under Progress</td>
<td>BMRTL established in 1994 DMRC prepared DPR for the project in 2003 In April 2006, GoI approved Similar funding pattern as Delhi Metro</td>
</tr>
<tr>
<td>5</td>
<td>Hyderabad</td>
<td>121,320</td>
<td>Consortium to hold 52% equity share, till 5 years from commercial operation date</td>
<td>Under Progress</td>
<td>Project approved in April 2008 Project qualified for VGF but was not required after competitive bidding, as the winning bidder agreed to pay a negative grant of Rs 12,500 million at NPV (@ 13.5%) Contract awarded on 23rd July 2008 to Maytas consortium Land was used as an alternate source of revenue Works was to start in August 2008</td>
</tr>
<tr>
<td>No.</td>
<td>City</td>
<td>Population</td>
<td>Project Details</td>
<td>Status</td>
<td></td>
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<td>------------</td>
<td>-----------------</td>
<td>-----------------</td>
<td></td>
</tr>
<tr>
<td>6.</td>
<td>Chennai Metro Rail Project</td>
<td>111,240</td>
<td>GoI: 50%</td>
<td>Underway</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>GoTN: 50%</td>
<td>(JICA Loan)</td>
<td></td>
</tr>
<tr>
<td>7.</td>
<td>Mumbai Monorail</td>
<td>24,600</td>
<td>L&amp;T: 50%</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Scomi Engineering</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Malaysia 45%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8.</td>
<td>Ahemdabad BRTS</td>
<td>368.13 (Phase I)</td>
<td>GoI: 35%</td>
<td>SPV: Ahmedabad Janmarg Limited (AJL) is carrying out the project</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>488.13 (Phase II)</td>
<td>GoG: 15%</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>AMC: 50%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9.</td>
<td>Pune BRTS</td>
<td>1300</td>
<td>GoI: 50%</td>
<td>Started Service in December 2006</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>GoM: 20%</td>
<td>The project did not provide intended benefits</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>PCMC: 30%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10.</td>
<td>Pune Monorail</td>
<td>66,000</td>
<td>PMR (Pune Metropolitan Region)</td>
<td>Work to start in March 2009</td>
<td></td>
</tr>
<tr>
<td>11.</td>
<td>Kolkatta Monorail</td>
<td>12,000</td>
<td>KMC Contract Given to Andromeda Technologies</td>
<td>To run on LPG and later on Hydrogen gas</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>6,650 (Phase II)</td>
<td></td>
<td>Phase 1 complete (1997) Phase 2 complete (2010)</td>
<td></td>
</tr>
</tbody>
</table>

- Mr Sreedharan criticized the project structuring; HMRL replied
- Tentative year for completion is 2014-15
- Similar format as Delhi Metro
- Construction expected to start in January 2009
- SPV: Ahmedabad Janmarg Limited (AJL) is carrying out the project
13. **Indore BRTS** 8,077  
   *GoI: 50%*  
   *GoMP: 20%*  
   *ICSTL: 30%*  
   **BRTS Yet to start**
   - For city bus service
   - ICTSL (SPV) incorporated on Dec 1, 2005
   - Service started on Feb 13, 2006
   - Decrease in profit margin for the operators due to fuel price hike and maintenance costs and reduction in fare
   - Turf war with informal sector minimized

14. **Bangalore Monorail**
   **Suggested as a part of the Comprehensive Traffic & Transportation Plan (CTTP)**
   - As November 08, state govt. examining proposals from manufacturers
   - No one has been awarded the contract
   - Delayed due to development works of the Metro rail project

15. **Ahmedabad Metro Rail Project** 35,917  
   **Not yet finalised**
   - Detailed DPR prepared and submitted by DMRC in Oct 2004
   - Govt. Plans to call private parties during Vibrant Gujarat Global Investors Summit in Jan 2009

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Source: Business Line, Jan 02, 2007, Delhi Metro’s new link project expected to cost Rs 3800 cr; Kolkata Scoop, Jun 02, 2007, Kolkata Metro Rail Corporation will be formed to take charge of the East-West Metro Project; Project Monitor, Nov 17, 2008, AP to take Metro Rail project next year; Project Monitor, Nov 18, 2008, Mumbai Metro; http://www.chennaimetrorail.gov.in/; http://www.delhimetrorail.com/index.htm; http://delhigovt.nic.in/dmrc.asp; http://www.hyderabadmetrorail.in/home.html
ANNEXURE

URBAN TRANSPORT

Introduction

1. Urban areas contribute to 55% of the GDP for India (Annual Report, MORTH 2004-05) thus, making it one of the most important regions with regard to economic growth. Urban population growth rate was 2.28% during 2000-05, while the growth rate was 1.5% for whole of India, during the same period (http://globalis.gvu.unu.edu) i.e., urban region has been growing at a faster rate than the rest of the areas. The growth rate has been declining (Figure 1). It is expected to be between 2.4% and 2.5% for the next 20 years.

2. From the supply side perspective, cities spend 15% to 25% of their total expenditure on transport. Good transportation is important for mobility and accessibility, which drive the economic growth. From demand side perspective, approximately 5% to 15% of household income is spent on urban transport in a developing country. For the poorest, expenditure may be as high as 25%.

Figure 1: Growth of Urban Population as a Proportion of Total Population

Policy Directions and Investments in Urban Transport

3. Urban transport is a state subject (as a part of management of urban areas) in the Constitution of India. The 74th Constitutional Amendment delegated the rights further to
Infrastructure Development and Mega Projects

urban local bodies. However, there are legislations at the central, state, and local level, which guide the activities related to urban transport in India. These are:

A. **Central Level**
   1. Constitution of India
   2. The Indian Tramways Act, 1886
   3. The Indian Tramways Act, 1902
   4. Metro Railways Act (Construction of Works), 1978
   6. Indian Railways Act, 1989
   7. Essential Commodities Act, 1955
   8. The Petroleum Rules, 1976

B. **State Level**
   1. State Police Act
   2. Public Transport Acts such as (Delhi Metro Railway Act, 2002; Andhra Pradesh Municipal Tramway (Construction, Operation and Maintenance) Act, 2008)
   3. Any Other Related State Acts/Rules

C. **Urban Local Level**
   1. Municipal/Town Planning Acts
   2. Development control rules
   3. Any Other Related Local Acts/Rules

As a consequence of these acts, many organizations at the central, state, and urban local level are involved in the urban transport planning and implementation (Table 1).

4. Resource constrains at state and urban levels also indirectly provide an opportunity for the Central Government entities to intervene in the urban transport matters.
Table 1: Organizations Involved in Urban Transport Planning

<table>
<thead>
<tr>
<th>Organization</th>
<th>Function</th>
<th>Relevant Acts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ministry of Urban Development</td>
<td>Over all responsibility for urban transport</td>
<td>State Government Development Acts</td>
</tr>
<tr>
<td>(Central Government)</td>
<td>policy and planning</td>
<td></td>
</tr>
<tr>
<td>Land Development Authority</td>
<td>Land use allocation and planning</td>
<td>State Government Development Acts</td>
</tr>
<tr>
<td>(State Government)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Transport Department</td>
<td>License and control of vehicles, inspection</td>
<td>Motor Vehicles Act, 1988</td>
</tr>
<tr>
<td>(State Government)</td>
<td>of vehicles, fixing motor vehicle tax rates</td>
<td></td>
</tr>
<tr>
<td>Ministry of Surface Transport</td>
<td>Administer motor vehicles act and notify</td>
<td>Motor Vehicles Act, 1988</td>
</tr>
<tr>
<td></td>
<td>motor vehicle specifications and emission</td>
<td></td>
</tr>
<tr>
<td></td>
<td>norms</td>
<td></td>
</tr>
<tr>
<td>Service provider</td>
<td>Operation of Buses</td>
<td>State Government Acts</td>
</tr>
<tr>
<td>PWD (State Government)</td>
<td>Construction and repair of roads</td>
<td>Constitution of India</td>
</tr>
<tr>
<td>Local Municipality</td>
<td>Construction and repair of roads, licensing,</td>
<td>Constitution of India</td>
</tr>
<tr>
<td></td>
<td>signage, clearing of encroachments, local</td>
<td></td>
</tr>
<tr>
<td></td>
<td>land use planning</td>
<td></td>
</tr>
<tr>
<td>Police</td>
<td>Enforcement of traffic laws and prosecution</td>
<td>State Police Acts</td>
</tr>
<tr>
<td></td>
<td>of violators</td>
<td></td>
</tr>
<tr>
<td>Railways</td>
<td>Own and operate urban/suburban rail transport</td>
<td>Indian Railways Act, 1989</td>
</tr>
<tr>
<td>Ministry of Petroleum and Natural</td>
<td>Regulation of price and quality of</td>
<td>Essential Commodities Act 1955, The Petroleum</td>
</tr>
<tr>
<td>GaS (Central Government)</td>
<td>transportation fuels</td>
<td>Rules 1976</td>
</tr>
<tr>
<td>Department of Environment</td>
<td>Monitoring of air quality</td>
<td></td>
</tr>
<tr>
<td>(State Government)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: Modified from TERI, 2001

5. Various studies (e.g. RITES, 1998; The World Bank, 2002; Tiwari, 2006) have suggested that sustainable transport system should have a significant share of public transport. For sustainable urban transport, the proposed/desirable modal splits of public transport are 30-40%, 40-50%, 50-60%, 60-70%, and 70-80% for cities with population in the range of 0.1-0.5 million, 0.5-1 million, 1-2 million, 2-5 million, and more than 5 million respectively for Indian cities (RITES, 1998). In order to achieve this objective, Ministry of Urban Development and Poverty Alleviation provides assistance in terms of broad guidelines and financial resources to the states (including urban local bodies).
6. One of the major initiatives of Government of India for urban development is through JNNURM. 63 cities would be included as a part of this initiative. The focus is on urban infrastructure and governance reforms. Cities are expected to prepare a city development plan (CDP), which is a long term view of the city’s growth and development, in the first stage. Based on the CDP, cities can submit detailed project reports (DPR) for individual project funding in the second stage. Funding up to 40% of the project cost would be provided as grant, once the rest of the finance has been arranged.

7. States/local bodies also receive funding up to 40% (as grant) for carrying out comprehensive traffic and transportation studies for a city. If a study establishes that city needs a mass transport system, the Central Government may provide budgetary support in terms of grant up to 40% of the total project cost, under various schemes.

8. A total of Rs 574,000 million (which is 2% of the GDP of India) is expected to be invested on urban transport during the 11th five year plan (Table 2). The striking feature is that more than half of the investment has been allocated for the development of MRT system.

Table 2: Planned Investment during 11th Five Year Plan

<table>
<thead>
<tr>
<th>Details</th>
<th>Rs million</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capacity Building</td>
<td>1,000</td>
</tr>
<tr>
<td>Cities with population 0.1 - 0.5 million</td>
<td>37,000</td>
</tr>
<tr>
<td>Cities with population 0.5 - 1 million</td>
<td>40,000</td>
</tr>
<tr>
<td>Cities with population 1 - 4 million</td>
<td>116,000</td>
</tr>
<tr>
<td>Cities with population 4 million plus</td>
<td>60,000</td>
</tr>
<tr>
<td>MRT for mega-cities</td>
<td>320,000</td>
</tr>
<tr>
<td>Total</td>
<td>574,000</td>
</tr>
</tbody>
</table>

Source: Working Group Estimates, 11th Five Year Plan for Urban Transport including MRT

These investments are expected to be met through the following sources of funds:

Table 3: Expected Sources of Fund for Urban Transport during 11th Five Year Plan

<table>
<thead>
<tr>
<th>Source of funds</th>
<th>Rs million</th>
</tr>
</thead>
<tbody>
<tr>
<td>GoI - JNNURM and UIDSSMT</td>
<td>150,000</td>
</tr>
<tr>
<td>GoI – other budgetary resources</td>
<td>44,000</td>
</tr>
<tr>
<td>Viability Gap</td>
<td>23,000</td>
</tr>
<tr>
<td>States/ULB</td>
<td>195,000</td>
</tr>
<tr>
<td>Financial Institutions</td>
<td>94,000</td>
</tr>
<tr>
<td>Private promoters</td>
<td>68,000</td>
</tr>
<tr>
<td>Total</td>
<td>574,000</td>
</tr>
</tbody>
</table>

Source: Working Group Estimates, 11th Five Year Plan for Urban Transport including MRT
II
ISSUES
11

LAND ACQUISITION AND REHABILITATION & RESETTLEMENT

BACKGROUND

11.1 Resettlement and rehabilitation of people displaced from their lands and the compensation given to them have become the single most difficult aspect that repeatedly comes in the way of timely execution of infrastructure and mega projects. There have been different approaches by states and some appear to have been more effective than others. The amendments to the Land Acquisitions Act and the new Resettlement and Rehabilitation Bill are a great improvement on the situation till now. Land is also a highly charged political issue. The problems appear to be primarily in compulsory acquisition especially for commercial projects, the rise in land values after acquisition which makes the original owner feel he has lost out, and the resettlement of the landless. Our recommendations try to deal with these issues. In almost all sections of our Report, there are recommendations relating to the issues and they are repeated here.

RECOMMENDATIONS

Proposed Legislation

11.2 Delays in land acquisition (LA) and rehabilitation and resettlement (R &R) have their origins in three factors – popular protests on equity concerns (inadequate compensation), lengthy procedures, and non-cooperation by states in central projects. While the first two factors are substantively covered by policy/legislation, the third factor is more a coordination than a substantive issue. While finding a quick-fix to the problems due to LA and R&R might be impossible, this Task Force is of the view that things can be improved to a considerable extent if the policy/legislation on the subject is designed with these concerns in mind.

11.3 The Government of India has introduced two Bills on these subjects recently in the Parliament – one, an amendment Bill on LA and the other, a new Bill on R&R. The Bills have not been passed by either House till now. This Task Force feels that there is an urgent need to revisit these Bills.
11.4 Both “The Land Acquisition (Amendment) Bill, 2007” (Bill No. 97 of 2007) and “The Rehabilitation and Resettlement Bill, 2007” (Bill No. 98 of 2007) have been drafted with a single purpose in mind – to secure and protect the monetary and livelihood interests of the affected persons and families. This is in sync with the renewed emphasis of governmental policies on inclusive development and a growing realization that popular resistance to matters relating to land acquisition and rehabilitation feeds on perceptions of less than fair compensation and rehabilitation claims. This is indeed welcome and one must admit that it is difficult to find fault with the two Bills on this score.

11.5 While the LA (Amendment) Bill amplifies the ambit of “persons interested” to those who have any kind of rights over the acquired land (beyond just those owning that land), expands the “cost of acquisition” to all possible expenditure and lays down a comprehensive scheme of valuing the land at market value, the R&R Bill amplifies the ambit of “affected family” by including all those who lose their livelihood due to the acquisition (agricultural and non-agricultural labourers, landless persons, rural artisans, small traders and self-employed persons and not just those either owning that land or having some kind of rights over that land). It also lays down the minimum values of all possible components of a comprehensive scheme for R&R. The two Bills are quite comprehensive from the point of view of plugging the loophole of less than fair compensation and rehabilitation.

11.6 However the Bills commit the mistake of ‘missing the woods for the trees’. In trying to secure equity for the affected persons, the Bills have completely lost sight of the very purpose for which land is supposed to be acquired – implementation of projects. For infrastructure projects, the speed of implementation of the projects is of the essence. Unfortunately, the Bills have not been drafted keeping this essential purpose in sight.

A. Need to shorten and coordinate procedures: The two Bills lay down extensive procedures of acquisition and R&R separately. With a little effort, these could have been shortened. In addition, these procedures are supplementary to each other viz., that the mere completion of one set of procedures is not enough. Also, time limits of procedures mentioned in the individual Bills have no meaning in practice since the procedures are supplementary. Thus, although section 14(5) of the LA (Amendment) Bill says “It shall be the duty of the Collector to ensure that physical possession of the land is taken over and the amount of compensation paid within a period of sixty days commencing from the date of the award”, section 29 of the R&R Bill renders this time limit inconsequential – “In case of a project involving land
acquisition on behalf of a requiring body, the compensation award, full payment of compensation, and adequate progress in rehabilitation and resettlement shall precede the actual displacement of the affected persons.”

B. Multiple Agencies: The R&R Bill creates a plethora of bodies/committees/authorities, many of which are not needed and may actually delay the process of R&R by getting embroiled in inconsequential issues of cross-jurisdiction

- Administrators for R&R, at project level – (required).
- Commissioner/Secretary for R&R, at state level – (required).
- R&R Committees, at project level – (required).
- Standing R&R Committees, at district level – (not required).
- Ombudsman – (required in principle but no need to set up separate bodies. This work could easily have been done by the Dispute Settlement Authority to be established under the LA (Amendment) Bill).
- A National Monitoring Committee, at the central level - (not required. The committee that really matters is the R&R Committee at the project level. In case of state projects, the state government establishes these committees and one presumes that if the state is interested in its project, then it will see to it that these committees work. The problem of coordination arises in case of central, centre-state and inter-state projects. The Bill rightly proposes that in such cases the Central Government, in consultation with the states concerned, shall set up these committees by including their representatives. If this committee is sufficiently empowered, then no other monitoring committee is needed.)
- An Oversight Committee for each major project, in the Ministry/Department of the appropriate government – (not required).
- A National Rehabilitation Commission, at the central level – (not required).

11.7 This Task Force, therefore, is of the view that though the two Bills succeed in securing the ends of equity for the affected persons and families, they are ill designed to secure the speedy implementation of infrastructure projects. It feels that these two ends are not mutually exclusive and that it is possible to design shorter and speedier procedures without diluting, in any way whatsoever, the equity based parameters fixed in the two Bills. This Task Force urges its parent body, the Centre-State Commission, to exert
pressure on the Government of India, at the appropriate level (say the Prime Minister’s Office or the Committee on Infrastructure), to urgently review the two Bills to consider the following recommendations:

11.8 There is no reason why the subjects of land acquisition and R&R should require two separate enactments. The two subjects are so intimately connected that the second (R&R) is merely an extension of the first (LA), particularly as out-of-project land may have to be acquired as an R&R measure. Also, the final action point – taking possession of the acquired land – is dependent upon the completion of both sets of procedures. Ideally, therefore, a common enactment should have dealt with both subjects. This would not only have given uniformity to the procedures but it would also have been possible to design common and co-terminus procedures leading to quicker completion. Administratively also, this makes sense as both Bills have been introduced by the same ministry viz., Ministry of Rural Development.

11.9 Even if it is not possible to merge the two Bills into a single enactment now, it should be possible to redraft the Bills in such a way that the procedure for land acquisition runs concurrently and is coterminous with that of R&R. While Part II of the Land Acquisition Act, 1894 [starting with the notification under section 4(1)] deals with the procedure of acquisition, Chapter IV of the R&R Bill, 2007 [starting with the notification under section 20(1)] deals with the procedure of R&R. The time limits of different steps under the two procedures should be so coordinated that it becomes possible to make it mandatory to take possession of the acquired land within a specified time-period. As discussed above, though the LA (Amendment) Bill, 2007, prescribes such a time-limit, the R&R Bill, 2007, not only does not prescribe any such time-limit but negates that of the LA Bill.

11.10 It should be possible to merge corresponding authorities under the two enactments into a single office or create common authorities

- The Land Acquisition Officer under the LA Act and the Administrator for R&R under the R&R Bill should be the same officer for a particular project. He could be called the LAO and R&R Administrator under both the enactments.
- The Commissioner/Secretary for R&R at state level, under the R&R Bill, should also be the Commissioner/Secretary for LA under the LA Bill.
- The R&R Committee at the project level, under the R&R Bill, should be a common LA and R&R Committee, under both the Bills.
The Land Acquisition Compensation Disputes Settlement Authority, under the LA Bill, should be the LA and R&R Compensation Disputes Settlement Authority, under both the Bills. There is no need for a separate Ombudsman under the R&R Bill.

11.11 The suggested LA and R&R Committee, at the project level, is the most important body in the entire process. It should be so empowered that it becomes possible to achieve the time limit suggested above.

11.12 The R&R Bill, 2007, provides for the basic minimum requirements that all projects leading to involuntary displacement must address. The Bill contains a saving clause to enable the State Governments, PSUs or other requiring bodies to continue to provide or put in place greater benefit levels than those prescribed under the Bill. This Task Force is in agreement with this approach as it has found that some Authorities/PSUs provide for substantial rehabilitation packages in their respective policies. In case of LA also, some State governments have put in place good procedures of valuing the acquired land that have found popular acceptability. The Task Force feels that The Land Acquisition (Amendment) Bill, 2007, should also have a similar saving clause.
ENVIRONMENT AND FORESTS

Background to Centre-State issues

12.1 Krishnapatnam port was up in 18 months. One reason was that there were no issues
in land acquisition. No agricultural land was involved. Under present clearance proce-
dures, conversion of agricultural land is a complicated process and time-consuming. A
committee of GOI gives clearance; if rejected it is not considered for another year.

12.2 It is necessary to distinguish between forests and forest land and review the distinc-
tion periodically as many areas shown as forest lands are practically barren. Although this
may accelerate forest degradation, updating data is necessary.

12.3 In the case of forest clearance, there are issues relating to the determination of net
present value (NPV) of trees that will be lost, giving equal land to Forest Dept. and the
illegal mining of areas declared as “No Go” areas.

12.4 Proposals of over 40 acres are examined by a Statutory Forest Advisory Board of
the Ministry of Environment and Forests, which recommends “in principle” approval
(phase 1 approval) and then final approval (phase 2 approval). It calculates the Net Present
Value of trees plus equivalent new forest land plus money for raising plantations.

12.5 For NPV calculation at present, the user agency applies to the State Government
forest department; which estimates the number of trees and then recommends to GOI. This
process is supposed to be completed within 90 days, but is usually delayed. No
recourse has been provided against such delays.

12.6 Supreme Court has asked for additional criteria for NPV in 2002. Under the rules,
the project developer has to deposit the calculated amount with the State Government.
Supreme Court has not allowed disbursement from ad hoc corpus. The NPV is still diffi-
cult for the developers to pay in lump sum.

12.7 Although detailed regulatory mechanism exists and Rules were framed for Forests
from application to DFO to reply from GOI to be within 210 days; with responsibility/
accountability fixed along the chain, and consequences laid down in cases of delay. These
rules came into force in early 2005 but have been stayed by the Supreme Court. Hence
there is no time limit at present nor any penalty for delays.
12.8 Before 1980 State governments gave clearances on use of forest land. However, forest land was moved from state to concurrent subject under the Constitution. Now Centre has to clear forest land for non forest use. Diversion has since come down sharply.

RECOMMENDATIONS

13.1 There is need for establishing Committees of officers at Central and State levels to
   a) act as appellate process for speedy resolution;
   b) identifying forest land; re-afforestation and compensatory land; and
   c) renewing land after mining; disbursement of funds.

13.2 World Bank has apparently expressed willingness to provide data on a web site that identifies forested lands and those that are not. Indian Remote Sensing maps could also be used for this purpose. This should be put in place without delay.

13.3 Funds for compensatory afforestation are not being disbursed. The Compulsory Afforestation Fund (CAMPA) funds must flow directly to the implementing agency in the State.

13.4 Joint Committees for Ganga, Jamuna Action Plans must be created.

13.5 There has to be agreed power sharing between Centre and State concerned, for example on issues like procurement or control over a SPV which must have Boards that are equally divided between Central and State governments, and perhaps also the local authority, in order to ensure speedier decisions.

13.6 In order to prevent State governments from withdrawing from agreed externally funded projects, there is need for certain measures. For example, GOI in initial MOU must incorporate that withdrawal would mean keeping such states out of externally funded projects. It would be best to give statutory backing to such an MOU so that no party can withdraw at will. The Inter State Council could be the body that puts its seal of approval on the MOU’s.

13.7 In agreements with external agencies for funding, it is necessary to insert conditions that training must be focused on locals in that area who will be on the project, rather than training merely of higher level officials.

13.8 State governments need to prescribe time that can be taken at the maximum at each level of clearance, and give reasons for refusals. Field level officials of forest depart-
ments must be involved from the planning stage. When approvals are refused, there must be a mechanism to ensure that illegal mining in the area is prevented. The Range Officers must be made answerable to the DFO, CCOF, etc.

13.9 Two stage clearance is adequate though time consuming; Stage 2 clearance must be decided at lower levels than the central Minister and deemed as cleared if not cleared in 30-60 days. However, no developer will take the risk of going ahead on the basis of deemed clearance. It is essential that an Empowered Committee with Secretary, Forests, as recommended by the Kanchan Chopra committee should use the Committee’s recommendations for calculation of NPV.

13.10 Delays in approvals are at the levels of the state government and of the central Minister. Stage 2 clearances have been shifted from J.S. to Minister and must be reverted to J.S. to enable speedy decision.

13.11 Gujarat has a state level committee; Centre must differentiate between states that have set up state level committees and those that have not.

13.12 Classification of reserved forests must be periodically reviewed on basis of changing forest density so that degraded forests are recognized.

13.13 Payment of NPV amounts must be staggered as forest land is acquired. Further, the amount available must be made known publicly.


13.15 Centre must accept the formula that FAC membership is decided by the S.C. This can avoid the delays due to jurisdictional disagreements between Centre and S.C.

13.16 CAMPA funds are better left to states in a separate fund (not Consolidated Fund) and monitored closely for use since the money has to come back to states in any case for disbursement.

13.17 Andhra has a Land Bank that is used for Compulsory Afforestation. Other states should also acquire extra land and keep it for this purpose.

13.18 Gujarat has a common effluent treatment for its chemicals cluster; these and projects for urban sewerage disposal need central funding as part of an environmental
infrastructure programme if untreated waste water is not to be let off into rivers and other water bodies. This model might be replicated by other states.

13.19 In forest land diversion cases, processing involves estimation of number of trees, including ground verification by the forest authorities to the extent of atleast 10% as well as identification of the area for compulsory afforestation. These involves several hundred hectares of forest land and given the programme priorities of line formation, such verification is often not possible within the stipulated time frame. At times, for important projects, MOEF has taken up with the State governments and suggested alternatives like use of expertise available outside the line formation. Such approach may be institutionalized and facilitated through creation of appropriate mechanisms which may be adopted by the project proponents.
1. The Directive Principles of State Policy include the obligation of the state to endeavour for protection and improvement of the environment and for safeguarding the forests and wildlife of the country. After the Stockholm Conference on Human Environment, 1972, it was considered appropriate to have uniform laws all over the country to address the environmental issues endangering the health and safety of people as well as for flora and fauna. In line with this, Parliament progressively legislated the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986.

2. These laws and the rules and notifications issued thereunder constitute the legal framework for pollution prevention and control and “environment clearance” issued by the appropriate Government – Central and State – assisted by Central and State level statutory Boards, Committees and Authorities. Prominent among these are the Central and State Pollution Control Boards (CPCB and SPCBs) and Pollution Control Committees (PCCs) of the Union Territories, the Environment Impact Assessment (EIA) Authorities and the Expert Appraisal Committees (EAC) for assessment and Evaluation of Infrastructure Projects requiring Clearance under Coastal Regulation Zone (CRZ) Notification, 1991.

3. On the Forest and Wildlife side, “forest clearance” and approval of proposals affecting wildlife relate primarily to the Forest (Conservation) Act, 1980 – along with various rulings given by the Supreme Court in the Godavaran case and in other cases – and the Wildlife (Protection) Act, 1972. The processing arrangement for the former envisages “forest clearance” at the State level for cases involving diversion of forest land up to five hectares subject to conditions like compensatory afforestation and up-front payment of net present value (NPV) of forest assets like trees, clearance through a State Advisory Group set up by the Ministry of Environment and Forests (MoEF) and supported by its Regional Offices for cases involving land area ranging from five hectares to under 40 hectares, and approval at the central level for larger area cases on the basis of the decisions of the statutory Forest Advisory Committee in two stages – in-principle and final. Mention may also be made of Supreme Court orders of 2002 and 2006 on the pooling of various receipts including payments made to State and Union Territory Gov-
ernments/Administrations for compensatory afforestation, NPV etc. at the central level into a single ring-fenced fund managed by a Compensatory Afforestation Fund Management & Planning Authority (CAMPA), legislative authori-zation for which has been sought through the Compensatory Afforestation Fund Bill tabled for consideration and passing in Parliament. Thereafter, the Rs.8,300 crore plus of receipts credited into it would begin to be released to States and Union Territories for compensatory afforestation on non-forest land as well as reforestation on degraded forest land. The key aspect of the wildlife protection regime which is of interest from the investment angle is the one relating to protected wildlife areas like national parks and wildlife sanctuaries and, at the national level. The apex decision-making body on issues like diversion of land use etc. in protected wildlife areas is the National Board on Wildlife (NBWL), chaired by the Prime Minister.

4. Concern has been expressed at various forums that delays in grant of environment and forest clearances are affecting project implementation. The matter was discussed during the 54th meeting of the National Development Council (NDC) in December, 2007, and Ministry of Finance asked to constitute an Expert Group to go into the system of statutory clearances, including forest/environment clearances, for industrial and infrastructure projects, and suggest concrete ways of speeding these up.

5. An Expert Group constituted in Department of Economic Affairs (DEA) studied the Central and State Government clearances under the provisions of Environment (Protection) Act, 1986, Forest Conservation Act, 1980, Wildlife (Protection) Act, 1972, Electricity Act, 2003, Explosive Act, 1984, Aircraft Act 1934, Factories’ Act, 1948, Air Act, 1981 and Water Act, 1974; besides clearances required from security, defence and groundwater authorities were also examined. It was discovered on the basis of actual case studies, that the time taken in according clearances, particularly those related to environment and forest sectors, is much in excess of the prescribed norms. This has caused inordinate delay in project implementation, leading to serious cost overruns and adverse impact on project viability.

6. Based on a detailed study of the processes, guidelines and format that are being used in respect of the clearances mentioned above, the Group made a number of recommendations including the following:

(i) The entire process of clearances (in respect of all major clearances) to be web-enabled and made accessible in electronic format so that the status of the applications can be monitored ‘on line’.
(ii) All clearances to have defined timelines with a system of ‘deemed approval’ on expiry of the stipulated timelines.

(iii) Environment clearance prescribed for industrial and infrastructure projects under the terms of the EIA Notification of 2006 to be comprehensive enough to cover the requirement of multiple rules formulated under Section 3, 6 and 25 of the Environment (Protection) Act, 1986 as also the “consent to establish” clearances required under the Air Act, 1981 and Water Act, 1974.

(iv) Re-structuring of the entire methodology of public hearing to make them simple, time bound and relevant.

(v) Constitution of State Environment Impact Assessment Authorities (SEIAAs) in the remaining States and Union Territories.
13

INSTITUTIONAL MECHANISMS

13.1 In almost every instance, (national highways, UMPP’s, ports, airports, and water), there was need for transparency and consultation by the Centre with the states, especially where Central Government approvals were required. There were many instances of unilateral central government decisions that the state governments did not agree with or that did not fit the states’ priorities. A need for high level coordination was necessary. This could be at different levels as detailed in subsequent paragraphs.

13.1.1 There is already provision for an Inter State Council which meets rarely. It must be activated. It should be the highest coordination body. At the apex will be the full Council that can meet to resolve contentious issues affecting all states, like royalties, land acquisition, rehabilitation and resettlement, etc.

13.1.2 There could be sub-committees where one or more states directly affected by a project, which could meet periodically the concerned central ministries under the overall supervision of the Inter State Council.

13.1.3 Departments concerned could meet regularly with the affected state government and expedite issues.

13.1.4 When special purpose vehicles are created, as they should be in every project, even if the participants do not include private parties, there could be representation for the concerned central government departments whose clearances are necessary.

13.1.5 Central government Ministries that decide on matters affecting states might do so after consulting the concerned states for example, in deciding the fixed and variable components in tariffs for UMPPs.

13.1.6 Regulatory Commissions with the responsibility for setting norms—for example, CERC determining escalations for specific items in UMPP tariffs—could ensure state government opinions are taken into consideration.
12.1.7 Land acquisition is with the Revenue departments in State governments. However decisions are very slow with this department in most states. It is necessary to have a separate institution as in Karnataka, or designate a special Joint Steering Committee empowered to take decisions, at least in case of foreign funded projects. Many PPP projects have such steering committees.

12.1.8 In the case of the Sardar Sarovar Project, the Supreme Court had set up a Grievance Redressal Authority which helped in speedy decision. This model might be used in all mega Projects.
REGULATION

RECOMMENDATIONS

As recommended under Power, the Task Force would like to see accountability, selection, tenure, etc, introduced in the same way for all Regulatory Authorities.

14.1 Roads and Highways

An independent Regulatory Authority for roads, bridges, highways and expressways must be established as soon as possible, so that the issues relating to the management, control and operations-maintenance of the highways are handled effectively on a unified pattern across the country. At present, while the centre owns the national highway stretches, the states control the management and operations-maintenance issues and where adversarial conditions exist the ‘highway experience’ turns into misery even on highways with excellent top-surface. The Control of National Highways (Land and Traffic) Act, 2002 creates hundreds of ‘Highway Administrations’ without giving them any original or appellate powers under the Motor Vehicles Act and other legislations having a bearing on these issues. This Task Force is of the view that there is a crying need to study the legislations in this area afresh, amend them/repeal them and enact fresh legislation with a view to putting an effective and credible Regulatory structure in the highways sector to oversee the following issues:

- Ribbon development
- Access to and from highways
- Encroachment and illegal parking
- Unauthorized state check-posts (police, excise, sales-tax, forest, mining, octroi, entry-tax, overloading etc.)
- Road safety issues
- Advance Traffic Management System
- Advance Passenger Information System
- Tolling
Ports

14.2 Private operation of ports requires regulation on many aspects and an independent regulator would be useful, replacing TAMP and covering all ports. A National Ports Regulation and Development Authority as an independent regulator needs to be created that will deal with port regulations, tariff principles for all ports, dispute resolution, captive ports and terminals, etc. The distinction between major and non-major ports is no longer relevant since some non-major ports are bigger than some major ports. They should all be dealt with by one regulatory body.

Civil Aviation

14.3 The Airports Economic Regulatory Authority (AERA) should be operationalized at the earliest.

Special Economic Zones

14.4 An independent regulator for SEZ be set up. The regulatory authority would deal with issues relating to SEZ, particularly, relating to approval of SEZ, fiscal issues, monitoring of SEZ, land use etc.

Power

14.5 An independent Coal Regulator must be created for determining tariffs, coal linkages, mine allocations, fuel supply agreements, etc. On tariff issues the Coal Regulator must take decisions along with the gas and power regulators concerned so that there is a coordinated approach between these related tariffs.

14.6 It is necessary also that the Oil and Gas Regulatory Board now constituted should have gas tariff determination authority which should not be left, as presently, to the opaque processes of government but done in a transparent manner. The Act constituting the board should be amended accordingly.

14.7 Ideally, the tariff regulation of power, coal and gas should be with a single regulator. Government may examine how this can be achieved.

14.8 There is no accountability mechanism for the electricity regulators (except an annual report tabled with the concerned legislature). The Task Force suggests that the SERC's should be accountable for the quality of their work, charges of corruption, etc, to the
CERC. The CERC should be similarly accountable to the Appellate Tribunal or to the Supreme Court like the High Courts. Already both SERC’s and CERC have to place an annual report on the table of the legislatures concerned. This is not adequate and somewhat closer accountability is necessary. The Act may be amended accordingly.

14.9 Selection of regulators should be by an expert body that does not have any government representatives. In any case the final appointment is by government. Government has recommendations on this subject from TERI, ADB and other bodies which might be implemented.

14.10 The term of office of any regulator should be five years, irrespective of age. Normally they should not be appointed after the age of 60 years.

14.11 Even if they come from government service, regulators should be paid the remuneration for the job, without deducting as per present practice, the pension for the earlier years of government service. Government rules need amendment.

14.12 Any policy directives to the ERC should be in writing, made public and subject to RTI, and placed on the table of the concerned legislature.

14.13 Any meetings between regulators and government or regulated entities should be minuted and the minutes must be made public.

14.14 The Act must be amended to remove powers of CERC to place caps on electricity trading margins and caps on prices for power sold by merchant power plants. Both should be left to the market to be determined. It must be made clear that the states are free to trade without hindrance by government or by CERC, both in spot and long-term contracts, from these capacities, at such prices as are available from buyers, without hindrance.

14.15 CERC should be asked in the case of each generating plant to give a ruling on the percentages to be allowed as royalty to the state on power generated in the state for supply outside the state.

14.16 Presently there are instances of SERC’s responding favourably to government pressure in their rulings. A supervisory judicial mechanism (as recommended earlier) must be put in place to penalize regulators (if it is established in judicial review), who do not act independently but only in the interest of the state electricity enterprise.
14.17 The order issued in 2000 on Availability Based Tariffs has a section on Gaming, that forbids gaming, that is, the attempt by any state to anticipate shortages by understating their generation programme, or worse, taking advantage of an immediate opportunity to make extra income from the surcharge for unscheduled interchange, by starving their consumers, and supplying the surplus at this higher price to the Grid. CERC must be asked to ensure that they collect information to confirm that there is no such gaming for earning UI charges.

14.18 ERC’s should have powers to compel State governments reimburse dues to the distributing utilities on account of subsidized or free power supplied to customers under instructions from the State government.
ADOPTION OF PUBLIC PRIVATE PARTNERSHIPS (PPP)

Background to Centre-State issues

15.1 Many of the issues that have arisen in implementing PPP’s in different states have had innovative and different solutions. This section therefore provides alternative recommendations that have been successfully tried out and the Commission might wish to suggest them to the Central and State governments.

15.2 Experiences of the states have brought out some of the key issues in executing PPP projects as under:

1. Creation of an enabling environment to promote PPP projects
2. Enhancing commercial viability of the projects through financial and fiscal support from the government
3. Selection of land, acquisition thereof and resettlement and rehabilitation of displaced persons
4. Structuring of projects to make them bankable and thereby ensure only serious bidders submit bids
5. Obtaining of clearances related to defence, airspace and environment
6. Development of shelf of PPP projects to give thrust to the pace of development
7. Capacity building at various levels
8. Dealing with unsolicited proposals

15.3 Considering that PPP projects at the state level involve certain degree of Central government involvement by way of provision of clearances, funding etc. there is need for better coordination between the States and Centre. As there could be overlap between the other sectors which are covered under the study of the Taskforce, the following suggestions are made in respect of PPP projects in general.
16. Recommendations

Enabling framework

16.1 Successful Progress in promoting PPPs is critically dependent on policy, legal, financial and fiscal frameworks. The Centre and the State have different levels of jurisdiction in different sectors of infrastructure based on the arrangement to be found in the Indian Constitution. For example, while telecommunication is largely a central subject, urban development belongs formally in the state list. Different aspects of Roads and Water development are distributed between the State and the Centre. The ownership of different Ports and Airports may lie with the Central or the State Government. While land acquisition for all such projects is the responsibility of the State Government, security comes largely under the Central government. The Public Private Partnership undertaken of any of these or infrastructure sectors may thus require approvals, support and guidance from both the State and Central Governments and their agencies. There is thus a strong need for coherence in the policy, legal implementation, and regulatory frameworks various by the State and Central Government to ensure the success of Public Private Partnership. Thus NHAI cannot implement successfully a BOT project if the concerned state(s) do not expeditiously acquire land, remove encroachments or provide local security for this purpose. Similarly the ability of the State Government to develop a port can be substantially jeopardized by the absence of an ineffective decision making framework regarding security or custom arrangements of such an installation which is under the control of the Central Government. There is thus a requirement to evolve joint policies and laws between the Centre and the State Governments to assure positive outcomes. The system of State governments concerning SEZ laws is an example of how such a system should be designed.

16.2 The proper structuring of PPPs, their related contracts and documentation, the financing and procurement methodologies are complex and technical with which most stakeholders in private and public sectors are unfamiliar. An intensive effort is required for establishment of a semi permanent body by the Central government to provide thought leadership as well as concrete guidance on the processes to be followed for successful PPPs. Such a body would lend authority and therefore comfort to different types of PPP interventions. Such arrangements have been successful in United Kingdom, South Africa and the Philippines in providing enabling framework for the PPPs.
16.3 It is important to add that the scope of work of a central agency established for this purpose by the Government is extremely likely to require a long term arrangement during which the agency can respond to the challenges being thrown up by PPP activity on an ongoing basis for several years to come till sufficient maturity and experience is gained by the Government. Such an agency should evolve a series of guidelines in response to challenges and issues raised.

Land Acquisition

16.4 Despite the progress made in PPP implementation, land acquisition continues to be a major issue. Much has been discussed on this and the amendments to the Land Acquisition Bill are still in draft form.

   a) On comparison with similar legislation in some other countries, we feel that the amended land acquisition bill will provide more clarity and if implemented along with the proposed Resettlement and Rehabilitation Plan, would go a long way towards inclusive development.

   b) More robust systems need to be evolved to ensure that we move away from a system based on giving “compensation” to the land owner to a system based on “benefit sharing” of the value created on the land. Innovations have been made by some states like Haryana to provide compensation to the affected persons. It appears to be more acceptable. Under this model, besides compensation for the land acquired and annuity for a period of 33 years, the developer shall give employment to at least 1 member of the family whose land is acquired for setting up the project. We recommend this and similar models for faster land acquisition.

   c) In some states, the policy of land-for-land has been adopted as a means of compensation. However, in other states, the same policy may not be adopted as such land may not be easily available.

Creation of land pools/land banks

16.5 As land is becoming scarce, it would be desirable that the states identify the lands available for infrastructure development. All such identified land could be pooled together and offered to prospective project developers for infrastructure development. The creation of such land pools would significantly reduce the cost of acquisition and also lead to faster implementation of the projects.
16.6 Gujarat has adopted this concept of land pools under its town planning strategy. Under this model, the lands to be developed are pooled and the compensation package is worked out after due public discussions. For the purpose of arriving at the compensation, a semi-final-value of the final plot is worked out on the basis of infrastructure proposed to be provided in the scheme area. A final plot value is also worked out taking into consideration that the proposed infrastructure is provided in the scheme. Difference between the semi-final plot value and final plot value is considered to be an increment in value, which could result from implementation of the Town Planning scheme. Half of the increment in value is adjusted against the compensation and the net demand/contribution of the owner is worked out. Simultaneously, the development cost and other infrastructure cost for implementation of the scheme are also worked out. The draft scheme continuing the physical proposal and the financial details along with financial part of the compensation and contribution of each plot is then submitted to the Government for approval. We commend the Gujarat model.

**Standardisation of model documents**

16.7 At the central level, standardization of model documents has been achieved in road sector and in the port sector. Wherever states are taking up PPP projects, they need to standardize the model documents to take care of interests of all stakeholders including lenders, developers etc., on an urgent basis. This will help in clear allocation of responsibilities and sharing of risk appropriately. Besides, standardization of documents helps in bringing about clarity about the project and improves the comfort level of the lending institutions. It may be mentioned that advances by banks and lending institutions to infrastructure SPVs are treated as unsecured advances since they have recourse primarily to the cash flow from the project. Therefore, availability of suitable provisions in the concession agreement in case of default will increase the confidence of the lenders about the project and enhance its viability. For instance, in the model concession agreement for national highways, there is a termination clause. It provides that in the event of termination of concession due to concessionaire default, the NHAI shall pay to the concessionaire by way of termination payment, an amount equal to 90% of the debt due less insurance cover and in case of termination due to authority default, the authority shall pay the concessionaire amount equal to the extent of debt due and 150% of the adjusted equity.
Establishment of Special Purpose company (Shell company)

16.8 States could set up a Special Purpose Company (Shell company) which could take up the task of bringing out a pipeline of PPP projects on the same lines as done by PFC while developing Ultra Mega Power Projects (UMPPs). The company will take up the entire task of getting all the approvals/clearances and such company may be transferred to the successful bidder to curtail delays in obtaining the required clearances and timely completion of the project.

States need to use the supporting facilities

16.9 In spite of the progress in the adoption of PPP model for infrastructure development, the need for identifying, formulating and offering of PPP projects by various states is still large. It is generally observed that states are not able to bring out a regular pipeline of projects mainly due to lack of capacity of the agencies involved in promotion of PPP projects. Although multilateral agencies are providing capacity building support, it is felt that states need to use all available means including the facility of Transaction Advisors as empanelled by the Dept. of Economic Affairs, Govt of India and the Infrastructure Project Development Support. This support is available to meet project development costs including preparation of DPRs, legal reviews, environment impact studies etc.

Deepening of the debt market and facilitating long term debt

16.10 As per a study brought out by the World Bank, the tenure of infrastructure loans is nearly half of the concession period. Repayment of the loan is in 12 to 30 years which corresponds to 50 to 60% of the concession period; internationally, repayment corresponds to 80-90% of Concession period. The shorter maturity of the loan results in higher quantum of VGF and higher tolling charges, putting burden on exchequer/users. This aspect needs to be kept in view while evolving model concession documents both at the centre and state level.

16.11 Government needs to facilitate the creation of instruments and mechanisms leading to the availability of longer tenor credit so that loan periods could more closely match the concession period.
Viability Gap Funding

16.12 There is need for speedy and flexible procedure for approval of projects for VGF. The following suggestions may be considered:

16.12.1 VGF approval could be in three phases viz., (i) “in-principle” eligibility after prefeasibility studies are completed; (ii) “in-principle” approval; and (iii) final approval. The degree of details required to be submitted would accordingly be reduced at each stage. At present, various details of the project including concession agreement, state support agreement, substitution agreement, escrow agreement, O & M agreement etc., as applicable to the projects are required to be submitted.

