

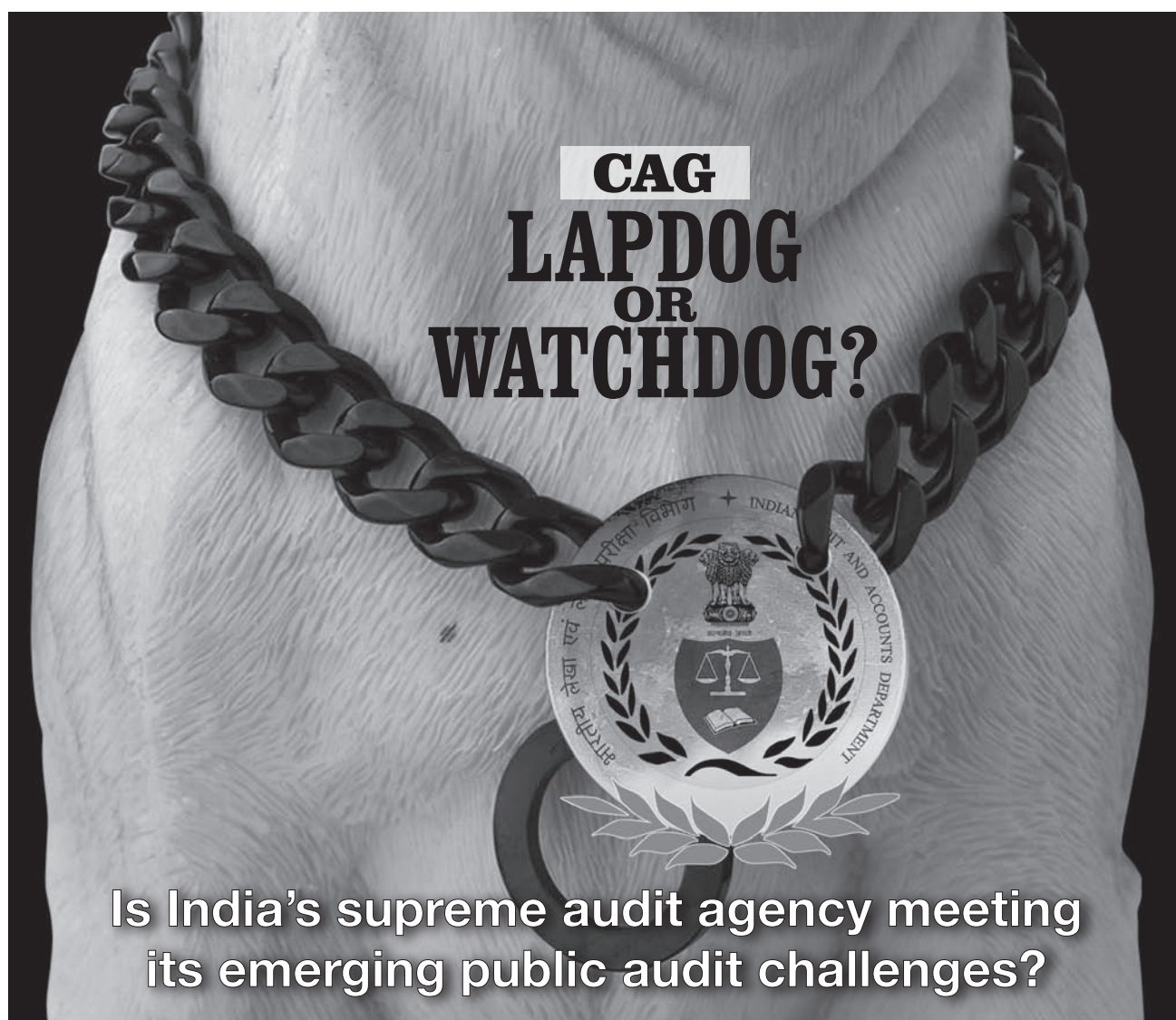
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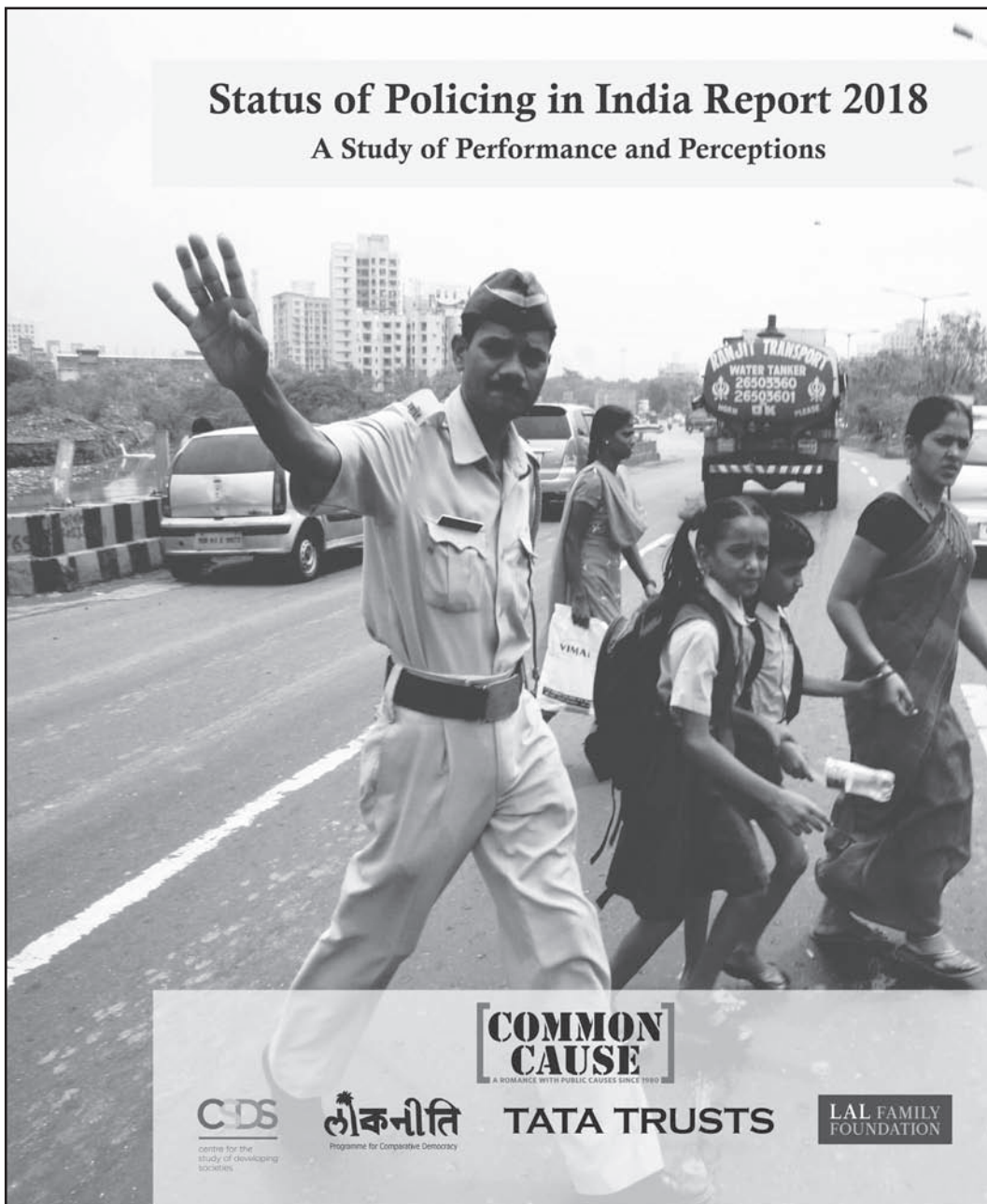


To Our Readers: Matrix of Accountability	3	Parliamentary Oversight	28
What Ails CAG?	5	A Good Governance Tool	36
Sample Audit Reports	13	Common Cause Interventions	42
Value of Social Audit	18	Case Updates	45

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Jointly prepared by Common Cause and its academic partner, Centre for the Study of Developing Societies (CSDS), the report is a study of the performance and perception of the police in India. It covers about 16000 respondents in 22 states on parameters like citizens' trust and satisfaction levels, discrimination against the vulnerable, police excesses, infrastructure, diversity in forces, state of prisons and disposal of cases etc.

The study combines mixed methodologies to present a slice of life of policing in India. It also analyses official data and CAG reports along with an all India perception survey conducted by the Lokniti team of CSDS and their partners in the states.

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THE MATRIX OF ACCOUNTABILITY

Back to Basics for Transparency in Governance

This issue of the Common Cause journal is devoted to one of democracy's most crucial watchdogs, the Comptroller and Auditor General (CAG) of India. So vital is the role of the institution for democracy that India's future as a potential economic superpower hinges on this factor alone. But why are we talking about it today? Isn't CAG functioning fine with its no-nonsense reports and an impressive track record?

Well, we are talking because India's supreme audit agency seems stuck somewhere between being a people's watchdog and yet another high-profile office working for those in power. True, its odd reports have created ripples but, let us face it, they have not been able to stem the rot. The moot point is that a systemic, scientific audit is central to the growth and well-being of our nation of 1.3 billion people, particularly its poor and aspirational masses. The destinies of such people depend on a climate of growth and fair opportunities which have a lot to do with good, accountable governance.