16.12.2 VGF grant may be fast-tracked for states which are making a serious beginning to adopt PPP model for infrastructure development.

16.12.3 Inclusion of land costs under VGF financing is desirable.

16.12.4 Inclusion of unsolicited proposals (Swiss Challenge model) for eligibility under VGF needs consideration.

16.12.5 VGF is currently provided at the backend. Release of VGF during construction stage should be in proportion to the equity raised by the developer.

Commitment to PPP at various levels

16.13 It is noted that in states where PPP model of infrastructure development has taken deep roots, the level of commitment at the government level has been high. Such commitment makes all the difference in respect of decision making, particularly when multiple departments are involved in implementation of infrastructure projects. It is suggested that states set up a Nodal Department for the promotion, development and monitoring of PPP projects.
Legislative framework

Need for adoption of a PPP Act

16.14 It is seen that some of the southern states like Andhra Pradesh and states like Gujarat and Rajasthan have made considerable progress in implementation of PPP projects. This is because of proactive government policy for infrastructure development. In particular, the state of Gujarat has adopted a separate legislation for infrastructure.

14.15 Having a separate State Act for PPP helps in quick decisions and reduces the risks. Reducing uncertainties is a major step in attracting private investment into infrastructure projects. The Gujarat Development Act 1999 provides a framework for private sector participation in financing, construction, operation and maintenance of infrastructure projects. The Act inter-alia, provides for a fair, transparent, and clear mechanism for selection of developers and details the scope and extent of support available from the State Government. State governments could enact similar legislation.
ANNEXURE

PUBLIC PRIVATE PARTNERSHIPS

Current Status

Sustained economic growth has led to demand on infrastructure services. Earlier, infrastructure investment in India was financed almost entirely by the government out of budgetary resources and internal generation of public sector infrastructure companies. However, in the last 10 years, there has been a marked shift in the investment pattern. Private investment has started flowing into infrastructure sectors like roads, port, airport, power and telecom. Private investment constitutes nearly 20% of total infrastructure investment. The government has envisaged raising private investment as percent of GDP from 4.5% to 9% by the end of the 11th Five year plan (2007-2012) and increase the share of private investment in infrastructure from the current level of 20% to 30% by the end of the plan period.

2. India has therefore adopted the Public Private Partnership (PPP) model for infrastructure development. PPP model offers various advantages including adequate definition of contractual obligations, responsibilities and risk allocation, appropriate performance incentives and penalty regime, quality of project management, efficient procurement processes and protection against political interference. Although there is no specific definition of PPPs, in the Indian context it means a project based on a contract or concession agreement, between a Government or statutory entity on the one side and a private sector company on the other side, for delivering an infrastructure service on payment of user charges. In Australia it is seen as a collaboration between the public and private sector to provide significant public infrastructure premised on the allocation of risk. In Singapore, PPP is referred to as a long term partnering relationship between public and private sector to deliver services. In UK, where PPPs have been more successful, they are referred to as private finance initiative where the public sector contracts the purchase of quality services on a long term basis as to take advantage of private sector management skills. This includes concessions where private sector takes the responsibility for providing public services including maintaining, enhancing or constructing the necessary infrastructure.

3. In India, PPPs are at a nascent stage, but the trends are encouraging. Total value of PPP infrastructure projects which have attained financial closure during 1997-2007 is about USD 15.8 billion. In the three years 2004-2007, 93 PPP projects worth USD 8.2
billion have achieved financial closure compared to 131 projects involving USD 5 billion in the previous 8 years. As per latest data available, 221 PPP projects with a contract value of Rs1,29,575 crore (USD 26.4 billion) are under implementation in various states.

**Inter-State variations**

4. Data reveals inter-state variations in adoption of PPP model for infrastructure development. Of the 221 projects under implementation, 37 projects are in Rajasthan, 36 in Andhra Pradesh and 27 in Gujarat. Other states which have more PPP projects include Tamil Nadu (26), Maharashtra (25) and MP (24). In rest of the states, the number of projects is low. By far, the maximum number of projects (170) are in the road sector followed by port sector (38).

**State level initiatives**

5. Some of the states have adopted a clear PPP policy. Andhra Pradesh has enacted the Infrastructure Authority Act which covers infrastructure sectors like roads, airport, seaport, urban infrastructure etc. Punjab has passed the Punjab Infrastructure (Development and Regulation) Act 2002, while Gujarat has enacted the Gujarat Infrastructure Development Act 1999. Few other states have enunciated infrastructure development policies which also provides for undertaking projects on PPP basis.
16

Data Requirements, Information Technology, Research & Development and Capacity Building

Background to Centre-State issues

Data Requirements

16.1 In many sectors, the quality of decisions for infrastructure development and management is poor due to non-availability of appropriate data. Inter state tribunals for water suffer from contestable data presented by various parties. Road projects often have data which have wrong (over) estimates or that which does not facilitate analysis at a network level. Inaccurate land and forest data, sometimes resulting in misclassification lead to delays in project clearances. Also, classified data leads to further limitations.

16.2 Data on Ganga and Brahmaputra river systems are treated as classified. Data required are not being made available to stakeholders easily. The hydropower projects taken up on a large scale in the Himalayan region are thus being planned with scanty data, which may lead to sub-optimal development or even failures.

16.3 Electronic data banks and knowledge products (including maps) need to be established for various resources. Data warehousing institutions at Central and State government levels under the respective resource domains should be set up. GPS should be used to create and monitor such data. Apart from infrastructure issues, such data should also enable disaster anticipation and management.

16.4 Policy guidelines should be drawn up for mandatory collection of reliable data, validation, collation, storage and updation, as well as sharing with genuine users and stakeholders.

17. RECOMMENDATIONS

Information Technology

17.1 In spite of the recent advances and benefits of application of information technology, it is yet to catch up in various infrastructure sectors to the required levels. Apart from administrative applications, focus needs to be on technical applications.
17.2 For example, in the context of flood management and control, simulations of water flows based on land use and topography (driven both by nature and construction) need to be studied periodically.

17.3 As another example, in the context of roads, traffic management systems that recognize traffic flows in a network/region should be put in place. Similarly, all highway projects must go in for e-tolling, with data gathering for future planning. This can be ensured by making it part of the concession agreement requirements.

17.4 In the context of power, optimization methods for load dispatch could enable better markets and improved resource allocation. Similarly, in the context of railways, internet based open auction systems for rake utilization could enable better markets and improved resource allocation.

**Research and Development**

17.5 Stand alone and educational institution based research and development centres must be encouraged to work on infrastructure issues. The Central Government should take initiative in promoting centres of excellence, in collaboration with states and ensure free flow of data for research purposes and academic output.

17.6 SEZs could be used to promote research and development institutions, with a requirement that each one should make this as part of their development profile.

**Capacity Building**

17.7 As new concepts in infrastructure development emerge, appropriate capacity building needs to be put in place.

17.8 Water issues are to be handled by proper trained professionals which require capacity building and manpower development through specialized courses and periodic training for which both centre and state could contribute.

17.9 Issues like model concession agreements, project structuring, preparing bankable projects (if required, making them viable through subsidies/grants like VGF for leveraging), facilitating multilateral financing with GOI guarantee, risk management, regulation, require professional understanding, not only at the Central Government level, but more significantly at the State and local government levels.
17.10 Capacity building would also include creation of adequate mass awareness and education of masses for informed debates and decision making. People's participation including community based organizations should be encouraged with proper training.

17.11 There is need for regulatory institutions in domains like water, road (including safety), rail etc. Regulatory authorities are to be formed in each State for monitoring of water use and fixing water rates. Water accounting should be made a routine process. Some institutions may have to play the role of a dispute settlement authority and/or an ombudsman.

17.12 There is need for the centre to set up educational and training institutions in various areas like maritime, road development and safety, SEZ management etc.

17.13 Vocational training institutions are required for skilled jobs. These can be state government initiatives, leveraging public private partnerships.

17.14 Government officers moving to PPP organizations must be encouraged, since they bring in valuable interfacing expertise and understanding of government processes. However, caution must be exercised where conflict of interest is a possibility.
## Composition of Task Force 7

### Infrastructure Development and Mega Projects

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<thead>
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<th>Name and Address</th>
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## Details of Meeting held of Task Force No.7 on ‘Infrastructure Development and Mega Projects’

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<tr>
<th>S. No.</th>
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<tr>
<td>1.</td>
<td>30&lt;sup&gt;th&lt;/sup&gt; June, 2008</td>
<td>Vigyan Bhawan Annexe, New Delhi</td>
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<td>2.</td>
<td>28&lt;sup&gt;th&lt;/sup&gt; August, 2008</td>
<td>Vigyan Bhawan Annexe, New Delhi</td>
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<td>3.</td>
<td>31&lt;sup&gt;st&lt;/sup&gt; Oct. &amp; 1&lt;sup&gt;st&lt;/sup&gt; November, 2008</td>
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<td>17&lt;sup&gt;th&lt;/sup&gt; &amp; 18&lt;sup&gt;th&lt;/sup&gt; November, 2008</td>
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<td>5.</td>
<td>25&lt;sup&gt;th&lt;/sup&gt; &amp; 26&lt;sup&gt;th&lt;/sup&gt; November, 2008</td>
<td>Selected Members of Task Force Visited Ahmedabad and held interaction with the various Departments of Govt. of Gujarat on Infrastructure Development and Mega Projects issues</td>
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<td>6.</td>
<td>1&lt;sup&gt;st&lt;/sup&gt; &amp; 2&lt;sup&gt;nd&lt;/sup&gt; December, 2008</td>
<td>Selected Members of Task Force Visited Hyderabad and held interaction with the various Departments of Govt. of Andhra Pradesh on Infrastructure Development and Mega Projects issue.</td>
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<td>7.</td>
<td>22&lt;sup&gt;nd&lt;/sup&gt; &amp; 23&lt;sup&gt;rd&lt;/sup&gt; December, 2008</td>
<td>Vigyan Bhawan Annexe, New Delhi</td>
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<td>8.</td>
<td>28&lt;sup&gt;th&lt;/sup&gt; January, 2009</td>
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<td>9.</td>
<td>20&lt;sup&gt;th&lt;/sup&gt; February, 2009</td>
<td>Vigyan Bhawan Annexe, New Delhi</td>
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This section provides the recommendations made by the Task Force in each of the sectors described in the main report. However, the structure of the main report has been left undisturbed and contains the same set of recommendations relating to each sector.
I Roads and Highways

1. A permanent structure for putting enabling policy in place must be created in place of the stop-gap arrangement of the Committee on Infrastructure and the Empowered Sub-Committee of the Committee on Infrastructure. A Ministry/Department of Infrastructure Policy should be created under the direct charge of the Prime Minister to replace the existing Committee on Infrastructure. The intention behind placing the Committee on Infrastructure under the direct control of the Prime Minister was to give a signal to all that the government accords the highest priority to infrastructure. This Task Force agrees with this view and accordingly, it recommends that the Ministry/Department of Infrastructure Policy be put under the direct charge of the Prime Minister. Broadly, its functions will be what the Committee of Secretaries is doing at the moment. The advantages of a Ministry/Department are that the processes and procedures will be better defined than those of a Committee and there will a dedicated secretariat. While the individual infrastructure Ministries will continue to lay down policies in all other areas of their domain, the Ministry/Department of Infrastructure Policy will be the final policy making body for Public-Private Partnership (PPP) in all areas of infrastructure.

2. MCAs and standard bidding documents (RFQs and RFPs) which have been evolved should not be treated as sacrosanct for all times. The proposed Ministry/Department of Infrastructure Policy should be able to quickly approve changes to RFQs and RFPs or to VGF procedures necessitated by changes in the environment (financial or institutional), on proposals made by owners of the projects viz., Ministries/Authorities/State governments.

3. The capacity for undertaking PPP projects varies considerably across states. The formulation of the MCA for PPP projects in states by the Committee on Infrastructure and the opening of the VGF window in the Ministry of Finance to state PPP projects are good initiatives to incentivize the states. The Committee on Infrastructure or the proposed Ministry/Department of Infrastructure Policy should come up with a JNNURM type scheme for enforcing PPP reforms in the states through scheme based incentives.

4. The proposal for the restructuring of NHAI, approved by the Union Cabinet, needs an urgent fresh look before it is put into operation. The present proposal is deficient in that it does not suggest concrete steps to make NHAI independent of the Minister/Ministry/Government in its day-to-day working. Giving a fixed tenure to the Chairman is a good step but this alone does not ensure autonomy of the Authority. Parliamen-
tary accountability does not justify interventions by the Minister on contractual/technical/personnel matters. The restructuring proposal also does not propose a transparent method of selecting the best candidates for the post of Chairman, Member and CGM. Ideally NHAI should be corporatised under the Companies Act. It should have a holding company and a central subsidiary to implement bigger projects (above a certain TPC) and expressways. It should have regional subsidiaries responsible for implementing all other projects pertaining to the states under their respective jurisdiction.

5. The Ministry of Road Transport & Highways should gradually cease to be a direct implementing agency and should gradually transfer all national highway projects to the NHAI as its capacity is built up. It should have only three functions – policy making in domain areas (except PPP), monitoring of projects and coordination with states. The Minister should not get involved in awarding contracts or in technical or personnel matters.

6. Since delays on account of most operational issues are due to lack of coordination and regular follow up, it is necessary to create Empowered Steering Committees for national highways consisting of stakeholders and permission/approval granting authorities. There should be a maximum of four or five of such Empowered Committees and each committee should meet once every three weeks. The Ministry of Road Transport & Highways must ensure that these Empowered Committees meet regularly.

7. NHAI should enter into comprehensive MoU with each state for time-bound action on all operational matters in advance – land acquisition, tree cutting permission, shifting of utilities, signing of state support agreements for BOT projects, forwarding of environmental clearance and forest clearance proposals to the MoEF. The Empowered Steering Committees will monitor whether the NHAI/states are fulfilling their respective responsibilities under the MoU.

8. At present, part of the Central Road Fund (CRF) is allocated to the Railways towards 50% share of the expenditure on ROBs/RUBs. This leads to unnecessary documentation and delay as the ROBs/RUBs have to be reflected in the Rail budget also. This should be discontinued and no money from the CRF be allocated to the Railways. This amount should be distributed between NHAI and the states. As to the requirement of approval of designs of ROBs/RUBs by Railways, the Empowered Committees will ensure timely approvals.
9. An independent Regulatory Authority for roads, bridges, highways and expressways must be established as soon as possible, so that the issues relating to the management, control and operations-maintenance of the highways are handled effectively on a unified pattern across the country. At present, while the centre owns the national highway stretches, the states control the management and operations-maintenance issues and where adversarial conditions exist the ‘highway experience’ turns into misery even on highways with excellent top-surface. The Control of National Highways (Land and Traffic) Act, 2002 creates hundreds of ‘Highway Administrations’ without giving them any original or appellate powers under the Motor Vehicles Act and other legislations having a bearing on these issues. This Task Force is of the view that there is a crying need to study the legislations in this area afresh, amend them/repeal them and enact fresh legislation with a view to putting an effective and credible Regulatory structure in the highways sector to oversee the following issues:

   a) Ribbon development
   b) Access to and from highways
   c) Encroachment and illegal parking
   d) Unauthorized state check-posts (police, excise, sales-tax, forest, mining, octroi, entry-tax, overloading etc.)
   e) Road safety issues
   f) Advance Traffic Management System
   g) Advance Passenger Information System
   h) Tolling

Legislative

10. There is no need for two legislations on land acquisition – The National Highways Act, 1956 and The Land Acquisition Act, 1894 – particularly after broad-based amendments to the Land Acquisition Act, 1894 are carried out. The Committee on Infrastructure should issue a mandate to proceed under only one legislation, preferably the amended Land Acquisition Act.

11. The proposed corporatisation of NHAI under the Companies Act will necessitate changes in The NHAI Act, 1988.
12. The CRF Act be amended, if need be, for doing away with the allocation of CRF funds to Railways.

13. The entire set of legislations in the areas of right-of-way management [eg. The Control of National Highways (Land and Traffic) Act, 2002] and traffic management [eg. The Motor Vehicle Act] should be reviewed/amended and a fresh legislation be enacted, if need be, for creating an effective Regulatory Authority in this sector.

II Railways

14. The following items were discussed with the representatives of Railways and RPF; Dedicated Freight Corridor; Land Acquisition; Over and Under Bridges; Interface with Waterways; Port Connectivity; Gauge Conversion; Security.

15. In case of Dedicated Freight Corridor, railways are going parallel to existing lines to save on land acquisition. Gujarat would like alignments to be agreed with the state. We recommend that alignments should be mutually discussed and agreed upon.

16. At a macro level, the Dedicated Freight Corridor represents a good example of Centre-State coordination. To support and leverage this corridor, the Delhi Mumbai Industrial Corridor Development Corporation (DMICDC) has been set up with participation from states coming under the influence zone of the Dedicated Freight Corridor. Industrial development, logistic parks and investments regions are being planned in the influence zone. This idea should be carried forth for all new railway lines and existing railway lines that have scope for traffic, including Konkan Railway Corporation (KRC). KRC in fact has four states participating in its ownership. There is scope for them to view their role more proactively to support and leverage KRC.

17. Land acquisition takes 1 year and in cases, up to 3 years. When forest land is unavoidably involved it can take 2 to 3 years. There is escalation of cost and contractual time. Even simple lines like bye passes have been held up due to land acquisition, causing movement problems. We recommend that all railway projects involving new lines, gauge conversion etc must build in bye pass construction as part of the project itself wherever required.

18. Temporary land acquisition (including forest permission where necessary) for approach roads during construction should be part of the detailed project report, since approach roads are becoming critical for modern construction technologies.
19. Some State governments have declared trees alongside railway tracks on railway land as protected trees. This hits operations. Essential that the state consults Railways prior to such actions.

20. There is uncertainty on agreed over bridges and there is need for stability for these agreements. Perhaps the agreement should have a clause forbidding changes without prior consultation and agreement.

21. Centre provides larger share from diesel levy of the road cess but states do not match and find it difficult to give even the smaller share they now do. There must be prior agreement between Centre and State the total cost and the share to be paid by the State with a time line for payments.

22. Whenever the construction is on behalf of NHAI, the road cess can be directly channelized to NHAI rather than through railways when NHAI/states are bearing the total construction cost.

23. Each level crossing to be bridged becomes a local political issue with Railways not too interested in some cases and the State Government not interested in others. But there has been no problem with crossings with NHAI. All over and under bridges over level crossings and others must be agreed as a package in advance and then put into one SPV for a PPP or similar vehicle for purposes of funding.

24. Illegal (not permitted) mining has begun to endanger bridges especially in sub-mountainous areas. It is essential that states have a mechanism to prevent illegal mining and stringent penalties are levied when it takes place within a specified number of kilometers from the bridge.

25. Port authorities are unable to find resources for all port connectivity projects. Therefore private investment should be encouraged. The new Model Concession Agreements for ports has been evolved which can help attract private investment.

26. Hinterland connectivity would be as part of future port projects. If the Project does not need to be subsidized by Railways, there is greater scope for state involvement. At present, state has no say even when it is a 50% partner.

27. Where state has projected low traffic, connectivity must be funded by the project developer.
28. The issues are similar for rail connectivity for SEZ. SEZ developers and State governments must take a proactive role in JVs.

29. There is need to demarcate responsibility between RPF, State Government, railway police and regular police of the location. Since track policing is the responsibility for the State Government concerned, only people security on train should be with RPF, with state police taking responsibility for baggage and crime. However a drugged passenger in a train must be responsibility of RPF since the origin of the passenger might be from another state through which the train passed.

30. There are also costs to Railways in providing security in states like J & K, North-East and Jharkhand and there must be prior agreement on the bearing of these costs.

**III Ports**

31. Private operation of ports requires regulation on many aspects and an independent regulator would be useful, replacing TAMP and covering all ports. A national Ports Regulation and Development Authority as an independent regulator needs to be created that will deal with port regulations, tariff principles for all ports, dispute resolution, captive ports and terminals, etc.

32. The distinction between major and non-major ports is no longer relevant since some minor ports are bigger than some major ports. They should all be dealt with by this one regulatory body. The distinction between major and minor ports must be replaced by treating them alike and under the same regulatory authority. States notify tariffs determined by the private operator of minor ports and must be persuaded to surrender this authority to the new regulatory authority. Since the authority will develop tariff principles, State governments might find such an authority useful.

33. Centre can use the powers it has for clearances of customs, environment, etc, to give advance sanction or rejection in the case of any new port notified by a State Government. A clear policy in this regard is essential. This power can be used to disallow state notifications of new ports when they are in conflict with other proposals more in the national interest as determined by the Centre.

34. Ports connectivity must be negotiated in advance between all the parties concerned. Centre must devise a policy that ensures backward/forward linkages including to
inland water transport, as well as to roads and rail. This policy should spell out cost sharing principles as well and be developed in consultation with states.

35. Gujarat has a State Maritime Board and, unlike GOI, a State Maritime Policy, since 1995. We need to delegate these powers to maritime states, each of which must have State Maritime Boards that take over much of the work of the present D-G Shipping. However capacity must be built in State maritime authorities to enable them to take on these responsibilities.

36. 

   a) A Model Concession Agreement has been prepared and is use in Gujarat with private parties. It could serve as a model for other states for local ports.

   b) The Centre has prepared a Model Concession agreement and this could be used as a model for Centre-State projects.

37. The PPP model should be encouraged for new ports, while the present policy of allowing private terminals should be pushed forward. A study to identify the procedural hurdles and loosen them is essential.

38. The problem of excessive delays due to slow environmental and forest clearances is common to most infrastructure projects and is covered in detail in a separate section. The recommendations there will benefit ports as well.

39. In order to develop a commercial and enterprise orientation in Port Trusts, they must be converted into autonomous companies. Private participation in them explored for their management. The present policy of leasing terminals to private parties within a port should continue to be encouraged and enhanced.

40. We were given to understand by a state maritime board that it is subject to tax while NHAI is not. Is such anomaly exists, it needs to be corrected and both bodies must be subject to the same principles.

41. Security is an issue for (a) intra-port (b) hinterland and (c) offshore. Intra-port security must be the responsibility of the port under the legislative control of the state with the centre laying overriding policy. Hinterland security is the responsibility of the state; and offshore security must remain with the Central Government. There must be a seamless transition between all the three levels of security.
42. Container security is an important issue in these days of terrorism and must be dealt with by the Centre under a national policy.

43. Standards and regulations for coastal shipping and for inland water transport must be combined so that there is scope for seamless movement between the two.

IV Civil Aviation

Land acquisition

44. In case of development of airport in public sector, it may be appropriate to have State Government participation by way of equity. However, in case of PPP projects, both centre and state should not own equity in the project to avoid conflict of interest.

Airport vicinity

45. As per the guidelines of Ministry of Civil Aviation for safety of aircraft operations, no building or structure shall be constructed or erected or no tree shall be planted on any land with the specified limits. As per the guidelines, the State Government should be notified for deciding the cases of aircraft glide path. Consultation and agreement therefore, are essential to ensure speedy and effective implementation.

Airport connectivity

46. Many airports suffer for want of appropriate connectivity to the areas served. Connectivity projects should invariably be structured along with the airport project. Bengaluru and Hyderabad are examples of airports where connectivity issues are being addressed reactively, at cost and inconvenience to passengers.

Regulator

47. The proposed Airports Economic Regulatory Authority (AERA) should be operationalized at the earliest. The Regulator should have responsibility for tariffs at the airport, berths for airlines, etc. Air Traffic Control remains a separate technical body under the Civil Aviation Ministry.

Small and remote airports

48. Small and remote airports, which might be financially unviable, should be developed under PPP, but with viability gap funding (VGF).
ATF tax

49. The tax on ATF by states needs to be rationalized. This can also be achieved by ATF being classified as a declared good. This will have revenue impact on concerned State governments and will need careful consideration. The Finance Commission may be requested to give a decision as part of its recommendations.

Security at airports

50. This requires a high level of attention and coordination among various agencies at the centre and states, airlines and airport authorities. Consideration must be given to having a single security agency in charge, with overriding authority over all agencies at the airport whenever there is a security alarm.

V Inland Water Transport

Legislative

51. It is necessary to have national legislation on standards for bridges, etc., for canals, rivers to enable future development of inter state and intra state inland water transport. Notwithstanding this position, the State governments ought to ensure that inland waterways related development projects (for example, dams, barrages etc) do keep the navigational requirements in view. Accordingly, necessary IWT related infrastructure such as navigational lock etc., be provided.

Institutional

52. Inland and coastal water transport should be treated as one to enable better regulation and standards of vessels to cover both.

53. As regards National Waterways which are developed through 100% funding by the Central Government/IWAI, State governments can complement the efforts of IWAI by providing assistance for land acquisition and other administrative issues on priority basis since ultimately the IWT development will be helpful in overall development of the State. In addition, the states can also take up the work of development of the National Waterways through the state agencies like irrigation department, PWD etc.

54. As regards waterways other than National Waterways, though the Central government/IWAI cannot invest directly in creation of infrastructure, it can invest through
IWAI, provide guidelines/assistance in formulating the schemes (which it had been doing regularly) or any other guidance pertaining to IWT sector as and when sought by the State governments.

55. One of the key areas for overall development of IWT sector is that most of the State governments do not have strong organizational set up to conceptualize and implement projects for IWT development. Therefore, if the State governments concentrate on formation of such organizational set up it will go in a long way in development of IWT sector in the states as in well as entire country.

VI Special Economic Zones

56. SEZ may be provided “infrastructure” status as this will facilitate easier funding by banks and other lending institutions and lead to generation of employment at the regional level.

57. Govt. of India has enacted the SEZ Act, 2005 and SEZ Rules 2006. States need to evolve suitable policies regarding SEZ development. In the absence of statutory provisions, fiscal benefits extendable by State governments under SEZ Act cannot be availed by the developer.

58. Rule 5, SEZ Rules 2006 provides that State governments should endeavour to provide electricity and water to SEZ developers. States need to ensure that such services are provided to the developer so that the development process is not hampered. Further, as per Rule 5, before recommending any proposal to set up SEZ, State governments shall endeavour that exemption from state and local taxes, levies, duties including stamp duty and taxes levied by local bodies. Further, the amendment to the Stamp Act provides exemption to any instrument executed by or on behalf or in favour of a developer carrying out the purpose of SEZ. States need to exempt from stamp duty on land acquired by the developer also as SEZ are meant to promote exports and generate employment.

59. SEZ should be normally exempt from land ceiling. States should notify the SEZ, once it is approved by the Central Government, to take care of such exemptions.

60. It is imperative that the developer should not be allowed to dilute their equity in the SEZ till the time the SEZ is fully developed and becomes operational.
Land Acquisition

61. SEZ developers may be asked to first acquire at least 30% of the land before approval is granted for the SEZ. This would avoid a situation where the approval has been granted and the progress of land acquisition is too slow.

62. Where the project developer has been able to acquire 70% of the land, for the remaining 30%, the government should help in acquisition.

63. SEZ be set up away from metro or city area and only on waste and non-arable land.

64. States may identify suitable land parcels and create a land bank which in turn could be provided for setting up of SEZ or any infrastructure projects.

65. State governments need to be proactive and ensure that developer is able to acquire the required contiguous area of land of 1000 hectares and above in case of multiproduct SEZ.

66. The land acquired should be only to the optimum level and acquisition of more than required land should be discouraged

67. States could adopt the “Haryana Model” of land acquisition and compensation.

68. In order to arrive at an acceptable compensation package, states may consider engaging independent assessors and surveyors.

Provision of Infrastructure at SEZ

69. Since most SEZ are outside municipal area, no infrastructure services are provided by the states. States need to ensure that the required infrastructure facilities are provided to the developers.

70. Till such time the demand picks up, captive power upto 49% of generation be allowed to be sold outside the SEZ area.

Regulatory

71. Set up an independent regulator for SEZ. The regulatory authority would deal with issues relating to SEZ, particularly, relating to approval of SEZ, fiscal issues, monitoring of SEZ, land use etc.
Legislative

72. States could align their R & R bills in line with the national bill.

VII (a) Power

73. States must be free to trade without hindrance by government or CERC, both in spot and long-term contracts, from electricity allocated under long term power purchase agreements to them from central generation plants.

74. Similarly, inter-state transmission capacity allocated under long term contracts by the Central Government monopoly Power Grid Corporation must be permitted to be sold if in excess of state requirements.

75. Unallocated capacity from Central Government owned generating plants was in past years allocated pro rata between states. Gujarat has pointed to us that it is now allocated on ad hoc basis and Gujarat is getting less than it did under pro rata basis. Unallocated power should be:
   a) Allocated pro rata, or
   b) Sold to the highest bidder at best available prices, or
   c) If it is to be allocated according to need, this must be done in a transparent way so that the principles are known to all.

76. Some states from where coal originates demand free power in lieu of royalty. A charge might be levied to create a carbon emissions fund and used for carbon mitigation programmes by the state. CERC should be asked for a ruling on the percentages to be allowed.

77. Mr. G. Haldea argued that one state should be barred from selling power to another at higher prices than within its own state. If the power belongs to the state by contract and it is meeting the demand projections in the state, there should be no such bar.

78. Regulators are expected to penalize states that take advantage of the penal Unscheduled Interchange surcharge to supply power to the Grid for maintaining frequency while depriving their state customers from supplies. They do not seem to implement this rule. Regulators must be required to examine each such transaction for violation.
79. Normally, there should be no bar on a generating state from selling what it considers as surplus to its requirements to another state at best available price.

80. Electricity Act 2003 might be amended to compel regulators (if so established on judicial review), who do not take steps to permit open access to do so.

81. Load Despatch Centres must be neutral between generators, distributing companies and consumers, traders and exchanges at the Centre and the States. They must be separated from their existing sponsors who also supervise them, Power Grid Corporation, the central transmission utility, and transmission monopolies in each state that are designated as state distribution utilities. Load dispatch centres should be funded by all users, and function as non-profit companies. Necessary amendments to the Electricity Act 2003 must be introduced to enable this.

82. Different agencies deal with fuel linkage or other clearances, with delays at many points, MOEF, the Supreme Court environment and forest clearances committee, Central Electricity Authority, Coal Ministry which will not look at coal linkage till the project is in an advanced stage; Defence Ministry, Airports Authority; Water linkage, etc. There is need for inter-Ministerial Committee to be transparent and effective to ensure coal linkages.

83. Fuel use, allocation and pricing now decided by the central government, must be in consultation with the states or the private utilities through an inter state mechanism for ensuring consultation and transparency or to an independent regulator.

84. The different Ministries whose approvals are required for different purposes in the case of ultra mega power projects should be represented on the Boards of the special purpose vehicles formed at the outset to bring the project to a stage where it can be opened to bidding.

85. Fuel linkages for coal based power plants are allotted with considerable delays by the central government causing delays in financial closures of new projects, and losses to operating power plants because of coal shortages. A transparent process for allotting coal linkages must be decided, preferably an independent regulatory body.

86. Since decisions on linkages for new projects also applies to rail linkages for new generating plants which have to get coal from across the country by rail, the presence of the railway representative on the board of the special purpose vehicle is necessary.
87. Andhra told us that for supplies of coal for power generation, linkage was unilaterally given for 75% plant load factor, though supplies are given only at 60% (of 75% plf), leading to the state having to import large quantities of coal, raising the average price of coal from Rs 2000 to 7000 per tonne, and hence also raising average cost of power. Domestic coal must be made available as promised in the agreement. Such fuel supply agreements are one sided since penalty on Coal India is applicable only if supplies fall below 60% of 75 plf. Consultation and transparency must be introduced.

88. Central Government must announce a coal utilization policy to ensure that existing power generation gets priority with existing power plants getting first priority in coal linkage and supply.

89. Renewable energy must be encouraged. Connectivity to the Grid of wind power must be made easier and faster and approvals of projects must include connectivity of Transmission provided by the generating company, the state transmission company or another private developer.

90. Many State governments give free or cheap power to some consumer groups. Four issues need to be dealt with:

   a) The beneficiary must be clearly defined and identified;

   b) Leakage through excess usage by beneficiaries must be avoided.

   c) The concerned governments must reimburse the cost of the subsidies to the operating enterprises in advance. The poor financial health of state enterprises makes it difficult for them to pay the bills of central suppliers of services like Railways, Coal India, central generating companies, etc. and has already led once to over Rs 40000 crores of outstanding dues being securitized.

   d) ERCs should have powers to make State governments reimburse dues on this account to the distributing utilities.

91. Power projects are given enormous amounts of land, in many cases from forests and agricultural lands. Coal based thermal plants have to dump the ash from burning high-ash Indian coal for which technologies are available to utilize most of the ash for making high quality cement.

92. New coal based generators must concurrently develop cement production themselves or by another enterprise to be located near the power plant.
93. CEA must reexamine the land requirements for thermal plants and give directions to all new generating plants accordingly.

94. CEA must minimize land requirement for each Project especially since all ash except “deep ash” is capable of being mixed for cement.

95. The re-examination of land requirement for power plants by CEA should cover the land required for hydroelectric plants as well.

96. The Gujarat government told us that the Mundhra UMPP has had no land acquisition problems or on relief and rehabilitation of displaced people. They felt that this was possibly because the project is sited in low quality agricultural cropland. The Gujarat government said that as a matter of policy, they picked sites for projects on lands which had weak agriculture. Gujarat Industrial Development Corporation has developed a policy which has a generous compensation policy. The Land Acquisition Act provides for a mediator in the Land Acquisition Officer. For the SPV, the State Government identifies land, location, quantum of the generated power that will be supplied to the state (1900 MW from Mundhra). Case studies of these projects might be prepared and distributed to states to identify best practices that allowed speedy decisions and execution.

97. The UMPP is bid on competitive tariffs with fixed and variable elements with escalations for the latter being decided at six monthly intervals by the CERC. The variable component accounts for 65% on account of coal, transport, etc. This rapidly raises the tariff. State governments must be involved in determining the tariff formula from the outset.

98. UMPP tariffs have elements whose cost escalations are allowed. Escalatable components in tariff include capacity, coal price, handling charges and freight. There is no cap on these escalations and CERC notifies escalations every 6 months without consultation. Centre and states should examine whether the fixed component should be raised and the escalatable charges capped. Further, coal prices used by CERC are spot prices but should be long term contract prices and also take account of tie ups by the UMPP developer of coal on a long term basis. The formula used must have the agreement of the concerned State Government.

VII (b) Oil and Gas

99. The Centre needs to examine a differential pricing for gas based on use, for example, differently for power, fertilizer, domestic use, transportation, petrochemicals.
100. Producing states and user states must be consulted on pricing so that there is transparency and all views are taken into account than only that of the monopoly owner viz., the Central Government.

101. The Central government’s gas allocation policy must have the consent of the states and major project developers. The Task Force feels that gas as a non-carbon emitting fuel, must have first priority for power generation.

102. Gas should also be supplied for distributed power generation in rural areas.

103. Royalty rates for gas to producer states should not be changed unilaterally but in consultation with the state.

104. Priorities for domestic gas distribution should be set by the State Government.

105. It has been argued that there should be freight equalization for gas. Since this is a concept being given up for other products, we are not in favour of it.

VIII Water Resources

106. While it is desirable to have Water under Union list, at this juncture it could be difficult to bring about this change. However, the option of enacting suitable laws is the next option available, the need for which needs no emphasis.

107. The Task Force is unable to agree with the suggestion that Entry 56 List I should be deleted.

108. Creation of appropriate and empowered River Basin Authority (RBA) and Water Regulatory Authority (WRA) is an urgent need and the Centre must initiate action immediately. Maharashtra has set up a Water Regulatory Authority for the State.

109. There is a need to create a reliable data base for all the river systems of the country. Data collection network has to be strengthened to meet the requirements for a reasonable and reliable assessment of the resource. The process was improved under Hydrology Project Phase –I, but the actual data is not being recorded in the master data centre. There are considerable difficulties in sharing the data by the States. Moreover, data of Ganga and Brahmaputra River systems are treated as classified and sufficient data required are not being made available to stakeholders easily. For example, the hydropower projects taken up on a large scale in the Himalayan region are being planned with scanty data, which may lead to sub-optimal development or even failures. These impediments must be removed through a policy on data collection and sharing.
110. The river basin plan should present a comprehensive outline of the development possibilities of the land and water resources of the basin, establish priorities in respect of water use for various purposes, indicate the need for earmarking water for any specific purpose and indicate inter se priority of projects. Uncontrolled storage, diversion and use of water by upstream States to the detriment of downstream States depriving their rightful demands results in friction among the States and inter-State disputes, leading to references being made to the Union Government/Courts. Present process of clearing of individual projects should be done away at the earliest and integration into the basin level requirements and deficient areas shall be looked into. Time dependant releases (even during the initial filling period) are to be built in to protect the needs of downstream and distress sharing shall be an essential part.

111. Available resources, of both surface and ground water are to be assessed for each river basin on a continuing basis keeping in view the dynamic nature of water availability year to year. Augmentation of utilizable water by addition of surface storages, and recharge and water harvesting methods for underground water are essential. This should be a task for the RBA.

112. A systematic plan to link all possible river basins and transfer from surplus to deficit areas can augment water availability substantially. This involves technical problems, environmental issues and requires political agreements between States. This needs to be pursued further by the Centre with all concerned States in view of its large benefits.

113. Water accounting of each basin is important but there are difficulties in compiling the data on existing water utilization, as the States do not come forward to share the data. This reinforces the need to make the giving of correct, comprehensive and timely data an urgent necessity. Water balance study of each basin is important for better planning, regulation and management of water. There has to be legislative compulsion for this purpose. Considering the fact that inter-state rivers comprise 83% of the geographical area of the country, this has to be a Central government function through the River Basin Authority. Section 16 on Technology and information gives specific recommendations relating to use of IT and these need to be implemented.

114. Equitable Water allocation, distribution/sharing between various States, stakeholders and various uses in a river basin/sub-basin have not been made for any of the river systems or in many of the water infrastructures already developed. This is an enormous task both technically and politically, which requires goodwill and national perspec-
Centre has to take the initiative.

115. Environmental and ecological issues are to be addressed adequately in the planning processes and adverse effects are identified for satisfactory mitigation.

116. Measures for minimizing delays in statutory clearances shall be implemented and monitored. Land acquisition problems have delayed a number of projects and this has been addressed separately.

117. Maintenance of water quality at acceptable standards over the entire river basin must be ensured and is to be the function of an empowered Central monitoring authority with State subsidiaries.

118. Maintenance of minimum flows in any river for ecological considerations must be kept in mind. The authority suggested above will do this.

119. Improvement of water use efficiency in all sectors of water use, particularly in irrigation being the major user (over 80%) of all waters utilized must be ensured by the River Basin Authority.

120. Monitoring of ground water and regulation; augmentation of water resources by measures such as artificial recharge, rainwater harvesting etc., needs to be undertaken by the State governments.

121. Creation of adequate mass awareness and education of masses for informed decision making must be initiated by the State and Central governments.

122. Capacity building and training of water managers is an urgent task. WALMIS and other institutions need to be brought under a network for mutual benefit and effectiveness. The Central government must plan and allocate resources for the purpose, defining some State share also.

a) Floods and droughts are frequent and lead to inter-State issues. Suitable Institutional arrangements are to be devised at the national level. The National Disaster Management Authority and Disaster Management Institute need to be empowered with adequate specialized staff.

b) Coordination mechanisms as in recommendation 10.24 below between different ministries must be ensured.
123. Ground and surface water development and regulation need better coordination. Adoption of traditional systems and watershed management for local needs due attention. State water departments must be trained for this purpose.

124. Financing mechanisms and water pricing need review with due consideration of its use such as for drinking/domestic use, irrigation, flood/draught management, industrial use etc. All Central assistance (such as AIBP and Restoration, Rehabilitation of Water bodies) extended shall be linked with required reforms, particularly improve water use efficiency and recovery of water charges to meet the operation and maintenance of water infrastructure and systems. Perhaps funding similar to JNURM could be devised or an incentive scheme like APRDP in Power.

125. Stake holder's / People's participation, evolving Community based organizations for water management, and suitable legal instruments for the same need action by all the State governments.

126. Rehabilitation and resettlement policies for project affected persons are addressed by the R & R bill, which is before the Parliament now.

127. Considerable dam infrastructures have been created and there is need for more. Safety issues are to be regulated through promulgation of a Dam Safety Act by the Centre.

128. NWRC must have more frequent meetings for resolution through mutual accommodation. There is the political factor also and when a State is not willing to run a political risk, intervention by the Union Government and consideration of the various issues in a national perspective would help in clearing the way for fruitful negotiations and resolution.

129. Water related issues are handled in various Ministries and there is need for creation of an umbrella mechanism for effective coordination. The Centre could set up a coordinating Committee of Secretaries.

130. In respect of dispute resolution by Tribunals under ISWRD Act, four of the five recommendations have been given effect by suitable amendment. Option for an appeal to the Supreme Court is available. If the outcome in implementation is not satisfactory, recommendations of NCRWC may have to be considered.

131. Most of these issues involve interstate implications, friction between States and require interventions from Union Government. They need to be duly addressed, which will help in saving of water, that could be made available to meet the downstream requirements, demands from other priority sectors and increase in irrigated area in keeping with the fast changing times and technology.
IX Urban Transport

132. Capacity should be built up for urban transport administrators and frontline staff at the local/institutional level and relevant state officials. This is especially important since newer technologies and policies are coming in and hence issues such as (i) choice of technology/mode/fuel/gauge; and related operation and maintenance and (ii) socio economic impacts, land acquisition, funding etc., need understanding.

133. Central government should enact overarching Acts to facilitate the development of different transport systems in the cities.

134. Funding initiatives such as JNNURM have been able to drive the transport developments in the city in appropriate directions guided by the centre. Such initiatives should be continued. Some cities/states have acted with the perception that funding would get exhausted soon and have submitted over ambitious proposals. Confidence may be reinforced that such funding would be available on a sustained basis.

135. Funding such as JNNURM should also be extended to drive policy guidelines with increased scope. Integration of transport modes at different levels (complementary routes, schedule integration, fare integration, physical integration of stations/stops and information sharing) should be promoted by providing adequate incentives of the cities which are able to carry out such integration.

136. To leverage scale in technology related costs including manufacturing/supply of equipment, use of technology and standards (design specifications, gauge etc) should be driven by the centre.

137. Cities should be given preference on the use of National Highways as separate road infrastructure can be built bypassing the city. The ownership with regard to land and other assets should be resolved with better coordination between city/state and centre.

X Land Acquisition & Rehabilitation and Resettlement

Proposed Legislation

138. Delays in land acquisition (LA) and rehabilitation and resettlement (R &R) have their origins in three factors – popular protests on equity concerns (inadequate compensation), lengthy procedures, and non-cooperation by states in central projects. While the
first two factors are substantively covered by policy/legislation, the third factor is more a coordination than a substantive issue. While finding a quick-fix to the problems due to LA and R&R might be impossible, this Task Force is of the view that things can be improved to a considerable extent if the policy/legislation on the subject is designed with these concerns in mind.

139. The Government of India has introduced two Bills on these subjects recently in the Parliament – one, an amendment Bill on LA and the other, a new Bill on R&R. The Bills have not been passed by either House till now. This Task Force feels that there is an urgent need to revisit these Bills.

140. Both ‘The Land Acquisition (Amendment) Bill, 2007’ (Bill No. 97 of 2007) and ‘The Rehabilitation and Resettlement Bill, 2007’ (Bill No. 98 of 2007) have been drafted with a single purpose in mind – to secure and protect the monetary and livelihood interests of the affected persons and families. This is in sync with the renewed emphasis of governmental policies on inclusive development and a growing realization that popular resistance to matters relating to land acquisition and rehabilitation feeds on perceptions of less than fair compensation and rehabilitation claims. This is indeed welcome and one must admit that it is difficult to find fault with the two Bills on this score.

141. While the LA (Amendment) Bill amplifies the ambit of “persons interested” to those who have any kind of rights over the acquired land (beyond just those owning that land), expands the “cost of acquisition” to all possible expenditure and lays down a comprehensive scheme of valuing the land at market value, the R&R Bill amplifies the ambit of “affected family” by including all those who lose their livelihood due to the acquisition (agricultural and non-agricultural labourers, landless persons, rural artisans, small traders and self-employed persons and not just those either owning that land or having some kind of rights over that land). It also lays down the minimum values of all possible components of a comprehensive scheme for R&R. The two Bills are quite comprehensive from the point of view of plugging the loophole of less than fair compensation and rehabilitation.

142. However the Bills commit the mistake of ‘missing the woods for the trees’. In trying to secure equity for the affected persons, the Bills have completely lost sight of the very purpose for which land is supposed to be acquired – implementation of projects. For infrastructure projects, the speed of implementation of the projects is of the essence. Unfortunately, the Bills have not been drafted keeping this essential purpose in sight.
143. **Need to shorten and coordinate procedures:** The two Bills lay down extensive procedures of acquisition and R&R separately. With a little effort, these could have been shortened. In addition, these procedures are supplementary to each other viz., that the mere completion of one set of procedures is not enough. Also, time limits of procedures mentioned in the individual Bills have no meaning in practice since the procedures are supplementary. Thus, although section 14(5) of the LA (Amendment) Bill says “It shall be the duty of the Collector to ensure that physical possession of the land is taken over and the amount of compensation paid within a period of sixty days commencing from the date of the award”, section 29 of the R&R Bill renders this time limit inconsequential – “In case of a project involving land acquisition on behalf of a requiring body, the compensation award, full payment of compensation, and adequate progress in rehabilitation and resettlement shall precede the actual displacement of the affected persons.”

144. **Multiple Agencies:** The R&R Bill creates a plethora of bodies/committees/authorities, many of which are not needed and may actually delay the process of R&R by getting embroiled in inconsequential issues of cross-jurisdiction.

- Administrators for R&R, at project level – (required).
- Commissioner/Secretary for R&R, at state level – (required).
- R&R Committees, at project level – (required).
- Standing R&R Committees, at district level – (not required).
- Ombudsman – (required in principle but no need to set up separate bodies. This work could easily have been done by the Dispute Settlement Authority to be established under the LA (Amendment) Bill).
- A National Monitoring Committee, at the central level - (not required. The committee that really matters is the R&R Committee at the project level. In case of state projects, the State Government establishes these committees and one presumes that if the state is interested in its project, then it will see to it that these committees work. The problem of coordination arises in case of central, centre-state and inter-state projects. The Bill rightly proposes that in such cases the Central Government, in consultation with the states concerned, shall set up these committees by including their representatives. If this com-
mittee is sufficiently empowered, then no other monitoring committee is needed.)

145. An Oversight Committee for each major project, in the Ministry/Department of the appropriate government – (not required).

146. A National Rehabilitation Commission, at the central level – (not required).

147. This Task Force, therefore, is of the view that though the two Bills succeed in securing the ends of equity for the affected persons and families, they are ill designed to secure the speedy implementation of infrastructure projects. It feels that these two ends are not mutually exclusive and that it is possible to design shorter and speedier procedures without diluting, in any way whatsoever, the equity based parameters fixed in the two Bills. This Task Force urges its parent body, the Centre-State Commission, to exert pressure on the Government of India, at the appropriate level (say the Prime Minister’s Office or the Committee on Infrastructure), to urgently review the two Bills to consider the following recommendations.

148. There is no reason why the subjects of land acquisition and R&R should require two separate enactments. The two subjects are so intimately connected that the second (R&R) is merely an extension of the first (LA), particularly as out-of-project land may have to be acquired as an R&R measure. Also, the final action point – taking possession of the acquired land – is dependent upon the completion of both sets of procedures. Ideally, therefore, a common enactment should have dealt with both subjects. This would not only have given uniformity to the procedures but it would also have been possible to design common and co-terminus procedures leading to quicker completion. Administratively also, this makes sense as both Bills have been introduced by the same ministry viz., Ministry of Rural Development.

149. Even if it is not possible to merge the two Bills into a single enactment now, it should be possible to redraft the Bills in such a way that the procedure for land acquisition runs concurrently and is co-terminus with that of R&R. While Part II of the Land Acquisition Act, 1894 [starting with the notification under section 4(1)] deals with the procedure of acquisition, Chapter IV of the R&R Bill, 2007 [starting with the notification under section 20(1)] deals with the procedure of R&R. The time limits of different steps under the two procedures should be so coordinated that it becomes possible to make it mandatory to take possession of the acquired land within a speci-
fied time-period. As discussed above, though the LA (Amendment) Bill, 2007, prescribes such a time-limit, the R&R Bill, 2007, not only does not prescribe any such time-limit but negates that of the LA Bill.

150. It should be possible to merge corresponding authorities under the two enactments into a single office or create common authorities.

151. The Land Acquisition Officer under the LA Act and the Administrator for R&R under the R&R Bill should be the same officer for a particular project. He could be called the LAO and R&R Administrator under both the enactments.

152. The Commissioner/Secretary for R&R at state level, under the R&R Bill, should also be the Commissioner/Secretary for LA under the LA Bill.

153. The R&R Committee at the project level, under the R&R Bill, should be a common LA and R&R Committee, under both the Bills.

154. The Land Acquisition Compensation Disputes Settlement Authority, under the LA Bill, should be the LA and R&R Compensation Disputes Settlement Authority, under both the Bills. There is no need for a separate Ombudsman under the R&R Bill.

155. The suggested LA and R&R Committee, at the project level, is the most important body in the entire process. It should be so empowered that it becomes possible to achieve the time limit suggested above.

156. The R&R Bill, 2007, provides for the basic minimum requirements that all projects leading to involuntary displacement must address. The Bill contains a saving clause to enable the State Governments, PSUs or other requiring bodies to continue to provide or put in place greater benefit levels than those prescribed under the Bill. This Task Force is in agreement with this approach as it has found that some Authorities/PSUs provide for substantial rehabilitation packages in their respective policies. In case of LA also, some State governments have put in place good procedures of valuing the acquired land that have found popular acceptability. The Task Force feels that The Land Acquisition (Amendment) Bill, 2007, should also have a similar saving clause.
XI Environment & Forest Clearances

157. There is need for establishing Committees of officers at central and state levels to
   a. act as appellate process for speedy resolution;
   b. identifying forest land; re-afforestation and compensatory land; and
   c. renewing land after mining; disbursement of funds.

158. World Bank has apparently expressed willingness to provide data on a web site
   that identifies forested lands and those that are not. Indian Remote Sensing maps could
   also be used for this purpose. This should be put in place without delay.

159. Funds for compensatory afforestation are not being disbursed. The Compulsory
   Afforestation Fund (CAMPA) funds must flow directly to the implementing agency in the
   State.

160. Joint Committees for Ganga, Jamuna Action Plans must be created.

161. There has to be agreed power sharing between Centre and state concerned, for
   example on issues like procurement or control over a SPV which must have Boards that
   are equally divided between Central and State governments, and perhaps also the local
   authority, in order to ensure speedier decisions.

162. In order to prevent State governments from withdrawing from agreed externally
   funded projects, there is need for certain measures. For example, GOI in initial MOU
   must incorporate that withdrawal would mean keeping such states out of externally funded
   projects. It would be best to give statutory backing to such an MOU so that no party can
   withdraw at will. The Inter State Council could be the body that puts its seal of approval
   on the MOU’s.

163. In agreements with external agencies for funding, it is necessary to insert condi-
   tions that training must be focused on locals in that area who will be on the project, rather
   than training merely of higher level officials.

164. State governments need to prescribe time that can be taken at the maximum at
   each level of clearance, and give reasons for refusals. Field level officials of forest depart-
   ments must be involved from the planning stage. When approvals are refused, there must
   be a mechanism to ensure that illegal mining in the area is prevented. The Range Officers
   must be made answerable to the DFO, CCOF, etc.
165. Two stage clearance is adequate though time consuming; Stage 2 clearance must be decided at lower levels than the central Minister and deemed as cleared if not cleared in 30-60 days. However, no developer will take the risk of going ahead on the basis of deemed clearance. It is essential that an Empowered Committee with Secretary, Forests, as recommended by the Kanchan Chopra committee should use the Committee’s recommendations for calculation of NPV.

166. Delays in approvals are at the levels of the State Government and of the central Minister. Stage 2 clearances have been shifted from J.S. to Minister and must be reverted to J.S. to enable speedy decision.

167. Gujarat has a state level committee; Centre must differentiate between states that have set up state level committees and those that have not.

168. Classification of reserved forests must be periodically reviewed on basis of changing forest density so that degraded forests are recognized.

169. Payment of NPV amounts must be staggered as forest land is acquired. Further, the amount available must be made known publicly.


171. Centre must accept the formula that FAC membership is decided by the S.C. This can avoid the delays due to jurisdictional disagreements between Centre and S.C.

172. CAMPA funds are better left to states in a separate fund (not Consolidated Fund) and monitored closely for use since the money has to come back to states in any case for disbursement.

173. Andhra has a Land Bank that is used for Compulsory Afforestation. Other states should also acquire extra land and keep it for this purpose.

174. Gujarat has common effluent treatment for its chemicals cluster; these and projects for urban sewerage disposal need central funding as part of an environmental infrastructure programme if untreated waste water is not to be let off into rivers and other water bodies. This model might be replicated by other states.
175. In forest land diversion cases, processing involves estimation of number of trees, including ground verification by the forest authorities to the extent of at least 10% as well as identification of the area for compulsory afforestation. These involves several hundred hectares of forest land and given the programme priorities of line formation, such verification is often not possible within the stipulated time frame. At times, for important projects, MOEF has taken up with the State governments and suggested alternatives like use of expertise available outside the line formation. Such approach may be institutionalized and facilitated through creation of appropriate mechanisms which may be adopted by the project proponents.

XII Institutional Mechanisms

176. There is already provision for an Inter State Council which meets rarely. It must be activated. It should be the highest coordination body. At the apex will be the full Council that can meet to resolve contentious issues affecting all states, like royalties, land acquisition, rehabilitation and resettlement, etc.

177. There could be sub-committees where one or more states directly affected by a project, which could meet periodically the concerned central ministries under the overall supervision of the Inter State Council.

178. Departments concerned could meet regularly with the affected State Government and expedite issues.

179. When special purpose vehicles are created, as they should be in every project, even if the participants do not include private parties, there could be representation for the concerned central government departments whose clearances are necessary.

180. Central government Ministries that decide on matters affecting states might do so after consulting the concerned states, for example, in deciding the fixed and variable components in tariffs for UMPPs.

181. Regulatory Commissions with the responsibility for setting norms—for example, CERC determining escalations for specific items in UMPP tariffs—could ensure State Government opinions are taken into consideration.

182. Land acquisition is with the Revenue departments in State governments. However decisions are very slow with this department in most states. It is necessary to have a separate institution as in Karnataka, or designate a special Joint Steering Committee em-
powered to take decisions, at least in case of foreign funded projects. Many PPP projects have such steering committees.

183. In the case of the Sardar Sarovar Project, the Supreme Court had set up a Grievance Redressal Authority which helped in speedy decision. This model might be used in all mega Projects.

**XIII Public-Private Partnership (PPP)**

**Enabling framework**

184. Successful Progress in promoting PPPs is critically dependent on policy, legal, financial and fiscal frameworks. The Centre and the State have different levels of jurisdiction in different sectors of infrastructure based on the arrangement to be found in the Indian constitution. For example, while telecommunication is largely a central subject, urban development belongs formally in the state list. Different aspects of Roads and Water development are distributed between the State and the Centre. The ownership of different Ports and Airports may lie with the Central or the State Government. While land acquisition for all such projects is the responsibility of the State Government, security comes largely under the Central government. The Public Private Partnership undertaken of any of these or infrastructure sectors may thus require approvals, support and guidance from both the State and Central Governments and their agencies. There is thus a strong need for coherence in the policy, legal implementation, and regulatory frameworks various by the State and Central Government to ensure the success of Public Private Partnership. Thus NHAI cannot implement successfully a BOT project if the concerned state(s) do not expeditiously acquire land, remove encroachments or provide local security for this purpose. Similarly the ability of the State Government to develop a port can be substantially jeopardized by the absence of an ineffective decision making framework regarding security or custom arrangements of such an installation which is under the control of the central government. There is thus a requirement to evolve joint policies and laws between the Centre and the State Governments to assure positive outcomes. The system of State governments concerning SEZ laws is an example of how such a system should be designed.

185. The proper structuring of PPPs, their related contracts and documentation, the financing and procurement methodologies are complex and technical with which most stakeholders in private and public sectors are unfamiliar. An intensive effort is required
for establishment of a semi permanent body by the Central government to provide thought leadership as well as concrete guidance on the processes to be followed for successful PPPs. Such a body would lend authority and therefore comfort to different types of PPP interventions. Such arrangements have been successful in United Kingdom, South Africa and the Philippines in providing enabling framework for the PPPs.

186. It is important to add that the scope of work of a central agency established for this purpose by the Government is extremely likely to require a long term arrangement during which the agency can respond to the challenges being thrown up by PPP activity on an ongoing basis for several years to come till sufficient maturity and experience is gained by the Government. Such an agency should evolve a series of guidelines in response to challenges and issues raised.

Land Acquisition

187. Despite the progress made in PPP implementation, land acquisition continues to be a major issue. Much has been discussed on this and the amendments to the Land Acquisition Bill are still in draft form.

a. On comparison with similar legislation in some other countries, we feel that the amended land acquisition bill will provide more clarity and if implemented along with the proposed Resettlement and Rehabilitation Plan, would go a long way towards inclusive development.

b. More robust systems need to be evolved to ensure that we move away from a system based on giving “compensation” to the land owner to a system based on “benefit sharing” of the value created on the land. Innovations have been made by some states like Haryana to provide compensation to the affected persons. It appears to be more acceptable. Under this model, besides compensation for the land acquired and annuity for a period of 33 years, the developer shall give employment to at least 1 member of the family whose land is acquired for setting up the project. We recommend this and similar models for faster land acquisition.

c. In some states, the policy of land-for-land has been adopted as a means of compensation. However, in other states, the same policy may not be adopted as such land may not be easily available.
Creation of land pools/land banks

188. As land is becoming scarce, it would be desirable that the states identify the lands available for infrastructure development. All such identified land could be pooled together and offered to prospective project developers for infrastructure development. The creation of such land pools would significantly reduce the cost of acquisition and also lead to faster implementation of the projects.

189. Gujarat has adopted this concept of land pools under its town planning strategy. Under this model, the lands to be developed are pooled and the compensation package is worked out after due public discussions. For the purpose of arriving at the compensation, a semi-final-value of the final plot is worked out on the basis of infrastructure proposed to be provided in the scheme area. A final plot value is also worked out taking into consideration that the proposed infrastructure is provided in the scheme. Difference between the semi-final plot value and final plot value is considered to be an increment in value, which could result from implementation of the Town Planning scheme. Half of the increment in value is adjusted against the compensation and the net demand/contribution of the owner is worked out. Simultaneously, the development cost and other infrastructure cost for implementation of the scheme are also worked out. The draft scheme continuing the physical proposal and the financial details along with financial part of the compensation and contribution of each plot is then submitted to the Government for approval. We commend the Gujarat model.

Standardisation of model documents

190. At the central level, standardization of model documents has been achieved in road sector and in the port sector. Wherever states are taking up PPP projects, they need to standardize the model documents to take care of interests of all stakeholders including lenders, developers etc on an urgent basis. This will help in clear allocation of responsibilities and sharing of risk appropriately. Besides, standardization of documents helps in bringing about clarity about the project and improves the comfort level of the lending institutions. It may be mentioned that advances by banks and lending institutions to infrastructure SPVs are treated as unsecured advances since they have recourse primarily to the cash flow from the project. Therefore, availability of suitable provisions in the concession agreement in case of default will increase the confidence of the lenders about the project and enhance its viability. For instance, in the model concession agreement for national highways, there is a termination clause. It provides that in the event of termina-
tion of concession due to concessionaire default, the NHAI shall pay to the concessionaire by way of termination payment, an amount equal to 90% of the debt due less insurance cover and in case of termination due to authority default, the authority shall pay the concessionaire amount equal to the extent of debt due and 150% of the adjusted equity.

Establishment of Special Purpose Company (Shell Company)

191. States could set up a Special Purpose Company (Shell company) which could take up the task of bringing out a pipeline of PPP projects on the same lines as done by PFC while developing Ultra Mega Power Projects (UMPPs). The company will take up the entire task of getting all the approvals/clearances and such company may be transferred to the successful bidder to curtail delays in obtaining the required clearances and timely completion of the project.

States need to use the supporting facilities

192. In spite of the progress in the adoption of PPP model for infrastructure development, the need for identifying, formulating and offering of PPP projects by various states is still large. It is generally observed that states are not able to bring out a regular pipeline of projects mainly due to lack of capacity of the agencies involved in promotion of PPP projects. Although multilateral agencies are providing capacity building support, it is felt that states need to use all available means including the facility of Transaction Advisors as empanelled by the Dept. of Economic Affairs, Govt. of India and the Infrastructure Project Development Support. This support is available to meet project development costs including preparation of DPRs, legal reviews, environment impact studies etc.

Deepening of the debt market and facilitating long term debt

193. As per a study brought out by the World Bank, the tenure of infrastructure loans is nearly half of the concession period. Repayment of the loan is in 12 to 30 years which corresponds to 50 to 60% of the concession period; internationally, repayment corresponds to 80-90% of Concession period. The shorter maturity of the loan results in higher quantum of VGF and higher tolling charges, putting burden on exchequer/users. This aspect needs to be kept in view while evolving model concession documents both at the centre and state level.

194. Government needs to facilitate the creation of instruments and mechanisms leading to the availability of longer tenor credit so that loan periods could more closely match the concession period.
Viability Gap Funding

195. There is need for speedy and flexible procedure for approval of projects for VGF. The following suggestions may be considered.

196. VGF approval could be in three phases viz., (i) “in-principle” eligibility after prefeasibility studies are completed; (ii) “in-principle” approval; and (iii) final approval. The degree of details required to be submitted would accordingly be reduced at each stage. At present, various details of the project including concession agreement, state support agreement, substitution agreement, escrow agreement, O & M agreement etc., as applicable to the projects are required to be submitted.

197. VGF grant may be fast-tracked for states which are making a serious beginning to adopt PPP model for infrastructure development.

198. Inclusion of land costs under VGF financing is desirable.

199. Inclusion of unsolicited proposals (Swiss Challenge model) for eligibility under VGF needs consideration.

200. VGF is currently provided at the backend. Release of VGF during construction stage should be in proportion to the equity raised by the developer.

Commitment to PPP at various levels

201. It is noted that in states where PPP model of infrastructure development has taken deep roots, the level of commitment at the government level has been high. Such commitment makes all the difference in respect of decision making, particularly when multiple departments are involved in implementation of infrastructure projects. It is suggested that states set up a Nodal Department for the promotion, development and monitoring of PPP projects.

Need for adoption of a PPP Act

202. It is seen that some of the southern states like Andhra Pradesh and states like Gujarat and Rajasthan have made considerable progress in implementation of PPP projects. This is because of proactive government policy for infrastructure development. In particular, the state of Gujarat has adopted a separate legislation for infrastructure.
203. Having a separate State Act for PPP helps in quick decisions and reduces the risks. Reducing uncertainties is a major step in attracting private investment into infrastructure projects. The Gujarat Development Act 1999 provides a framework for private sector participation in financing, construction, operation and maintenance of infrastructure projects. The Act inter-alia, provides for a fair, transparent, and clear mechanism for selection of developers and details the scope and extent of support available from the State Government. State governments could enact similar legislation.

XIV Data Requirements, IT, R & D and Capacity building

Information Technology

204. In spite of the recent advances and benefits of application of information technology, it is yet to catch up in various infrastructure sectors to the required levels. Apart from administrative applications, focus needs to be on technical applications.

205. For example, in the context of flood management and control, simulations of water flows based on land use and topography (driven both by nature and construction) need to be studied periodically.

206. As another example, in the context of roads, traffic management systems that recognize traffic flows in a network/region should be put in place. Similarly, all highway projects must go in for e-tolling, with data gathering for future planning. This can be ensured by making it part of the concession agreement requirements.

207. In the context of power, optimization methods for load dispatch could enable better markets and improved resource allocation. Similarly, in the context of railways, internet based open auction systems for rake utilization could enable better markets and improved resource allocation.

Research and Development

208. Stand alone and educational institution based research and development centres must be encouraged to work on infrastructure issues. The central government should take initiative in promoting centres of excellence, in collaboration with states and ensure free flow of data for research purposes and academic output.
209. SEZs could be used to promote research and development institutions, with a requirement that each one should make this as part of their development profile.

**Capacity Building**

210. As new concepts in infrastructure development emerge, appropriate capacity building needs to be put in place.

211. Water issues are to be handled by proper trained professionals which require capacity building and manpower development through specialized courses and periodic training for which both centre and state could contribute.

212. Issues like model concession agreements, project structuring, preparing bankable projects (if required, making them viable through subsidies/grants like VGF for leveraging), facilitating multilateral financing with GOI guarantee, risk management, regulation, require professional understanding, not only at the central government level, but more significantly at the state and local government levels.

213. Capacity building would also include creation of adequate mass awareness and education of masses for informed debates and decision making. People's participation including community based organizations should be encouraged with proper training.

214. There is need for regulatory institutions in domains like water, road (including safety), rail etc. Regulatory authorities are to be formed in each State for monitoring of water use and fixing water rates. Water accounting should be made a routine process. Some institutions may have to play the role of a dispute settlement authority and/or an ombudsman.

215. There is need for the centre to set up educational and training institutions in various areas like maritime, road development and safety, SEZ management etc.

216. Vocational training institutions are required for skilled jobs. These can be State Government initiatives, leveraging public private partnerships.

217. Government officers moving to PPP organizations must be encouraged, since they bring in valuable interfacing expertise and understanding of government processes. However, caution must be exercised where conflict of interest is a possibility.
COMMISSION ON CENTRE-STATE RELATIONS

TASK FORCE- 8

Socio-Political Developments, Public Policy, Governance and Social, Economic and Human Development

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Report of the Task Force

Creation and Composition of the Task Force

Task Force No. 8 on Socio-Political Developments, Public Policy, Governance and Social, Economic And Human Development(TF 8) was set up by the Commission on Centre State Relations under the Commission Secretariat OM No. 1-14/2008-CCSR dated June 18, (ref: Appendix-1) with Sh. P. Shankar as its Chairperson and with Dr. George Mathew (Co-Chair), Dr. Shiv. Viswanathan, Prof. Niraja Gopal Jayal, Dr. Rekha Sexena, Sh. R.M. Sharma and Patrika Mukhim as Members.

Scope of Work

The Office Memorandum of the Commission dated the 18th September, 2008, did not communicate the Terms of Reference (ToR) for the Task Force. However, before the plenary meeting of the Commission with the Task Force Chairpersons and Members, on June 30, 2008, the Commission made available a questionnaire to the Task Force. This questionnaire provided an idea of the issues, as seen by the Commission, inter-alia, to be addressed by ‘Task Force-8 on Socio-Political Developments, Public Policy and Governance’- as the Task Force was designated at that point of time, by the Commission. (Ref: Appendix- I).

In a subsequent communication dated November 24, 2008, from the Commission Secretariat to the Chairperson and Members of the Task Force-8 (and to the Task Force-9 on Social, Economic And Human Development), it was conveyed that the Commission took the view to the effect that there was a substantial commonality of concerns in the issues being looked at by the Task Force-8 and Task Force-9 and therefore, the Commission also decided to merge Task Force Nos. 8 and 9 under the Chairmanship of Sh. P. Shankar, IAS(Retd.), with Dr. George Mathew formerly chairman, Task Force-9 as Co-Chair. The merged Task Force was described as ‘Task Force-8 on Socio-Political Developments, Public Policy, Governance and Social, Economic and Human Development’ (ref: Appendix-II).
It was also clear to the Task force that issues focused in the questionnaire were required more to attract emphasis on Centre-State relations than the sectoral policy aspects. In addition, the importance of the third tier of local self governance as also the inter-State relations be given due recognition while addressing the issues. Extracts from the questionnaire, as it related to the merged Task Force (TF)-8, which also formed the precise working guide for the deliberations of the Task Force, are given at Appendix-III.

Meetings

One meeting of the TF-8 (on June 30 2008) and two meetings of TF-9 (on June 30 and September 16, 2008) were held before the two TF-8 and TF-9 were merged. The first meeting of the reconstituted TF-8 was held on December 2, 2008, the second meeting, on July 7, the third meeting was on July 16, and the fourth meeting was held on August 4, 2009. In the first meeting of the Reconstituted TF-8, it was, inter-alia, decided that individual Members would attempt papers on specific subjects and these papers would be discussed in the subsequent meetings. Accordingly, subject areas were identified for being handled by the members.

Papers/ Contributions by Members

Papers and working notes were contributed/under contribution on subjects/issues relating to the ToR (Term of reference) of the reconstituted TF-8 as detailed below:-

(A) Contributed

P. Shankar:

(1) Public Policy and Governance.
(2) Notes on Political Developments, Directive principles, Panchayat Raj and Delivery of Public Services.

Shiv. Viswanathan:

(1) Paper on ‘Centre-State Synergies’.
(2) Note on ‘A Proposal to Re-write the DPSP’.
(3) Note on ‘A Community for Peace and Conflict Resolution’.
Patricia Mukhim:
(1) Notes on ‘Health Care and Education’, with reference to NE
(2) Need for Inclusive Governance in the NE.

Rekha Sexena:
(1) Intergovernmental interactions in the Indian Federal Systems.
(3) The Rajya Sabha: A Federal Second or Secondary Chamber?

(B) Under Construction

Dr. Irudaya Rajan:

Internal Migration in India: Dealing with the Political and Administrative Organization.

Limitations

The Task Force felt appropriate to mention here about the major/broad limitations that were part of its working after the TF was constituted. The subjects to be dealt with were very many and its impact was more pronounced after the merging, in November 2008, of the Task Force 9 with the Task Force 8 and that was after 3 to 4 months of the working of Task Force 8(pre-merged). But the more important factor had been that the time available with the Task Force was extremely short. The ToR of the TF 8 (post-merged), in the opinion of the Members, covered complex issues of socio-political nature which would require to be studied, in detail, in the field, by social scientists in an elaborate canvas. Some of the members of the Task force, whose active participation would have made a visible difference, could not spare their time to associate themselves with the work of the Task Force. The Task Force was also informed about budget constraints which could not permit any study/studies to be assigned to research institutions or to individual scholars to generate new knowledge. The Task Force had to; therefore, rely on the experience of its members in drawing and making the recommendations.

In the light of these constraints the Task Force had to deal with the subjects/issues referred to it in the ToR on a selective basis, leaving some of them uncovered, some of them limitedly covered and proceed addressing the topics on the basis of the
available knowledge, expertise and experience and arrive at its recommendations, within the limited time at its disposal.

The Terms of Reference (ToR) and the Issues

The Composition of the ToR

The ToR encompasses a group of diverse but inter-related subjects. There are some common issues that relate to several of the subjects (such as governance, migration etc.) and some specific issues and concerns exclusive to each or specific subject {coalition politics, natural backwardness of pockets and clusters due to agro-climatic and ethno-geographic dissimilarities, regional (Tribal) cultures including that of the NE etc.}. These issues exclusively attract for a deeper study and understanding. Be that as it may, the Task Force would commend to the Commission that some of these issues, which are of a major significance for harmonizing the national and regional interests, are studied, in-depth, by competent organizations for the use of the Commission.

In broad terms, the Task Force addressed the elements and issues arising out of the references (made to the Task Force), by the Commission, in the following segments:

- Issues of political and Constitutional significance- inadequacies, voids, and failures of compliance;
- Issues of Governance and Administration- inadequacies in delivery of public services, accountability and responsiveness in Administration and empowering the local level of governance;
- Issues of political and social significance-; growing regional, ethnic, caste and religious bias in political and social fabric;
- Issues of equity and inclusiveness- imbalances in the ‘state-responsiveness’ to citizen’s needs (in education, health, social standards);

It is felt appropriate to mention that the issues, arising out of all the ToR are not covered and those issues covered are not claimed for coverage in their entirety. Equally what is mentioned above is not a rigid categorization and what follows is a broad overview/identification of some of the major ‘responses to the issues’ that emerged from the papers and notes contributed by members, under the segmentation indicated above.
Issues of political and constitutional significance

The emergence of strong regional parties with limited presence in one state alone as well as parties representing caste groups and their growing influence in the formation of Governments, at the States and at the Centre, has been one of the most significant political developments in the last two decades or so. The political parties with all-India presence have been forced to align with one or the other of these regional parties to win some parliamentary seats for themselves while again relying on the latter’s support for forming government at the centre. This development can be genuinely perceived as fissiparous and weakening the integrity of the federal structure of the polity. Yet, the alliance between the regional and caste parties with the all-India parties, on the other hand, could be seen as a mitigation of this very unity-threatening development. Given the access to political power and the vast resources at the command of the Central Government, the regional parties have had to temper their strong regional bias and act with greater restraint and seemingly greater responsibility on national-level issues. The experience of the coalition governments at the centre, over the past decade, could stand testimony to this view. In the long run, however, it is perceived that it would be a significant obsession to the all-India parties to work on a strategy to achieve reconciliation between strong regional pulls and greater national perspective.

A corollary to this development is the increasing embarrassment for the Central Government when two States are at loggerheads over some issues such as, for instance, sharing of river waters—especially when the one or both States are under the rule of parties in coalition at the centre.

It is generally viewed that there is an inadequate and often felt unsatisfactory constitutional division of legislative power relating to water between the Union and States. This view is held because there is no constitutional recognition of water (i) as a scarce natural resource (ii) it is an integral part of the ecological system and (iii) its scarcity and denial as a matter primary resource for life would greatly affect the social equity and natural justice.

The National Development Council or the Inter-State Council, past records would show, have not been successful in dealing with such issues and are not, as at present, to represent, entities for forging consensus on contentious issues between States. This would point out to the need for formation of ‘Zonal Councils of States’ of an entity or institution like a permanent “Standing Committee of Chief Ministers’ or the like to develop
commonality of approach on issues of mutual concern/interest and to the mutual benefit of all members and also foster better understanding and spirit of give- and- take between them. Even if this may take some years to develop into effective forums, in the current political scenario it could be considered well-worth attempting.

Similarly, since on several politically sensitive issues, the Central Government has not been able or willing to intervene in disputes between States, it would be worthwhile that the Constitution could establish a bilateral dispute resolution process where in the State parties to a dispute, are compelled to sit together and arrive at a solution bilaterally. While again this may take time to develop into a viable and effective mechanism for dispute resolution, the very coming together of the States without the presence of third parties, could be expected to promote better understanding of each other's compulsions and enable the degree of flexibility in the matter.

Public policy

A view is voiced that all major policies should be finalized only after mandatory ‘consultation’ through a series of public hearings in all parts of the country. This is not impossible or impractical since, at present, ‘Environment Impact Assessment’ of major projects mandates such public hearings. At least in area-specific matters a beginning could be made. For instance, if public hearings had been held, perhaps, the Singur fiasco could have been avoided! In Konkan, setting of industries has been decided through public hearings. Given the realities of elections in the country, dominated as they are by religion, caste, money and muscle power, results cannot be construed as endorsement of party manifestos, especially when the winner need not secure a majority of total votes. It is true today that several bills on sensitive matters are referred to Committees of Parliament which in turn hold wide consultations with individuals and organizations before submitting their reports to Parliament. But on strictly policy issues consultations are not well structured and made thorough. Instead of courts intervening at every instance, the Constitution itself should provide for such mandatory consultation with all the stakeholders affected by any public policy.

Public policy measures affecting the country as a whole may need resort to a referendum or a plebiscite with a constitutional mandate. It could be sensitive social issues such as reservation for socially-disadvantaged sections or amendments to personal laws or economic issues such as trade agreements or even political issues such as the Indo-US nuclear deal. Recently, in several States in the USA, referenda were held on
public policy issues along with the Presidential and Congressional elections. Even if this cannot be immediately adopted, there is need to give thought to this for implementation at some stage, in this form or in a similar or modified form, at least on major policy issues impacting a large number of people and/or of extremely sensitive social and political nature.

The policies themselves should clearly identify the different categories of stakeholders who would be affected, in one way or other by the policy. The governments, both at the Centre and at the States, should clearly respond to the views expressed and concerns raised at these public hearings before finalizing the policies for adoption. The policies should also contain clear guidelines on implementation and monitoring with reference to identified parameters and milestones. All this would help formulation of policies which will have the support of the people and hence could be more effectively implemented.

Another important aspect of policy formulation will be to build in flexibilities necessitated by the diversities in the Indian polity, among regions and states. “One policy fit all” approach would sooner or later end in local agitations, *ad hoc* amendments and modifications and sometimes loss of sight of the original objectives of the policy itself.

The next issue is whether we can believe that all matters of public interest would be catered for by the political system through the executive and legislative arms of the ‘State’. We should have, in the Constitution, a provision for the citizens to seek policies in areas of concern to them which, very likely, may be of little priority to the political parties. An instrument is required to be constitutionally established through which a prescribed minimum number of citizens could ask governments to come forth with policies on the subject(s) specified. This would be better than, the courses, at present being resorted to, where citizens are forced to take up Public Interest Litigations (PILs) and rendering Courts direct governments to frame policies. Such Court interventions should have to be exceptions. Citizens petitioning to the governments would be more legitimate and in accordance with the constitutional separation of powers between the three arms of the ‘State’.

**DPSP**

The DPSP have been incorporated in the Constitution to ensure that these important prerequisites to the well-being of citizens are never forgotten by the Government, even while recognizing that such action may have to be taken over a period of time,
though not instantly. The Task Force feels that there has been no assessment of the manner and the degree of enforcement of the DPSP. There should be periodical reports on the degree to which the DPSP have been acted upon by the Central and State Governments. More importantly, since DPSP cannot be static, there is need for continuous updating taking into account developments that take place. For example, issues like global warming, carbon footprints, emergence of knowledge society, biotechnology etc., need to be represented in the DPSP casting a responsibility on state and Central Government to take effective action in these areas and the accountability for the same. The Constitution should prescribe the manner in which the assessment of implementation of DPSP should be taken up as also institutionalize the updating process.

**Panchayati Raj**

The 73rd and 74th Amendments to the constitution, considered by many as landmarks in the evolution of the Indian democracy, have still not delivered the results expected of the same. Several government reports, including that of the second Administrative Reforms Commission (ARC), have highlighted the half-hearted manner in which the real devolution of powers to the local bodies has been undertaken by most State Governments. The position with regard to devolution of financial powers is ever worse. Since Government of India has the constitutional responsibility to enforce these amendments, it would be necessary that urgent action is taken by the governments both at the states and at the Centre. Unless local bodies have greater say and control in areas like primary education, primary health care, water supply and sanitation, the citizens will continue to have very little say in matters of real concern to them. Arising out of this also is the large gap in the Human Development Indices (HDI) among the states besides the gaps between public expenditure as budgeted by the centre and the actual benefits accruing to the people.

As important as the devolution of powers, in the matter of financial as well as administrative powers to the local bodies, there is need for some intervention to ensure that these bodies do not use their representative character. Unfortunately, there is an increasing trend towards politicization of local body elections and elections are contested on party basis. This seriously affects the effectiveness of these institutions to concentrate on local issues and thereby rendering the issues getting increasingly marginalized. Party loyalties would override local concerns and force individual local bodies to conform, rather than clamour for freedom to act in purely local interest, which may demand deviation from centrally conceived plans and priorities.
Issues of Governance and Administration

The Constitution has two important chapters on Fundamental Rights and DPSP. However neither includes good governance. There have been any number of reports and initiatives both at the Centre and in the States on various aspects of public administration but there has been no sustained action to make the Administration effective and accountable to the citizens. The first pre-requisite to improving governance is make it obligatory on the part of governments to work consistently on improving the quality of governance and this can be achieved by including ‘Good Governance’ in the chapter on DPSP, to begin with, if not the same as a Fundamental Right. That would give the necessary mandate and authority to the Central Government to ensure certain minimum standards of public administration, not only in Central Government departments but also in the States.

Governance can be said to revolve around four key attributes-efficiency, transparency, accountability and honesty. It is not the intention here to discuss each of these aspects in detail and set out an agenda for action for the Governments to achieve. Enough has been written by various commissions and committees on the different aspects of governance. It is only necessary to list some of the key areas for action under each of these to provide the perspective for what is sought to be recommended as a possible means of achieving the objective.

In this direction, to start with, the citizens have a right to expect that the public administration is efficient in the discharge of its functions. The first requirement here is a qualified and well-motivated civil service. Recruitment to government service has to be open, transparent and broad-based followed by good training on a continuous basis. Remuneration and career progression has to be linked to efficiency and performance. The civil servants need also to be insulated from political and other external pressures to perform their functions objectively and fairly. Equally important is the attention to simplification of rules and procedures and minimizing levels in processing of cases. Review and monitoring of performance has to be revamped and linked to a transparent system of rewards and punishment. The use of Information Technology and greater adoption of e-governance, which is handy to the government, would immensely contribute to efficiency in administration.

The Task Force here expresses its concern about the current state of the All India Services, especially the Indian Administrative Service (IAS) and the Indian Police Service (IPS). After Independence the erstwhile Indian Civil Service and the Indian Police were
reconstituted as the IAS and the IPS. There was quite a bit of skepticism about the wisdom of continuing, in whatever form, the two services, as they were viewed as instruments of colonial power. However, in the first few decades of our Independence, the two services acquitted themselves quite creditably, handling varied administrative challenges and natural calamities. However, over the last decade or so, it has become evident that people are questioning the rationale of continuation of these services in their present form. Apart from anything else, the greatest criticism against them has been their failure to remain ‘politically neutral’ and ‘professionally independent’. Officers of these premier services, for the most part, seem to have become too subservient to their political masters and seen to be aiding and abetting them in far too many improprieties and irregularities. The need for a thorough overhaul of the services is imminent. The ARC, among others, has addressed this need. It is only necessary for us to flag this issue here as of paramount and urgent importance in our quest for good governance.

Transparency in administration can be achieved by a positive and proactive attitude to the ‘Right to Information’ and making public the rationale for all important decisions on policies as also application of such policies. Section 4 of the RTI Act makes it obligatory for all Departments to make public all information on their working and, with or without the goading of the Information Commission(s); Government(s) should work towards fulfilling this obligation within a year. Improved transparency in its turn would promote better policy formulation and improve public confidence and better respect for laws and regulations.

Accountability improves with greater transparency in government functioning. It can be further improved with delegation of powers to authorities closer to the people especially in matters of civic services, welfare schemes etc. The Panchayati Raj institutions (PRI) need to be strengthened in the true spirit of the 73rd and 74th Amendments to the Constitution. Elections to the PRI need to be non-partisan, if they have to function as truly representative of local issues. Initiatives such as social audit and involvement of community-based organizations like the self-help groups of women in the implementation and monitoring of schemes need to be pushed through, with greater vigour and across the nation. The RTI again would be an important means of enforcing greater accountability of public servants.

Citizens have a right to expect a clean and honest administration. Even though the Central Vigilance Commission is in existence since 1964 and is statutory since 2004, vigilance administration and anti-corruption activities have been far from satisfactory.
There seems to be a lull since the Supreme Court judgment in the Jain Hawala case. The CVC’s annual reports receive virtually no attention in the media and have never been discussed in Parliament. The Government should take the suggestions of CVC seriously and strengthen the vigilance set-up in Central Departments and the Public Sector Undertakings. In the states, a strong and independent Vigilance structure to tackle corruption in public services should be created. At present, Lok Ayuktas are effective in one or two states but, by and large, the state vigilance commissions are ineffective and function as any other government department without functional autonomy and independence.

Several initiatives have been taken in the recent past to improve efficiency, transparency and accountability in public administration. But the experience has not been uniform through the country. Both in Central Government departments and in some states, commendable progress has been achieved in ushering in e-governance. Similarly, the right to information has been a very potent tool in the hands of the citizens to enforce transparency and accountability of public servants. But, here again the results are not uniformly encouraging in all the states. It will be the duty of the Central Government to ensure that what have been successfully achieved in one state, the best practices, as may be said, are brought to the notice of all others through publicity campaigns and conferences. People in all states could get to know what their brethren in some other states have been able to achieve and the same is expected to create the required pressure on the laggard states to fall in line.

Yet another model before Government to forge national consensus on delicate issues is the model of the Standing Committee of Finance Ministers of States which exceeded all expectations by successfully tackling the issue of VAT. This could also be institutionalized and used in tackling a variety of issues where perspectives of the various States may seem to differ. The main advantage of this instrument lies in that the responsibility to develop a common approach on issues stands transferred to the states who no longer would feel that the Centre is forcing a decision on them.

Recent experiences manifest that Community Based Organizations (CBOs) like Self Help Groups (SHG) of women are seen to be playing an important role in many rural areas. These are effective instruments in enforcing accountability of governments. Even as there is threat of PRI institutions becoming just one more tier in the party based governmental structure, CBO could play a very important role in improving the quality
of governance. At present, there is no constitutional or statutory recognition of the role they could play and it is high time this was considered. Also, since the virus that has affected the PRI sector could also creep into the CBO as well, Government could consider establishing an independent and autonomous regulatory body which could ensure that CBO act in a responsible and democratic manner without, however, in any way, interfering in their functioning as CBO.

**Delivery of Public Services.**

Delivery of public services is an area that needs special attention. This is especially so since Government of India transfers enormous amounts to States under various schemes such as Sarva Siksha Abhyan, National Rural Employment Guarantee Scheme etc. and unless there is attention to implementation the benefits accruing to the targeted population will be far less than intended. Government should consider establishing broad-based oversight mechanisms which would ensure that in the villages the schemes work as per the objectives laid down. There should be involvement of local bodies as also CBO to ensure that leakages are minimal. Social audit on the working of these schemes be made mandatory and there should be third-party inspections and assessments on a regular basis.

**Issues of political and social significance**

The politics of regionalism and that of religion has come to Centre-State over the last two to three decades. Violence and conflict have haunted Indian Society despite the legacy of peace left behind by the national movement. The Indian ideas of peace and conflict resolution out-linked to the works of Gandhi and Tagore and in the theosophist documents have disappeared in later imaginations. Outdated notions of problem solving have become state-centric. These notions find place in the conceptions that army and police are meant more for pacification rather than for peace keeping. The idea of conflict resolution, in the current context of the co-existence of pluralistic society and multicultural systems, needs to incorporate the theories of community, diversity, and livelihood, etc., as outlined by some of the authors of social movements. The current sense of the problem and problem solving systems has the imprimatur of the Nation State, while the sense of diversity is more civilized or civil society-oriented. In the current definition of federalism, the ideas of security, top-down metaphors of management still dominate the imagination of the margins. There is, therefore, need for a detailed and organized ‘thought experiment’ to be institutionalized in a gradual but in innovative stages.
The above understandings can be glimpsed in the context of NEern region. NEern is perceived as a homogenous entity and a site for violence, secession and the brutalization of society. However this is not the case. It is time to realize the diversity of the NE and see each state as a separate community of problems and needed the problem solving approaches. Secondly, the NE should be seen as a site for a wider imagination for India. The community of expertise available in the region (part of it located at Shillong between IIM and NEHU) could be gainfully tapped. The support-base for the same could also include, as collaborators, the journalists, the housewives, the human rights activists etc., who could pluralize the imagination. The need is to invent new institutions, new thought experiments to break the current stalemate, the tiredness that war and violence have brought to the area. But one does not want to create a provincial problem solving centre(s). The institution we seek to propose has to be national, civilizational and South Asian in perspective. The narratives of the violence of NE should be made open to other narratives and other forms of problem solving in the country.

One other problem that was also conceived as politically and socially serious and that has come to centre-stage, of late, is that of ‘Migration’. According to the data of National sample survey, as enumerated in the 1999-2000 on net immigration and/or out-migration in the main Indian states, the greatest out-migration is from Bihar, but only 3.1 per cent of the population. Uttar Pradesh has out-migration of only 0.8 per cent. In no other state is out-migration even 1 per cent of the population. Orissa actually has net immigration of 0.6 per cent. This is explained by the influx of Bengalis and Bangladeshis in the north and Telugu speakers in the south. Land scarcity has driven outsiders to encroach into forests, and this is one reason for net immigration into poor states like Orissa and Madhya Pradesh. Assam is listed as having net out-migration of 0.5 per cent. This is, however, questionable given the influx of large Bengalis/ Bangladeshis into Assam and making the same a serious political issue. West Bengal, another poor state, has 2.7 per cent immigration. This represents an inflow from even poorer Bangladesh. Given the social and political implications of the ‘Migration’, it is felt advantageous that a detailed study on the subject be commissioned for meaningful understanding of the problem. The study could also include issues like forced migration and sexual trafficking as components.

**Issues of equity and inclusiveness**

The Indian Constitution, when it was adopted in 1950, was considered by most
political scientists as a quasi-federal set-up with strong unitary features. For almost thirty years it remained so and it was possible for the Government at the Centre to initiate measures with some success, in various areas such as public policy, social equity and governance to bring about some uniform standards, in order that public administration would be more and more responsive to citizen’s needs. However, the efficacy in the response systems required much to be desired, due also to regional economic diversities, political complexities and the resultant risks. Views are often expressed that lack of built-in flexibilities, necessitated by the area diversities, among the regions and states, led to the failure of “One Policy Fit All” approach. Ad-hoc amendments and modifications and sometimes such modifications which tended to the loss of sight of the original objectives itself, often rendered credence to the belief that given the socio-political diversities of the regions, ‘top to down’ approaches and “bureaucracy-crafted” social growth measures are far from attaining the implementation success as they are often at odds with ground realities besides being suffered from functional sight-specificities.

On the other hand public administration, world over, during the past two decades started increasingly moving on the reform track under which ‘State Response System’ has been undergoing adaptations from ‘responsiveness’ to ‘collaboration’. Such collaboration is meant for higher levels of partnerships, in policy making and public administration, with various social players such as private sector, the third sector and the citizens. It is increasingly believed that the ethos of “collaborative response system” having linkages with bureaucratic-driven, private sector-driven and citizen driven and with participative approaches would have to, gradually and in the long run, replace the “state response system’. It would be reasonable to believe that the “collaborative response system” is expected to provide durable responses in the direction of Centre-State, inter-State and intra-State/ regional political, economic, social and cultural relations.

If the inclusive growth is the ultimate objective, the Citizen’s participation would have to be at the core of the identification of the policy and implementation process. Some approaches are suggested in para 7.6 and 7.7 of this report which could be considered as indicative and alternative models could also be explored. The primacy of improving the ‘Human Development Indices’- health, education, and communication- for achieving the above needs no emphasis.

The Task Force recognizes that the ‘State responsiveness to citizen’s needs’, by itself, would, arguably, be central to what the ToR described as “socio-economic development”.

Report of the Commission on Centre-State Relations
The Task Force desired to dwell at some length, through a study, how responsiveness could be institutionally produced or alternatives could be developed. While a systematic study was not possible, given the limitations of time and expertise support available at the disposal of the Task Force, attempts were made, with the support of the members of the Task Force, to forge ideas in selected areas of ‘health’, ‘education’, and inclusive governance’, with special reference to NEern region. The details of this attempt are appended- (Appendix-IV).

In the area of health, while the primary responsibility rests with the ‘State’ augmentation of private intervention including that by voluntary systems, it is believed, would ably supplement the State’s effort. Giving due deference to the mortality rates, the ‘state support’ and other support would have to be need-based and not population-based. At the front-end of the rural health, the ‘safe drinking water’ and ‘sanitation coverage’ which is at 8-11 per cent of the all households (in the NEern region) requires serious stress under both the ‘Bharat Nirman’ and the ‘Total Sanitation Campaign’ programmes.

The scourge of HIV/AIDS is here to stay. Society could, through a process of awareness programs and education, embrace HIV/AIDS victims instead of shunning them. Centres for HIV/AIDS treatment as well as counseling for HIV/AIDS patients and relatives/friends to be available at Government district and state hospitals. The promotion of safe sex, especially among young adults, must be promoted through strong sustained media campaigns. There would need to be extensive use of retro-viro drugs, which are accessible cheaply and easily to vulnerable groups to reduce the impact of this challenge. In a region plagued by conflicts, drug abuse and HIV/AIDS there are as yet no trauma treatment centres or post- trauma counseling centres to rehabilitate victims of conflict, rape and domestic violence and HIV/AIDS. Such centres must come up at all district headquarters of the NE if need be through active intervention of the Centre.

As in the case of health, in the area of education also, while the primary responsibility, particularly that of primary education rests with the ‘State’, augmentation of support, in both secondary and university education, from private intervention, including that by voluntary systems, would ably supplement the State’s effort. While the infrastructure for the same in the private sector exists, augmentation of the same and also establishment of pre-education training centers, by NGOs, Trusts and Registered Societies are incentives.
Inclusive governance implies that people should be principal participants in the planning and implementation processes for their development. But obviously this has not happened and the planning processes in this country have become exercises conducted by bureaucracy who are far removed from the needs and aspirations of people. Hence the stress has to be to correct the anomalies and to stress on local self governance as a remedy. Local self-government, as elaborated in our Constitution is a convergence between accelerated growth and inclusive growth. Securing inclusive growth without inclusive governance would, obviously, be an unacceptable proposition and self governance provides the platform for the same. The overarching components of governance include (a) policy formulation (b) implementation (c) monitoring and evaluation. In all these three processes, people are at the heart of them all. If these three components become the guiding principles, chances of the success would be greatly enhanced. Policies formulated by the Centre and superimposed on states are often at odds with the ground realities. They do not reflect the aspirations of the people and defy the very logic of governance which is meant to be participatory in nature and where people are at the core of policy making. While the groundwork for the same (grass-root governance) has been laid by the 73rd Amendment to the Constitution, devolution of powers to local bodies did not flow, at the desired pace and therefore, grass-root planning did not take materialize effectively.

Panchayat Raj, therefore, needs to be revisited and must become the principal governance reform to reinforce economic reform in a manner that secures inclusive growth. Parallel measures of empowering the grassroots are required in those areas, many in the NE, which the Constitution exempts from Panchayati Raj, such as the Sixth Schedule areas.

Activating and strengthening institutions of local self government calls for conformity to certain broad and generally well-accepted principles of institutional design. These include:

- Holding of regular elections to local bodies;
- Clarity in the functional assignments to different levels of local bodies in rural and urban areas;
- Matching the devolution of functions with the concomitant devolution of funds and functionaries so that the devolved functions might be effectively performed;
• Ensuring that elected representatives of local bodies effectively wield their powers;
• Building capacity in local bodies to undertake planning;
• Ensuring a healthy, constructive and mutually fruitful relationship between officials appointed by the State Government and elected local bodies; and
• Providing for collective decision-making through Gram and Ward Sabhas and holding the local body to account for their performance is some of the features of a good design for local self-government.

In addition, it is important to create systems and institutions for planning and delivery of public services, including the creation of information systems, and for monitoring evaluation and ensuring accountability.

Systems of decentralised governance in the NE Region show a wide diversity, unparalleled in any other region of the country. While the Panchayati Raj system fully covers two of the eight States of the Region - Sikkim and Arunachal Pradesh - three other States - Mizoram, Meghalaya and Nagaland - are entirely exempted and have their own local systems. The remaining three States - Assam, Tripura and Manipur - have both Panchayati Raj and non-Panchayati Raj areas existing side by side. While such diversity is expected in a region that is itself very diverse it also makes local governance complex, since it is based on the immense ethnic, linguistic and religious diversity, seen in the region. However, a common feature of these diverse systems of self-governance is that all need strengthening. This is as true of NEern Region, as it is of most parts of the country.

Institutionalizing participative planning from the grassroots level upwards to culminate in the preparation of a district plan is a key factor in strengthening governance. As mandated in the Constitution, District Planning Committees (DPCs) are required to be elected to the extent of 80 per cent of the membership by and from amongst the elected members of the district level Panchayat (Zilla Parishad) and the Municipalities within a district.

The district plan must emerge from plans prepared by each village Panchayat, intermediate Panchayat, district Panchayat, and municipality for their respective geographical areas and functional competence. To this end, State Governments need to
clearly inform Panchayats at each level (and the Municipalities) of the resources likely to be available and the activities entrusted to them. DPCs are required to be entrusted with the responsibility to “consolidate” these Panchayat/Nagarpalika plans into a draft district development plan and forward it to the State Government. All stakeholders, particularly of historically discriminated and marginalized sections, including women, must be engaged in participatory planning and implementation. This has to be done to assess the resources in the villages and towns, identify and priorities the needs and requirements and monitoring and evaluation of various projects, schemes and programs.

There is an imperative need for ensuring convergence of centrally funded institutions in the NEern Region. NE India has a plethora of centrally funded institutions such as the Indian Council for Agriculture Research (ICAR), the North East Space Application Centre (NESAC), Barapani, Central Agricultural University, Imphal, Geological Survey of India, Archeological Survey of India, Botanical Survey of India, amongst others. Each of these institutions has functioned independently with no significant contributions to the knowledge pool of the states. This has happened primarily because of lack of convergence and the absence of an institution for bringing about that convergence. It is important to identify such an institution so that the NEern states can tap into the rich resources and knowledge bank that each of these centrally funded institutions has created or is in the process of creating. This would also bring in a measure of accountability in these institutions which hitherto have been functioning as independent entities.

**Conclusions**

**Recommendations**

The discussion in the foregoing section, together with the articulations, followed by detailed analysis, made in the papers, subscribed by members, reflect, in brief, as the recommendations. A moderation of these views was not made as it was expected that the recommendations, made by members, attract careful consideration by the Commission. These recommendations are listed below, in summery form and these are not necessarily structured in the same sequence as set out in the papers.

At the outset, the Task Force considered it essential that the Centre should lead by example in the implementation of the recommendations made by the Commission. The following are the set of recommendations:
General

• The TOR covers complex issues of socio political nature which would require to be studied in detail, in the field, by social scientists. Therefore, The Task Force believes that some of these major issues are studied in depth by some academic/research organization, for the use of the Commission. Incorporation of these aspects, preceded by a study by and findings of a research body, would add great value to the Report of the Commission;

• The Task Force strongly suggests that Centre-State relations are looked at from the periphery i.e. from the states in the NE or the tribal States of Chattisgarh and Jharkhand, rather than from the Centre alone;

• The Task Force would like to emphasize the need to provide in the Constitution, a mechanism or a methodology to “imagine” scenarios and issues that could well arise in the future and deal with them; These relate to environment, global warming, green balancing, intellectual property rights, future trade barriers etc.-to cite a few;

• The Commission’s recommendations, accepted by the Government, must be adopted in all the Central Government departments within a year or so;

• These should be publicized effectively throughout the country using a mix of media publicity and public contact programs across the country. This will, in due course- sooner than later in today’s media-exposed society- generate pressures on the individual State Governments to initiate measures;

• The nodal department at the Centre should frequently organize meetings with the State Governments to familiarize them with the positive steps taken by the Centre and the State Government(s). This will also generate the required pressure on other states to emulate the pioneers;

• The Centre should also provide widely publicity to the successful initiatives of the State Governments to exert pressure on the others. Initiatives like the Bhaghidhari in Delhi and the Kutumbasri in Kerala are examples. The laggard states cannot remain immune to such publicity since their own citizens would exert pressure on them to emulate the others;
Public policy

- All major policies should be finalized only after mandatory ‘consultation’ through a series of public hearings in all parts of the country. It could be sensitive social issues such as ‘reservation’ for socially disadvantaged sections or amendments to personal laws or economic issues such as trade agreements. This is not impossible or impractical since, at present, ‘Environment Impact Assessment’ of major projects mandates such public hearings;

- A provision in the Constitution be made under which citizens (a prescribed number of them) can seek policies in the areas of concern to them from the government;

- It is true that several bills on sensitive matters, and involving public interest, are referred to Parliamentary Committees which, in turn, hold consultations with individuals and organizations, before submitting their reports to parliament. However on strictly public policy issues, such consultations are not structured and are not thorough. Instead of court interventions in the route of Public Interest litigations (PILs), the Constitution itself should provide for such mandatory consultations with the stake holders affected by public policy;

- It is hard to believe that all major issues of inter-State or intra-state nature could be solved through Central interventions. Issues relating to water, emotive issues in the regions, within the state are examples in this regard. A provision in the constitution could be established having a bilateral dispute resolution process wherein the state parties to a dispute, are compelled to sit together and arrive at a solution;

- An alternative model could be the permanent institutionalization of the Standing committee of state Ministers/ State Chief Ministers, to whom common or some time bilateral issues could be referred for dispute resolution and in tackling a variety of issues where the perspectives/opinions may seem to differ. The experience of VAT, through a committee of State Finance ministers is a pointer in this respect and the Centre could perhaps push the reforms/new initiatives in public administration, with the Centre playing a secondary and facilitating role;
Governance

- Quality in governance and ensuring such a Quality is made mandatory by including governance in the chapter of Directive Principles of State Policy (DPSP). And if the Constitution does make good governance a Directive Principle, then such initiatives by the Centre also acquire legitimacy and legal force;

- Citizens have a right to expect clean and honest administration. For this purpose a strong and independent vigilance structure be created to ensure honesty in public services;

- Notwithstanding the repeated review since 1977 of centrally-sponsored schemes and central schemes with a view to severely curtail central initiatives in areas in the State List, in many areas today most of the welfare schemes in the states continue to be dependent on large grants from Central schemes such as the NREGS, Sarva Siksha Abhyan, Mid-day meals for school children etc. Given the experience of the power sector reforms, pushed through in the last 10 years, these central schemes should be leveraged to push through initiatives like mandatory social audit, involvement of community-based organizations in implementation, involvement of gram sabhas in beneficiary identification etc.;

DPSP

- There has been no assessment of the manner and degree of enforcement of DPSP. It is obvious that DPSP cannot be static. There is need for continuous updating of the DPSP, taking into account the developments that are taking place. Issues like global warming, carbon foot prints, emergence of knowledge society, Bio-Technology etc., need to represented in the DPSP, casting a responsibility on the ‘State’ to take effective action in these areas. The Constitution should prescribe the manner in which the assessment of implementation of the DPSP should be taken up and also institutionalize the updating process;

Social issues-Migration

- One issue, conceived as politically and socially serious that has come to centre-stage, and referred to the Task force, by the Commission, is that of ‘Migration’. 
The Task Force could not dwell on this important area due to paucity of expertise and time. Given the social and political implications of the ‘Migration’ the task force recommends that a detailed study on the subject be commissioned for meaningful understanding of the problem. The study could also include issues like forced migration and sexual trafficking and relates aspects, as components;

Panchayat Raj

- The 73rd and 74th Amendments to the constitution are considered as landmarks in the evolution of the Indian democracy. However, it has been highlighted in several reports that very little and no meaningful steps, for the real devolution of powers to the local bodies have been undertaken by most State Governments. Since government of India has the constitutional responsibility to enforce these amendments, urgent action is called for so that local bodies have greater say and control in areas like primary education, primary health care, water supply and sanitation- which are basic to the human development;

- There is an increasing trend towards politicization of local body elections and contests for elections on party basis. This seriously affects the effectiveness of these institutions to concentrate on local issues and real issues would get increasingly marginalized. Party loyalties would override local concerns and force individual local bodies to conform rather than clamour for freedom to act, in purely on local interest, which may demand deviation from centrally conceived plans and priorities;

North-Eastern States

- In the NE States forming part of the Sixth Schedule of the Constitution, the 73rd and 74th Amendments do not apply and special efforts are required to empower the people and make for inclusive governance. Community based organizations (CBO) like Self Help Groups (SHG) of women is increasingly seen to be playing an important role in many rural areas. These are effective instruments in enforcing accountability of governments. Even as there is threat of PRI institutions becoming just one more tier in the party based governmental structure, the CBO could play a very important role in improving the quality of governance. At present, there is no constitutional or statutory recognition of the role they could play and it is high time that this aspect be considered. Also, since the virus that has affected the PRI sector could also creep into the CBO as
well, Government could consider establishing an independent and autonomous regulatory body which could ensure that CBOs would act in a responsible and democratic manner without, however, in any way interfering in their functioning as CBO;

**Conclusion**

This report, which provides an overview of the issues, together with a set of recommendations- given broadly but not comprehensively, for reasons mentioned in the previous section(s)- on the ToR referred to the Task Force, is submitted to the Commission on Centre-State Relations for their Consideration.
TASK FORCE-8

O.M dated June 18, 2008 setting up the Task Force No. 8 by the Commission on the Centre State Relations.

&

CONSTITUTION OF TASK FORCE-8

REPORT

(APPENDIX-I)
OFFICE MEMORANDUM

Sub: Composition of Nine Task Forces to act as Knowledge Partners to the Commission on Centre-State Relations.

Taking into account the nine broad groupings of its ToR, the Commission has constituted none Task Forces to act as its Knowledge Partners on the following thematic areas:

(i) Constitutional Scheme of Centre State Relations
(ii) Economic and Financial Relations
(iii) Unified and Integrated Domestic Marker
(iv) Local Governments and Decentralized Governance
(v) Criminal Justice, National Security and Centre-State Cooperation
(vi) Natural Resources, Environment, Land and Agriculture
(vii) Infrastructure Development and Mega Projects
(viii) Socio-Political Developments, Public Policy and Governance
(ix) Social, Economic and Human Development

The details of the composition of each of the Task Forces are contained in the Annexure.

The Members of the Task Forces constitute a cross-section of expertise of the highest order in public service, Constitutional law, social and economic studies, engineering, civil
service, finance, banking and industry. The Task Forces may meet as often as required. Such meetings would be convened by the designated Secretariat Officers on behalf of the Task Forces.

The outstation Members of the Task Forces will be entitled to travel by air. Such members of the Task Forces as are still serving with Government or the Public Sector will travel by the entitled class. Those retired from service may travel in the class they were entitled to at the time of their retirement. Those members who were not in Government service may travel by executive class. The expenditure incurred on the local transport by taxi between residence to airport at the place of origin of journey, and between the airport-hotel-venue of the meeting and back will be reimbursed as per actual subject to a ceiling of Rs.500/.-.

The Delhi/NCR-based members will be entitled to road mileage for journey by taxi as per actual subject to the above-said ceiling.

The Members will be provided accommodation in the ITDC-run Hotel Janpath. The ITDC will charge the Commission a tariff of Rs.6125 inclusive of all taxes and breakfast per day. As per the Supplementary Rules, reimbursement of rent in any State Guest House or accommodation provided by the registered societies like India International Centre and India Habitat Centre or any of the medium-range ITDC/State Government Tourism Hotel will be made subject to the above-said ceiling. As for the boarding, breakfast is generally part of the room rent. Lunch will normally be served following the meeting of the Task Forces. The Members will be entitled to reimbursement for dinner as per actual subject to a maximum of an amount of Rs.600 plus payable taxes.

Non-official members of the Task Forces (which includes retired Government officers) would be paid a sitting fee of Rs.1500/.

The receipt of this OM may kindly be acknowledged at either of the addresses given below:

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(Veena Upadhyaya)
AS & Adviser, ISC
June 18, 2008

Encl: One
Constitution of Task Force -8

Socio-Political Developments, Public Policy, Governance and Social, Economic and Human Development

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TASK FORCE-8

COMMUNICATION DATED NOVEMBER 24, 2008 MERGING THE TASK FORCE 8, TASK FORCE 9 AND DESCRIBING IT AS TASK FORCE 8.

REPORT

(APPENDIX-II)
To
The Members of Task Force Nos. 8 & 9

Subject: Meeting of merged Task Force Nos. 8 & 9.

Sir,

I am directed to say that in view of the fact that there is substantial commonality of concerns in the issues being looked at by the Task Force No.8 (Socio-Political Developments, Public Policy and Governance), it has been decided to merge Task Force Nos. 8 & 9 under the Chairmanship of Shri P. Shankar, IAS (retd.) with Dr. George Mathew, formerly Chairman Task Force 9 as Co-Chair. The merged Task Force will be described as Task Force No.8 on Socio-Political Developments, Public Policy, Governance and Social, Economic and Human Development.

2. The first meeting of the Task Force No.8 will be held at 3.00 p.m. on 2ns December, 2008 in Committee Room, Vigyan Bhawan Annexe, New Delhi.

3. You are requested to make it convenient to attend the meeting.

4. The Secretariat support will be provided by both Mr. Manoj Kumar, Section Officer and the undersigned under the supervision of Ms. Veena Upadhyay, Additional Secretary a & Adviser, Inter-State Council Secretariat (ISCS). The telephone, fax numbers and e-mail ID of these officers is given below:

(i) Ms. Veena Upadhyay
   Tel: 011-23022152 (Office)
   011-23022147 (Fax)
   e-mail: director_ccsr@nic.in

(ii) Mr. K.Muthu Kumar
    Tel: 011-23022155 (Office)

(iii) Mr. Manoj Kumar
     Tel: 011-23022146 (office)

Yours faithfully,

K. Murhu Kumar
Deputy Secretary and Coordinator T.F. No.8
Tel; 23022155

Copy for information, to

1. Sr. PPS to Secretary
TASK FORCE-8

EXTRACTS FROM THE QUESTIONNAIRE, AS RELATED TO MERGED TASK FORCE (TF)-8

REPORT

(APPELLIX-III)
The Terms of Reference and the Issues

Socio-Political Developments, Public Policy, Governance, and Social, Economic and Human Development-Terms of Reference

Political Developments

India is characterized by ‘unity in diversity’ consistent with a pluralistic identity. Recent decades have been marked by significant increase of socio-political mobilization around sectarian identities. Fears have been expressed that political developments emanating from such mobilization pose a threat to the unity and integrity of the country. Do you agree with this assessment and if so what are your suggestions for a long-term solution?

Another significant political development has been the growth and ascendancy of regional parties. These parties have now come to legitimately play a major role in governance at the national level. Given the possibility of this trend continuing, what would you suggest should be done to harmonize national and regional interests for better Centre-State relations?

In contemporary federations, different types of political configurations exist with various kinds of coalitions being formed among political parties, other groups and individuals. In India the multi-party coalitions have increasingly become the trend. In this context, what measures would you suggest ensuring that the national vision and wider collective purpose are always paramount and do not get distorted.

With the passing of the 73rd and the 74th Amendment to the Constitution in 1992 more empowered local level political leadership has emerged. New areas of political tensions and conflicts among Central, State and Panchayat/Municipal level leaderships have consequently arisen. How can these conflicts be resolved and their relationship harmonized? Please give your suggestions.

Social Developments

Socio-economic developments have resulted in large scale migration from the under developed to the better developed regions within the country. This has sometimes
affected the established demographic patterns and has tended to cause social tensions. This development has serious implications for Centre-State and inter-State relations. With the free movement of citizens guaranteed by the Constitution, what measures would you suggest to contain such social tensions?

**Public Policy and Governance**

Article 37 of the Constitution states that the principles laid down in Part IV are fundamental in the governance of the country and it shall be the duty of the State to apply these principles to making laws.

(i) Have the Directives been accorded due regard by the Centre and the States in making laws and in formulating policies and programs?

(ii) What are those Directives which require more legislative attention from (a) the Union Parliament, and (b) the State Legislatures?

What in your view are the elements of good governance that need to be addressed? What parameters would you consider appropriate in order to judge the performance of a State? What are your views about the existing monitoring, review and evaluation mechanisms to ensure delivery of effective outputs and outcomes of the schemes and programs in the field?

The task of governance is no longer confined exclusively to Governments, but includes a wide range of stakeholders— the organized private sector, public-private partnership institutions, civil society organizations, user and consumer groups, special interest groups, associations of industry and a variety of other non-state organizations. In many spheres of activity, earlier performed primarily by Governments, eg. Education, health care, infrastructure creation and management, such organisations now play a very important role at various levels. In view of their growing significance these organizations may have to be seen as important players in a multi-level federal order.

In the context of these developments, what measures would you suggest for the participation of these emerging stakeholders in the scheme of governance to address the growing challenges of ensuring good governance for promoting the welfare of the people?

In the context of the increased role of many non state organizations in the delivery of public services, please give your views on:
(a) What can be done to ensure that such organizations take due account of social responsibilities and public good in their functioning?

(b) How can the discipline of human rights and the philosophy of the Directive Principles be brought into the scheme of such organizations?

(c) How can the principle of democratic accountability in the delivery of public services be extended to these organizations?

Social, Economic and Human Development

Development strategies, particularly those aimed at correcting regional imbalances, often require looking at the region as a whole. Regions are often defined by topographic, agro-climatic, ethno-geographic and social and cultural similarities and may comprise two or more States. There is merit in looking at the core strengths of the entire region and basing strategies on such strengths irrespective of State boundaries. This would require new forms of inter-State cooperation for synergistic development. What are your suggestions for achieving such cooperation?

One of the criticisms faced by the central sector and Centrally Sponsored Schemes is that they tend to have a uniform prescription for all situations without adequate regard to regional and local specificities and suffer from lack of flexibility.

Do you think such criticism is justified? If yes, what are your suggestions to remove them? What measures do you suggest for customization of programs and schemes to suit the differentiated needs of States and Local Governments?

Quality of education at all levels and in all fields has been a matter of concern. There is need for developing common acceptable standards and having an effective system of accreditation, certification and quality assurance systems and procedures. Given the Constitutional provisions what respective roles, according to you, can the Centre and States play individually or collectively in working out a coordinated strategy in this respect?

What steps can be undertaken by the Centre and States in a coordinated manner to preserve and promote academic disciplines which are getting marginalized by a variety of socio-economic developments?

One of the challenges faced by policy planners in the country is lack of uniform social and economic measurement standards (including poverty, health, education etc.).
This applies across Central departments as well as between States. This is an important issue because these measurements are utilized for the allocation of resources to the States.

How can uniform national standards for the measurement of these indicators be formulated? What are your suggestions with respect to Centre-State cooperation in the joint formulation of these standards?
TASK FORCE-8

PAPERS SUBMITTED BY MEMBERS:- TASK FORCE 8.

REPORT

(APPENDIX-IV)
Task Force-8

Paper presented by

P. Shanker, Chairperson
1) Public policy

All major policies should be finalized only after mandatory consultation through a series of public hearings in all parts of the country. This is not impossible or impractical since at present environment impact assessment of major projects mandates such public hearings. At least in area-specific matters a beginning could be made. For instance, if public hearings had been held, perhaps, the Singur fiasco could have been avoided! In Konkan, setting of industries has been decided through public hearings. Given the realities of elections in the country, dominated as they are by religion, caste, money and muscle power, results cannot be construed as endorsement of party manifestos, especially when the winner need not secure a majority of total votes. It is true today several bills on sensitive matters are referred to committees of Parliament which in turn hold wide consultations with individuals and organizations before submitting their reports to Parliament. But on strictly policy issues consultations are not well structured and thorough. Instead of courts intervening at every instance, the Constitution itself should provide for such mandatory consultation with all the stakeholders affected by any public policy. Public policy measures affecting the country as a whole may need resort to a referendum or a plebiscite. It could be sensitive social issues such as reservation for socially-disadvantaged sections or amendments to personal laws or economic issues such as trade agreements or even political issues such as the Indo-US nuclear deal. Recently, in several States in the USA, referenda were held on public policy issues along with the Presidential and Congressional elections. Even if this cannot be immediately adopted, there is need to give thought to this for implementation at some stage, at least on major policy issues impacting a large number of people or of extremely sensitive social and political nature.

The policies themselves should clearly identify the different categories of stakeholders who would be affected, in one way or other by the policy. The governments both centre and state should clearly respond to the views expressed and concerns raised at these public hearings before finalizing the policies for adoption. The policies should also contain clear guidelines on implementation and monitoring with reference to identified parameters and milestones. All this would help formulation of policies which will have the support of the people and hence more effectively implemented.

Another important aspect of policy formulation will be to build in flexibilities necessitated by the diversities in the Indian polity, among regions and states. “One policy fit all” approach would sooner or later end in local agitations, ad hoc amendments and modifications and loss of sight of the original objectives of the policy itself.
The next issue is whether we can believe that all matters of public interest would be catered for by the political system through the executive and legislative arms of the State. We should have in the Constitution a provision for the citizens to seek policies in areas of concern to them which very likely may be of little priority to the political parties. An instrument is required to be constitutionally established through which a prescribed minimum number of citizens could ask governments to come forth with policies on the subject(s) specified. This would be better than at present where citizens are forced to resort to PILs and courts direct governments to frame policies. Such court interventions should be exceptions and citizens petitioning governments would be more legitimate and in accordance with the constitutional separation of powers between the three arms of State.

**Governance**

The Constitution has two important chapters on Fundamental Rights and DPSP. However neither includes good governance. There have been any number of reports and initiatives both at the Centre and in the States on various aspects of public administration but there has been no sustained action to make the Administration effective and accountable to the citizens. The first pre-requisite to improving governance is make it obligatory on the part of Governments to work consistently on improving the quality of governance and this can be achieved by including Good Governance in the chapter on Directive Principles to begin with, if not as a Fundamental Right. That would give the necessary mandate and authority to the Central Government to ensure certain minimum standards of public administration not only in Central Government departments but also in the States.

Governance can be said to revolve around four key attributes—efficiency, transparency, accountability and honesty. It is not the intention here to discuss each of these aspects in detail and set out an agenda for action for the Governments to achieve. Enough has been written by various commissions and committees on the different aspects of governance. It is only necessary to list some of the key areas for action under each of these to provide the perspective for what is sought to be recommended as a possible means of achieving the objective.

First and foremost, the citizen has a right to expect that the public administration is efficient in the discharge of its functions. The first requirement here is a qualified and
well-motivated civil service. Recruitment to government service has to be open, transparent and broad-based followed by good training on a continuous basis. Remuneration and career progression has to be linked to efficiency and performance. The civil servants need also to be insulated from political and other external pressures to perform their functions objectively and fairly. Equally important are simplification of rules and procedures and minimizing levels in processing of cases. Review and monitoring of performance has to be revamped and linked to a transparent system of rewards and punishment. The use of Information Technology and greater adoption of e-governance would immensely contribute to efficiency in administration.

Here we need to express our concern about the current state of the All India Services, especially the Indian Administrative Service (IAS) and the Indian Police Service (IPS). After Independence the erstwhile Indian Civil Service and the Indian Police were reconstituted as the IAS and the IPS. Even though there was quite a bit of scepticism about the wisdom of continuing, in whatever form, the two services, as they were viewed as instruments of colonial power. However, in the first few decades of our Independence the two services acquitted themselves quite creditably, handling varied administrative challenges and natural calamities. However, in the last decade or so, something has gone wrong, it would seem and people are questioning the rationale of continuing them in their present form. Apart from anything else, the greatest criticism against them is their failure to remain politically neutral and independent. Officers of these premier services, for the most part, seem to have become too subservient to their political masters and seen to be aiding and abetting them in far too many improprieties and irregularities. The need for a thorough overhaul of the services is imminent. The ARC, among others, has addressed this need. It is only necessary for us to flag this issue here as of paramount and urgent importance in our quest for good governance.

Transparency in administration can be achieved by a positive and proactive attitude to the Right to Information and making public the rationale for all important decisions on policies as also application of such policies. Section 4 of the RTI Act makes it obligatory for all Departments to make public all information on their working and, with or without the goading of the Information Commission(s); Government(s) should work towards fulfilling this obligation within a year. Improved transparency in its turn would promote better policy formulation and improve public confidence and better respect for laws and regulations.

Accountability improves with greater transparency in government functioning. It can be further improved with delegation of powers to authorities closer to the people
especially in matters of civic services, welfare schemes etc. The Panchayati Raj institutions (PRI) need to be strengthened in the true spirit of the 73rd and 74th Amendments to the Constitution. Elections to the PRI need to be non-partisan, if they have to function as truly representative of local issues. Initiatives such as social audit and involvement of community-based organizations like the self-help groups of women in the implementation and monitoring of schemes need to pushed through with greater vigour and across the nation. The RTI again would be an important means of enforcing greater accountability of public servants.

And finally, the citizens have a right to expect a clean and honest administration. Even though the Central Vigilance Commission is in existence since 1964 and is statutory since 2004, vigilance administration and anti-corruption activities are far from satisfactory. There seems to be a lull since the SC judgement in the Jain Hawala case. The CVC’s annual reports receive virtually no attention in the media and have never been discussed in Parliament. The Government should take the suggestions of CVC seriously and strengthen the vigilance set-up in Central Departments and PSUs. In the States, a strong and independent Vigilance structure to tackle corruption in public services should be created. At present, Lok Ayuktas are effective in one or two states but by and large the state vigilance commissions are ineffective and function as any other government department without functional autonomy and independence.

Several initiatives have been taken in the recent past to improve efficiency, transparency and accountability in public administration. But the experience has not been uniform through the country. Both in central departments and in some states, commendable progress has been achieved in ushering in e-governance. Similarly, the right to information has been a very potent tool in the hands of the citizens to enforce transparency and accountability of public servants. But, here again the results are not uniformly encouraging in all the states. It will be the duty of the Central Government to ensure that what have been successfully achieved in one state, the best practices we may say, are brought to the notice of all others through publicity campaigns and conferences. People in all States could get to know what their brethren in some other states have been able to enjoy and his will create the required pressure on the laggard states to fall in line.

2) Political Developments

The emergence of strong regional parties with limited presence in one state alone as well as parties representing caste groups has been one of the most significant political development in the last two decades or so. The political parties with all-India presence
have been forced to align with one or the other of these regional parties to win some parliamentary seats for themselves while again relying on the latter's support for forming government at the centre. This development can be genuinely perceived as fissiparous and weakening the integrity of the federal structure of the polity. Yet, the alliance between the regional and caste parties with the all-India parties, on the other hand, could be seen as a mitigation of this very unity-threatening development. Given the access to political power and the vast resources at the command of the Central Government, the regional parties have had to temper their strong regional bias and act with greater restraint and seemingly greater responsibility on national-level issues. In the long run, however, it would be a challenge to the all-India parties to work on a strategy to achieve reconciliation between strong regional pulls and greater national perspective.

A corollary to this development is the increasing embarrassment for the Central Government when two States are at loggerheads over some issues such as, for instance, sharing of river water—especially when the on or both States are under the rule of parties in coalition at the centre. The National Development Council or the Inter-State Council, past records would show, have not been useful at all in dealing with such issues and are not seen by anyone as capable of forging consensus on contentious issues between States. This would point to the need for formation of Zonal Councils of States to develop commonality of approach on issues of mutual concern to the mutual benefit of all members and also foster better understanding and spirit of give- and- take between them. Even if this may take some years to develop into effective forums, in the current political scenario it could be considered well worth attempting.

Similarly, since on several politically sensitive issues, the Central Government has not been able or willing to intervene in disputes between States, the Constitution could also establish a bilateral dispute resolution process wherein the State parties to a dispute are compelled to sit together and arrive at a solution bilaterally. While again this may take time to develop into a viable and effective mechanism for dispute resolution, the very coming together of the States without the presence of third parties, could be expected to promote better understanding of each other's compulsions and the degree of flexibility each has in the matter.

Yet another model before Government to forge national consensus on delicate issues is the Standing Committee of Finance Ministers of States which exceeded all expectations by successfully tackling the issue of VAT. This could also be institutionalized
and used in tackling a variety of issues where perspectives of the various States may seem to differ. The main advantage of this instrument lies in that, responsibility to develop a common approach on issues stands transferred to the States who no longer would feel the Centre is forcing a decision on them.

**Panchayati Raj**

The 73rd and 74th Amendments to the constitution considered by many as landmarks in the evolution of the Indian democracy have still not delivered the results expected. Several government reports including that of the present Administrative Reforms Commission (ARC) have highlighted the half hearted manner in which the real devolution of powers to the local bodies have been undertaken by most State Governments. The position with regard to devolution of financial powers is even worse. Since government of India has the constitutional responsibility to enforce these amendments, urgent action is called for. Unless local bodies have greater say and control in areas like primary education, primary health care, water supply and sanitation, the citizens will continue to have very little say in matters of real concern to them. Arising out of this also is the large gap between public expenditure as budgeted by the centre and the actual benefits accruing to the people.

As important as the devolution of powers, financial as well as administrative to the local bodies, there is need for some intervention to ensure that these bodies do not use their representative character. Unfortunately, there is an increasing trend towards politicization of local body elections and contest on party basis. This seriously affects the effectiveness of these institutions to concentrate on local issues and get increasingly marginalized. Party loyalties would override local concerns and force individual local bodies to conform rather than clamour for freedom to act in purely local interest which may demand deviation from centrally conceived plans and priorities.

In the NE States forming part of the Sixth Schedule of the Constitution the 73rd and 74th Amendments do not apply and special efforts are required to empower the people and make for inclusive governance. A paper on issues of special significance to the NE prepared by Ms. Mukhim, Member, is annexed. (Annexure-B)

Increasingly, community based organizations (CBO) like Self Help Groups (SHG) of women is seen to be playing an important role in many rural areas. These are effective instruments in enforcing accountability of governments. Even as there is threat of PRI institutions becoming just one more tier in the party based governmental structure CBO
could play a very important role in improving the quality of governance. At present, there is no constitutional or statutory recognition of the role they could play and it is high time this was considered. Also, since the virus that has affected the PRI sector could also creep into the CBO as well, Government could consider establishing an independent and autonomous regulatory body which could ensure that CBO act in a responsible and democratic manner without, however, in way interfering in their functioning as CBO.

**Delivery of Public Services.**

Delivery of public services is an area that needs special attention. This is especially so since Government of India transfers enormous amounts to States under various schemes such as Sarva Siksha Abhyan, National Rural Employment Guarantee Scheme etc. and unless there is attention to implementation the benefits accruing to the targeted population will be far less than intended. Government should consider establishing broad-based oversight mechanisms which would ensure that in the villages the schemes work as per the objectives laid down. There should be involvement of local bodies as also CBO to ensure that leakages are minimal. Social audit on the working of these schemes is a must and there should be third-party inspections and assessments on a regular basis. It is high time we went beyond the “ten paisa” which the Late PM Shri Rajiv Gandhi lamented reached the people in most Government schemes.

**Directive Principles**

The DPSP have been incorporated in the Constitution to ensure that these important prerequisites to the well-being of citizens are never forgotten by the Government, even while recognizing that such action may have to be taken over a period of time, though not instantly. The Task Force feels that there has been no assessment of the manner and degree of enforcement of DPSP. There should be periodical reports on the degree to which the DPSP have been acted upon by the central and State Governments. More importantly, since DPSP cannot be static, there is need for continuous updating taking into account developments that take place. For example, issues like global warming, carbon footprints, emergence of knowledge society, biotechnology etc., need to be represented in the DPSP casting a responsibility on state and Central Government to take effective action in these areas. The Constitution should prescribe the manner in which the assessment of implementation of DPSP should be taken up as also institutionalize the updating process.
Task Force-8

Paper presented by Shiv Visvanathan
1) A Proposal to Re-write the DPSP

One of the intriguing features of the Indian Constitution is the DPSP. This is a feature the constitution shares with two other constitutions, the Irish and the Russian.

The DPSP is unique in that it is non-justiciable. It is a wish list for the future, an ideological gyroscope to guide future decisions. As it exists today, it is a collage of ideologies, fragments from socialist, Gandhian, Marxist and nationalist manifestoes. It provides a complementary imagination to the framework of rights. If rights focused on the individual and the citizen, the DPSP concentrated more on a collective and collectivist vision. Progressive for its own time, especially in its attitude to land and property it needs to be rendered in a more futuroistic way. One has to go beyond the hold of nineteenth century dreams and ideologies and create a heuristic which comprehends the new debates of a knowledge society and the cultures and economics that sustain it.

One needs to explore new trends in science and technology including in the philosophical implications of the informational communicational, biotechnological and nano-technological revolutions.

Secondly, one needs to see how issues around risk, uncertainty, diversity and complexity can be seen sensitively by the imagination of the constitution.

Thirdly, the 20th century has created violence around ideas of nation state, security, and development. Without throwing the baby out with the bath water, one needs to create new imaginaries for the constitution, a wish list of future. Key words that might create new outlines of the futures.

Fourthly, the very nature of problem solving has changed. Solutions especially in complex systems have to be panarchic. One has to understand how to build ideas of risk and uncertainty within the ethics of responsibility. The constitution needs to create new heuristics through forms of social audit without freezing concept or method in a procrustean way.

We are proposing a small seminar to incorporate and create new imaginaries to be included into the DPSP. May be the Centre for Law and Governance could locate the first discussions for this idea.

2) A community for Peace and Conflict Resolution.

Violence and conflict have haunted Indian Society despite the legacy of peace left behind by the national movement. The Indian ideas of peace and conflict resolution out linked to the works of Gandhi and Tagore and in the theosophist documents have
disappeared in later imaginations. Our notions of problem solving has become state centric. Our conceptions of army and police are more for pacification rather than peace keeping. Secondly our idea of conflict resolution needs to incorporate the theories of community, diversity memory and livelihood as outlined by some of our NGOs and social movements. Our sense of the problem and problem solving has the imprimatur of the nation state, while our sense of diversity is more civilizational or civil society oriented. In our current definition of federalism the ideas of security, top-down metaphors of management still dominate the imagination of the margins. The members of the task force would like to suggest a thought experiment to be institutionalized in gradual but innovative stages.

We would like to argue that the North East is seen as a homogenous entity and a site for violence, secession and the brutalization of society. I think it is time we realize the diversity of the NE and see each state as a separate community of problems and problem solving. Secondly, the NE should be seen as a site for a wider imagination for India and we propose in this context a community of problem solving people to be located at Shillong between IIM and NEHU. It could include as collaborators journalists, housewives, human rights activists who could pluralize the imagination. We desperately need to invent new institutions, new thought experiments to break the current statement, the tiredness that war and violence have brought to the area. But one does not want to create a provincial problem solving centre. The institution we seek to propose has to be national, civilizational and South Asian in perspective. The narratives of the violence of NE should be open to other narratives and other forms of problem solving.

To think the problem of Federalism stops at the border is to impose a — reality to the imagination. We believe issues like forced migration, sexual trafficking could be part of the issues to be discussed. Finally such a proposal would rework the top-down view of Centre-State relations by endowing a community of listeners who by speaking a language beyond standard management might add to the imagination of democracy and federalism. In this context, the task force proposes a second experiment: a report on the future using the North East as a site for an alternative imagination.

The idea of the future and the methodologies of future studies might go on long way in creating alternatives imagination both logically and nationally. It decentres the area as a domain of violence and one reconstructs alternative visions of ecology, energy, community, femininity, sustainability and time which can rework the stereotype of federalism. We realize that the response to a disaster is often a disaster institute. Such an institution
bureaucratizes issues. What we are proposing is a more floating structure, an innovation which realizes its own limits and yet is open to the risk of new possibilities.

Shiv Visvanathan

Task Force on Centre State Relations

(3) **ON CENTRE – STATE SYNERGIES : Note on Federation**

The Committee on Centre-State relations has a number of outstanding lawyers, bureaucrats, executives and political scientists on its various panels. To add to their professional wisdom would be an act of redundancy. I realize that in many ways the Sarkaria Report is the benchmark for much of the efforts. It demands a reading as a master text on Centre State relations a lot of the committees will be building incrementally on it. I decided that there is place for an alternative approach.

In terms of communication theory, I decided I would be better off as “noise”, assuming that noise as Colin Cherry once said is “but unwelcome music.” I would like to emphasize that this is not a dissenting note because dissent without final report would be preemptive and premature. What I am seeking is reflexivity of another kind. It might be subjective but as Stafford Beer once said “The facts about the system are in the eye of the beholder.”

Mary Kaldor in her *The Baroque Arsenal* observed that generals are notorious for fighting the previous war. After World War II, most generals were obsessed with improving the battle tank, which for all its legendary status, was becoming a baroquized weapon. More or more bucks were producing lesser bangs. Kaldor argues that the entire tragic comedy of the tank arose because one failed to see the tank as a mode of thought captive, not merely to certain interests, but also to ingrained categories.

The idea of Centre-State relations as part of the architectonic of federalism, suffers from a similar process. It reflects a mode of thought we legitimize and take for granted. It is premised on the primacy of the Nation State and the nature of democracy. Both make two assumptions of synergy. First, that the whole is more than the sum of the parts. Second, the whole is only good as the vitality of the parts. In a semiotic sense, federalism necessitates a synecdochal relationship but the model of the system adopted is antiquated, a nineteenth century treatise for a 22nd century dream. The categories used, the key words employed like security, sovereignty, stability, decentralization, efficiency,
productivity belong to an outdated format. In an ironic way, our competence in a professional sense has defined the limits of our enterprise. We are contributing to the making of an obsolescent document hypothesizing a slice of the future to a problematic past.

Let us examine federalism as a current mode of thought. It spatializes a territory, assumes a homogeneity of space and creates a set of divisions or classifications about how to divide power. It is more a theory of distributing power than a vision of sharing well being. The division between centre and state is the standard dualistic cut. At times, it becomes a triptych, when the third tier, the panchayat system is added to it. Dualism and hierarchy become the basic modes of thought represented as a tree or a taproot. Power is then distributed, syllabus like, in the constitution between centre and state. This constitutes the standard narrative of federalism which sees power as stock rather than flow and assumes the territorial materiality of the border. Problem solving is basically represented in a spatial form. The notion of the system becomes rudimentary. What I am proposing is a federation of time as a tacit constitution underlying the federalism of space.

For federalism as space, time becomes a fundamental problem. One will discuss three separate forms of time. 1) The time of emergency. 2) The future as time. 3) The multiplicity of time a federal model has to content with.

The Italian Philosopher Giorgio Agamben in a classic little monograph States of Exception argues that one of the great ironies of modern constitutional democracies is the way they limit the very possibilities of democracy in the act of preserving a democracy. The emergency, a constitutional response to a state of crisis, either because of perceived internal threat or external force, usually creates a centralization of power or a suspension of fundamental rights. The emergency as an episodic process triggers a modification of the constitution as an adaptive move. But emergency in a constitutional sense has no thermostat, or a feedback loop where the system returns to the normal and rights are restored. Agamben argues that while the emergency is an episode, its responses acquire a more permanent quality. The state of exception become the rule. The crisis is normalized in a juridical sense.

States of exception are becoming the norm. Either as national purpose, a popular word for national development projects, or through tropes like security or crisis. We have created exceptions that have become the rule. The legal apparatus for meeting a
perceived crisis remains in place long after the episodic purpose it was designed to handle ceases to exist.

If time as crises is one problem for Indian federalism, time as future has no place in the constitution. Every constitution has to be part science fiction, a bit Utopia. It has to adapt to the nature of speed, to innovations in technology, to ideas of risk centering around uncertainties of scientific change which are neither local or global, centre or state. They demand ideas of governance and complexity which our constitution does not acknowledge.

Probably the only area of futuristic impulse is the DPSP, where the future as federalism and the future of federalism need to be articulated. The current set of provisions existing under the DPSP has their roots in ideologies. They are formulated as wish lists, fragments out of various isms. These include in particular items out of Communist, Socialist and Gandhian manifestos. Out of it emerges a collage of propositions which articulated notions of social and economic justice.

Isms, even if utopian, are poor forecasters of the future. What one requires are heuristics or scenarios of a different kind. The DPSP helps one create the tacit and the projected constitution. A tacit constitution is based on the assumption that each constitution is surrounded by an unconscious of ideas about ecology, technology, time in which a constitution is embedded. A projected constitution states ideas of a preferred form of wellbeing, for example ideas of technology or governance. What the DPSP as a heuristic of governance can do is to articulate this methodology of scenarios. 1) It can include the responsibility for lowering the carbon footprint at each level. 2) It can state arguments for prudential models of governance, for example, around precautionary models of technology, especially relating to Bio-technology. 3) It can formulate indices of diversity showing that a polyarchic model of decision making has to be panarchic in its solutions.

Let me emphasize that panarchy and decentralization are two different approaches to problem solving. The emphasis on decentralization is on dispersal of power, of emphasizing locality and participation. As a method panarchy is more strategic in the way it thinks about scale. Federalism is more familiar with size rather than scale. In scale, the solution at each level can possibly be different, even qualitatively different. Panchayat, state, centre have to work panarchically in the future. Panarchic solutions increase diversity indices. They are ecologically more resilient than hierarchic solutions. 5) The DPSP can
demand socio-ecological audits of all SEZ and development projects to be published under RTI. The list can be worked out as part of a Knowledge Commission-Civil Society project. 6) The DPSP can invoke the 100 miles principle. This is an idea that invokes Swadesism at its best. The idea was suggested by the activist Ela Bhatt who observed that people should have control of the food they grow, the water they drink, the livelihoods they have land be responsible for the ecology of place within a hundred miles radius. Without the hundred miles experiment, Panchayati Raj by itself can be vacuous. The hundred miles is a rule of thumb, a way of converting space to place and owning it as a responsibility. The link between life, livelihood, and lifestyle becomes clearer both as livelihood autonomies and as carbon footprints.

The third aspect of this problem is that federalism feeds off territoriality and thus does not cope with multiplicities of time. The spatialization of thought itself strait jackets problem solving. Thought operates as binaries and dualisms, creates thought flows through tap roots or trees and does not allow for flows of rhizomes. It accepts the paradigm of the state and therefore only builds epicycles of modifications around it. Even the panchayat for all its allure does not challenge the heliocentrism of the State. The contouring of state and centre is fairly rudimentary. If worked into a multiplicity of times, the notions of federalism become more complex. The margins in conventional thought are visualized as spatially remote, fragments of a periphery. Margins lack the sense of being qualitatively different. One of the interesting exercises the committee could perform is to reverse the linearity of centre visiting states or periphery to enact the standard consultative process which we pompously call participation. We should invite Assam, Meghalaya, Mizoram, Manipur, for instance, to take the initiative to construct their vision of democratic federal model. Rather than reading this as a reverse telescope model such a construction should be seen as critical for federalism. For the centre to hold, it must assume the possibility of secession and build such fluctuations into the model. Otherwise any struggle either in Manipur or Singur is read as rebellion, secession or revolution allegedly justifying action against our own people. Unless we build some models of disorder, the system will not be diversity sensitive. The Margins are not underdeveloped fragments. They may constitute alternative imaginations the future needs.
The homogenizable models of time as progress, or development give way to multiple ecologies of time. The questions change. How do Centre-State relations work between oral, written, Gutenberg and digital societies? Here thought is neither binary nor spatial. What new rhizories of power connect peasant, craft, nomadic, industrial and post-industrial societies?

There is an official classification which anchors federalism. The difference it seeks within homogeneity ignores the other splits, the taxonomic fissures between formal and informal parts of society. The federalism of the formal and the federalism of the informal economies form different kinds of wholes. Political battles emerge between the centralism of the formal and the diffusiveness of the informal community. The emergency was a case study in the pathology of federalism exemplified just such a problem.
What I am suggesting is that without federating multiple times, federations of space are limp. By creating con-federations of time, India can actually work the future by reworking the standard juxtaposition of past, present and future. Here the past and its methodologies of the commons can now serve as a model for digital networks. The network society in fact moves between the old and new models of federalism by restricting ourselves to an older version of federalism, I think we are losing out on new imagination for the future. Federalism has to allow for a different sense of fragments and wholes. It is in this context that one wishes to examine:

**Federalism in relation to the knowledge economy and Knowledge Society.**

**Federalism as a metaphor for organizing knowledge.**

The Knowledge Society based on advances in information and the nature of invention is a fundamental challenge to notions of territoriality. There is first, the idea that innovation moves by networks, outsourcing, creating rhizomic connections across nation states. There are two arrangements for this. Science itself as a mode of organization and as a cognitive system is segmentary. Secondly, the countercultures that shaped information technology created the network as an open model of knowledge. The network challenges the territoriality of the boundary. Thirdly, latest movements in knowledge have advocated the knowledge commons where user centered is crucial. The demand for understanding knowledge as a commons is not merely a way of restoring the spirit of the original university but a response to the requirements of innovation. Once knowledge is seen as a flow, often a rhizome, making surprising connections, the standard models of territoriality and nationalism weaken. Scientific knowledge plays hop-scotch over boundaries. What scientific knowledge as a reflective process suggests is that every system needs a meta-narrative, an axiomatic of assumptions of a greater whole. At one time the idea of civilization, Hinduism, South Asia, the ecological idea of a subcontinent played the meta-system role for the nation state. But as these forms of knowledge recede or weaken, we have to ask what plays that wider role? It is not globalization which still lacks the mythopoetic power. The question one is asking is what is the idea of India that holds us together today? One sees an attempt to forge it around a Nehruvan consensus in the writing of Khilhani, Guha or Nilkeni, but all this gives us is a good boy theory of democracy and federalism. The question one asks is that is this sense of meta narrative adequate? More particularly it is this wider narrative that provides the sense of frame communities and community for Centre/State as an associative, contractual relationship. Is the Homo-Politics and the Homo Juridicus enough to create C/S models?
There is a second aspect of knowledge that needs discussion. There is a discussion of education as a state subject but no discussion of Federalism in the knowledge commission. As a knowledge society, India is a collection of diverse forms of knowledges. I am not merely saying that diversity is essential but asking who is responsible for diversity? Who-State or centre-is responsible for the 50,000 vanities of rice we possess? The relation between knowledges – science, traditional knowledge, folk knowledge – follows the usual hierarchies. Can knowledge be pluralized through new federations of responsibility? Just as we had and have van panchayats, can we have knowledge panchayats at the local community level. Given the evidence Anil Gupta and the Honey Bee Network, the CSE and the PPST have assembled, the idea of knowledge panchayats may play the role of science movements did in the seventies and eighties of the last century.

There was a third issue after often raised during the debates about knowledge and science during the alternative science debates in the nineties. One of the arguments often raised was that federalism was based on a communicational model between centre and state systems. If such a model was to be truly dialogic, Centre-State relations should include an RTI index. One can argue that the rate of flow of information must increase from centre to state and rate of flow of categories and dialects must proceed in the opposite direction. This guarantees diversity, connectivity, transparency and the fact that the language of the discussion is not alien to the system.

By now, it must be clear that what one is worried about is the official imagination of Centre-State relations. The anxieties operate in terms of the languages of power or that of accounting systems. My fear is that these anxieties are not creative enough or anxious enough. We lack what Hans Jonas called the heuristics of fear.

The heuristics of fear is a set of “as ifs” or “imaginaries” of crisis which go beyond what futurists would call worst case analysis. Visualize the following situations.

Kashmir gets limited autonomy from India.
A boundary state secedes from India.
Water crisis create anarchy, even violence between states.
A major disaster makes part of India unlivable.
A small state refuses to allow a nuclear plant or a missile site to be located in or actually demands the closure of one already located there.
Famines or drought force the government of India to use Biotechnology for food closing down millions of small land holdings.

Forced migration to cities forces new powerful cities to create a cordon-sanitaire around the city to beat back new inflows of population.

Aids patients in the new ID card system are denied entry into some states.

Workers coming for employment are forced to return to their states as part of sons of soil state policy.

What if internal or displacement creates more refugees than external conflict?

The Austrian historian Robert Jungk used the method of community discussion to open up people to the idea of the future. In the beginning he found that people only extrapolated or projected from the present but gradually they realized the power, the diversity implicit in the future as metaphor. This efflorescence of discussions helped Austria articulate its opposition to nuclear plants. What I am suggesting that parallel to the think tanks India is establishing and going beyond work of NIAS or even the Adam Smith Institute, think tanks should become a part of civil society activity. If democracy is a form of problem solving then the future has to be an integral part of it. The current division of power and finance adds little to the future as an imagination.

The challenge is can we oscillate the system to allow for a more complex set of combinations which could be more constructive for the democratic frame? Consider some examples:

Allow tribes say in the Dangs in Gujarat, the right to Green Economic Zones where SEZ’s are challenged as the dominant concept of visualizing industrial life. The recent march inspired by Mahasweta Devi might be an alternative way of pluralizing development sequences. This may include pursuing forms of agriculture radically different from modern monocultures.

Imagine parts of India have been seceding from the Centre without the Centre knowing it. Can one see secession and return as a cycle of action when protest leaves Delhi deaf. The historian Dharam Pal observed that villages would abandon a village if the king was intolerable. If this is part of tradition, why not build on it?

Allow for the facts that riots are no longer simple reactive affairs. Riots in the last
decade have become extremist affairs. They have also become routine, banal forms of
displacement. For example, for the thirteen districts for which reliable data is available,
aftermath of the 2002 riots in Gujarat, 70,000 people were displaced. If justice is a
critical part of Federalism, the question we have to ask is can people who suffered from
such genocide take their case to the International Court of Justice?

Unequal development creates special corridors of affluence, which turn regional.
Should one allow them some autonomy of decision making or stick to standard Centre/
State scripts?

All I really want to suggest is a point that the philosopher Cornelius Castoriadis
once made. He talked for the need of political imaginaries, ideas of the future which go
beyond current definitions and prescriptions. The imaginary, as he argues, is not fictive or
illusory, but it is the positioning of new forms, possibilities, hypothesis which collectively
determine an imagination. It is an attempt to create new languages which challenge explicit
power. It allows questions to be posed anew, not in terms of academic politics or
bureaucratic factionalism but in terms of playfulness of its political unconscious. It is the
absence of the imaginaries that makes Federalism the new dismal science.

Yet one should not look at the Centre-State relations as a part of a theory of
management, a science of public administration. There is an oral history of CSR, we
must tap into to go beyond the official reports. What would be interesting to explore are
the acts of “muddling-through” “the rules of thumb” that made the CSR a creative game.
Rather than relying on the Sarkaria report as an old testament of governance, which
requires a new testament, we could create an oral history of governance around federalism.
It may help articulate the tacit regimes and the stereotypes of state, power, governance
we operate with. After all here are two gigantic systems of Politics and Administration
contending with each other. The tacit knowledge available might provide a more relevant
heuristic of governance. To solve problems, we must take problem solving seriously as
method, heuristic, strategy and paradigm.

For all our territorial stability, we are a nation at war with itself. I am not referring
to our conflict with Pakistan or China. I am talking of internal violence, the sense of
instability in Kashmir, Mizoram, the earlier conflict over Khalistan, the displacement of
refugees in dam projects, the virtual elimination of the great tribal societies like the Ho,
the Santhals, the battle against the informal economy and nomadic society. How do the
margins, the alternative imaginations survive within a state whose models of development
and security is outmoded? The question is, sustainable federalism possible and what place does it have for subsistence societies? These are questions that demand an answer from our task force.
Task Force-8

Paper presented by Patricia Mukhim
(1) **NEED FOR INCLUSIVE GOVERNANCE IN THE NORTH-EAST**

To say that governance should be inclusive is a misnomer. The very term governance implies that people should be principal participants in the planning and implementation processes for their development. But obviously this has not happened and the planning processes in this country have become exercises conducted by bureaucracy who are far removed from the needs and aspirations of people. Hence the current stress to correct the anomalies and to stress on local self governance as a remedy. Local self-government, as elaborated in our Constitution is a convergence between accelerated growth and inclusive growth. We cannot secure inclusive growth without inclusive governance. The overarching components of governance include (a) policy formulation (b) implementation (c) monitoring and evaluation. In all these three processes, people are at the heart of them all. If these three components become the guiding principles, chances of manipulation and corruption will be greatly reduced. Policies formulated by the Centre and superimposed on states are often at odds with the ground realities. They do not reflect the aspirations of the people and defy the very logic of governance which is meant to be participatory in nature and where people are at the core of policy making.

The 73rd Amendment to the Constitution has laid the groundwork for grass-roots governance in our country. But despite the fact that 3.2 million elected representatives, including 1.2 million women and well over 22% SC/ST (their estimated share in the rural population), are serving in the local bodies of our vibrantly democratic society at the grassroots, devolution of power has not been effective and grass-roots planning has not happened.

Panchayat Raj therefore needs to be revisited and must become the principal governance reform to reinforce economic reform in a manner that secures inclusive growth. (Parallel measures of empowering the grassroots are required in those areas, many in the NE, which the Constitution exempts from Panchayati Raj, such as the Sixth Schedule areas).

Activating and strengthening institutions of local self government calls for conformity to certain broad and generally well-accepted principles of institutional design. Holding of regular elections to local bodies; clarity in the functional assignments to different levels of local bodies in rural and urban areas; matching the devolution of functions with the concomitant devolution of funds and functionaries so that the devolved functions might be effectively performed; ensuring that elected representatives of local bodies
effectively wield their powers; building capacity in local bodies to undertake planning; ensuring a healthy, constructive and mutually fruitful relationship between officials appointed by the State Government and elected local bodies; and providing for collective decision-making through Gram and Ward Sabhas and holding the local body to account for their performance are some of the features of a good design for local self-government. In addition, it is important to create systems and institutions for planning and delivery of public services, including the creation of information systems, and for monitoring evaluation and ensuring accountability.

As suggested by the National Commission to review the working of the Constitution in its chapter on ‘Empowering and Strengthening of Panchayat Raj Institutions/ Autonomous District Councils/ Traditional tribal governing institutions in NE India’, the functioning of ADCs should be amended to make them more accountable through the insertion of a clause that makes mandatory the creation of village councils/bodies with a fair representation for traditional institutions without giving the latter any primacy. Village councils or Dorbars should be elected every five years and mandatory representation for women ensured as in the case of PRIs.

**Systems of Inclusive Governance in the North-East Region**

Systems of decentralised governance in the NER show a wide diversity, unparalleled in any other region of the country. While the Panchayati Raj system fully covers two of the eight States of the Region - Sikkim and Arunachal Pradesh - three other States - Mizoram, Meghalaya and Nagaland - are entirely exempted and have their own local systems. The remaining three States - Assam, Tripura and Manipur - have both Panchayati Raj and non-Panchayati Raj areas existing side by side. While such diversity is expected in a region that is itself very diverse it also makes local governance complex, since it is based on the immense ethnic, linguistic and religious diversity seen in the region. However, a common feature of these diverse systems of self-governance is that all need strengthening. This is as true of NER as it is of most parts of the country.

For effective local self-government, major governance reforms are required as much in Panchayati Raj areas in the North East Region as in exempted areas. Governance needs to be strengthened by (a) laying out clear policy objectives (b) concurrent audit (c) post completion audit in all of which communities themselves play a role.
Although Sikkim, Arunachal Pradesh and parts of Assam, Tripura and Manipur are covered under the provisions of Part IX of the Constitution, the extent of powers devolved upon Panchayats in these States is uneven. Sikkim has been adjudged the third best State in the country in the implementation of Panchayati Raj; Assam the best for Activity Mapping; Tripura and Manipur among the better States for their pattern of devolution; and Arunachal Pradesh has been commended for recent steps taken to move towards effective devolution. Yet, in all five States, there is considerable scope for improving the process of devolution.

Institutionalizing participative planning from the grassroots level upwards to culminate in the preparation of a district plan is a key factor in strengthening governance. As mandated in the Constitution, District Planning Committees (DPCs) are required to be elected to the extent of 80 per cent of the membership by and from amongst the elected members of the district level Panchayat (Zilla Parishad) and the Municipalities within a district. Although most states falling under Part IX of the Constitution have now constituted DPCs, the states of Nagaland, Mizoram and Meghalaya are yet to get into this exercise. However, in Arunachal Pradesh and Tripura, some issues relating to the composition of the DPCs, owing to the special circumstances of these States, still remain to be clarified. The district plan must emerge from plans prepared by each village Panchayat, intermediate Panchayat, district Panchayat, and municipality for their respective geographical areas and functional competencies. To this end, State Governments need to clearly inform Panchayats at each level (and the Municipalities) of the resources likely to be available and the activities entrusted to them. DPCs are entrusted the responsibility to “consolidate” these panchayat/nagarpalika plans into a draft district development plan and forward it to the State Government.

Achieving the above requires a clear and unambiguous activity mapping for different levels of Panchayats based on the principle of subsidiarity. Activity Mapping is the key to the effective devolution of functions to Panchayats.

All stakeholders, particularly of historically discriminated and marginalized sections, including women, must be engaged in participatory planning and implementation. This has to be done to assess the resources in the villages and towns, identify and priorities the needs and requirements and monitoring and evaluation of various projects, schemes and programmes.
Devolution of adequate funds in an untied manner. The devolution of funds should be patterned on activity mapping of each level of governance. For this, State Governments will need to undertake a detailed analysis of their annual budgets, both non-plan and plan, to separate allocations to be transferred to Panchayats in accordance with the activities devolved to them. The funds available under various schemes can be allotted to the projects selected and prioritized by the people.

Streamlining and consolidation of schemes to ensure flexibility and a measure of autonomy. This has to be done mainly at the State and central levels.

Assignment of significant revenue raising powers and building capacity of local governments to raise revenues from the sources assigned to them.

Maintenance of proper management and statistical information system to enable local governments to efficiently design and implement plans and raise resources and undertake evaluation of programmes.

The Planning Commission has issued detailed guidelines to State Governments on bottom-up planning through the Panchayats, Municipalities and DPCs in conformity with the constitutional provisions on 25 August 2006. The NER States concerned have commenced the process of district planning through the Panchayats in BRGF districts. But states beyond the purview of the 73rd Amendment are yet to fall in line.

**Governance Reforms in NER areas exempted from Panchayati Raj**

Meghalaya and Mizoram, and large tracts of Tripura, come under the provisions of the Sixth Schedule to the Constitution. Nagaland and the hill areas of Manipur are governed by similar arrangements through State legislation. Such special arrangements are aimed at the protection of tribal areas and interests, by mandating district or regional local self-government institutions for them through Constitutional arrangements or State legislation. These institutions have been entrusted with the twin tasks of i) protecting tribal culture and customs and ii) undertaking development tasks. However, the Autonomous Developmental Councils which are supposed to establish responsive administrations and undertake development-planning functions with the maximum participation of the people have with time become mere power centres accomplishing virtually nothing.

On paper, the Autonomous Councils are vested with more powers than those given to the equivalent institution of the District Panchayats by Part IX of the Constitution.
However, there are significant variations in the powers given from one Autonomous Council to another depending on the nature of the Memorandum of Settlement and negotiations that preceded the assignment of the special status under the Sixth schedule. Thus, the Bodoland Territorial Council has much more powers than the NC Hills Autonomous District Council, even though both are in Assam. It is advisable to adopt an even approach to devolution of powers under the Sixth Schedule. As a guide, the matters enunciated in the Eleventh Schedule of the Constitution may be considered for entrenchment to the Autonomous District Councils.

While designing local planning approaches, care must be taken to harmonize the functions and rights of traditional tribal self-governing village institutions such as the Syiemships and Dorbars of the Khasi hills of Meghalaya, the Kuki-Impi of the Kukis in Manipur, the Clubs of the Manipur valley and peoples’ organizations of various tribes in Nagaland, with institutional mechanisms designed for modern development and service delivery.

The Autonomous Councils will have to be capacitated to be institutions that can bring economic transformation and not merely be legislative, regulatory and administrative agencies. However, in order to effectively assume a central role in local development, they will need to adopt a more participatory approach. Such a transition will need to emerge from within, as tribal communities themselves proceed to adapt their time-honoured traditional systems to the needs of inclusive participation and development. In this context, it may be desirable to consider the approach adopted in the Fifth Schedule areas, where democratic elections based on adult franchise and reservations to women in elected seats and leadership positions have been applied without reducing the importance of tribal customs and traditions.

Para 4 of the Sixth Schedule makes a provision for village councils to be established by District or Regional Councils mainly for the dispensation of justice in disputes that involve two or more tribal persons. However, recent initiatives in communitization at the village level, aimed at harmonizing the ‘village community with the traditional tribal body’ have shown significant success. The most celebrated example is Nagaland’s experience of communitization for effective public service delivery. Other examples include the NEC sponsored “NEern Community Resource Management Project” (NERCORMP) in Assam, Manipur and Meghalaya involving the International Fund for Agricultural Development (IFAD). Such initiatives are worthy of emulation to accelerate participative village development. Examples from the IFAD project have shown that unlike government
schemes, the IFAD funded projects have not been afflicted by the malaise of extortion primarily because they are community-driven and because people have shown a keen sense of ownership of the projects. This clearly indicates that many systems can co-exist if the delivery mechanisms work.

To deepen participation at the village level, there is a need to form village councils. Where such bodies have not been set up, Central and State Government should persuade the District or Regional Councils to set up village level bodies in exercise of their powers. Ideally, there should be a democratically chosen Village Development Committee or Board, consisting of about ten to twenty members formed at the habitation level through an open meeting of the community with adequate representation of women and youth. This provision may be made wherever the village population is more than an identified threshold (say 100) and taking into account the tribal composition of the area. This body should have the responsibility of participatory planning from the village and habitation level upwards and protection and management of natural resources. Such Village Development Committees/Boards could activate participative decentralized planning at the habitation, village or cluster level. They should also be responsible for implementing the National Rural Employment Guarantee Act linked to the overall village level plan. Defining a village in the NER could pose special problems given the wide dispersal of habitations and the tendency to practice shifting cultivation. The principle adopted in Section 4 of the Panchayats (Extension to Scheduled Areas) Act 1996, which defines each tribal habitation as a Panchayat could be adopted for the constitution of Village Development Boards/Committees in the NER.

Bodies for participative planning in urban areas will need to follow the provisions of Part IX-A if not exempt from its application.

Inclusive committees may be set up at the district level, analogous to the District Planning Committee, to consolidate the District Plan. Unlike in the areas under the purview of Parts IX and IX-A of the Constitution, there is no compulsion to appoint the State Finance Commission (SFC) to enable the assignment and devolution of taxes, non-tax revenues and grants to village, district and regional Councils the State Governments. This is a lacuna and, therefore, the States should be required to constitute such bodies. The ToR of these SFC-like bodies may be patterned on the provisions of Article 243-I of the Constitution. The Union Government will have to take the necessary action to persuade States to make such arrangements.
Despite the fact that the Sixth Schedule has declared that certain functions should be entirely transferred to District and Regional Councils, some departments have not or have only been partially transferred. Some States have persisted with retaining their parallel development and administrative machinery in Council areas particularly in vital areas such as rural development, education and health. Clarity in the assignments would avoid waste of resources and improve efficiency in service delivery. It is also important to wind up the parallel institutions or merge them with the Councils, in respect of assigned departments.

The success of the Autonomous District Councils fulfilling their developmental role will depend crucially on their capacity to design and implement plans. Almost all Councils do not have access to planning professionals. There is also no specialized set-up within the Councils for planning. This results in short-term thinking on development, leading to the Ad-hoc conception of development projects without proper technical and financial consideration. Therefore, capacity development to gain expertise in planning, monitoring and evaluation is important at the Council’s level.

The Governors of the States concerned have a special role in the context of District and Regional Councils. Special provisions have been inserted into the Sixth Schedule to give discretion to the Governor on some important matters. Paragraphs 20BA and 20BB confer discretion on the Governors of Tripura, Mizoram and Assam. Under Para 14 of the Sixth Schedule, a provision has been made for the Governor of the State concerned to appoint a commission to inquire into and report from time to time on the administration of autonomous districts and regions and to examine and report on any matter specified by him. The report of every such Commission with the recommendations of the Governor is to be laid before the Legislature of the State by the Minister concerned together with an explanatory memorandum regarding the action proposed to be taken thereon by the Government of the State. Considering the fast-changing scenario in the Scheduled areas, the need to ensure true autonomy in the letter and spirit of the Sixth Schedule and to ensure that development initiatives proceed smoothly, it is timely that this provision of the Constitution be invoked. All the Governors concerned could appoint a common high level commission, to examine and report on the Autonomous Councils in these States in the light of changes that have taken place, the challenges of the future and the demands of local development.
Grassroots Planning and Service Delivery in NER

Improvement of service delivery by local self-governments in the NER would vitally depend upon the quality of planning undertaken by these bodies. Implementation of the recommendations on grassroots planning by the Expert Group would help in the preparation and implementation of people-based district plans. Such guidelines could also need to cover the non Panchayati Raj areas.

A series of sequential steps for building the district plan from the village level upwards needs to be carried out by charting a district vision setting out the goals and outcomes for the next 10-15 years through participative processes starting from the grassroots level upwards. Each planning unit starting from Gram Panchayat and municipalities in areas covered by Parts IX and IX-A of the Constitution (and Village Development Committees in areas covered by Schedule VI of the Constitution and similar other areas discussed above) should articulate the vision and set out the goals and outcomes in terms of human development indicators, infrastructure development and development in the productive sectors of the economy based on the physical and human resources. This vision for human development would ideally cover health, education, women and child welfare, social justice and availability of minimum services.

The vision for infrastructure should be in tune with the targets under the Bharat Nirman Program The vision for the productive sectors should take account of the natural and human resources such as agricultural production, and improvement, irrigation and water management and security. The vision built from the lowest level should be coordinated and compiled at block and district levels to draw up the district vision. Each State Government in the region should coordinate and compile the visions prepared by the districts and build a vision based thereon for the State.

In states like Meghalaya which were granted Sixth Schedule status when they were part of the composite state of Assam, mainly as a safeguard for the customary laws and practices of the tribal minorities, there may be merit in examining whether the ADCs should continue in their present form, now that the State is ruled by the tribal majority. ADCs in Meghalaya have virtually no role as development agencies. They continue to function as regulatory bodies collecting royalty and taxes from forest products, minerals and markets exercise minimal control over water bodies and regulate trade by non-tribals. The mere continuance of an institution which is virtually a stand-alone body having no
linkages either with the State Government or with village-based institutions definitely requires some new thinking. ADCs would either need to be empowered with the requisite delivery mechanisms and adequate funds both of which they are lacking in, along the models of a Zila Parishad

Mainstreaming gender in governance: Need for gender budgeting and gender auditing

Inclusive governance entails the full participation of women at all levels of decision making. Empowerment of women has been the agenda of governments right from the Tenth Plan. To actively engage in governance women have to be empowered politically, educationally, economically and legally. Burning issues relating to women and children in the NER are the persistently high infant, child and maternal mortality ratios. Other important concerns are the feminization of poverty and the exploitation of women in low paid, hazardous and insecure jobs in the unorganized sector. These issues require a special sensitivity which cut across all projects/programmes and schemes. Lack of awareness about reproductive rights and health enslave women to domestic chores and are a factor for replicating poverty and nullifying all development initiatives. The propensity to see women only as members of self help groups (SHGs) as vehicles for savings and credit. The self help concept should cover mass-based organizations of women who are legitimately concerned about the lack of food, housing, potable water and employment.

Women bear multiple burdens in the process of displacement as a result of large development projects such as mega dams, uranium, rat hole and open cast mining. Women bear greater responsibility to rehabilitate all the members of their household in the process of involuntary resettlement. Although environmental and social impacts of projects are a pre-requisite before project clearance, the gender fall-out is usually not taken care of. It is proposed that gender outcomes be clearly enunciated at the policy formulation stage to mitigate the negative impacts. Appropriate gender tools should be developed for evaluating those outcomes.

Each program across all Ministries and Departments should clearly identify and disaggregate the group of intended stakeholders in terms of gender. Gender budgeting is integral to ensuring gender justice. Gender budgeting involves the translation of stated gender commitments into budgetary allocations. It dissects the government budget to establish its gender-differential impacts.
There can be no real development as long as half of the population is left out of the planning, implementation and review processes. Gender-blind or gender neutral policies cannot result in specific gender outcomes. This can be addressed through gender budgeting which seeks to give a gender perspective to government budgets and assesses how it addresses the needs of women in the areas of health, education, basic services like water and sanitation, employment etc. Gender budgeting is not about creating a separate budget for women and men but to seek affirmative action to address practical and strategic needs of women. Gender responsive budgeting initiatives provide a way of assessing the impact of government revenue and expenditure on women.

Gender auditing of schemes and programs implementations and impact analysis inform policy makers about the need for course correction and a more gender nuanced planning. Also the outcomes from gender auditing will push women’s advocacy groups to ask for affirmative and corrective action by government. The ultimate aim is to give women a greater say at different levels and stages of developmental planning, policy and programs formulation.

Gender sensitive governance is the key to inclusive growth. This would also help attain the Millennium Development Goals by 2020.

**Responsive bureaucracy:**

Governance involves a set of actors pursuing similar goals. In this respect the bureaucracy plays a critical role in policy formulation and implementation. Unfortunately, problems of governance in the NER are exacerbated by a bureaucracy that is not mentally attuned to or inclined to deliver. Glaring administrative lacunae in closing the gaps between policy formulation and execution have left several schemes unfinished or badly executed. There is an inherent resistance in the bureaucracy to involve stakeholders and peoples’ institutions in formulation of schemes and their shared implementation. Further, the proclivity of bureaucrats posted to the NER to consider their postings as some sort of ‘punishment’ and to take the first flight out the region for the flimsiest of reasons gives the impression that they are least interested in their jobs but are more keen on a posting to the national capital.

The Administrative Reforms Commission headed by former Chief Minister of Karnataka, Shri Verappa Moily has made some path-breaking recommendations to stem the attrition rate of bureaucrats posted to the North East. Recommendations seeking the
exemption of income tax for non-tribal bureaucrats posted to the region as an incentive to hold them to their jobs and for tribal officers to agree to a posting outside their states for better exposure, with the rider that they continue to be exempted from income tax, might bring some major change of attitude among the administrators.

**Convergence of centrally funded institutions in the NER:**

NE India has a plethora of centrally funded institutions such as the Indian Council for Agriculture Research (ICAR), the North East Space Application Centre (NESAC), Barapani, Central Agricultural University, Imphal, Geological Survey of India, Archeological Survey of India, Botanical Survey of India, amongst others. Each of these institutions have functioned independently with no significant contributions to the knowledge pool of the states. This has happened primarily because of lack of convergence and the absence of an institution for bringing about that convergence.

It is important to identify such an institution so that the NE states can tap into the rich resources and knowledge bank that each of these centrally funded institutions has created or is in the process of creating. This would also bring in a measure of accountability in these institutions which hitherto have been functioning as independent entities.

(The views in this paper besides being that of the author who was a key contributor of the North East Vision 2020 document are also culled from parts Vision 2020 wherever relevant).

**(2) Education**

- All children to be enrolled in schools by 2020. Strategies for retention upto completion of high school need to be imaginatively thought out in line with different cultural moorings.

  Flexibility of curriculum to allow skill development in areas of strength of each states which are likely to generate employment.

- Man power planning in line with the resource base of the region

  Education not really free and poverty is a great inhibitor

  Need to delink teachers’ enrolment from political influence

- Maths and Science Teaching : (Page 92) Presupposes the absence of such
faculty with region – not based do any statistics. Need to develop more innovative teaching methods. Strengthen laboratories at high school levels

- Drop out rates: 60-65 % fail their SSLC. Where can they be accommodated? Alternative systems of education. The term drop-out is pejorative and does not sufficiently define those who cannot make it through one conventional system of education. The problem here is not of those who cannot cope with a particular curriculum bit with the educational system that does not provide sufficient scope for alternative courses of studies.

- Teaching learning materials to be provided and other joyful learning conditions in school to be ensured. The child tracking system needs to be intensified.

- SSA funding patterns of 75:25 between Centre and States should be maintained until the SSA Mission period. Social audit and monitoring of SSA and primary schools by Village Education Committee would ensure better attendance of both teachers and students and bring quality education.

- Link education to practical economic needs by strengthening Industrial Training Institutes and Krishi Vigyan Kendras to accommodate women and youth. Vocational education should address local demands and be linked to the local industry, business and trade.

- Secondary Education: Success of the SSA would require a major expansion of secondary education. This would require a new mission for Secondary Education along the lines of SSA.

Public-private partnership in expansion of secondary education within the region is a strong possibility considering the strong presence of the private sector and faith-based organizations in secondary education

Incentivise the setting up of secondary schools by NGOs, Trusts, and registered societies in the private sector. Public sector can focus on more difficult areas and unreached areas.

Curriculum reforms, review of examination systems and overhaul of State Boards of Secondary Education to be undertaken on urgent basis so that education is in tune with rapidly changing socio-economic scenario.
NER to emphasise investment in teacher education, pre-service and in-service training and greater use of ICT as well as facilitate setting up of well-stocked libraries for reference work.

Secondary schools will impart vocational training in non-engineering and tertiary sector activities rather than conventional subjects relating to the manufacturing sector. Music an inherent strength of the NE should become a paying profession. NER to plug in to the national and international music network to make it viable for youth to take it up professionally. Need to set up centres of excellence for music in NER.

**University Education:**

University education needs revamping to cater to the new economic imperatives. The Knowledge Commission should address deep-seated problems of outdated syllabi, poor funding, inadequate or poor facilities, recruitment procedures and policies to reduce disparities in academic standards of various Universities.

By 2020 NER should have at least two colleges and one university in educationally backward districts. Existing institutions need to be strengthened and monitored. Distance and open education to be expanded to accommodate those with special needs.

Select universities in the region to be improved and upgraded to meet international standards and become globally competitive. Expert faculty, funds and infrastructure of international standards to be provided to such institutions and supported by appropriate policy changes.

Higher education would benefit from private sector investments. This would also provide a competitive edge between institutions. A clear policy for inviting private sector investment would be needed.

While accreditation is necessary to raise the bar in higher ands technical education the process would benefit from greater transparency and be more effective.

Opening up of more institutions like IITs and IIMs need to be considered so that the NER becomes an educational destination of choice and offsets the stereotype of being a backward region with security concerns.

Training in Soft skills for entry into the IT and ITES sectors to be a priority to leverage on the English speaking skills of a large number of youth from the region.
HEALTH CARE

In a study conducted by the Martin Luther Christian University, Shillong in a village of 800 population and 85 households, it was that nearly 85% of the villagers had no access to formal government health care systems. They depended on traditional health practitioners. In NE India there is a crisis in public health, ranging from management and human resources. Apart from financial crunch there is also hardware and infrastructure problems which include lack of adequate training and medical education facilities.

Public health care means that primary responsibility for health care rests with the State. Private medical interventions can only supplement the State’s efforts. The approach to health care must be need-based and not population based.

CHCs, village dispensaries and PHCs must be improved and strengthened by ensuring that the NRHM function as it is envisaged – transparently and with accountability. State Governments would need to ensure, through a system of regular review, that all PHCs have adequate medical supplies (including life-saving drugs), are staffed regularly and have infrastructure support such as dwelling units, infrastructure and communications for medical personnel and their families as well as for ANMs/ANWs. Many government doctors decline to live in rural areas because of a lack of such facilities.

It is becoming clear that merely having Health Sub Centres and PHCs will not solve the health care crisis. To ensure delivery some governments have begun engaging NGOs and outsourcing health care to them. This is still at the trial period and therefore too early to comment.

To deal with larger numbers of patients at the district level, district hospitals may be funded and upgraded with top-of-the line equipment and manned by specialists in addition to general practitioners. The state hospitals would need to be strengthened with funding and equipment so that epidemics and new diseases which have disastrous implications – pandemics such as bird flu and meningococcal meningitis, (the latter has claimed hundreds of lives in Meghalaya) can be contained quickly and effectively.

In an August 2005, the Ministry for Health and Family Welfare listed 15 major problems before the health sector in the Northeastern states, saying they “lack in adequate financial resources to invest in the public health sector, which is suffering from many infirmities”. The list included poor quality of medical services, poor and ill-maintained
infrastructure, lack of residential units for doctors and paramedics as well as lack of specialists and lack of medicines, non-existent continuing medical education and lack of monitoring and evaluation.

Some of the NEern states such as Assam (409) and Meghalaya (400+) have among the highest maternal mortality rates in the country, after Jharkhand, per 10,000 live births.

In addition, while the other states of the region reported an Infant Mortality Rate largely at par with the national average of 67.6 per 1,000 live births, the small state of Meghalaya reported the highest national rate of infant fatalities at 89.0. Indeed, while Assam, Manipur, Nagaland, Mizoram and Sikkim reported lower than the national average of mortality for children under five years (94.9 per 1,000 live births), Meghalaya at a whopping 122.0 and Arunachal Pradesh at 98.1 reflected the crisis in access to health care for small children in these states.

These challenges have to be met by strengthening institutional delivery mechanisms and quality of service as well as infrastructure. Capacity building through the creation of a Regional Resource Centre which will “identify core areas for short, medium and long-term, plan for providing the missing technical and managerial capacity, help the states offer training and periodic updating of knowledge and skill, sources of funding” as well as develop “Centres of Excellence in the fields of health-care, medical and paramedical education.”

The NHRM envisages a delivery system through trained dhais, ASHAs, ANMs, to encourage safe home deliveries as well as institutional deliveries may be in place through a combination of twin strategies: dramatically incremental budgetary provisions reflected in government investments in health care across all national programmes as well as partnerships with private health care organizations and NGOs which specialize in health outreach and implementation issues. Funding could come from the Centre and from Plan funds.

Communitization of health care as carried out in Nagaland by networks of trained rural health personnel including ASHAs, is the only way to bring health care to more people. Existing ANM centres would need strengthening and improvement while setting up at least one nursing school and paramedical institute in each state.
These needs as well as a growing older population requiring treatment for geriatric problems need specialized care. Such challenges could be met through a combination of the NRHM programs, especially national immunization programs and projects. Improvement of institutional delivery, the presence of village workers (one ASHA per village) and ANWs/ANMs in rural areas as well as larger number of doctors and trained medical workers.

Many diseases in the NER are closely linked to poor sanitation and bad quality of drinking water. The section on Infrastructure deals with this. What requires renewed emphasis is that all State Governments must increase budgetary allocations and spending on improved sanitation. Bharat Nirman and the Total Sanitation Campaign of the Central Government which provides subsidies for safe toilets, which need to be built locally and designed for local needs. Current sanitation coverage is between eight to 11 per cent of all households, a condition that is readymade for consistent outbreaks of dysentery and diarrhea which remain among the biggest killers of young children.

Funding should enable the construction of new CHCs, PHCs and housing for doctors and medical/paramedical staff wherever CHCs and PHCs are located in addition to upgrading existing housing facilities and ensuring access to connectivity and good education facilities. Financial incentives such as “hardship packages” should be built into NRHM programs and state budgets through Central Plan funding to make working in rural medicare more attractive. This and other initiatives, including rotation of tenure of doctors in rural area and trained teams of rural paramedics, would require sustained budgetary allocations in State Plans, supplemented by Central funding.

The National Rural Health Mission should strive to reach all vulnerable groups in plains and hill areas through special initiatives such as on-land mobile clinics as well as boat clinics (which currently are working effectively in five districts under a PPP with an NGO in Assam). These could function through the State Governments and with strong partnerships with district administration and governing institutions such as panchayats, district councils and new groups patterned on the NERCORMP.

The existing five medical colleges (three in Assam, one each in Manipur and Sikkim as well as the North East Indira Gandhi Regional Institute of Medical Sciences in Shillong) are inadequate to meet the demands for trained health personnel. Some of these needs can be met through telemedicine and tele-education. In addition to the new colleges
proposed in Assam, Arunachal Pradesh, Nagaland, Mizoram and Tripura each to have a modern medical college.

- Coverage of health care (insurance) for all through group and individual insurance could be ensured through various private and public sector schemes.
- Traditional health knowledge systems are currently shut out of the health structure although they deliver basic services where the government has no presence or reach. These services to be officially recognized and strengthened through an independent documentation centre which will have knowledge practitioners and the State Government as partners. Such a system would be included in the AYUSH system of the Central Government.

Each state could have at least one super speciality institute, especially in cardiac care, at the state capital or, to serve the largest population, be located near a major transport hub. Cancer institutes and neurological centres would need to be set up. These could give top of the line treatment to patients on commercial lines while charging modest fees to the poor.

In addition, each state could have trauma centres for victims of domestic violence and other forms of physical abuse, accidents and disaster management (given the fact that the region is a high-risk seismic zone) as well as drug and substance abuse centres. These could be major revenue earners with a part of their top-of-the-line capacity set aside for high-income patients from across state and international borders and would plug the funds flowing out of the NE from where patients with serious illnesses such as cancer and cardiac-related problems, go to other parts of India for specialized treatment.

A healthier lifestyle, based on an improved awareness of diet and exercise, would be the norm. Such a lifestyle would be supplemented by extensive use of vegetables and medicinal plants native to the region which are high in nutrition.

In addition, where government facilities do not exist and where there is an infrastructure bottleneck/gap, local medical organizations with a good track record could, under a PPP mode, meet such deficits. The pattern could be similar to that of the NRHM, with direct Central funding to the state of all software and most hardware components to the partner organization which is tasked with delivery within a specific time frame and must meet rigorous reporting requirements.

If health care for all is to become a reality, the allocations to ensure must go up to
10-12 per cent of the annual budgets for the next 10 years with regular rigorous reviews of delivery systems and targets set.

An institutionalized Review, Monitoring and Evaluation Mechanism to be set up for each project above Rs. Five crores on the pattern outlined in the chapter on governance.

While improved infrastructure facilities at all levels (including village dispensaries, referral hospitals and district hospitals) must be assured through the above process, one area that requires greater attention are the problems of those who are physically and mentally or otherwise challenged. Public and private buildings would need redesigning as also transport facilities to give them access while state and private hospitals and clinics would have specialists and wards for their treatment and care.

In recent times the NE has been affected by avian flu and a difficult strain of meningococcal meningitis which claimed several lives but which could not be effectively controlled by the State Health Department. Disaster preparedness plans and capacity building is required among local communities, not just specialists. Each district should have its own disaster preparedness plan to meet these as well as other natural disasters such as floods and earthquakes and primary emergency centres for them.

The scourge of HIV/AIDS is here to stay. Society could, through a process of awareness programmes and education, embrace HIV/AIDS victims instead of shunning them. Centres for HIV/AIDS treatment as well as counseling for HIV/AIDS patients and relatives/friends to be available at Government district and state hospitals.

The promotion of safe sex, especially among young adults, must be promoted through strong sustained media campaigns. There would need to be extensive use of retro-viro drugs, which are accessible cheaply and easily to vulnerable groups to reduce the impact of this challenge.

In a region plagued by conflicts, drug abuse and HIV & AIDS there are as yet no trauma treatment centres or post- trauma counseling centres to rehabilitate victims of conflict, rape and domestic violence and HIV&AIDS. Such centres must come up at all district headquarters of the NE if need be through active intervention of the Centre.
Force-8
Paper Presented by Rekha Saxena
(1) Methods of Interaction in the Indian Federal System

Interaction in federal systems encompasses centre-state relations, inter-provincial relations, provincial-local relations, local-local relations, as well as relations between the government on the one hand and the civil society and market, on the other. These networks of relations can be graphically depicted at two levels: (1) vertical — top-down as in federal constitutions without institutions of direct democracy (initiative and referendum) or else bottom-up as in the Gandhi-JP political thought on radical decentralization (Singh and Saxena 2003) that actually goes out of conventional federal theory; and (2) horizontal (at the same level of government) i.e. among the provincial governments themselves or among local governments themselves, where the higher level of government is either absent or at best an observer rather than a direct participant. Additionally, in the era of neo-liberal capitalist reforms, these interactions have also come to subsume state-civil society-market partnership and relations. (See diagram 1)

**DIAGRAM - 1**

Union Government \[\longleftrightarrow\] National Civil Society \[\longleftrightarrow\] National Market

and its agencies

State Governments \[\longleftrightarrow\] Regional Civil Society \[\longleftrightarrow\] Regional Market

\[(n = a \text{ to } z)\]

Local Self Governments \[\longleftrightarrow\] Local Civil Society \[\longleftrightarrow\] Local Market

\[(n = a \text{ to } z)\]
Disputes in inter governmental relations may crop up on matters of common concerns such as 1.) constitutional jurisdictions, 2.) revenue sharing or vertical fiscal imbalances, 3.) horizontal fiscal imbalances, 4.) exercise of federal spending power, 5.) regional development policies of federal government and discrimination or disparities over who benefits or loses more, 6.) control over natural resources including mineral and water resources, 7.) cultural, linguistic, religious differences and public policies in the fields of education, culture, media, arts and letters; 8) conflicting policies and ideologies of political parties, 9.) lack of intergovernmental consultation and unilateral or arbitrary action by either order of government; and 10) clash of personalities and ego trips. This enumeration is only illustrative; there may be other causes of disputes (Meekison n.d.)² Procedures, ad hoc forums, and institutions are needed to settle them. Some of these may be mentioned in the constitution itself, some may develop informally. Constitutional forums may be more rigid where informal ones have the advantage of flexibility. The former are less likely to be manipulated by powerful partners, the latter may be open to be taken less seriously and thus are vulnerable to exploitation.

In terms of comparative federal theory, at least three broad models of IGIs may be delineated: 1) predominant pattern of interactions in parliamentary federal systems, e.g. Canada, Australia, India; 2) presidential federal systems, e.g. U.S.A, Switzerland, Russia; 3) Germany and South Africa. Germany is a parliamentary federation with a unique federal second chamber in the Bundesraat. South Africa is also basically parliamentary system but the President there is elected by the National Assembly. However, departing from the Westminster tradition, the President and his Cabinet Ministers are not required to be members of the Parliament. And, the National Council of Provinces is composed of provincial delegates who can be the premier of the province or his or her nominee. This is comparable to the German Bundesraat.

The typical forums of IGIs are the following: firstly, there is “executive federalism” (Smiley 1980)³ so-called because in this category executive heads or their political or bureaucratic representatives from the two orders of government meet in a conference to negotiate, make, and harmonize cooperative policies. These forums could be either formal or informal, e.g. First Ministers’ Conferences (FMCs) in Canada, National Development Council (NDC), Inter-State Council (ISC), ministerial or bureaucratic conferences in Indiachaired by the Prime Minister, Union Minister or Secretary of the concerned policy area. Although other mechanisms could also be used, executive federalism
is the most common method of IGI s in parliamentary federal systems. This is because federal second chambers are generally weaker than the popular parliamentary chambers on account of the fact that government of the day is collectively responsible on the confidence of the latter. Secondly, there is “legislative federalism”, so-called because in this model the federal second chamber becomes an important instrument of articulating state rights or interests. This is typical of presidential federal systems built on the principles of separation of powers combined with federal division of powers. These features entail governments with fixed tenures rather than being dependent for survival on parliamentary majorities, weak/ indiscipline parties, and powerful federal second chambers. Not that presidential-federal systems do not use Governors’ or ministers’ or secretaries’ or Mayors’ conferences (quite frequent in USA), but second chamber also rivals them as a forum of states’ rights and interests, which is not so in parliamentary-federal systems.

Thirdly, there is a mixed category of the first two types which display executive and legislative federalism in more or less equal measure as in Germany and South Africa, where the direct representation of provincial heads of governments in the federal second chamber enable the provincial governments to effectively influence the federal legislative process.

In any federal political system, the processes and structures of intergovernmental interactions may be shaped by a number of major factors. Some of these variables are related to the nature of the constitution and the form of the government. Some other variables pertain to the nature of the party system, interest group system, and the media. Another set of variables concern the size of the federation and the distance of the peripheral states from the center including the international borders and the relationship with the neighbours. Yet another set of variables refer to the diversity of the people and internal boundaries of the federating units. A fifth set of factors draw attention to differentials in economic resourcefulness of the federating units that is also associated with the issue of the capability of the provincial states and local self-governing units. Finally, as all federations are in reality dynamic and evolving systems, the factor of changing scenarios must also be taken into account as an independent variable impacting on intergovernmental interactions. These dynamic factors may be brought into operation due to internal as well as external sources of change and the expanding range of political, social and economic actors involved in the process of interaction. In the discussion that follows, I focus primarily on the Indian federal experience.
Nature of the Constitution and the form of Government

In a Westminster-inspired parliamentary federal system like India, the following structures of government are particularly relevant in a study of intergovernmental interactions: 1.) “executive federalism”, i.e. governmental forum of executive heads of different levels of governments; 2.) fiscal federalism, i.e. the mechanism for distribution of revenue resources between the union and state governments, not entirely as a value-neutral distributive system but imbued with a national concern for sharing of common resources and equalization and removal of regional economic disparities; 3.) “legislative federalism”, i.e. the use of the federal second chamber as a forum representing the states; 4.) All-India Services that are a unique feature of the Indian federation that considerably facilitate harmonious Union-State relations; 5.) the union agencies of federal-provincial implication that smoothen Union-State relations, 6.) independent regulatory authorities in sectors of economy, and 7.) tribunals and constitutional courts as forums for addressing the issues that remain unresolved by the political or semi-political processes.

Executive Federalism

Article 263 of the Constitution provides for the establishment of an Inter-State Council to address issues of common concern or disputes between or among states and the centre. It corresponds to Article 135 of the Government of India Act, 1935, relating to the setting up of an Inter-Provincial Council. It may be taken as an indicator of the centralized nature of the Indian federal system during the British rule, as also in the Congress Raj until the 1980s that the centre managed to do without setting up such a constitutional intergovernmental council. The British hegemony and Congress dominance are mainly accountable for this fact. The ISC first came to be constituted in 1990. This coincided with the transformation of the one-party dominance under the Indian National Congress into a multi-party system in the Lok Sabha election in 1989 and the onset of coalition/minority governments by the National Front led by Janata Dal. The Council consists of the executive heads of the government in the centre, state, and union territories plus six Central Ministers named by the Prime Minister. It is chaired by the Prime Minister and takes decision by consensus, not majority. The decision of the chairman as to consensus is final. Another important mechanism is the NDC set up by a cabinet resolution of the Nehru government in 1952 as a matter of convention. The latter is not entrenched in the Constitution in the sense of being written into the text itself by an amendment.
During the phase of Congress dominance, NDC was eclipsed by Congress party’s Parliamentary Board overseeing the working of Congress governments at centre and in states. Prime Minister Nehru consistently wrote forth nightly letters to the chief ministers with the objective of explaining central policies to the latter and persuading them or eliciting their support on union-state relations and policies of cooperative federalism. Even during a multi-party system and coalition/minority governments since 1989, NDC and ISC have not really come into their own. For parties in power in states, including major regional parties are partners in federal coalition governments. With direct representation in the union cabinet, regional parties holding the reigns of power in states with their top leaders being Chief Ministers do not have much incentive to empower the intergovernmental forums. They remote-control their representatives in the union cabinet instead to make their points in exclusively federal or concurrent jurisdictions. This weakens the authority of the Prime Minister and the collective responsibility of the union cabinet.

The delayed arrival on the scene of an Inter-State Council under the Constitution can at least partly be explained by the preference of the Congress governments at the centre in the past to deal with intergovernmental matters at a forum less comprehensive than the Inter-State Council or ad hoc bodies outside the framework of the constitutional provision. For example, the Government of India set up under Article 263 of the Constitution the Central Council of Health in 1952, the Central Council for Local Government and Urban Development in 1954, and the Council for Sales Tax and State Excise Duties in 1968. All these bodies are partially intergovernmental in scope. Subsequently, the Government of India set up the National Development Council for intergovernmental consultation and decision-making in the area of planned economic development in 1952 with its secretariat in the Planning Commission in New Delhi. Both the NDC representing the executive heads of the two levels of government and the Planning Commission consisting of experts and politicians named unilaterally by the union government were set up by cabinet resolutions outside Article 263 of the Constitution. Intergovernmental matters are also regularly sorted out at ad hoc conferences of civil servants and ministers of concerned departments in New Delhi and state capitals. For example, Union Ministry of Health and Family Welfare (HFW) convene two annual meetings of the Secretaries of Union and State Ministries of HFW for formulation and implementation of intergovernmental policies and schemes.

To improve standards of professional and tertiary education, union statutes have set up All-India bodies under the Advocates Act 1961; the University Grants Commission
Act, 1956; the University Medical Council of India Act, 1956; and All-India Council for Technical Education in 1987. Though the states are represented in these bodies but they are not very happy that their control over education has been made subservient to these high-powered bodies.⁷

The Union Human Resources Development Minister Murali Manohar Joshi (BJP-led NDA) convened a conference of Education Ministers and Secretaries of States in New Delhi to discuss a new National Education Policy emphasizing Hindutva values. Seventeen out of twenty-five state education ministers expressed objection backed by walkout.⁸ On its return to power in 1999, National Democratic Alliance (NDA), with cosmetic revisions by National Council for Educational Research and Training (NCERT) subsequently introduced the New National Curriculum Framework for Secondary Education (NCFSE). The move was challenged by a Public Interest Litigation (PIL) in the Supreme Court on the plea that the school syllabi were changed without consulting the Central Advisory Board of Education (CABE), the apex intergovernmental body on education policy, and that the Union Government wanted to ‘saffronize’ education system in contravention of the national ethos and the secular Constitution. The court first put a blanket ban on the introduction of the new policy, and subsequently cleared the non-controversial subjects. The text books on Hindi, History, Social Sciences, and Religion were held back, pending the final disposal of the case.⁹ The court finally cleared the new policy package, holding that emphasis on moral and religious values in education in a universal way is not tantamount to partisan promotion of Hindutva and hence not violative of the secular value of the Constitution.

There are other forums like the five Zonal Councils which were set up under the States Reorganization Act 1956 with the purpose to promote cooperation in resolving regional disputes. These five zones were-central, northern, southern, western, and eastern each having a zonal council and one more North-Eastern Council was set up under the North Eastern Council Act, 1971. The Zonal Councils have the Union Home Minister as Chairman, however, in case of North-Eastern Council, the Governor of Assam is the Chairman. These zonal councils have been a defunct body except for the North-Eastern Council which has worked with some degree of regularity and usefulness at the regional level. Additionally, on complex national issues some Prime Ministers, notably Indira Gandhi and P.V. Narasimha Rao tended to convene the National Integration Council (NIC) founded by Prime Minister Nehru in 1961 in the wake of the Chinese aggression. NIC is intergovernmental in scope as well as representative of various walks of civic life and business. Recourse is often also made of all-party conferences on controversial issues of wide ramifications (Saxena 2006)¹⁰
Fiscal Federalism

Under the constitutional provisions and the process of planning introduced since the early 1950s, fiscal federalism in India has been a highly centralized affair. Fiscal transfers from the centre to the states are made by the centre on the recommendations of the Finance Commission appointed every five years by the President of India (under Article 280 of the Constitution) and of the Planning Commission (a non-statutory central agency set up by cabinet resolution since 1950). By and large, the central plan as well as non-plan transfers are made by the Finance Commission, whereas other transfers, often called discretionary, are made by the Planning Commission. The discretionary transfers include grants for state plans, allocation of finances from public financial institutions set up under the Companies Act, 1956, like Life Insurance Corporation, General Insurance Corporation, and Unit Trust of India; loans and grants, and disaster relief; and grants from the Central Road Fund for maintenance of national highways.

Finance Commissions have enjoyed a considerable degree of legitimacy in federal relations as a constitutional body of mixed membership consisting of retired politicians, experts, and bureaucrats, more so than the Planning Commission, mainly a body of bureaucrats and politicians. The role of the Planning Commission has become partly diluted under economic liberalization accelerated since 1991, but it has managed to survive these reforms as a government think tank and an agency coordinating the relationship between the governments and the private sector – domestic and global. With the decline in public investment with economic liberalization at union and state levels and gradual deregulation and privatization, there is less for the Planning Commission to plan, one-third of what it used to do in the heyday of planning, according to an official of the Planning Commission.11 During the heyday of planning, [the government] attempted to implement the Plan objectives, but since 1991 the budget has been the main forum for articulating the strategy of [economic] transition' (Rao 2002).12 Yet both the Union and State Governments continue to clear a lot of economic matters pertaining to annual plans in bilateral meetings in the Planning Commission rather than in multilateral intergovernmental forums.

With the paradigm shift to neo-liberal economic policy regime, the Planning Commission is constantly called upon to address certain new problems that were not so significant in the Nehru and Indira Gandhi eras for example the new concerns relate to indicative planning for the private sector "which accounts for the bulk of the economy
and where efficiency is vital.” As the Tenth Five Year Plan Document perceives the main problem here is the overall policy framework and comprehensive review of “policies in different areas to identify constraints to efficiency and optimal utilization of resources.” In addition, a new task that the Planning Commission and the government have to address is what has come to be known as governance as distinguished from government. The Tenth Plan laments: “Weak governance, manifesting itself in poor service delivery, excessive regulation, and uncoordinated and wasteful public expenditure, is seen as one of the key factors impinging on growth and development.”

Growing polarization in the party system has not left the process of planning unaffected. The ideological differences on economic policies within the bourgeois parties, Communist parties and regional parties in governments in federal India were more successfully resolved than it appears are the fundamental differences on economic policies with cultural and communal implications. While approving the XI Plan in the NDC meeting on December 19, 2007, the BJP Chief Ministers sharply protested to what they called “communal budgeting” by setting aside funds for minorities with obvious accent on Muslim minorities for the first time in the union budget.

Despite its wider legitimacy, even the Finance Commission Reports appear to reflect changes in electoral equations and party system transformations. For example, beginning with the Fourth Finance Commission Report (1965) there is a trend of increase in net proceeds of non-corporate income tax distributed to the states – form 60 to 75 per cent (Rao and Chelliah 1996). This happened at a time too close to the 1967 general elections in which the hitherto dominant Congress party lost in half of the then 16 states. Moreover, share in the net yield from union excise duties to percentage of states’ share jumped from 20 to 45 in the Seventh Finance Commission Report (1978) (Rao and Chelliah ibid). This happened after the Congress party suffered its first electoral defeat in 1977 Lok Sabha election as well as in a number of states. Thus the pattern of devolution of the above two major taxes – the only ones shared between the centre and states before the Eightieth Amendment to the Constitution in the year 2000 – subtly reflected the new political realities of transformed party systems in states and the union with federal coalition governments with strong regional representation.

After the Constitution (Eightieth) Amendment (2000) the Centre’s entire tax revenue receipt became shareable with the state. The Eleventh Finance Commission (2000-5) fixed the aggregate share of states in the Centre’s divisible pool at 29.5 per cent. It is notable, however, that in real terms even though the States’ and Union Territories’
The transfer of fiscal resources by the centre to the states has been heavily weighted in favour of more populous and economically backward states. Beginning with the Tenth Finance Commission (1995-2000) the formula for transfer has been revised to a limited extent to reward efficiency and performance by the state. But more developed states clamour for more and a further revision. Economic liberalization and federalization have been reducing the capacity of the centre to seek to curb regional economic disparities, which may be aggravated further in the years ahead. But substantial inter-State labour migration and shift of capital to backward regions to reduce labour costs is possible, especially if the state government concerned is at least able to ensure law and order and reign in the trade union assertiveness.

The Twelfth Finance Commission Report, the latest in operation presently, recommended the following criteria and weights for federal fiscal transfers mandatory under the Constitution: population 25 per cent, income distance or disparity with the objective of equalization among states 50 per cent, area 10 per cent, and tax mobilization at the state level 7.5 per cent, fiscal discipline or better management of funds 7.5 per cent. Thus even though the weight age of better economic performance now add up to 25 per cent, population and backwardness still together account for the aggregate weight age of 75 per cent. Although more developed states resent this ratio, it must be borne in mind that it is consistent with federal theory and practice of equalization of inter-State disparities in wealth and standards of human development and services.

The Thirteenth Finance Commission that was just been formed is likely to bring about a fundamental change in the pattern of federal fiscal transfers to the states. For its terms of reference, perhaps for the first time has asked the Finance Commission explicitly to take into account the gross budgetary support to the central and state plans. Earlier, support to plans was a discretionary rather than constitutionally mandated grant to the states on the advice of the extra constitutional Planning Commission. The implication of this change is that the amount of fiscal transfers through the channels of constitutional entrenched Finance Commission would be reduced into a minor flow and the discretionary grants from the center would become a wider channel. States have always preferred transfers through the autonomous Finance Commission dispensation rather than through the Planning Commission which is a creation of the union executive (Reddy 2007).
• **Legislative Federalism**

As already suggested above, legislative federalism is typically a weak instrument of settlement of intergovernmental disputes for the simple reason that its popular legitimacy is eclipsed by the directly elected parliamentary chamber. The Rajya Sabha in India is composed on the principle of federal representation and is indirectly elected by the elected members of the state legislatures. The House is a permanent chamber with 1/3\textsuperscript{rd} members retiring every second year to be replaced by new incumbents. However, its federal character is diluted by the absence of the principle of equal representation for each federating unit. The number of Rajya Sabha members as those of Lok Sabha reflect the population of the state concerned.

The influence of federalism in the working on the Rajya Sabha was not all that evident in the era of Congress dominance as both the houses were more or less similar in terms of their membership. In the phase of multi-party system since 1989, the federal features of the Rajya Sabha have become more evident, for Rajya had generally been under the control of an opposition that was stronger in state legislatures. The ruling party with a coalitional majority in the Lok Sabha must, therefore, work in cooperation with the oppositional majority in the Rajya Sabha in the passage of legislation and constitutional amendments. In amendments, in particular, the Rajya Sabha has a veto right by virtue of the fact that there is provision for a joint sitting of the two houses in case of legislation, but none in case of amendments. This development has endowed the Rajya Sabha with greater federal relevance reflecting the political complexion of state legislatures. During periods of oppositional control of the Rajya Sabha, it can thus force the government majority in the Lok Sabha to accommodate the interests of states under opposition parties. However, this was not so during the period of one-party Congress dominance throughout the country (Singh).\textsuperscript{21} In Canada, the Senate is even less politically consequential than the Rajya Sabha. For the Senators are patronage appointees of the government of the day and therefore beholden to the ruling party controlling the House of Commons. The Australian Senate is perhaps more federally relevant than either the Indian Rajya Sabha or the Canadian Senate. This is for the reason that the Australian Senators are directly elected by the people in various federating states. There are, however, some continuing trends that detract from the growing federal role of the Rajya Sabha (Saxena 2007).\textsuperscript{22} Candidates for Rajya Sabha elections are nominated on the basis of party patronage at least in the case of national parties. These nominations are made by national party caucuses in the national and state capitals and the nominees may have no connection with the state they are supposed to represent.
A constitutional amendment in the Representation of People Act, 1951, in August 2003 by the NDA government abolished the domiciliary requirement for members of Rajya Sabha elected from a particular state. Another change that was given effect to be that voting in Rajya Sabha is done openly rather than by secret ballot so that the party leadership could more effectively ensure that the state legislators did not transgress party lines in voting. This amendment led to the election of some business magnates and film actors from states where they were not residents. Former Rajya Sabha member Kuldip Nayar filed a case in the Supreme Court arguing that this is destructive of the Rajya Sabha’s representative credentials as a federal second chamber.

The Supreme Court, which in recent years had been exercising its power of interpretation and reviews to promote the federal principle, has for some inexplicable reasons delivered a retrogressive judgement in the above case. The five-judge Bench, headed by Chief Justice Y.K. Sabharwal, in its 317-page unanimous judgement, among other things, observed:

“It is no part of federal principle that the representatives of the States must belong to that State. There is no such principle discernible as an essential attribute of federalism, even in the various examples of the Upper Chambers in other countries. The various constitutions of other countries show that residence, in the matter of qualifications becomes a constitutional requirement only if it is expressly so stated in the constitution. Residence is not the essence of the structure of the Upper House. The Upper house will not collapse if residence as an element is removed. Therefore, it is not a prerequisite of federalism. It cannot be said that residential requirement for membership to the Upper House is an essential basic feature of all federal constitutions. Hence, if the Indian Parliament, in its wisdom has chosen not to require a residential qualification, it would definitely not violate the basic feature of federalism. Our Constitution does not cease to be a federal constitution simply because a Rajya Sabha member does not “ordinarily reside” in the State from which he is elected.” (Nayar 2006)  

The Report of the National Commission to Review the Working of the Constitution (NCRWC) has, however, recommended that “in order to maintain basic federal character of the Rajya Sabha, the domiciliary requirement for eligibility to contest elections to Rajya Sabha from the concerned State is essential.”
(4) All-India Services (AISs)

AISs are a unique feature of Indian federation. They are federally recruited and trained by autonomous union agencies and allocated to the states (and the union on deputation). Their antecedence goes back to the British Indian Civil Service, which in turn may be indirectly traced back, in terms of being the highest echelons of bureaucracy, to the Mughal mansabdari system and the Maurya mahamatya system. The decision for the creation of the first two All India Services – Indian Administrative Service (IAS) and Indian Police Service (IPS) – was taken at the conference of the Union Home Minister Sardar Vallabhbhai Patel and Provincial Premiers in October 1946 convened by the interim government of India. Under Article 309 of the Constitution the parliament enacted the All India Services Act, 1951, empowering the Union Government to make rules in consultation with state governments for the regulations of All India Services. By Article 312 (2) the services known as IAS and IPS at the commencement of the Constitution were ‘deemed to be services created by Parliament’. In consultation with the state governments, the union government created a new All India Service – Indian Forest Service – in 1966.

The net effect of AISs on the working of Indian federalism is tremendous. Since these officers belong to common services and alternately work for both orders of government, they are a significant factor in harmonizing Union-State relations and policies. Their presence contributed to the development of cooperative federalism in India. When predominant congress party first lost power at the state level, their loyalty to opposition state governments was initially suspected. However, more professionally neutral civil servants among them managed to keep the trust of different party governments at different levels reasonably well. The problem arose in those cases where the civil servants were forced to become partisan or personal stooges of those in power at the state level. The system has worked reasonably well in states like west Bengal and Kerala where left parties have ruled through institutional channels of the government or stable party organizations. Initial hiccups were subsequently streamlined. The minister-civil servant relations in recent years have been more turbulent and problematic in states like Gujarat where the BJP has ruled on its own with one-party majority and in states like Bihar and U.P where caste dominated parties continue to hold the ground.
Union Agencies with Federal – Provincial Implications

The text of Constitution of India makes provisions for strong federal agencies, armed with considerable autonomy from governments at the centre and in the states. Among them are constitutionally entrenched agencies of the Comptroller and Auditor-General of India, the Election Commission of India, and the Union and State Public Service Commissions. All these agencies have responsibilities relating to audit and accounts, elections, and highest levels of civil services of both the union and state governments. The incumbents of these offices have been guaranteed special constitutional protection as to their security of tenure. Their performance has generally been of a very high order, although Bihar and Punjab Public Service Commissions have recently got a very bad press due to shocking corrupt practices on large scale in rigged examinations and venal public employments.

Over the years there has been a tremendous proliferation of central agencies created by the Union Government that significantly impact the Centre-State relations. e.g. Reserve Bank of India (RBI), National Human Rights Commission (NHRC), National Minorities Commission (NMC), Central Vigilance Commission (CVC), Central Bureau of Investigation (CBI), and a number of central paramilitary forces such as Central Reserve Police Force (CRPF), Central Industrial Security Force (CISF), Railway Protection Force (RPF), National Security Guard (NSG), Border Security Force (BSF), Assam Rifles, and Indo-Tibetan Border Police (ITBP). Some of these agencies are created by cabinet resolutions, and some by parliamentary statutes. RBI’s antecedents go back to Reserve Bank of India Act, 1934. Nationalized in 1949, it controls India’s monetary policy, prescribes parameters for banking and financial systems of the country, and performs merchant banking functions for union and state governments acting as their bankers. NHRC and NMC monitor human rights situation in the country with increasingly critical and forthright studies and comments on the performance of union as well as State Governments. The CBI was created by a statute in 1946 to investigate crimes within states with their permission; however, in a number of cases the CBI is obligated by the Supreme Court to probe state authorities without the consent of the state governments. The CVC was originally a non-statutory body but has now been statutorily empowered to examine cases of corruption of public servants throughout the country.

In the backdrop of growing incidence of corruption and political vendetta, the judiciary has intervened to lend greater autonomy from union executive’s control to the
CVC and CBI. In a historic judgement the Supreme Court ruled:

“While the Government shall remain answerable for the CBI’s functioning, to introduce visible objectivity in the mechanism for over viewing, the CVC shall be entrusted with the responsibility of superintendence over the CBI’s functioning. The CBI shall report to the CVC about cases taken up by it for investigation’ progress of investigations; case in which charge-sheets are filed, and their progress. The CVC shall review the progress of all cases moved by the CBI for sanction of prosecution of public servants which are pending with the competent authorities, specially those in which sanction has been delayed or refused [by the Executive].” 25

Law and order being a state subject, state governments in the past complained about deployment of central paramilitary forces in states without their consent. With the growing costs of maintenance of law and order, state governments now themselves demand more and more deployment of central police forces within their jurisdictions.

- **Tribunals and the Constitutional Court**

The Inter-State River Water Disputes Act, 1956, provides for reference of inter-State river water disputes to a tribunal on receipt of application from a state and on satisfaction of the union government that the dispute ‘cannot be settled by negotiations’. The Union government has so far set up the Narmada Tribunal, the Krishna Tribunal, the Godavari Tribunal, the Cauvery Tribunal, and the Satluj-Jamuna Canal Tribunals. This mode of dispute settlement has generally been effective, except for the last two that have proved to be rather sticky. A more recent dispute that could not be resolved within this framework was finally referred by the President to the Supreme Court for its advisory opinion. This concerned the case arising out of termination by Amarinder Singh, Congress Chief Minister of Punjab, in 2004 of all inter-State river water agreements that Punjab had signed with riparian states of Haryana and Rajasthan in the 1980s.

Further, the Constitution has empowered the Supreme Court and High Courts, original, appellate and advisory jurisdictions under Articles 131 and 131 A)/132/133/134/134 (A), and 143, respectively. Article 144 provides that all civil and judicial authorities in India “shall act in aid of the Supreme Court”. The term “civil” here obviously includes all legislative and executive authorities. And since the military authority in India is subject to civilian control, it includes all the coercive arms of the state as well.

The Supreme Court of India has adjudicated case relating to transfer of area of a
state to a foreign power (The Berubari Union Case 1960), acquiring of lands vested in a state by the union (State of West Bengal vs. Union of India 1963), appointment of Chief Ministers and role of Governors (e.g., B.R. Kapur vs. State of Tamil Nadu 2001), dismissal of state governments and abuse of article 356 (S.R. Bommai vs. Union of India 1994), “basic structure” of the Constitution vis-a-vis amending power of the Parliament (e.g., Keshavananda Bharti vs. State of Kerala 1973, Minerva Mills vs. Union of India 1980 etc.).

In less than two decades since the Keshavananda Bharati judgement on the basic structure of the Constitution, Granville Austin felt justified in concluding that in the struggle for the custody over the Constitution, Parliament has finally lost to the judiciary. But he hastened to add: “Unless the court strives in every possible way to assure that the constitution, the law, applies fairly to all citizens, the Court cannot be said to have fulfilled its custodial responsibility.” (Austin)

The Supreme Court has also taken care to stress the need for a forum for consultation between the Union and State Governments on policy formulation and harmonization. For example, in Aruna Roy’s case (2002), The Supreme Court advised the CABE (originally setup in 1926) to revive itself to effect collective consultation between the union and states on education.

The Supreme Court’s original jurisdiction includes union-state and inter-State disputes regarding the federal division of power and fundamental rights of citizens. These matters can be directly raised in the Supreme Court itself (article 131). A case law arising out of T.N. Cauvery Sangam v. Union of India (1990) has extended the original jurisdiction to include inter-State water disputes as well. However, in the spirit of Constitution’s preference for political settlement of inter-State river water disputes, the Cauvery Tribunal that awarded its arbitration report after 17 years of proceedings early in the year 2007 has by and large been accepted by the riparian states with very little expression of dissatisfaction. Ramaswamy Iyer, a former union secretary of the government of India, in charge of water resources and an authority on the dispute has aptly commented that this award is tantamount to judicial determination with sensitivity to constitutionality and federalism in action in India. In his well considered opinion, the real constitutional position is that there can be no appeal to the Supreme Court against it and aggrieved states must desist from taking recourse to extra constitutional action (Iyer 2007).

The appellate jurisdiction of the Supreme Court includes appeals from High Courts in certain cases in civil, criminal and other proceedings, if the High Court certifies that the dispute raises substantial question of law regarding the interpretation of the
Constitution (article 134). In other instances, the Supreme Court may grant “special leave to appeal” to itself in “any cause or matter passed or made by any court or tribunal in the territory of India” (article 136 Clause-1). The Parliament can further enlarge the jurisdiction of the Supreme Court by law with regard to the Union List, and in relation to the State List and Concurrent List as well, if the Union and State-Governments so agreed (article 138, Clauses 1 & 2). In addition, there is an advisory jurisdiction of the Supreme Court by Presidential reference if the Union executive considers it “expedient to obtain the opinion of the Supreme Court” (article 143).

- **Independent Regulatory Authorities**

  Since the onset of economic liberalization in 1991, several semi-judicial independent regulatory authorities have been set up in important policy areas under Acts of Parliament, such as Central Electricity Regulatory Authority (CERA) in power sector, Central Telecom Regulatory Authority (CTRA) in telecommunication, information technology (being debated), Securities Exchange Board of India (SEBI) and Competition Commission (being tabled) in corporate company’s affairs. Chaired by a Supreme Court judge and experts as members, these mechanisms are meant to replace direct administrative control by government departments in various policy areas which have implications for states as well.

  Among the sectors of economy where the reforms have been particularly bogged down is the power sector where the public generation is mostly done by the central corporations and distribution is done by the State Electricity Boards (SEBs) instituted by state governments. All SEBs have been mostly in a disastrous state of loss due to mismanagement and rent-seeking by politicians, bureaucrats and unions. They have not been able to earn a minimum rate of return of 3% on their net fix assets in service after making allowance for wear/off and debt servicing under the Electricity Supply Act 1948.

  Even though, reforms in this sector were started as early as in 1991, success has been most depressing compared to the other sectors of the economy. A conference of the Union Power Ministers, Chief Ministers and power ministers of States in 2001 strongly resolved to explore commercial viability of unbundling/corporatization in 2-3 years.

  A new Electricity Act was passed by the Parliament in 2003 replacing relevant Acts of 1910, 1948 and Electricity Regulatory Commission Act of 1998 as a comprehensive legislation in the concurrent union state jurisdiction. The major thrust of
the Act was privatization with protection of the interest of the consumers. However, there are few takers of the offer for privatization with notable exceptions of metropolitan cities. Among states, Orrisa SEB was first to be privatized on an experimental basis but a significant advance at state level reforms in the power sector is still awaited.

**Party System, Interest Group and Media**

Party System is perhaps the most important factor that influences the working of a federal constitution. This can be seen in the extreme case of the Soviet political system. The constitution of the U.S.S.R. was on paper the most federal document granting the federating units the right to secede. Yet, in its actual working, it was so highly centralized on account of the Communist Party being the only political formation legally sanctioned to contest elections that in practice it was a unitary political system par excellence.

The one-party dominant system under the aegis of the Indian National Congress that prevailed from Independence to the end of the 1980s—with only minor breaches—operated as the single most important political factor that determined the way Indian federalism worked in that period. The Congress was the dominant political force in the country at federal as well as in all, or most, states during that period. Most intergovernmental disputes then were therefore settled across party tables, mainly at the top party executive committee called the Congress Working Committee (CWC) and a sub-committee of the CWC called the Congress Parliamentary Board (CPB). The latter was assigned the responsibility of overseeing the working of Union and State governments. These two bodies included the Prime Minister and/or party President and most powerful union ministers and most influential Chief Ministers. The interlocking of the top leaders of the government and the party at union and state levels provided the empowered committees that could claim to represent all sections and authoritatively decide with the safe presumption that their decisions would carry the legitimacy of the politically relevant interests and identities in the entire country. Whether it was the phase of Nehru-Patel duumvirate or the Prime Ministerial cabinets headed by Nehru, Indira Gandhi and Rajiv Gandhi, the Prime Minister and his senior colleagues were looked upon by all party factions and state governments as the leaders who stood above factions and cleavages and could bring the warring groups together. This style of conflict resolution was also consistent with the mode of dispute settlement in hierarchical and unequal traditional Indian social structure in which the typical method of resolution of dispute was through a high ranking Panchayat rather than direct negotiation between the disputants. The Congress organization
and the Congress governments resolved their political, electoral and other conflicts largely through this process of mediation and arbitration by high ranking party hierarchs and ministers. A well documented study of political succession in India towards the fag end of the Nehru era is made by the Canadian political scientist, Michael Brecher. Nehru’s succession by Shastri and Shastri’s by Indira Gandhi was smoothly managed by what Brecher calls the “Grand Federal Council of the Indian Republic”, which included the overlapping leadership of the Congress Working Committee (CWC) and the Congress Parliamentary Board (CPB) with some other special invitees. This political process of conflict resolution gradually broke down with the decline of the Congress predominance and fragmentation of national parties and rise of regional parties, old and new. Early breaches in the one-party dominant system that surfaced in 1967 and 1977 were temporarily mended, when non-Congress coalition governments in north-Indian State proved to be extremely factitious and unstable between 1967-1971, and when the Janata Party government proved to be inadequate substitute for an alternate centrist party like Congress between 1977 to 1979.

However, even the Congress that came to be electorally restored under Indira Gandhi in 1980 turned out to be a highly centralized prime ministerial political pyramid sans internal democratic organizational elections that remained suspended from 1971 to 1992. This feature of the Congress political machine reduced its ability to reconcile its own internal organizational conflicts, let alone the societal and regional conflicts of the Indian sub-continental political system. This happened precisely at the moment when the ability and the skill to reconcile conflicts were more urgently in demand than ever before. Yet, with massive parliamentary and legislative majorities, Prime Minister Indira Gandhi was looked upon as the ultimate arbiter in the realm of intergovernmental relations. She was able to resolve myriad political and inter-State river water disputes and make it acceptable to State Governments, particularly those ruled by the Congress party.

However, the oil shocks of the early 1970s, the Bangladesh Liberation War and unprecedented influx of refugees caused a great economic stagnation and inflation. These economic factors coupled with decline of democratic channels of settlement of political disputes led to the emergence of a massive extra-parliamentary mass movement that came to be ultimately led by Jayaprakash Narayan. As already mentioned, the Janata alternative that emerged out of the JP movement could not sustain itself as a party of governance and prematurely fell mid-way through its mandate. As also already mentioned, the Congress restoration in 1980 also failed to clear the clogged political processes that
had worked so well during the Nehru era. During his tenure as Prime Minister, Rajiv Gandhi tried to clear the way by adopting a greater federal accommodation to demands for regional autonomy in Punjab, Assam and Mizoram by signing regional ethnic peace accords. However, none of these agreements have been fully implemented yet for a variety of reasons. Since 1989, the Congress dominance has been replaced by a multi-party system with recurrent coalition and/or minority governments, mostly unstable. This phase of Indian politics marks a paradigm shift in political as well as economic terms.

The major direction of political change is regionalization of the party system and greater federalization of the political system. The economic dimension is characterized by neo-liberal reforms with accent on market forces and a relative decline in the role of the state. The net effect of these changes is that the dominant ruling party as the site where major conflicts of the political system were thrashed out has been replaced by a large number of parties – national and regional – none of which is able to muster majority and form a government on its own. The political process which was the major means of conflict resolution often seems to have broken down. As a result, judiciary is called upon to resolve a large number of disputes which could be better settled by political means.

Intergovernmental relations are also influenced by the nature and autonomy of the pressure groups and the mass media. The typical pattern of interest group politics in India was initially such in which trade unions, peasant organizations and professional associations were mostly aligned with the dominant political parties in the nation and the regions. Since the 1980s, there has developed a tendency of at least some of these pressure groups dissociating themselves with political parties in a bid to act autonomously. In a way, this is a reflection of growing autonomy of State Governments and greater associational vigour of the civil society. Similarly, the print media in India until the 1980s were largely controlled by private capital, and the electronic media were a government monopoly. Towards the end of the 1980s, private T.V channels mushroomed and the nationalists temper of the print media became open to global capitalism. These changes have obviously altered the entire platform of the interface between pressure groups and parties as well as government–media relationships. Needless to say that these parameter altering changes have reconfigured the nature as well as the modes of intergovernmental relations which must allow for non-governmental and civil society participation in the process of federal governance.
Geography and Diplomacy

Geography and federalism are intimately related, especially in terms of size. This is because in geographically vast countries like USA, Australia, federal solution was opted even without much cultural diversity in terms of language and religion. Political geographer, Ramesh Dikshit argues that maintenance of regional autonomy in federal countries is facilitated by ethnic diversities, existence of units with independent or competitive economies and existence of a political unit prior to the process of federal union (Dikshit).

In India although vast geographical size is combined with cultural diversity, the mere size and distance of the far-flung peripheries from the center and the presence of friendly or hostile relations with the neighbouring foreign countries put additional pressures on intergovernmental relations and make the task of resolving complex issues much difficult. Several new states have been created over the years on the argument that the national and state capitals are so far from the people living in some corners in some states that a new federal unit was needed to make democracy meaningful for the people. Similarly, the states on the frontiers in the North-East, North-West and Deep South demand special considerations and arrangements to deal with China, Pakistan, Bangladesh and Sri Lanka with appropriate internal and external diplomacy. Creation of Union Territories is also in some ways related to the size question. These considerations are obviously required to be appropriately addressed at the intergovernmental forums.

Demography and Internal Boundaries

Demographic diversity and the internal boundaries of a federation are closely interlinked. Federalism is first and foremost an answer to the problem of accommodating socio-cultural diversities of two kinds, namely, a.) those that are territorially concentrated in some federating units, e.g. Muslims in Jammu and Kashmir (J&K), Sikhs in Punjab and tribal people mostly in the border states, and b.) those that are scattered across the board, e.g. Muslims and Sikhs outside J&K and Punjab respectively. Mere diversity does not tell us enough about how it will relate to federal politics. For example, the ten Hindi-speaking states and four South-Indian non-Hindi-speaking states have no common regional forum, but the seven states of the north-east have an institutionalized regional forum in the North-Eastern Council. These divergent patterns obviously impact the nature of relationships and coalitional configurations of states in intergovernmental forums.

It is notable that the Hindi heartland states who enjoy a numerical majority in
both the houses of the Parliament are/may be outnumbered in intergovernmental forums like NDC/ISC etc because of the numerical majority of non-Hindi speaking states in these forums. Although the decision in intergovernmental forums are made by consensus as determined by the chair, but the hidden logic of numbers cannot but have its effect on the decisions and policies made. At the time of the fourth general election in 1967, there were 16 states that by now have multiplied to 28 as a result of reshaping of internal boundaries. The last three states of Uttarakhand, Jharkhand and Chattisgarh were created as recently as in November 2000. The creation of smaller and new states obviously has some influence in the coalitional configuration in intergovernmental forums. The federal balance of power in India today has shifted from the Hindi heartland to the non-Hindi speaking rim land states. It is not entirely co-incidental that the three new states were created out of three major Hindi speaking states of Uttar Pradesh, Bihar and Madhya Pradesh despite the initial resistance of the parent states.

Wealth of States and varying Capabilities

The variability in resource endowment and institutional capability of states in India is truly immense. Generally speaking, the Hindi heartland that was once the center of great Indian culture and state systems is today backward than the rim land states especially in the west and the south.

In a study of regional disparities of growth and employment in 14 selected major states of India comprising 93% of the population, it was found that GSDP (Gross State Development Product) growth in states with high and medium income developed faster than in the low income states during the period 1999-2000 to 2004-2005. It is thus evident that regional disparities in the post neo-liberal capitalist reforms are growing (Ramaswamy 2007). This is not surprising because both national capital a well as foreign direct investment make a bee-line to the developed Bombay-Poona, Bangalore Hyderabad, Chennai, and Delhi-Gurgaon belts. Backward states are left high and dry.

The union government still enjoys considerable control over monetary policy through the Reserve bank of India and fiscal policies through the union cabinet, but the representation of state governments in intergovernmental forums have been increasingly becoming more vocal and assertive. However, one factor that greatly limits the economic autonomy of state governments is their relatively weaker political institutionalization and economic capability in resource mobilization and utilization. Not only have the state governments been either unable or unwilling to tax their own jurisdictions e.g. agriculture
but some of them have also been incapable in fully utilizing and absorbing the resources made available to them. For these in capabilities, economically backward states have also been unable to attract private capital investment—national and foreign.

**Changing Contexts**

Substantial contextual changes over time also greatly impact functioning of union-state relations including the working of intergovernmental forums. These changes may emanate from either the internal environment or the external. Examples of internal changes could be greater democratization of the civil society and federalization in the sense of regionalization of the party systems. Besides, the issues and identities in question play a significant role. For instance, developmental and other non-controversial issues are more likely to be resolved at an intergovernmental forum than issues dealing with major constitutional matters. Moreover, intergovernmental consensus can sometimes be possible under the pressure and urgency of the moment and the ideological climate of the time. Governments have been generally more accommodative in arriving at a workable understanding on developmental plans and fiscal federalism than on constitutional amendments relating to federal provisions and constitutional division of powers between the union and the states. Further, the shift to neo-liberal policy paradigm explains why consensus has been feasible on economic reforms now in this changed political atmospherics, the same way as the consensus on development planning was easier to achieve in the then prevailing socialist ideological climate of the Nehru era. Yet another important factor is the personality of the Prime Ministers and the Chief Ministers concerned. The stronger the personalities involved on both sides at an intergovernmental forum, the less likely are the chances of a consensual outcome. Finally, since the rules of business and proceedings are informal in these forums, flexibility also contributes to their success. The more the political actors at an intergovernmental forum are prepared and well briefed in advance on the agenda the more likely they are to bring dispassionate and rational discussion to the table.

External factors like war and globalization also impinge on intergovernmental interactions. It was in the wake of wars that the National Integration Council was set up as an additional intergovernmental forum. Besides war, cross border terrorism demanded special intergovernmental responses to the problem they posed. Globalization has also created new tensions between the union and state governments, e. g. the signing of the WTO treaty by the union government in 1995 without consulting the state governments...
even in areas that fell in their exclusive jurisdiction like agriculture led to filing of petitions by states of Tamil Nadu, Rajasthan and Orissa in the Supreme Court. Later on, these cases were withdrawn apparently after amicable out of court settlement and assurances. But these incidents underline the importance of intergovernmental consultation either in the existing or newly created forums.

The recent signing of the Indo-US civilian nuclear deal in phases in 2005 and 2007 has brought into sharp focus the changed context of the federal coalition governments as the left communist parties supporting the minority United Progressive Alliance (UPA) government from the parliamentary floor have mounted a tremendous pressure on the executive to share its treaty making power with the Parliament. At the cost of the fall of the government, Prime minister Manmohan Singh has yielded to the pressure of the combined opposition to discuss the matter in the Parliament and seek to modify the terms of the treaty on the plea that the US Congressional Hyde Act shifted the goal post by departing from the 1995 agreement between US President and Indian Prime Minister. Normally the treaty making under the Indian constitution is an executive power that can be exercised without prior parliamentary sanction. The Parliament comes into the picture only when a legislation is required for the implementation of the treaty.

**Contemporary Reformist Discourse on Executive Federalism**

As far as suggestions for reform/change are concerned, the Sarkaria Commission Report (1988) had given more attention to mechanisms of executive federalism and had recommended at greater length for their constitutionalization and federalization. The Venkatachaliah Constitution Review Commission Report (2002) has also underlined the importance of ISC and recommended utilization of its full potentiality for evoking more equitable Union-State relations. This Commission, while endorsing the recommendations of the Sarkaria panel on Centre-State Relations recommended that “in resolving problems and coordinating policy and action, the Union as well as the States should more effectively utilize the forum of Inter-State Council. This will be in tune with the spirit of cooperative federalism requiring proper understanding and mutual confidence and resolution of problems of common interest expeditiously.” Similarly, the Common Minimum Programme (CMP) of the United Progressive Alliance (UPA) government also stressed the need for strengthening union-state relations through activation of intergovernmental agencies like the ISC.

In the recent regional roundtables on Indian federalism culminating into the Fourth
International conference on Federalism sponsored by the Forum of Federations, Ottawa and hosted by the Inter-State Council Secretariat of India, the following two points were discussed in context of making the ISC more consequential as well as more autonomous from the union Home Ministry, Government of India. Firstly, the Presidential order of 28 May 1990 that established the ISC omitted clause A of Article 263 of the constitution which reads as follows: “inquiry into and advising upon disputes which have arisen between the states”. This omission, it was felt, has taken out of the purview of the ISC, a very important power of formally instituting an inquiry into an inter-State dispute. In the long run, political settlement of disputes is not only more long lasting but it also reduces the burden on the judiciary whose cutting edge may be blunted by over use.

Secondly, the location of the ISC secretariat in the Union Home Ministry tends to make it into an organ of central government rather than an autonomous federal agency. Two alternative sites for its location were considered, namely the Cabinet Secretariat and the Rajya Sabha Secretariat. It was felt that the latter would be a more appropriately autonomous ground as the Rajya Sabha is the representative chamber of the states of India.

Besides, a few procedural reforms like holding regular and preferably in-camera meetings with advanced agenda, preparatory groundwork and flexible and consensual rules of business, the most important structural reform that can be suggested is the merger of the NDC and the ISC as the key apex intergovernmental mechanism. This will have two desirable effects.

Firstly, it would avoid unnecessary bifurcation of the apex intergovernmental body with the same membership in the NDC and ISC. The division of work between the two in terms of economic and political policy making is apparently made on the reasoning that it would prevent politicization of the planning process. In any case, politics cannot really be divorced from economic decision making. In fact, a certain degree of political contestation is necessary to inject a dose of democratic bargaining and to remove the distortions of an imposed consensus that may really conceal an unjust political order.

Secondly, this artificial separation also results in narrow construction of policy areas not only along economic and political issues but also in the proliferation of a very large number of national councils for a variety of policy areas that lack integrated high power status to lend weight to their recommendations. These national councils may still be continued as bodies of technocrats whose recommendations must be considered by a
top-level intergovernmental agency representing the executive heads of the two orders of government. Moreover, there is no constitutional obstacle to the merger of the NDC and ISC as Article 263 of the constitution does not really restrict the functions of the ISC to any specific domain in terms of economic or political decision-making. The division of work between the two is only implicit in the cabinet resolution setting up the NDC which only mentions planning related functions for it.

Thirdly, keeping the two bodies apart is also a profligacy in keeping two separate secretariats for the two organizations. If the two are merged, the secretariat of the NDC, i.e., the Planning Commission, itself could be expanded to include an economic wing and a political wing. This makes enormous sense today when in the era of neo-liberal economic reforms the governments in India for almost two decades now have been trying to reduce deficit without notable success.

**Conclusion**

The importance of intergovernmental interactions in India has gradually been increasing and the process is likely to not only continue but accelerate in the years to come. Scholars of Indian federalism like Lawrence Saez predicted increased jurisdictional conflicts that has not materialized all that much until now but may pose a challenge, especially in view of de-institutionalization of political processes and increased burden of litigation on the judiciary. Two decades after the Sarkaria Commission submitted its report, the central government has set up a four-member commission headed by former Chief Justice of India, Justice Madan Mohan Punchhi. The commission has been asked to submit its report within two years. The Terms of Reference of the Commission are alive to the challenges before the Indian federation in an era of profound changes marked by greater federalization, globalization, terrorism, natural disaster largely caused by climate change. Some important specific tasks assigned to the Commission include assessing the impact of the recommendation of the Eighth to Twelfth Finance Commissions on fiscal relations between the two orders of governments, and the continuing over dependence of the states on the center; a federal investigative agency to cope with inter-State and international ramifications of crime; amendment of Article 355 allowing sue motto deployment of central forces in states in exceptional circumstances, and effective devolution of powers and autonomy to city councils, panchayati raj and autonomous tribal bodies under the Sixth Schedule of the Constitution.
In retrospect, it may be concluded that while executive federalism continues to be a constant forum at which intergovernmental interactions in India have been conducted, in the initial decades of the Republic the party forums of the dominant Congress were the most important facilitating factor to smoothen the relationships, whereas in more recent decades, judiciary has emerged as a significant institution of last recourse for adjudication of the disputes that remain unresolved through the political processes. In a welcome development, the government of India have also been creating partnership forums with the captains of industry, media and the civil society institutions.
Notes and References


7. Education was initially an exclusive state subject but by Act, it was transferred to the concurrent list. The bulk of universities and schools are set up by the state governments. However, a select number of universities and schools are established by the union government under Acts of the Parliament.


9. The Times of India and The Hindu, Delhi editions, 23 March 2002: 1 and 13 respectively.

10. For more details, see Rekha Saxena, Situating Federalism: Mechanisms of Intergovernmental Relations in Canada and India, New Delhi: Manohar, 2006.


17. Ibid: Annexure II.
27. Granville Austin
35. The Gazette of India Extraordinary, Part I, Section 1, Ministry of Home Affairs notification IV/12013/9/2004-CSR.

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(2) The Rajya Sabha: A Federal Second or Secondary Chamber?

A new look at the Rajya Sabha in the phase of federalization of the polity and globalization of the economy, especially since the early 1990s, is long overdue. Globalization and federalization both walk hand in hand in weakening the national or federal state and augmenting the autonomy of provincial states and local political systems. How have these trends impacted the Rajya Sabha, the federal second chamber of the Parliament of India, designed to represent the regional states?

Studies of the Rajya Sabha in the past, in some cases even down to the present, have interpreted its design and role essentially in the parliamentary paradigm and underestimated its federal credentials and relevance. The point of departure for this work is the query whether the Rajya Sabha is a secondary parliamentary chamber, as most analysts from W.H. Morris Jones to Sandeep Shastri have tended to argue, or whether by design or evolving role, the Rajya Sabha has emerged as an effective federal second chamber, especially since the regionalization of the state party systems since the 1980s and of the national party systems since the 1989 Lok Sabha elections. This chapter fleshes out this line of interpretation in greater elaboration and comparative ambience than done by M.P. Singh. Some relevant comparative points are also made in convergence or contrast in relation to other parliamentary-federal second chambers (e.g. the Canadian Senate), presidential-federal second chambers (e.g. the U.S. Senate), and a rather unique parliamentary-federal second chamber, that in fact is more of an intergovernmental forum than a federal second chamber, pure and simple (e.g. the German Bundesrat). This paper breaks new ground in this comparative insight and delineation of these three analytical/theoretical models of second chambers. This paper also flags a new possible line of inquiry whether the Rajya Sabha can also be used as a forum for accommodating India’s diversities by presidential nomination regime and ticket distribution practice of political parties for fielding candidates for Rajya Sabha elections.

This chapter also proposes to examine the role and relevance of the Rajya Sabha, the federal second chamber of the Indian Parliament in representing the states and accommodating the diversities of India. The Rajya Sabha has so far been brought under analytical scanner mainly as a House of revision and a forum for articulation of state rights. This paper revisits it from these angles plus its utility as an instrumentality of accommodating India’s multicultural and regional diversities. I am prompted to add this angle of inquiry as previous studies have generally concluded that the Rajya Sabha has
neither distinguished itself as a council of revision nor as defender of rights of the states of the Indian Union. Not that I entirely agree with these conclusions as it would become evident below; yet I would like to bring to the notice of the students of the Rajya Sabha a third possible term of reference in future research, namely, the theme of diversity.

Comparative Perspective

In comparative federal theory, two broad models of bicameralism may be delineated: a.) parliamentary federal second chambers and b.) presidential federal second chambers. The former category is illustrated by Canada and India, while the latter by the United States and Switzerland. Federal second chambers in parliamentary mode are sought to be invested with the additional relevance of representation of federating units to the virtue of bicameralism based on its role as a chamber of revision. However, this federal relevance is not meant to override the parliamentary primacy of the popular chamber. Thus the center of political gravity in decision-making rests with the popular parliamentary chamber. Federal second chambers in presidential mode are designed as an institution of checks and balances vis-à-vis the popular chamber. In addition to enjoying the pretension of being popularly elected, these chambers also exercise co-equal powers in legislation, and in some matters exercise veto not only over popular chamber but also over the executive.¹

The Australian Senate and the German Bundesrat are unique in the sense that they conform to neither of the two foregoing models. Even though, these two constitutions are regarded as parliamentary ones, their second chambers are constituted in a way that signals some departures from the standard parliamentary federal mode exemplified by Canada and India. The Australian Senate is directly elected by the people and invested with equal powers with the popular chamber with the exception of taxation and key appropriation bills which cannot be initiated but can be rejected by it.² The German Bundesrat is not a parliamentary but an intergovernmental organ unlike the Australian Senate which is not intergovernmental but a parliamentary organ. Members of Bundesrat are delegates of Land governments who are bound to vote according to the instructions of their governments. In fact usually they double as the ministers of the State Governments and delegates to the Bundesrat. Bundesrat has only a suspensive veto on general federal legislations, in as much as its formal objections against such bills can be overruled by an absolute majority of the Bundestag.³ It has, however, power of absolute veto in the category of bills called zustimmungsgesetze which means finance bills, federal finance, and laws prescribing administrative procedures for implementing a federal law.
The Indian Variant

In India, bicameralism was first introduced under the Government of India Act 1919 without any federal content. The Motilal Nehru Committee Report 1928 recommended a federal second chamber but rejected the US model. This House was to be elected by the provincial legislatures with some degree of weighted representation for smaller provinces to reduce disproportionality as far as possible. The Government of India Act 1935 also proposed a federal second chamber but, like the Nehru Committee Report, stopped short of the idea of equal representation for units in view of the nationalist public opinion in India being opposed to it.

Two rationales underlie the composition of the Rajya Sabha under the 1950 Constitution: a.) Federal representation of states on a territorial basis, and b.) Ensuring review/revision of bills received from the Lok Sabha. However, the Constituent Assembly Debates suggest that the consideration of federal representation weighed more heavily in the minds of the framers of the constitution than the revising role. In fact, some members advocated equal representation to each state (Lokanath Misra, Orisa: General) or at least proportionately larger representation to smaller states, if not equal (Shibban Lal Saksena, United Provinces: General). The Sarkaria Commission Report added two more points to the foregoing: a.) mature input in legislative and constituent process from more experienced persons represented there, and b.) lending some degree of continuity to the parliamentary work in view of the fact that Rajya Sabha is a continuous chamber partially renewed at the rate of 1/3rd retiring every six years.

To sample some observations on the floor of the Constituent Assembly, I would like to cite what Gopalaswamy Ayyangar and Loknath Misra said on the relevance of the second chamber in the Draft Constitution. The former put forward the hope that the Rajya Sabha would “hold dignified debates”, “delay legislation “, “which might be hastily conceived”, and “participate in the debate with an amount of learning and importance which we do not ordinarily associate with a House of People”. The latter observed: “ I suggest that the allocation of seats to the representatives of the State in the Council of States ,should be on the basis of equal representation to each of the component States, the number of which representation shall be in no case more than three”.

The federal character of the Rayja Sabha has, however, been diluted by giving representation to states on the basis of population (Articles 4[1] and 80[2] read with the
Fourth schedule), unlike the U.S. Senate which gives equal representation to the states. Thus, the state of Uttar Pradesh has 31 members, Tamil Nadu and Andhra Pradesh has 18 each, Bihar and West Bengal have 16 each whereas the six states of NE, Goa and Sikkim have just one member each in the Rajya Sabha. (See Table 1).

Table: 1

Allocation of Seats in the Council of States

<table>
<thead>
<tr>
<th>States</th>
<th>Seats</th>
</tr>
</thead>
<tbody>
<tr>
<td>Andhra Pradesh</td>
<td>18</td>
</tr>
<tr>
<td>Assam</td>
<td>7</td>
</tr>
<tr>
<td>Bihar</td>
<td>16</td>
</tr>
<tr>
<td>Jharkhand</td>
<td>6</td>
</tr>
<tr>
<td>Goa</td>
<td>1</td>
</tr>
<tr>
<td>Gujarat</td>
<td>11</td>
</tr>
<tr>
<td>Haryana</td>
<td>5</td>
</tr>
<tr>
<td>Kerala</td>
<td>9</td>
</tr>
<tr>
<td>Madhya Pradesh</td>
<td>11</td>
</tr>
<tr>
<td>Chattisgarh</td>
<td>5</td>
</tr>
<tr>
<td>Tamil Nadu</td>
<td>18</td>
</tr>
<tr>
<td>Maharashtra</td>
<td>19</td>
</tr>
<tr>
<td>Karnataka</td>
<td>12</td>
</tr>
<tr>
<td>Orissa</td>
<td>10</td>
</tr>
<tr>
<td>Punjab</td>
<td>7</td>
</tr>
<tr>
<td>Rajasthan</td>
<td>10</td>
</tr>
<tr>
<td>Uttar Pradesh</td>
<td>31</td>
</tr>
<tr>
<td>Uttarakhand</td>
<td>3</td>
</tr>
<tr>
<td>West Bengal</td>
<td>16</td>
</tr>
</tbody>
</table>
Socio-Political Development, Public Policy, Governance and Social, Economic and Human Development

<table>
<thead>
<tr>
<th>State</th>
<th>Count</th>
</tr>
</thead>
<tbody>
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<td>Jammu and Kashmir</td>
<td>4</td>
</tr>
<tr>
<td>Nagaland</td>
<td>1</td>
</tr>
<tr>
<td>Himachal Pradesh</td>
<td>3</td>
</tr>
<tr>
<td>Manipur</td>
<td>1</td>
</tr>
<tr>
<td>Tripura</td>
<td>1</td>
</tr>
<tr>
<td>Meghalaya</td>
<td>1</td>
</tr>
<tr>
<td>Sikkim</td>
<td>1</td>
</tr>
<tr>
<td>Mizoram</td>
<td>1</td>
</tr>
<tr>
<td>Arunachal Pradesh</td>
<td>1</td>
</tr>
<tr>
<td>Delhi</td>
<td>3</td>
</tr>
<tr>
<td>Pondicherry</td>
<td>1</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>233</strong></td>
</tr>
</tbody>
</table>

Note: Including the 12 Nominated members the total no. comes to 245

Source: Fourth Schedule of the Constitution (Articles 4(1) and 80(2)).

The impact of federalism on the working of the Rajya Sabha was not that evident in the era of Congress dominance as both Houses were more or less similar in terms of their membership. British political scientist, W.H. Morris Jones in his classic study also did not find any appreciable federal role or relevance for the Rajya Sabha: “the Upper House is a Council of States of the Union and its members are elected by the State Assemblies. This, however, does not seem to have made the floor of the Council a battleground between Centre and States; a defense of ‘states rights’, an expression of regional demands, is just as likely to be heard in the other house.”

Morris-Jones found that the Rajya Sabha was also no conspicuous in performing the task of a chamber of revision. In his view, similar in members’ socio-economic and political career backgrounds as well as in rules of procedure, the Rajya Sabha “provided neither for technical revision nor for a wider or more leisurely debate”. The only relevance
as a second chamber that Morris-Jones could find for the Rajya Sabha was the following:
a.) As the site for the first initiation of bills in conjunction with the Lok Sabha to reduce
the burden of the Lok Sabha as the first chamber of legislative initiation; 10 and b.) The
Rajya Sabha was “beginning to try its wings as a forum for grand and soaring debate”. 11

Among the important bills that have finally found a place in the statute book, I
may mention Hindu Marriage and Divorce bill, 1952; Child Labour (Prohibition and
regulation) Bill, 1986; Transplantation of Human Organs Bill, 1994; Marriage
Laws(Amendment) Bill,1999; Pre-Natal Diagnostic Techniques (Regulation and
Prevention of Misuse) Amendment Bill,2001,etc.As for the Private Members’ bills, only
14 of them have made it to legislation out of which five were introduced in the Rajya
Sabha. 12

The powers of the Rajya Sabha are similar to those of the Lok Sabha except for
the money bills that can originate only in the Lok Sabha and cannot be finally rejected by
the Rajya Sabha. Beyond sending it back for reconsideration to the Lok Sabha, something
which can be done only once, the Rajya Sabha can do no more. It is commonly assumed
that the financial role of the Rajya Sabha is not significant. However, the Constitution
requires the Annual Budget and the Railway Budget to be placed in both the houses.
Moreover, the government cannot withdraw any money from the Consolidated Fund of
India unless an Appropriation Bill for this purpose has been approved by both houses of
Parliament. In addition, Rajya Sabha members are also represented in two of the three
important financial committees of the Parliament, i.e., Committee on Public Accounts,
and Committee on Public Undertakings. Further, Rajya Sabha members are also part of
the Department- based Standing Committees of Parliament which consider demands for
grants of ministries and departments and report there on. Rajya Sabha’s role in financial
matters appears to have increased rather than decreased with the passage of time. 13

Deadlocks between the two chambers are resolved at a joint sitting14 in which the
Lok Sabha may have its way due to its numerical strength. In constitutional amendments,
since there is no provision for a joint sitting for resolving a deadlock, the Rajya Sabha has
a veto. During periods of oppositional control of the Rajya Sabha, it can force the
government majority in Lok Sabha to accommodate the interests of states under opposition
parties. However, this was not so during the period of one-party Congress dominance
throughout the country. Since 2004 again, the Congress coalition has a working majority
both in the Lok Sabha and Rajya Sabha.
As a federal second chamber, the Rajya Sabha is armed with three special powers: authorizing the Parliament under article 249 to legislate on an item in the state list and to create an All-India Service. The Rajya Sabha was thus used by the centrist Congress party in power in 1950, 1951, and 1986, to centralize the political system to the detriment of federal features by authorizing the Parliament by two-thirds vote to legislate on state subjects in national interest. By doing so it has thus contributed to legislative centralism. As an illustration of the second special power mentioned above, the Rajya Sabha authorized the creation of a new All India Service- the Indian Forest Service-in 1966. A third special power related to an Emergency situation. If an Emergency is declared at the time when the Lok Sabha is dissolved, the Rajya Sabha makes the formality of parliamentary approval of the proclamation. An Emergency so approved can be in operation for a maximum period of thirty days from the date on which the reconstituted Lok Sabha meets.

In the phase of multiparty system, the federal features of the Rajya Sabha have become increasingly more evident. For, the Rajya Sabha has been under the control of the opposition parties that are stronger in state legislatures (except for the present house [2004 - ]). The ruling party with a coalitional majority in the Lok Sabha must, therefore, work in cooperation with the oppositional majority in the Rajya Sabha in the passage of legislation and constitutional amendments. Commenting on the increased federal relevance of the Rajya Sabha since 1989, M.P. Singh argues that “the essential parliamentary interpretation of the powers of the Rajya Sabha was a by-product of the one-party dominant system in the early decades of the Indian Republic. The federal relevance of the Rajya Sabha is likely to increasingly become more salient with the growing regionalization and federalization of the political system.”

A study of the changing profile of Rajya Sabha members from 1952-2002 by Sandeep Shastri brings out some interesting patterns and trends. Out of 1607 members of the House in aggregate, regional and nominally national parties have tended to nominate and get elected proportionately more such members to the Rajya Sabha who have had earlier been members of state legislative assemblies. The percentage of such member's party wise is as follows: TDP (66), AIADMK (60), DMK (58), CPI (M) (62), and CPI (60). Among the larger national parties, Congress, Janata Party/ Dal data stand at 43% and 48/ 43 % respectively. The relevant data of the BJP in this regard is 54%. This shows that the modal categories of the Rajya Sabha members have significantly brought to the Parliament considerable number of years of experience gained in the state legislatures.
Despite the intention of the makers of the constitution to emphasize the parliamentary rather than federal character of the Rajya Sabha, in actual practice membership of the Rajya Sabha reflects regionalist or federal incumbency of the House. (See the Graph).

Elected Rajya Sabha Members – 1952 to 2002

Previous Membership of Legislative Bodies: Party wise

(all figure in percentage –n.1607)


There are however some continuing trends that detract from the growing federal role of the Rajya Sabha. For candidates for Rajya Sabha elections are nominated on the basis of party patronage at least in the case of national parties. These nominations are made by national party caucuses in the national and state capitals and the nominees may have no connection with the state they are supposed to represent.

A constitutional amendment in the Representation of People Act, 1951 in August 2003 by the NDA government abolished the domiciliary requirement for members of Rajya Sabha elected from a particular states. Another change that was given effect to was
that voting in Rajya Sabha be done openly rather than by secret ballot so that the party leadership could more effectively ensure that the state legislators did not transgress party lines in voting. This amendment led to the election of some business magnates and film actors from states where they were not residents. Former Rajya Sabha member Kuldip Nayar filed a case in the Supreme Court arguing that this is destructive of the Rajya Sabha’s representative credentials as a federal second chamber.\textsuperscript{18}

The Supreme Court which in recent years had been exercising its power of interpretation and review to promote the federal principle has for some inexplicable reasons delivered a retrogressive judgement in the above case. The five-judge Bench, headed by Chief Justice Y.K. Sabharwal, in its 317-page unanimous judgement, among other things, observed:

“It is no part of federal principle that the representatives of the States must belong to that State. There is no such principle discernible as an essential attribute of federalism, even in the various examples of the Upper Chambers in other countries. The various constitutions of other countries show that residence, in the matter of qualifications becomes a constitutional requirement only if it is expressly so stated in the constitution. Residence is not the essence of the structure of the Upper House. The Upper house will not collapse if residence as an element is removed. Therefore, it is not a prerequisite of federalism. It cannot be said that residential requirement for membership to the Upper House is an essential basic feature of all federal constitutions. Hence, if the Indian Parliament, in its wisdom has chosen not to require a residential qualification, it would definitely not violate the basic feature of federalism. Our Constitution does not cease to be a federal constitution simply because a Rajya Sabha member does not “ordinarily reside” in the State from which he is elected.”\textsuperscript{19}

I strongly disagree with this interpretation of the constitution and its evolving federal character. The Report of the National Commission to Review the Working of the Constitution (NCRWC) has also recommended that “in order to maintain basic federal character of the Rajya Sabha, the domiciliary requirement for eligibility to contest elections to Rajya Sabha from the concerned State is essential.”\textsuperscript{20}

The Court also upheld introducing open ballot, instead of secret ballot, for elections to the Rajya Sabha. The Bench observed:

“The principle of secrecy is not an absolute principle. The secrecy of ballot is a
vital principle for ensuring free and fair elections. The higher principle, however, is free
and fair elections and purity of elections. Out of the two competing principles, the purity
of election principle must have its way and the rule of secrecy cannot be pressed into
service “to suppress a wrong coming to light and to protect a fraud on the election process”.
If secrecy becomes a source for corruption then sunlight and transparency have the capacity
to remove it. In the present case in respect of the introduction of “open ballot” voting in
elections to the Rajya Sabha for elimination of the evil of cross-voting for consideration,
it can only be said that legislation pursuant to a legislative policy that transparency will
eliminate the evil that has crept in would hopefully serve the larger object of free and fair
elections.”

Conclusion

To sum up, as a federal House, the Rajya Sabha was expected to represent the
states. Initially, this role was rather insignificant, but has expanded over the years with the
transformation of the party systems at federal and state levels. Its increasing federal
relevance may be further strengthened by expanding its electoral college to include local
bodies in addition to state legislatures. This would be consistent with the current efforts
to put the local self-governing institutions on a constitutional footing. If the suggestion
made by Rainy Kithara to reconstitute it as a Prades Sabha with some representation to
the local bodies is implemented, the Rajya Sabha will significantly contribute to giving
some substance to the rhetorics of multi-level federalism, which at present for all practical
purposes is a bi-level affair. Such a reconstituted Rajya Sabha,” should speak for the
lower levels of the polity at the center and should have a special voice in legislations
affecting the lower levels.”

Further, if the twelve nominated members of the Rajya Sabha — until 2003, 105
such members have sat in the upper chamber— are nominated in a non-partisan way by
the presidential discretion rather than on the advice of the government of the day, the
chamber of Elders could be further made more representative of the universe of letters
and the civil society.

Notes And References

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of Delhi.
William Riker in his argument justifying bicameralism directs attention to some of these devices of checks and balances that a constitution may use to checkmate populist majoritarianism, e.g., the requirement of legislative supermajorities, non-legislative catchment area for the executive or cabinet creating some sort of tricameral system, multi-party proportional representation precluding majority for any one party and judicial vetoes on legislations in the process introducing tricameralism. (William Riker,” The Justification for Bicameralism”, International Political Science Review, Vol. 13, No.1,1992,pp.101-2.

The Directly elected Australian Senate is unique in the sense that it co-exists in a parliamentary federal system with a popularly elected parliamentary federal chamber. In view of the fact that there has been a persistent demand in Canada for a Triple E Senate—Elected, Equal, and Effective—the Australian experience is extremely interesting for comparative federal theory. The demand for a triple –E Senate in Canada has been strong in the Western provinces of British Columbia, Alberta, Saskatchewan, and Manitoba who are upbeat about their under representation and control of the federal government mostly by the Liberal party until recently which is practically non-existent in the Canadian West. Liberals with a stronger presence in Ontario and Quebec often pack the Senate with their party faithful. For a positive evaluation of the Senate and its qualitative debates and excellent legislative committee work, thanks to the elder statesmen appointed therein by the party in power, see C.E.S. Franks,” The Canadian senate in modern Times”, typescript, Department of Political Studies, Queen’s Univesity, July 17,2001.

The German second chamber is thus an exercise in what the Canadians call ‘executive federalism’ with one modification that the forum of executive representation in the German case is via the second chamber of the Parliament rather than the first ministers’ or inter-ministerial conferences. Indian system is patterned after the Canadian executive federalism.


CAD , Book 1 , 28 July 1947, p.876. Emphasizing the role of Rajya Sabha ,Dr.S.Radhakrishnan, in the first session of the Rajya Sabha on May 13,1952 said: “There is a general impression that this House cannot make or unmake governments and,
therefore, it is a superfluous body. But, there are functions, which a revising Chamber can fulfill fruitfully. Parliament is not only a legislative but a deliberative body. So far as its deliberative functions are concerned, it will be open to us to make very valuable contributions, and it will depend on our work whether we justify this two Chamber system, which is now an integral part of our Constitution. So, it is a test to which we are submitted. We are for the first time starting under the parliamentary system, with a second Chamber in the Centre and we should try to do everything in our power to justify to the public of this country that a second Chamber is essential to prevent hasty legislation.” (Seminar on ‘Role and Relevance of Rajya Sabha in Indian Polity, December 14, 2003, Celebrations to commemorate the 200th session of the Rajya Sabha. (Courtesy: Rajya Sabha Secretariat). Ibid., Book 2, 3 January 1949, p.1208.

Ibid., Book 2, 3 January 1949, p.1208.


Ibid., p.257.

The range of bills introduced per year in the Rajya Sabha varies from 18.4% in 1992-2001 and 11.5% in 1952-1961. The data show the growing relevance of the Rajya Sabha over the years, as in the intervening period also the number of bills first introduced in the Rajya Sabha was higher than the figure for 1952-1961. (Fifty Years of Rajya Sabha (1952-2002), Table 5.2, New Delhi: Rajya Sabha Secretariat, 2002, p.65). Also see Rajesh K. Jha,” The Process of Legislation in Coalition/Minority Governments: Case Studies from Ninth to Twelfth Parliament, Ph.D thesis, Department of Political Science, University of Delhi, 2006, p.276-89.


Seminar on “Role and relevance of Raja Samba in Indian Polity”, December 14, 2003, op.cit.

Ibid.

Till date, joint session of the Parliament was held on three occasions: in 1961 over the Dowry Bill; in 1977 over a bill on banking, and in 2002 over anti-terrorism legislation.


Kuldip Nayar and Others versus Union of India and Others, *Supreme Court Cases* (2006), 7 SCC.


*Kuldip Nayar and Others vesus Union of India and Others*, op. cit., paras 463, 464 and 421, p.23.


India and the World at large are passing through rapidly changing times. Within the country, the years since 1990s have witnessed tremendous transformation which may be encapsulated in two rather vague terms, i.e. federalization of the polity and neo-liberal reforms in the economy. Beyond the boundaries of the nation, globalization and regional integration have gathered unprecedented momentum following the end of the cold war and an emerging new geo-political scenario inter-mediated by the sole super power, the USA, and the great world and regional powers defined in military as well as economic terms. Veritably, a new world is in the making to which India must reorder its relations.

Changes in the various components of the Indian polity and the world around lack synchronicity as well as symmetry. This is inevitable because political, economic and international changes occur or are occasioned with divergent motivations and at varying paces. To give just one example, the avalanche of the pep talk about the globalization must contend with competing state sovereignties, particularly in a region like South Asia, which is beset with festering regional feuds and competing geo-political considerations of global and regional powers. Compulsions of economic progress and backwardness have pushed the issues of supranational economic cooperation among nations to the forefront in which different states and regions in India as well as the world around have varying stakes. However, the constitution and the laws provide an essential and inescapable matrix within which the new opportunities and challenges must be met. Positive, critical and constructive attempt at reforms may of course make interventions to reconcile the contradictions and promote moves in desirable directions.

It is well known that in the wake of Independence and partition in 1947, India drafted and adopted a federal constitution with a strong parliamentary center. Taking the lessons of history and the contemporary times, the Constituent Assembly of India settled for a constitution which, as Dr.Ambedkar put it, will work as a federal one but would be amenable to transformation into a unitary one in constitutionally contemplated emergencies. Without going into the details of controversial centralization of a potentially federal constitution and the displacement of the cabinet system by a Prime Ministerial system in the 1970s, it is evident that the system has been in for a remarkable degree of federalization since the 1990s. Since the same decade, economic reforms have reversed the process of state-led strategy of growth and given a greater leeway to the marked forces both in national and multinational terms. Federalization and marketization have conjointly augmented the autonomy of both the State Governments and the private sector. In this
new ambiance, the channels of communication between the Sub-national governments (SNGs) and foreign governments and between the Indian corporate companies and foreign companies are expanding at a remarkable pace.

This specific concern can be justified by the growing trends of federalization in the country and the frequency with which the interests of SNGs demand their contacts with foreign governments as well as multi-lateral financial institutions like IMF, World Bank and world direct investors. This changed context requires a fresh look at constitutional and legal frameworks regulating these relations with a view to bringing about positive reforms. The examples would be too numerous to cite here. Illustratively several State Governments have entered into or are in process of negotiating contracts with foreign governments or multilateral international agencies for development of the infrastructure and vital sectors of the economy. During his previous visit to India, the World Bank President spent more time in some state capitals than in New Delhi. As the Rudolphs remark: “By the end of the 1990s, state Chief Ministers became the marquee players in India’s federal market economy.”

A reading of the Constituent Assembly debates as well as the text of the constitution indicates that the framers of the constitution were essentially motivated by the theory that external affairs and treaty making powers should be an exclusively union jurisdiction, and primarily an executive affair. Presumably, the colonial practice and nationalist sentiment had made them blind to the fact that the matter at some stage could become federally sensitive in the sense that states and regions could develop a desire for being effectively consulted and represented in the process of treaty making. This argument appears to be validated by observations made by K.M.Munshi (Bombay : General) who made a rather detailed comment on the nature of the union executive in the draft constitution strongly advocating the British model against the American model but completely glossing over the difference between the two models with regard to the treaty making power. As is well known, the treaty making power in the US is shared between the executive and the federal second chamber, whereas in the British follow a unitary executive model of treaty making. Munshi argued that the model of the British executive “is the best form suited to Indian conditions”. He went on to say: “we must not forget a very important fact that during the last 100 years, the Indian public life has largely drawn upon the traditions of the British constitutional law. Most of us, and during the last several generations before us, public men in India, have looked up to the British model as the best. For the last thirty or forty years, some kind of responsibility has been introduced in
the governance of the country. Our constitutional traditions have become parliamentary and we have now all our provinces functioning more or less on the British model. As a matter of fact, today the Dominion Government of India is functioning as a full fledged Parliamentary Government. After this experience why should we go back upon the tradition that has been built for over 100 years, and try a novel experiment which was, as I said, framed 150 years ago and which has been found wanting even in America?’.²

Nevertheless, Article 51 of the Part IV of the constitution on DPSP, dealing with promotion of international peace and security uses the generic term ‘the state’ rather than the Union. This article provides “the state shall endeavour to

\[\begin{align*}
&a) \text{ promote international peace and security;} \\
&b) \text{ maintain just and honourable relations between nations;} \\
&c) \text{ foster respect for international law and treaty obligations in the dealing of organized people with one another;} \text{ and} \\
&d) \text{ encourage settlement of international disputes by arbitration}.\end{align*}\]³

It may be argued academically as also by the judiciary with greater authoritativeness that this article leaves the scope open for a greater participation of SNGs in the exercise of the treaty making power by the union.

Rajiv Dhavan also argues for a more democratic interpretation of the treaty making power of the union executive. To quote him

“Under the scheme of the Constitution, it is Parliament that needs to legislate on the manner and extent to which the Union may participate in international conferences, associations and other bodies, enter into treaties and agreements and implement whatever decisions are made at these meetings through these instruments.

There is nothing to prevent Parliament from passing legislation which will place treaty negotiations within a framework of democratic accountability in India”.⁴

I argue that this democratic accountability needs to be expanded into federal accountability.

Under the Constitution, SNGs are not authorized to contact foreign authorities directly. Under the Union list, Article 246 read with the Seventh Schedule of the
Constitution specified by Entries nos.10 (foreign affairs), 11 (diplomatic representation), 12 (Union Nations Organization), 13 (International conferences), 14 (War and Peace), and 41 (International Trade) give exclusive authority in this regard to the Union Parliament.\(^5\)

According to Article 73(b) the extent of executive power of the union extend “to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement”.\(^6\) Treaty making power is thus an executive act performed by the Government of India on behalf of the Parliament. However, Article 253 of the Constitution requires enactment of a law by the Parliament for giving effect to international agreements. In terms of this Article, “Parliament has the power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body”.\(^7\)

The constitutional provision in India with regard to treaties is consistent with the practice in the British Empire. In a 1937 case, *Attorney General of Canada v. Attorney General of Ontario*, the Privy Council observed: “Within the British Empire there is a well established rule that the making of a treaty is an executive act, while performance of its obligations, if they entail alteration of the existing domestic law, required legislative action. Unlike, some other countries, the stipulations of a treaty duly ratified do not, within the empire, by virtue of the treaty alone, have the force of law”.\(^8\)

The Privy Council also noted that this practice is simple enough in case of unitary countries but is somewhat complex in the Canadian case by virtue of its being a federal system. To quote from this judgement again: “There being so such thing as treaty legislation but only a distribution of legislative powers between the Dominion and the Provinces, the distribution being based on classes of subjects and it being one of the essential conditions in the inter-provincial compact to which the B.N.A. Act gives effect, the Dominion Parliament could not be said to have power to legislate for obligation arising out of treaty and make the same binding on the Provinces in face of Ss.91 and 92 of the Act”.\(^9\)

There have arisen controversies in this regard in India as well. The Constitution bench in *Magambhai Ishwarbhai v. Union of India* (1969)\(^10\) discussed the nature of treaty making of the union. As per Justice J.C.Shah: “The effect of Article 253 is that if a treaty, agreement or convention with a foreign State deals with a subject within the competence of the State Legislature, the Parliament alone has, notwithstanding Article 246(3), the power to make laws to implement the treaty, agreement or convention or any decision made at any
international conference, association, or other body. In terms, the Articles deal with legislative power: thereby power is conferred upon the Parliament which it may not otherwise possess. But it does not seek to circumscribe the extent of the power conferred by Article 73. If, in consequence of the exercise of executive power, rights of the citizen or others are restricted or infringed, or laws are modified, the exercise of power must be supported by legislation: where there is no restriction, infringement of the right or modification of the laws, the executive is competent to exercise the power”.

In *P.B.Samant v. Union of India* (1994), a petition was filed in the Bombay High Court invoking its power to issue a writ of Mandamus under Article 226 restraining the Union of India to enter into the final treaty relating to Dunkel proposals without prior consent of the Parliament and state legislatures. It was contended that the intended treaty will affect agricultural products, irrigation facilities and raw cotton which fall within the jurisdiction of state legislatures. The Court overruled these contentions and endorsed the earlier decision of the Supreme Court in the Maganbhai Patel case: “It is undoubtedly true that the executive power of the Central Government flows from the provisions of Article 73 of the Constitution of India. It is equally true that the proviso set out that the executive power shall not, save as expressly provided in this Constitution or in any State to matters with regard to which the Legislature of the State has the power to make laws”.

In *Vishaka v. State of Rajasthan* (1997), the Supreme Court ruled that international conventions signed by the Government of India that are consistent with the spirit of the fundamental rights, even though not exactly in terms of letters of the Constitution, can be read into the fundamental rights, although union and state legislatures may not have passed an implementing legislation to that effect. It therefore follows by implication that such judicial expansions of fundamental rights by the courts are equally binding on the Government of India and the State Governments. Thus, by entering into such international conventions, Government of India binds itself as well as the State Governments.

An old fashioned bureaucratic approach to this problem would create insurmountable bottlenecks and clog the channels of communication. Hence, a more flexible approach is called for. It is understandable that when under the given constitutional framework only Union Government is authorized to have contact with foreign authorities and when the frequency of such contacts with SNGs is increasing, the Union Government must develop mechanisms of consultation with State Governments before signing treaty which entails obligations for the State Governments as well, particularly relating to their exclusive jurisdictions.
In the constitutional scheme, the treaty making power was treated as a special aspect executive power. Article 131 of the Constitution dealing with original jurisdiction of the Supreme Court over union, state and inter-State disputes adds a clarification that this “jurisdiction shall not extend to a dispute arising out of any treaty, agreement, covenant, engagement, sanad or other similar instruments which, having been entered into or executed before the commencement of this Constitution, continues in operation after such commencement, or which provides that the said jurisdiction shall not extend to such a dispute”. The growing trend of federalization in the sense of regionalization is likely to run into conflict with an exclusive union executive monopoly over treaty making power.

So far, there is no concrete evidence of institutionalized consultation with State Governments by the Union Government prior to international conferences to which only the Union Government is entitled to send delegations, which the State Governments may join only as a matter of courtesy. There are no regular agencies in this context, only ad hoc agencies which are not mandatory. This inevitably results in unavoidable tensions between the union and State Governments. For example, at least three petitions: one each by governments of Tamil Nadu, Rajasthan and Orissa filed cases in the Supreme Court under Article 131 of the Constitution. The cases have been withdrawn but the pressure from the SNGs for participation in the treaty making power is not likely to disappear in the growing context of globalization.

In this context, the Report of the National Commission to Review the Working of the Constitution (NCRWC) has recommended that “for reducing tension or friction between States and the Union and for expeditious decision-making on important issues involving States, the desirability of prior consultation by the Union Government with the inter-State Council may be considered before signing any treaty vitally affecting the interests of the States regarding matters in the State List.”

There are other unanticipated problems that treaty making power of the union may give rise to in the context of India’s growing integration with global and supranational regional economies. For example, there is a widely shared apprehension that relatively low prices of medicines in India may increase phenomenally as a result of the TRIPS clauses of the WTO treaty. To quote Dhavan:

“The Indian Constitution guarantees life and liberty to each person in India. This has been interpreted to include the right to health. Read with the Directive Principles,
there is a positive obligation on the state to ensure the health of persons. If the patent regime is changed or EMR protection is given for drugs and medicine, there would be good public interest reasons for asserting that by virtue of the executive action of agreeing to these patent law changes and committing the legislature to change its laws, the direct and inevitable effect of these changes would be that India would not be able to fulfill its constitutional obligations to its own people.

It is these considerations (amongst others) which persuaded the States of Tamil Nadu, Rajasthan and Orissa to raise federal disputes with the Union on the signing and implementing of the GATT treaty.\textsuperscript{16}

The Rudolph’s see in the dawn of liberalization in the early 1990s the gradual emergence of what they call “a federal market economy.” To quote them:

Our use of the term ‘federal market economy’ is meant to draw attention to the fact that the new imagined economy evokes not only the decentralisation of the market, but also new patterns of shared sovereignty between the states and the center for economic and financial decision-making. This increased sharing shifts India’s federal system well beyond the economic provisions of its formal constitution. Over the last decade it has become clear that if economic liberalisation is to prevail, it is the State Governments and their Chief Ministers that can and must break the bottlenecks holding back economic growth. Can they and their governments negotiate a path that avoids surrender to populist pressures and yet effectively responds to the inequalities generated by market solutions?\textsuperscript{17}

In the larger context of new trends in comparative federalism, John Kincaid has conceptualized what he calls “constituent diplomacy” to refer to relations between subnational political units (states/ provinces/ cantons/ lander) and organizations beyond the boundaries of the nation state or the federal state.\textsuperscript{18} Rob Jenkins has tried to explore developments in this direction in the recent trends in Indian federalism. Both Kincaid and Jenkins are of the opinion that India is not yet a clear cut case of constituent diplomacy in the sense defined above. For the Indian states are considerably less autonomous in the area of foreign economic policy than paradigmatic cases of constituent diplomacy. For example, the State Governments exercised marginal influence over India’s multilateral talks on agricultural trade at the WTO and other forums. Yet some new trends are noticeable. To quote Jenkins “During the 1990s (and into the new millennium), several of India’s State Governments conducted negotiations and concluded agreements with international economic institutions such as the Asian Development Bank and the
International Labor Organization. Some bilateral aid agencies, like the United Kingdom’s Department for International Development, have begun to focus much of their efforts directly on State Governments as well”.

Notwithstanding Kincaid and Jenkins’s argument, the fact of the matter is that India cannot speak in different voices to the world organizations and international audiences without undermining its credibility. The Center may have the predominant constitutional power in concluding international treaties and agreements but neither the Center nor the States can fully honor treaty obligations unless there is a broad consensus between the two levels of government to do so. The Center, unlike in the old days of one-party dominant system, can no longer stampede State Governments into submission to discharge treaty obligations, leaving aside the question whether a particular treaty or agreement affects the resources or legislative powers of the States. The situation in Canada is somewhat similar to that of India; the federal government has the power to conclude international treaties and agreements, but the Canadian system has come to institutionalize the Premiers’ conference(s) as a means to evolving consensus among the provinces prior to federal government’s agreement on critical international commitments. It is by no means a perfect system – the Kyoto Accord to control environmental pollution was signed by Prime Minister Jean Chretian much to the protest of some provinces, and Quebec always insists on participation with the federal delegation when it comes to signing international agreements particularly in respect to cultural and educational matters. Quebec also maintains its own trade missions abroad though other provincial premiers do trot the globe for more business opportunities for their provinces. Minor difficulties notwithstanding, the Canadian system works through consultation and negotiations between the federal and the provincial governments.

In view of the growing trend of federalization in India wherein ‘province’ or ‘state-building’ has captured the psychology of provincial leaders and coalition-building at the Center has become the governing mode of administration, it is timely that foreign relations particularly having to do with treaties, agreements and conventions with foreign countries (Union List I, entry 14), even though enumerated exclusively under the Center’s jurisdiction, should be conducted on a broad-based consensus between the Center and States through a well-institutionalized process of mutual consultation and negotiations. In the absence of such a mechanism, it is likely that the Center will face more and more challenges to its treaty-making and treaty-implementing powers from the State
Governments. So far, the Supreme Court has recognized that the treaty-making power of the Center overrides the normal federal-state jurisdictional lines in the limited number of cases the Court has dealt with (except in the *Berubari* case\(^\text{20}\) where the Court called for a constitutional amendment for the cession of Indian territory to another country), but the Center's power is not absolute. International treaties and other agreements can be challenged in the court of law if these are in violation of Fundamental Rights (Part III of the Constitution) of the people but more so if they are not in line with the 'basic structure' of the Constitution. First enunciated in the *Keshavananda v. State of Kerala* (1973),\(^\text{21}\) the doctrine of 'basic structure' as developed by the Supreme Court gives the Court the power to review the constitutionality of any legislative and executive action if it is not in conformity with the basic structure of the Constitution. The doctrine is still in the making, but federalism has certainly been recognized as falling within the ambit of ‘basic structure’. Before treaty-making and treaty-implementation conflicts become the burden of the Supreme Court to settle, it will augur well for Center-State relations if some cooperative mechanism is put in place whereby the State Governments become partners with the Center in concluding international treaties, accords and agreements.

(The first draft of this paper was published in the EPW.)
References:


Constitution of India, Article 51.


Constitution of India, Article 246.

Constitution of India, Article 73(b).

Constitution of India, Article 253.

A.I.R. 1937 Privy Council, p.82.

Ibid, p.83

A.I.R. 1969, Supreme Court, Section 783.


Constitution of India, Article 131.


Lloyd I Rudolph and Susanne Hoeber Rudolph, supra n.1, p.1542.


In Re Berubari, AIR 1960 SC 845: (1960)3 SCR 250

Task Force-8

Paper presented by S. Irudaya Rajan
Internal Migration in India: Dealing with the Political and Administrative Organization

1. Introduction

The dimensions of population are influenced not only by births and deaths but also by geographical movement or migration. The study of migration is more complex than that of the other components responsible for population alteration, because it involves two places (origin and destination) and depends on social, economic and other characteristics of both the concerned places. Migration is not a recent phenomenon; it has contributed to economic and social development by enabling man to overcome the tyranny of space (Isard and Reiner, 1966). The migration of people has been international, inter-State and intra-State. When migration takes place across the various regions of a country, it is normally known as internal migration (Kumar, 2007). The Population Census in India defines migration based upon ‘Place of Birth’ (POB) and ‘Place of Last Residence’ (POLR). Migrants by POB are those who are enumerated at a village/town at the time of census other than their place of birth. A person is considered as migrant by POLR if the place in which he is enumerated during the census is other than his place of immediate last residence. By capturing the latest of the migration in cases where persons have migrated more than once, this concept would give a better picture of current migration scenario. The main driving force behind migration is a better standard of living away from home. In recent decades migration has been taking place amidst increasing global economic, political, and social integration that has been accompanied by greater speed and ease of transportation (Surjit, 2001). Migration carries human capital to regions of destination, entails investment in the employment of migrants, permits acquisition of new skills and accentuates economic cycle (Kuznets, 1962; Bhagawati, 1972). Probably more than at any time in the past, the Indian economy is being fuelled by the movement of labour. The current rapid growth of the Indian economy is certainly stimulated by migration of labour from rural villages to other prosperous villages, towns and cities; within and across districts, States and even national borders. However, such migration is not only a sign of dynamism; it reflects increasing inequalities, agrarian crisis and inadequate livelihood generation in many parts of rural India. Apparently, a growing part of contemporary internal migration often involves short-term, temporary and circulatory sojourns in the host regions. And direction of people’s movement has always been guided by the specific needs of the time (Chandrasekhar and Ghosh, 2007). According to Kundu (2007) persons who have gone to any other place for 60 days or more during the last six months from the date of survey
and returned may be termed as short duration or circular migrants. Konseiga (2002) defined a short-duration migrant as a member of the household who stays less than a year in the destination country or place.

The major problem currently faced by several developing countries is linked to stagnation and volatility of agriculture, India being no exception to this. The growth rates in agricultural production and income have been noted to be low and unstable over the past decade and a half, being responsible for serious socio-economic deprivation often leading to complete failure and causing malnutrition among women and children, high Infant Mortality Rate (IMR) and a large number of suicides in peasants’ families. The possibility of creating livelihood opportunities outside agriculture in rural areas seems to be limited since much of the growth in non-farm employment in majority of the states has been noted as poverty induced (Kundu, 2007). Migration in India largely fuelled by increasing regional disparities, rural-urban disparities and urban bias in economic planning. Urbanisation is one of the key dimensions in the modernisation process of the country. Economies of scale prevent investments from taking place in the hinterland and this is true of many regions in India (Surjit, 2001). Therefore, the implications of such a large volume of migration are immense and have economic, social and political dimensions. The difference in the economic opportunities available across the states of India ensures the perpetuation of the process. Internal migration is now seen as a major mechanism for the redistribution of resources from richer to poorer localities and a vital means of raising the incomes of the poor (Harris, 2005). In the past few decades new patterns have emerged, challenging old paradigms. First, there has been a shift of the workforce towards the tertiary sector in both developed and developing countries. In developing countries, the workforce shift towards the secondary/tertiary sector has been slow and dominated by an expansion of the informal sector, which has grown over time. Nevertheless, in India, a permanent shift of population and workforce co-exist with the circulatory movement of populations between lagging and developed regions and between rural and urban areas, mostly being absorbed in unorganised sector of the economy.

2 Migration and Development

From Ravenstein’s (1885; 1889) point of view, migration appeared to be a consequence of development. Everett Lee’s (1966) theory of migration attempted to capture the pushes from origin were the polar extremes of the pulls to destinations. Lack of employment opportunities in villages, as opposed to the existence of jobs in towns,
was seen to cause rural to urban migration, though rural areas were also seen to have pulls like better living, education, health standards, etc. Todaro (1966; 1976) argued that migration is mainly due to expected rather than real income differences between the rural and urban sectors. Further argues that increases in the number of urban jobs or urban incomes would lead still more increases in rural to urban migration rather than alleviating urban unemployment problems.

The structural functional/Marxist approach to migration considers migration as a response to the over all strategy of economic development. This approach concentrates on the organisation of the society and its modes of production and argues that the transformation and disruption of the underdeveloped economies as a result of their integration with the colonial capitalist systems starts migration and its associated problems like the exploitation of labour (Amin, 1974; Meilink, 1978). Rajan and Kumar (2007) highlighted the magnitude and trends in migration from India by selecting industrialised countries to which migration took place during two time periods, 1834-1937 and 1951-2001. Further, they stressed the economic impact of labour migration on labour markets, financial flows, social, and demographic factors and concluded that migration is a tool for development for both the individuals and the society.

3 Trends and Patterns of Internal Migration in India

There is considerable information on the pattern of migration during British period. The source of early migration flows in India was primarily agro-ecological, related to population expansion to new settlements (Eaton, 1984). The demand for labour rose internally with the growth of tea, coffee and rubber plantation colonies and later, with the advent of modern industries. Much of this labour was procured through some form of organised mediation and some portion of it remained circulatory and retained strong links with the areas of origin. But as it settled down, it provided a bridgehead to other migrants. As a result, metro urban pockets like Kolkata, Mumbai, Chennai and Delhi attracted rural labourers mainly from labour catchment areas like Bihar, Uttar Pradesh, and Orissa in the east and Andhra Pradesh, Tamil Nadu, and parts of Kerala and Karnataka in the south (National Commission on Rural Labour, 1991; Joshi and Josh, 1976; Dasgupta, 1987).

The historical pattern of the flow of labourers persisted even after Independence. In 2001, India's population exceeded 1 billion of which, 67.2 per cent lived in rural areas and 32.8 per cent in urban areas. Between 1951 and 2001, the proportion of the population living in urban areas rose from 17.3 per cent to 32.8 per cent. Of the total workforce,
73.3 per cent remained in rural areas, declining marginally from 77.7 per cent in 1991 and 79.3 per cent in 1981; 58 per cent remained dependent upon agriculture. The ratio between the highest to lowest state per capita incomes, represented by Punjab and Bihar in the first period, and Maharashtra and Bihar in the second period, has increased from 2.6 per cent in 1980-83 to 3.5 per cent in 1997-2000 (Srivastava and Bhattacharyya, 2003). The Planning Commission of India estimated that 26.1 per cent of India’s population lives below the poverty line (based on NSS, 1999-2000). Hence, these factors contributed largely to inducing people to migrate to the better-off places in the country.

Table 1 shows the proportion of migrants to total population by gender for the census periods from 1971 to 2001. In India, migrant population is around 30 per cent of the total population, which is quite high in terms of proportion. The proportion of migration has not come down over the decades; rather, it has seen a tendency to rise, indicating the important role that it plays in the economy, influencing the lives of a large section of poorer sections of the population. This indicates the significance of migration for the poorer sections in the country. In the past few decades, the proportions of migrants were around 30 per cent in all the above-mentioned census periods except in 1991, where it witnessed a decline to 27.6 per cent of the total migrants in the country. When we look at this in the gender aspect, the proportion of female migrants is greater in all the mentioned census periods. The proportion varies between censuses for both male and females and the higher proportion of female migration could be explained by the fact that it is stimulated by social factors such as marriage while in the case of males, migration depends on economic factors. Regarding the rural population tends to migrate more than their urban counterparts. Here, it is seen that 21.7 per cent migrated to other prosperous rural and urban areas of the country, whereas the migrants from the urban areas was only a marginal 4.8 per cent. In all categories, the proportion of female migrants is predominantly greater.
than that of male migrants; this could be mainly because of marriage as earlier mentioned, whereas male migration is considered mainly to be economically motivated rather than having any non-economic factors behind the migratory expedition.

Table 2: Internal Migrants in Various Categories since 1961-2001

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Migrants</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Intercensal</td>
<td>15.0</td>
<td>12.4</td>
<td>12.2</td>
<td>9.7</td>
<td>9.5</td>
<td>98.3</td>
</tr>
<tr>
<td>Intercensal interstate</td>
<td>2.0</td>
<td>1.6</td>
<td>1.6</td>
<td>1.3</td>
<td>1.6</td>
<td></td>
</tr>
<tr>
<td>Lifetime</td>
<td>30.6</td>
<td>28.7</td>
<td>29.4</td>
<td>26.5</td>
<td>29.2</td>
<td>301.1</td>
</tr>
<tr>
<td>Lifetime interstate</td>
<td>3.3</td>
<td>3.4</td>
<td>3.6</td>
<td>3.3</td>
<td>4.2</td>
<td>42.3</td>
</tr>
<tr>
<td>Male migrants</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Intercensal</td>
<td>11.3</td>
<td>9.4</td>
<td>8.9</td>
<td>6.1</td>
<td>6.2</td>
<td>32.9</td>
</tr>
<tr>
<td>Intercensal interstate</td>
<td>2.2</td>
<td>1.8</td>
<td>1.6</td>
<td>1.2</td>
<td>1.6</td>
<td>8.5</td>
</tr>
<tr>
<td>Lifetime</td>
<td>18.3</td>
<td>17.2</td>
<td>16.6</td>
<td>13.8</td>
<td>16.4</td>
<td>87.2</td>
</tr>
<tr>
<td>Lifetime interstate</td>
<td>3.4</td>
<td>3.4</td>
<td>3.3</td>
<td>2.8</td>
<td>3.7</td>
<td>19.7</td>
</tr>
<tr>
<td>Female migrants</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Intercensal</td>
<td>19.0</td>
<td>15.7</td>
<td>15.7</td>
<td>13.5</td>
<td>13.2</td>
<td>65.4</td>
</tr>
<tr>
<td>Intercensal interstate</td>
<td>1.7</td>
<td>1.3</td>
<td>1.7</td>
<td>1.5</td>
<td>1.7</td>
<td>8.3</td>
</tr>
<tr>
<td>Lifetime</td>
<td>43.7</td>
<td>41.1</td>
<td>43.1</td>
<td>40.3</td>
<td>43.0</td>
<td>213.7</td>
</tr>
<tr>
<td>Lifetime interstate</td>
<td>3.2</td>
<td>3.4</td>
<td>3.9</td>
<td>3.8</td>
<td>4.6</td>
<td>22.7</td>
</tr>
</tbody>
</table>

Source: Kundu (2007), Migration and Exclusionary Urban Growth in India.
The pattern of internal migration is presented in Table 2 using the various decadal census data. It may be seen here that mobility of population measured through percentage of lifetime migrants has declined systematically during 1961-1991. An analysis of intercensal migrants (those shifting place of residence during the past decade) reveals a sharp decline among male as well as female migrants. Economic factors are likely to be relatively more important in explaining the declines in the mobility of males while the mobility of females for whom socio-cultural factors play a more important role, has been higher. The sharper decline in case of male migrants, both in case of rural as well as urban areas, has been attributed, besides the rigidities of the agrarian system, growing regionalism etc., to the inhospitable environment they are confronted with in cities and towns. A fall in the rate of urbanisation during 1991-2001, too confirms this argument. The nineties has been the decade of rapid migration. Except for the total intercensal migrants, the percentage figures for all other migration categories have reported a rise during the decade, both for male as well as female, as is seen in the table.

197. Table 3: Migrants in each Stream to Total Migrants in India, 1991 and 2001

<table>
<thead>
<tr>
<th></th>
<th>1991 Total</th>
<th>1991 Male</th>
<th>1991 Female</th>
</tr>
</thead>
<tbody>
<tr>
<td>i) Intra-District</td>
<td>62.1</td>
<td>50.4</td>
<td>66.4</td>
</tr>
<tr>
<td>ii) Inter-District</td>
<td>26.0</td>
<td>30.1</td>
<td>24.5</td>
</tr>
<tr>
<td>iii) Inter-State</td>
<td>11.8</td>
<td>19.4</td>
<td>8.9</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2001</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>i) Intra-District</td>
<td>61.5</td>
<td>50.7</td>
<td>66.1</td>
</tr>
<tr>
<td>ii) Inter-District</td>
<td>23.5</td>
<td>26.0</td>
<td>22.8</td>
</tr>
<tr>
<td>iii) Inter-State</td>
<td>13.1</td>
<td>20.5</td>
<td>10.0</td>
</tr>
</tbody>
</table>

Note: Same as Table 1.
Table 3 portrays migrants’ proportions as per the migration streams for the 1991 and 2001 censuses. Among these, the most predominant destinations are intra-district with 62.14 per cent, inter-district with 26.05 per cent, and inter-State with 11.82 per cent in 1991; it is 61.5 per cent, 23.5 per cent and 13.1 per cent respectively for these three categories in the 2001 census. In the gender aspect, both in 1991 and 2001, the proportion of female migrants is predominantly higher than that of male migrants in almost all streams. In India, a large proportion of population prefers to migrate primarily within their district territory. This indicates that people are not ready to travel longer distances, but if and when there are economic compulsions like poverty, lack of employment and livelihood problems, they may migrate longer distances as they have no other any alternative or option.

Table 4: Reasons for Migration for 1991 and 2001 (0-9 Years Migrants)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Work/Employment</td>
<td>12.1</td>
<td>30.4</td>
<td>3.0</td>
<td>14.7</td>
<td>37.6</td>
<td>3.2</td>
</tr>
<tr>
<td>Business</td>
<td>2.7</td>
<td>6.6</td>
<td>0.8</td>
<td>1.2</td>
<td>2.9</td>
<td>0.3</td>
</tr>
<tr>
<td>Education</td>
<td>4.2</td>
<td>9.0</td>
<td>1.8</td>
<td>3.0</td>
<td>6.2</td>
<td>1.3</td>
</tr>
<tr>
<td>Marriage</td>
<td>44.9</td>
<td>2.6</td>
<td>65.9</td>
<td>43.9</td>
<td>2.1</td>
<td>64.9</td>
</tr>
<tr>
<td>Moving with Family</td>
<td>36.1</td>
<td>51.4</td>
<td>28.5</td>
<td>37.3</td>
<td>51.3</td>
<td>30.1</td>
</tr>
<tr>
<td>Total</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
</tr>
</tbody>
</table>

Note: Same as Table 1.

Table 4 illustrates the reasons for migration from 0-9 year duration of migration for the period between the 1991 and 2001 censuses. As we know, in India the large proportion of
movement is marriage migration in which female migrants are predominantly higher than male migrants. Nonetheless, after excluding marriage and migrants moving with family, the most important reason for migration is work/employment followed by education and business respectively. Work/employment as the reason for migration proportion has increased from 12.1 to 14.7 per cent since 1991 to 2001. In the case of other factors like education and business, it has shown a slight decline from 1991 to 2001. When we examine the gender aspect in all the economic-related reasons, male migrants were predominantly more than females. In other words, the proportion of female migrants for employment purposes is very negligible as compared to their male counterpart and this difference between male and female migrants is much wider.

Table 5: Migrants by Place of Last Residence Indicating Migration Streams for Duration 0-9 Years India, 2001.

<table>
<thead>
<tr>
<th>Migration Streams</th>
<th>Intra-State Persons</th>
<th>Males</th>
<th>Females</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rural to Rural</td>
<td>60.5</td>
<td>41.6</td>
<td>68.6</td>
</tr>
<tr>
<td>Rural to Urban</td>
<td>17.6</td>
<td>27.1</td>
<td>13.6</td>
</tr>
<tr>
<td>Urban to Rural</td>
<td>6.5</td>
<td>8.6</td>
<td>5.6</td>
</tr>
<tr>
<td>Urban to Urban</td>
<td>12.3</td>
<td>18.3</td>
<td>9.7</td>
</tr>
<tr>
<td>Inter-State</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rural to Rural</td>
<td>26.6</td>
<td>20.7</td>
<td>32.7</td>
</tr>
<tr>
<td>Rural to Urban</td>
<td>37.9</td>
<td>44.7</td>
<td>30.9</td>
</tr>
<tr>
<td>Urban to Rural</td>
<td>6.3</td>
<td>6.1</td>
<td>6.4</td>
</tr>
<tr>
<td>Urban to Urban</td>
<td>26.7</td>
<td>25.9</td>
<td>27.5</td>
</tr>
</tbody>
</table>

Source: Same as table 1.
Table 5 gives details about migration streams based on intra-State and inter-State migration for duration of nine years. There is a clear sign that as far as intra-state migration is concerned, a large proportion of migrants, i.e., 60.5 per cent moved in the rural to rural stream. Coming next in order of proportion are the migrants who moved from rural to urban areas with 17.6 per cent. The proportion of population that migrated from urban to rural areas is quite low at 6.5 per cent, while urban to urban area migration stands at 12.3 per cent. In contrast, in the case of intra-state migration except rural to rural migration stream, in all other streams, the proportion of male migrants is higher than that of female migrants, whereas in the rural to rural migration stream, the proportion of female migrants is 68.6 per cent. This indicates that female migration is mostly confined to rural to rural areas where they may be participating in agricultural activities. It is generally considered that females are more suitable to be employed in agriculture and allied activities.

When we look into inter-State migration stream the picture is different. Here, the most predominant stream is rural to urban stream with 37.9 per cent followed by urban to urban and rural to rural migration streams with 26.7 and 26.6 per cent respectively. In this section also, female migrants largely moved in the rural to rural stream, and male migrants outnumbered them in all other streams. This can be interpreted in two ways. One is that most of these rural female migrants are illiterates and hence hesitant to migrate to urban areas which demands taking more risks, more knowledge and adaptability to a new life style. Furthermore, rural females are burdened with household, family duty and taking care of children, and such responsibilities naturally discourage or restrict them from migrating longer distances and confine their movements to nearby rural areas for shorter periods.

4 Protecting the Migrants: Internal Migration Act, 1979

According to Indian Census 2001, 314.54 million persons moved for various reasons within the country. Out of these, 29.90 million migrated for reasons of employment. It has been observed that migration from rural to urban areas has increased. There was exploitation of the migrant workers in relation to payment of minimum wages. It was to appraise the problem related to labour migrants that the Ministry of Labour, Government of India was first passed the Internal Migration Act in 1979. The Ministry of Labour and Employment is in charge of registering these migrants. The purpose of
this act was to regulate and safeguard the employment of internal migrant workmen in India. Therefore, the Government of India enacted the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979. Their main objectives are: 1) Registration of all principal employers/contractors employing migrant labour; 2) Licensing of contractors - no contractor can recruit any migrant labour without obtaining a licence from the appropriate government; 3) Issue of passbook affixed with a passport-sized photograph of the workman indicating the name and the place of the establishment where the workman is employed. The period of employment, rates of wages, etc. of every inter-State migrant workman; 4) Payment of minimum wages fixed under the Minimum Wages Act, 1948; 5) Payment of equal wages for inter-State migrant workmen performing similar nature of work along with the local labourers; 6) Payment of journey allowance including payment of wages during the period of journey; 7) Payment of displacement allowance; 8) Providing for suitable residential accommodation; 9) Providing for medical facilities free of charge, and 10) Providing for protective clothing. Both the Central and the State Governments are required to implement the provisions of the above Act in their respective jurisdictions. Though the objectives of the government administration sound very good for the welfare of these migrants, this act was not very effective in the Indian case.

4.1 Promoting the Welfare of Workers

The Ministry of Labour and Employment (2009) has made serious efforts to promote welfare of workers, especially relating to enhancement of well-being of farmers, farm labour and those belonging to the unorganised sector, striving for elimination of child labour, Social Security, providing vocational training etc. Some of the major initiatives taken for legislative measure are: 1) The Apprentices Act, 1961 was amended, _inter alia_, to provide for reservation for other Backward Classes, 2) The Maternity Benefit Act, 1961 was amended to enhance the medical bonus from 250 INR (5.11718 USD) to 1000 INR (20.4687 USD) and 3) To provide social security to workers in the unorganised sector. A Protocol on Prevention, Rescue, Repatriation and Rehabilitation of migrant and trafficked child labour has been developed. The list of occupations for which child labour is banned has been enlarged. The Central Government has revised the national floor level minimum wage from 66 INR per day (1.35094 USD) to 80 INR per day (1.63750 USD) with effect from 01.09.2007 onwards up to 2009.

These measures will go a long way in achieving the objectives of having a strong, efficient and productive workforce in India. The working conditions of the migrant workers
as an amendment being sought in the Interstate Migrant Workmen’s Act plug loopholes in implementing their objectives. Therefore, there is a need for the National Commission for Enterprises in the unorganised Sector (NCEUS) approach that could be implemented by the Government of India. Regarding the universal social security registration, the entitlement to minimum social security should be through portable schemes, so that it can serve the workers as a basis for entitlements to other benefits, and the comprehensive legislation on minimum working conditions with special provision for protection of women migrants could be enhanced.

5 Development Induced Migration

The implementation of technology has brought about a revolution in the day-to-day life of the people. The various activities relating to development have caused a number of crises which puts mankind in disaster, (for example, the displacement of two villages in Orissa caused by the construction of the Hirakud Dam) large scale of deforestation, mining, work industrialisation, nuclear and military bases, and etc., which affect the ecology, economy, and the total life space of huge population, sometimes pushing them out of their native locality (Baboo, 1992). The rehabilitation for the displaced population may not be done with immediate effect. In such situations, people can resort to migration as a strategy to safeguard their livelihood. In this process, migration will take place as the outcome of development. The construction of major infrastructure works such as dams may involve the temporary or permanent relocation of communities. By redirecting traditional resource flows, such projects can alter human settlement and mobility and health outcome patterns. Indigenous persons and others may also be prompted to migrate by the adverse public health and environmental effects of some extractive industries. Efforts to settle nomadic populations or to conserve land have also resulted in resettlement programmes or spontaneous movements and poor population health outcomes. Bhaduri (2007) argued that the strategy under which the state allies with corporations to dispossess people of their livelihoods is nothing but developmental terrorism, irrespective of the political label of the political parties in office. A massive land grab by large corporations is going on under various guises, aided and abetted by the land acquisition policies of both the federal and State Governments. However, until September 2006, the Board of Approvals Committee of the Ministry of Commerce had approved 267 Special Economic Zones (SEZ) projects all over India. Destruction of livelihoods and displacement of the poor in the name of industrialisation, big dams for power generation and irrigation, corporatisation of agriculture despite farmers’ suicides, and modernisation and...
beautification of our cities by demolishing slums are showing everyday how development can turn perverse. Bhaduri suggested that we must chart out an alternative path of development; such possibilities, although limited, exist even in the present situation. The most well known examples of development-induced displacements are those caused as a result the construction of the Three Gorges Dam in China; Sandouping, Yichang, and Hubei, and Hirakud and Narmada project in India.

6 Forced Migration

Forced migration refers to the coerced movement of a person or persons away from their home or home region, uprooting, exile and forced displacement, be they due to conflict, persecution or even so-called ‘development’. These are conditions, which characterise the lives of millions of people across the globe (Mehta and Gupte, 2003). It often connotes violent coercion, and is used interchangeably with the terms ‘displacement’ or ‘forced displacement’. A specific form of forced migration is population transfer, which is a coherent policy to move unwanted persons, perhaps as an attempt at ‘ethnic cleansing’. Someone who has experienced forced migration is a ‘forced migrant’ or ‘displaced person’. Less attention has been paid to displaced populations who experience refugee-like status in their own countries for similar reasons or those displaced as a consequence of infrastructure projects such as mines, dams and roads.

The Department of Displacement and Rehabilitation, Indian Social Institute estimates that in India, over 20 million people have been displaced due to development projects during the 1980s (Fernandes et al., 1989). Roughly 65 per cent of development-induced displacement is caused by large river valley dam projects. In India, between 1951 and 1991, about 213,000 were displaced due to ‘development’ schemes, of which nearly 30 per cent were tribal people. Nearly 75 per cent of the ‘tribal’ populations have not been settled at all and the author suspects that most of them refused resettlement (Asif, 2000). The displacement toll of 300 large dams that are constructed every year worldwide is estimated to displace about 4 million people. South and East Asia account for 80 per cent of displacement (Dwivedi, 2006). The conservative estimates place the number of displacement down at about 10 million annually. Similarly, in some parts of the developing world such as Africa, the growing exodus of people from their homes due to natural disasters and civil strife was said to be close to 4.6 million in 2003 alone (UNHCR, 2003). Non Governmental Organisation (NGOs) demanded compensation for livelihood losses of landless people and ‘encroachers’ who were dependent on forest land, and resources. In April 1986, the Narmada Dharangrastra Samiti (NDS) was formed in Dhulia,
a committee under the leadership of Medha Patkar. The well-known Sardar Sarovar Project in India, and the world-wide campaign led by the Narmada Bachao Andolan show concern about the crisis and the need to take collective action against the displacement and despoliation in the Narmada Valley. Both the local and Central Government is responsible for the mass displacement of the people because they are in charge of issuing the licence to the corporation to start the project. In the case of the NDS, the role of the NGO under the leadership of well-known social activist Medha Patkar was very sensational. A group of people raised their voices and went on a hunger strike in front of the court to protest against the project. The outcome of the mass movement against the construction of dam is that the Narmada project has abandoned the plan to increase the height of the dam.

In India, only the Bedhi project in Uttar Kannada district in Karnataka was abandoned due to the pressure from the affected people; further, the very language used, of compensation by the project authorities tended to blunt the political voices of those affected: compensation, no matter how meagre, generated interest and impeded unity among the affected people (Dwivedi, 2006). In fact, if compensation is properly and justly administered, some households may benefit because under the Gujarat Government's policy, and the affected landless agricultural labourer is entitled to 2 ha of land as compensation in the project command, as are his/her adult sons. As far as the Government is concerned no justice has been done for implementing the compensation package. The problem arises when the social marginal cost is exceeding the social marginal benefits; for the purpose of development, society may have to bear a very high cost. Social costs such as displacement seem to come into consideration only when the adversely affected people exerted political pressure. The construction of dam also increases the environmental cost, such as destroyed the forest land, wildlife, soil erosion and human displacement, etc. In the case of India, using the word displacement is complicated, particularly in the Northeastern region as there is internal displacement and migration due to the ethnic conflict (Goswami, 2007).

6.1 Civil Society

Both theoretical and empirical research has attempted to confirm that societies strive politically and economically when they are able to build strong non-state actors and community organisation (Monga, 2009). In theory, its institutional forms are distinct from those of the state, family and market, though in practice, the boundaries between state, civil society, family and market are often complex, blurred and negotiated. Civil society
commonly embraces a diversity of spaces, actors and institutional forms, varying in their degree of formality, autonomy and power. Civil societies are often populated by organisations such as registered charities, non-governmental organisations, community groups, women’s organisations, faith-based organisations, professional associations, trade unions, self-help groups, social movements, business associations, coalitions and advocacy groups. The role of the civil society is important in a situation where the society has to bear high cost for developmental project that displaced thousand of them. The NGOs working for society, for example, like the Narmada Bachao Andolan in the construction of Sardar Sarovar Project in Narmada and Hirakud Dam in Orissa, etc., play a big role and push the government to provide compensation for the displaced persons. Apart of the NGOs that agitated against the construction of big dam, there are NGOs that mobilise the social movement especially to protest against the influx of population in Assam.

7 Environment Induced Migration

Migration can be used as a coping strategy for livelihood when people face of vulnerability due to environmental problems. Available evidence suggests that labour migration can form the basis of a sustainable livelihood in chronically degraded land, building resilience across households and communities. Indeed, families without labour migrants may suffer more during chronic or sudden onset disasters (Erza, 2001). Labour migration to rural and urban areas is a common component of diversified local economies. In lesser-developed countries, labour migration is typically internal, temporary and circular in nature. During periods of chronic environmental degradation, such as increased soil salinisation or land degradation, the most common responses by individuals and communities is to intensify labour migration patterns. By doing so, families increase remittances and lessen immediate burdens to provide. Climate change can affect migration in three distinct ways: i) the effects of warming and drying in some regions will reduce agricultural potential and undermine “ecosystem services” such as clean water and fertile soil, ii) the increase in extreme weather events – in particular, heavy precipitation and resulting flash or river floods in tropical regions – will affect ever more people and generate mass displacement, and iii) sea-level rise will permanently destroy extensive and highly productive low-lying coastal areas that are home to millions of people who will have to relocate permanently (Nordas and Gleditsch, 2007).

In India, for example, Orissa, West Bengal, Assam, Tripura, etc., are, every year, badly affected by natural disasters like flood and cyclone. When coastal Kerala and Tamil
Nadu were hit by the tsunami, it induced thousands of people to migrate for survival and safety. Migration may become an adjustment mechanism, possible for those with the resources to move early and far enough away from danger or, as a last resort, a survival mechanism. However, in extreme cases and for those with fewer means to move, migration may be an expression of failed adaptation – an attempt to escape from imminent suffering or even death. Forcibly displaced groups vary greatly – some flee systematic persecution while others flee life-threatening natural disasters – but most are influenced by several underlying causal factors (Wood, 1994). It is also found that environmental degradation plays a role in migration, particularly in less developed countries, and this migration, in turn, can be a factor in international and intrastate political conflict (Reuveny, 2005).

Perhaps the most familiar scenario is that of large-scale human displacement in the wake of natural and industrial disasters. While not always environmentally induced, devastating tsunamis, earthquakes and floods have left millions without shelter and basic services. In some cases, entire areas have been irrevocably damaged, making return infeasible. In the worst cases, early warning systems and response plans may be non-existent or ineffective, leaving governments virtually helpless to prevent mass internal or cross-border displacement or to arrange for adequate collective centres and camps. Logistical concerns, such as procuring and distributing drinking water, can be immensely challenging, even for most developed States. In addition, the sheer volume of technical, logistical and financial resources required to ensure sustainable returns can be overwhelming as governments engage in transportation, livelihood regeneration and ‘building back better’ so that, for instance, housing and coastal dykes are more robust. The effective management of environmental migration is necessary to ensure human security, health and well-being and to facilitating sustainable development. With more informed action and multi-stakeholder cooperation, societies around the world will be better able to achieve these objectives. As awareness grows of the issues at stake, a consensus is emerging on the need for a global strategy to study, plan for, adapt to and mitigate the processes and effects of environmental change. The movement of people and the implications for sound migration management should be the key elements to focus.

8 A Case Study of Migrants in Mumbai and Migration Profile in Maharashtra

On the basis of net migration during last decade, i.e., the difference between in-migration and out-migration, Maharashtra stands at the top of the list in India with 2.3 million net migrants, as per the 2001 Census. It received 8.2 per cent of in-migrants to total population and 16.4 per cent share of total migrants, which is the highest among the major states in India (Table 6).
Table 6: Variation in Migration Profile based on PLOR during 1991-2001 (Duration 0-9 years)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>In-migrants</td>
<td>32,31,612</td>
<td>16,13,268</td>
<td>100.3</td>
</tr>
<tr>
<td>In-migrants (from abroad)</td>
<td>48,394</td>
<td>30,150</td>
<td>60.5</td>
</tr>
<tr>
<td>Total in-migrants</td>
<td>32,80,006</td>
<td>16,43,418</td>
<td>99.6</td>
</tr>
<tr>
<td>Out-migrants</td>
<td>8,96,988</td>
<td>7,70,030</td>
<td>16.5</td>
</tr>
<tr>
<td>Net migrants (+/-)</td>
<td>23,83,018</td>
<td>8,73,388</td>
<td>172.8</td>
</tr>
</tbody>
</table>

Source: Same as table 1.

8.1 Contribution of Migration to Urbanisation

Migration is one of the important factors contributing to the growth of urban population. The total urban population of the country, excluding Jammu and Kashmir increased from 217.6 million in 1991 to 283.6 million in 2001 registering a growth rate of 30.3 per cent. The migration data of 2001 Census indicates that 20.5 million people enumerated in urban areas are migrants from rural areas who moved in within the last 10 years. There are 6.2 million migrants who have similarly migrated from urban areas to rural areas. Thus the net addition to urban population on account of migration is 14.3 million. This works out to be 6.6 per cent of the urban population in 1991. In other words, out of the urban growth of 30.3 per cent, 6.6 per cent is accounted for by migration to urban areas. Thus, natural growth of urban population and growth due to formation of new urban settlements and extension of areas of towns during 1991-2001 adds up to 23.7 per cent.
8.2 Migration into Urban Agglomerations

2001 Census data also presents migration data by last residence for each Urban Agglomeration (or UA) and City in the country, allowing specific examination. The inflow of migrants depends upon the size of the UA/city as in large UAs and Cities the availability of work/employment is greater. However, in terms of amenities and services, in-migration causes a severe pressure, as these are not commensurate to high growth in population. Table 2 provides a comparison of migrants by last residence during last ten years into important UAs and their share to total UA population, thus providing an insight into the fast pace in which the migration is taking place in these centres.

The total number of in-migrants during the last ten years is the highest in Greater Mumbai UA, the main component being those who are coming from outside the state. Delhi UA on the other hand received 1.9 million migrants from other states, the largest among the UAs shown above. Kolkata UA is important as it received 54,509 persons from other countries, most likely Bangladesh. Bangalore UA, received 0.3 million in-migrants from other states, more than Chennai and Kolkata, which is likely due to its growing opportunities in information technology related work. In terms of proportion of in-migrants to total population in these UAs, Delhi UA was at the top, with in-migrants constituting 16.4 per cent of the population. Greater Mumbai (15.1 per cent) and Bangalore UA (13.4 per cent) were the next two in terms of proportion among the UAs (Table 7).

**Table 7: Number of In-Migrants by Last Residence (duration 0-9 years) into important Urban Agglomerations: 2001 Census**

<table>
<thead>
<tr>
<th>Name of the UA</th>
<th>2001 Population</th>
<th>From within the state</th>
<th>from other State</th>
<th>from other</th>
<th>Total in-migrants</th>
<th>% of in-migrants to total population</th>
</tr>
</thead>
<tbody>
<tr>
<td>India Urban</td>
<td>28,61,19,689</td>
<td>2,49,74,372</td>
<td>1,15,75,574</td>
<td>3,48,060</td>
<td>3,64,80,006</td>
<td>12.7</td>
</tr>
<tr>
<td>Greater Mumbai</td>
<td>U.A</td>
<td>1,64,34,386</td>
<td>8,92,706</td>
<td>15,71,181</td>
<td>25,665</td>
<td>15.1</td>
</tr>
<tr>
<td>Delhi UA</td>
<td>1,28,77,470</td>
<td>77,663</td>
<td>19,88,314</td>
<td>46,386</td>
<td>21,12,363</td>
<td>16.4</td>
</tr>
<tr>
<td>Chennai UA</td>
<td>65,60,242</td>
<td>3,34,972</td>
<td>94,964</td>
<td>5,684</td>
<td>4,35,620</td>
<td>6.6</td>
</tr>
<tr>
<td>Kolkata UA</td>
<td>1,32,05,697</td>
<td>4,70,601</td>
<td>2,97,279</td>
<td>54,509</td>
<td>8,22,389</td>
<td>6.2</td>
</tr>
<tr>
<td>Hyderabad</td>
<td>57,42,036</td>
<td>4,07,861</td>
<td>88,216</td>
<td>2,406</td>
<td>4,98,483</td>
<td>8.7</td>
</tr>
<tr>
<td>Bangalore UA</td>
<td>57,01,446</td>
<td>4,01,932</td>
<td>3,53,156</td>
<td>6,397</td>
<td>7,61,485</td>
<td>13.4</td>
</tr>
</tbody>
</table>

Source: Same as table 1 (D3 UA City)
8.3 The Political Organisation of the Shiv Sena

Shiv Sena is a far-right political party in India founded on June 19, 1966 by Balasaheb Thackeray. The party originally emerged out of a movement in Mumbai, the then-Bombay, broadly favouring increased influence of Marathi-speaking people in Maharashtra. Although the party’s primary base is in Maharashtra, it has tried to expand to a pan-Indian base. Gradually it moved from a pro-Marathi ideology, to one supporting a Hindu nationalist agenda as it aligned itself with the Bharatiya Janata Party. In 1960, Balasaheb Thackeray, a Mumbai-based cartoonist, began publishing the satirical cartoon weekly Marmik. Through this publication, he started disseminating anti-migrant sentiments, which led to the formation of the Shiv Sena as a political organisation. The New Economic Policy started in the 1990s in India, but it had already begun in Mumbai during the early 1980s under the government of Sharad Pawar. There has been an expansion of the textile industry in Mumbai, which involved an increase in employment in the informal sector. Most of the manufacturing firms demand low wage labour. But the changes had never been slow in Mumbai; the faster growth of the city’s population occurred in the decade after Independence, when 950,000 migrants came to the city (Eckert, 2003). On the other hand, there was a steady flow of South Indian migrants to the city who came to take over many white-collar employments.

Since then, the political approach of the Shiv Sena was centre around the concept of Bhumiputra (sons of the soil), the idea that Maharashtra inherently belonged to the Marathi community. The Shiv Sena was thus born out of a feeling of resentment about the relative marginalisation of the native Marathi people in their own state by people whom they perceived as outsiders. The Shiv Sena especially attracted a large number of disgruntled and often unemployed Marathi youth, who were attracted by Thackeray’s charged anti-migrant oratory. Shiv Sena cadres won a reputation for violence, became involved in the murder of Communist MLA of Dadar, Krishna Desai in the 1970s, various attacks against the South Indian communities, vandalising South Indian restaurants, street hawkers, and pressuring employers to hire Marathis (Katzenstein et al., 1998). Subsequently due to internal conflict in the party, in December 2005, Raj Thackeray, Balsaheb Thackeray’s nephew, left the party. Raj Thackeray later founded a new party, Maharashtra Navnirman Sena (MNS). The new party has tried to distance itself from the Hindu nationalist agenda of the Shivsena. After the split, clashes have occurred between followers of the two Senas.
As far as the electoral performance of the Shivsena in the Parliament Election is concerned, the number of candidates contested start declining from 1999 to 2009 general election, and the number of elected candidates have also since then declined at the same time (Table 8). The decline in their performance, basically, stand by their own set of agenda and style of politic which may not like and interest for the larger section of the society especially those came from outside Maharashtra and settle there. The party campaign against non-Maharashtraians in Mumbai, the Shiv Sena protests, have been known to break down into violence and force in public, in the name of protecting Hindutva from what it deems as corrupting Western influences. There have been many occasions when they attacked North Indians in Mumbai (Rumbold, 2008). Likewise, the Shiv Sainiks attacked movie theatres in Mumbai. The party holds that the influx of migrants should also be stopped as these migrant soon bring in their friends and relatives to the state. Subsequently, the migrants get rations cards and their names on the electoral rolls with the help of politicians who want to create vote banks; this will affect the demography (Gaonkar, 2009).

Table 8: Electoral Performance of the Shivsena in the Parliament Election

<table>
<thead>
<tr>
<th>year</th>
<th>Candidates</th>
<th>Elected</th>
<th>Votes</th>
</tr>
</thead>
<tbody>
<tr>
<td>1971</td>
<td>5</td>
<td>0</td>
<td>227468</td>
</tr>
<tr>
<td>1980</td>
<td>2</td>
<td>0</td>
<td>129351</td>
</tr>
<tr>
<td>1989</td>
<td>3</td>
<td>1</td>
<td>339426</td>
</tr>
<tr>
<td>1991</td>
<td>22</td>
<td>4</td>
<td>2208712</td>
</tr>
<tr>
<td>1996</td>
<td>132</td>
<td>15</td>
<td>4989994</td>
</tr>
<tr>
<td>1998</td>
<td>79</td>
<td>6</td>
<td>6528566</td>
</tr>
<tr>
<td>1999</td>
<td>63</td>
<td>15</td>
<td>5672412</td>
</tr>
<tr>
<td>2004</td>
<td>56</td>
<td>12</td>
<td>7056255</td>
</tr>
<tr>
<td>2009</td>
<td>22</td>
<td>11</td>
<td>–</td>
</tr>
</tbody>
</table>

Source: Election Commission of India, 2009
Box-1: Political Manifesto of the Shiv Sena

The Shiv Sena manifesto for the Member of Parliament (MP) Election, 2004 and 2009 to the Lok Sabha seats remained unchanged; they demand more Jobs for natives. It has been the approach of Shiv Sena right from its beginning that 80 per cent of the jobs in the states should be reserved for the native people. Fortunately, the State Government also accepted this approach. But the approach has not become a law yet. This the reason why so many people from the other states are coming to Maharashtra – especially in Mumbai – and trespassing on the jobs of the natives. This point should have been considered seriously in 1956 itself, when formation of states on the lingual basis took place, but it was not. A few other states also have the same issue as with Maharashtra. Shiv Sena will continue to insist that the Central Government solve this issue and pay attention to the welfare of the ‘sons of earth’, as and when the Shiv Sena-BJP get the right of governance. This will keep the regional relations at a good level, all the states will be able to progress well and the aim that ‘every state’s progress is finally the progress of the country’ will be achieved.

Source: http://shivsena.org

9. Migration into the Northeastern Region of India

In different periods of human history, the NEern states in India particularly Assam, experienced the influx of different groups of people, who came to this part of the state for different reasons. In fact, migration took place in the earlier 1502 during the period of the Ghurid rulers and still continues. Some studies point out that population into the Northeastern region has caused an increase in ethnic diversities in that region. Besides the tribal groups in the region, a new class of people has come into existence as a consequence of prolonged interactions among cultures of the in-migrants and those of the indigenous people. Population pressure (influx of in-migrants) endangers the livelihood of local population and may possibly reduce the tribal communities into minorities. It's certainly not the only cause for increasing unemployment and poverty of some sections of the rural population. When the British came to Assam in 1826, they saw immense fallow lands with very few people to cultivate them and pay revenue. In 1838, began to draw new wasteland settlement rules (Guha, 1977).

The migrants communities included: tribal labourers from the Chota Nagpur region of Bihar and Orissa, mainly, belonging to the Santhal, Oran, and Munda tribes, who were
employed in the British-owned tea gardens; Bengali Muslims mainly from the West Bengal
district of Mymensingh, who settled on land along the Brahmaputra valley. Marwaris, an
entrepreneurial community from Rajasthan, engaged in trade, commerce, and money-
lending and more recently, in few industries and many tea plantation purchased from the
British; a scattering of other migrant communities, such as Nepalis, who are settled in
low-lying hills around the Brahmaputra Valley, tending cattle; Bihari males, who work as

The studies dealt with the population influx of migrants into the Northeastern
region (Singh, 1987; Ali and Das, 2003; and Sarma, 2006). The internal influx was mainly
from eastern direction; subsequently, people from the western directions of India also
began coming in and communities like the Hindu Assamese-speaking population of Assam
often traces their origin back to parts of mainly India. Despite protest by the local
populations then, population flow into the Northeast has largely been abetted, facilitated
or condoned by the state, for e.g., the refugee flow into Arunachal Pradesh and other
Northeastern states. However, out-migration is more from the troublesome states of
Manipur, Nagaland, Tripura and Assam (Krishan, 2007), whereas in-migration is more
common in Sikkim, Arunachal Pradesh, Mizoram and Meghalaya.

9.1 Attack of the In-Migrants in Assam

Clashes between the migrants and the indigenous population have been a prominent
feature of post-Independence politics within the multi-ethnic community in the
Northeastern states. In India, tensions erupt between migrants and the local population
in the states of Assam, Maharashtra, Bihar, and Andhra Pradesh (Weiner, 1978). The
problems arise when the migrants become more successful than the native population in
terms of occupation and wage earning capacity. Differences in skills could lead to the
migrants having a greater advantage and higher chance of getting the jobs. On this account,
the local people who are at a disadvantage, become envious of the migrants. On other
occasions, the settler in-migrants from Bihar, especially the backward communities, fought
for their right to be recognised by the Government of Assam and for their demands to be
fulfilled. There arose a series of protest by the Adivasis against the government for failing
to implement the reservation on par with the Scheduled Tribe communities. This led to
the outbreak of violent conflict with the local people of Assam. The indigenous population
of Assam started killing the Biharis living in different districts of the state.

Conclusion

There is an obvious increase of internal migrant numbers during 1991 and 2001. Among them, a large number of people migrated in intra-district, in other words, within their district's territory. However, the study analysis of intercensal migrants (those shifting place of residence during the past decade) reveals a sharper decline among male as well as female migrants. The decline in the mobility of male, wherein economic factors are likely to be relatively more important, has been higher than for female, for whom socio-cultural factors play a more important role. In case of intra-state migration most predominant stream (in terms of distance) is intra-district with 62.14 per cent, inter-district is 26.05 per cent and inter-State is 11.82 per cent in 1991 and it is 61.5 per cent, 23.5 per cent and 13.1 per cent in 2001, here also female migrants were higher than male migrant’s proportion. The study has shown that the significant reason for migration is work/employment, followed by education and business (excluding marriage and moving with family). Work/employment as a reason for migration proportion has increased from 12.1 to 14.7 per cent between 1991 and 2001. Of this, 21.7 per cent of rural population migrated to other prosperous rural and urban areas, whereas urban area witnessed 4.8 per cent. A large proportion of migrants moved in the rural to rural stream with 60.5 per cent, followed by migration from the rural to urban areas, with 17.6 per cent. Interestingly, in the case of intra-State migration except in rural to rural migration stream, in all other streams, the proportion of male migrants is higher than that of female migrants whereas in rural to rural migration stream the proportion of female migrants is greater at 68.6 per cent. Whereas inter-State migration rural to urban stream with 37.9 per cent followed by urban to urban and rural to rural migration streams with 26.7 and 26.6 per cent respectively.

In India, though the Internal Migration Act for workers is well established, there are loopholes in implementation of the act. Migration is a complex and dynamic phenomenon which is difficult to explain by a single theory. Therefore, the policy in India should focus on the documented migrant, the casual workers working in urban areas, the urban self-employed, the low paid regular wage earners in slum areas, and the undocumented seasonal migrants moving from rural-rural, rural-urban locations. Since, the Migration Act plugs a loophole; there is a need for the National Commission for Enterprises in the Unorganised
Sector approach to implement the universal social security registration, and the entitlement to minimum social security through portable schemes, so that the workers can serve as a basis for entitlements to other benefits. The policy action is weak in promoting and protecting the welfare of the migrant’s workers in India. The citizens are entitled to acquire the universal declaration of human right, including right to development (Art.8 (I), but the problem arise due to human rights violations (Iyer, 2003). The destruction of livelihoods and displacement of the poor people in the name of industrialisation everyday show how development can turn perverse. We must chart out an alternative path of development (Bhaduri, 2007). The role of the civil society plays an important role in the path of pushing the government to act towards rehabilitation and compensation for the displacement of poor people in the name of development projects. However, mass populations have been displaced in relation to environmental induced migration, and state intervention must be well in place for the rehabilitation and resettlement of the displaced people with special packages of compensation. The in-migration seen in the Northeastern region and Mumbai is of a similar kind and based on ethnicity, languages, culture and social network links. The perception of the local people regarding in-migrants in the receiving state depends on the mindset of distinction between insider and outsider. The role of the civil society on the basis of its own agenda regarding the migrants’ rights to project or protest also can have either positive or negative consequences. In the Northeastern states, there are lots of protest against in-migrant workers and also attacks, especially on Biharis migrants. The Shiv Sena in Mumbai has been making very strong protests against non-Maharashtrians in the state and is organising attacks on South Indian people and on the North Indian Hindi-speaking people there. These differences in people perception give rise to internal conflict and communal clashes among them. Policy should be strengthened and the Migration Act implemented with a proper mechanism to ensure a safety net for internal migration in India. In this regard, the role of the civil society in favour of protection of the migrant workers can also influence policy action plan of the government.


ii Conversion as on 14/07/2009: http://www.oanda.com/convert/classic

The minimum wage is different across Indian states for both male and female in rural and urban areas.


For more details see Clonadh Raleigh, Lisa Jordan and Idean Salehyan, Assessing the Impact of Climate Change on Migration and Conflict, World Bank: http://socialdevelopment@worldbank.org

The Shiv Sena, meaning Army of Shiv, referring to Shivaji Bhosle. Members of Shiv Sena are referred to as Shivasainiks. The Shiv Sena is described as a militant nativist organisation by several academics.

For more details of the Hindu agenda is on the website: http://www.rss.org

The former Chief Minister of the Maharashtra government, and also the President of the National Congress Party called (NCP). Currently, serve as the Agriculture Minister in the Union Cabinet under the umbrella of the United Progressive Alliance (UPA).

Natives means the inhabitants of Maharashtra state, they are the citizen of Maharashtra who speak Marathi language as their mother.

Ethnic diversities: The present-day population of India is an outcome of the very long process of population movement of the subcontinent. Human groups with different ethnic backgrounds have entered the region with different points of time. Their immigration, their settlement in India and later movements within the country has led to a high degree of intermingling of various ethnic and cultural streams. The ethnic and cultural diversities displayed by the Indian population today have acquired their distinguishing traits through this process of social intermixing (Bright, 2005).

For Special Economic Zones (SEZ), the construction of big dams for power generation and irrigation, corporatisation of agriculture despite farmers’ suicides, and modernisation and beautification of our cities by demolishing slums, etc.
References