A dependable watchdog guards a property against theft or intrusion. It must alert the owners at the right time. We also know that all watchdogs do not always bark and bite, and in some cases, they may even show undue obedience to the enemies. But all limits are crossed when the watchdog becomes someone's lapdog and that is the most troubling aspect of the watchdog institutions meant to guard democracies. Our attempt is to analyse with the help of specialists if the watchdog called CAG is being made ineffectual and what can the people, the real owners of the property, do.

The role of the CAG becomes more and more crucial as India moves up on the list of the world's top and fastest growing economies. By 2050, India's economy, which is currently at the seventh place, is expected to be second only to China. And if we do not improve governance and plug the pilferage in the delivery of services by then, we could be saddled with the world's largest population of young people who are not in proper employment, education or vocational training, despite economic resurgence.

The age of technology, globalisation and public-private partnerships may have thrown new challenges but the rules of the game remain the same as they were when the idea of an audit was first mooted. Whatever you do, but in the end, accountability in expenditure has to be made a part of the culture and never left to the executing authorities. The spending of public money must also be overseen by the public or its institutions because lack of public participation is a breeding ground of corruption whose real cost is borne by the poor. No wonder, the state audit of accounts is as old as the state itself.

The term audit comes from its Latin root '*audire*,' which relates to hearing. An audit in days of yore was meant to be an oral and loud scrutiny of accounts read out to an audience. The obvious purpose was to instil transparency in public expenditure. The idea was also to make sure that those entrusted with the responsibility of spending public money were not allowed to get away without explaining the rationale for every penny spent.

Historical references are available from medieval Europe of the 1500s where an audit was meant to be a public scrutiny of accounts enacted in front of the real people. This tells us something precious about the exercise. First of all, an audit was meant to be an open and public exercise which was inherently participatory in nature. Secondly, it was part of a process in which those in-charge of accounts and decision making (presumably on behalf of the public) were held accountable to their peers. And lastly, the auditors by all accounts, were known to be impartial persons, akin to the '*panch pameshwar*' of the ancient Indian tradition.



If you want to capture a glimpse of people's audit, try and visit a social audit in rural India which takes place in front of a village panchayat as part of Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGS). Social audit of the panchayats is direct, rudimentary, and yet, an effective exercise, except in cases where it is hijacked by vested interests. It marries grassroots governance with keen public participation. It is a great example of an imaginative policy design, reinvented. However, the obvious caution is that a face to face exercise is best done as a micro level activity at a small scale.

Since the days of the oral procedures, the world of audit, accounting and public expenditure has changed radically, and multiple times. Old civilisations like India and China had their own accounting systems with sophisticated instruments like cheques and bearer bonds. Many of these devices were retained in modern accounting systems which were formalised in early 21st century by the colonial powers. However, governance, even in ancient times, had its own mechanisms of audit and accountability. In old Indian classic, *Arthashastra*, sage Chanakya lists several types of frauds, embezzlements, misappropriation and concealment of facts which the good rulers were required to guard against.

In the modern Indian context, the institution of audit is colonial and is structured on the British model. India's formal audit process was started in the 1860s. After Independence in 1947, the Indian constitution bestowed special status on the office of the CAG. The father of the Constitution, Dr Bhimrao Ambedkar, made the CAG as one of the most important officers of the Republic and covered it with a parliamentary oversight to maintain public accountability. However, the subsequent governments entirely failed to build on the institution's original strength, brick by brick, while learning from experiences and building on strengths.

Nothing stopped us from restructuring the CAG of India as an autonomous body, insulated from the political class and independent of the executive whose work it is meant to scrutinise. On the contrary, we have conceded the high office of the CAG to the executive. While many developed nations are extending public audits to private behemoths, we are doing the opposite by removing public-private partnerships from its ambit.

In the past, Common Cause has taken up the issues of rationalising the CAG's appointment and that of the CAG audit of the government-supported entities which are dealing in land, urbanisation and town planning. To us, the future of the institution of CAG is yoked to the health of democracy in India. The real issue is not of technology or manpower or skillsets, not even resources. It is of going back to the basics, where public accounts are scrutinised by strong and capable public institutions. It is also of building a culture of checks and balances in democracy through time-tested mechanisms of transparency and accountability.

Like always, we will wait for your comments and suggestions. Please write to us at commoncauseindia@gmail.com

Vipul Mudgal
Editor





WHAT AILS CAG, WHAT CAN BE DONE?

Evolving Challenges for the National Auditor

Dr. B P Mathur*



PHOTO CREDIT: Shambhu Chatak

The institution of Comptroller and Auditor General (CAG) in India is patterned on the British model. In Britain, The Exchequer & Audit Department Act of 1866 created the office of CAG with a view to strengthen democracy and exercise parliamentary control over national finances. The office of CAG came into being, thanks to the missionary zeal of William Gladstone who was Finance Minister at the time and later became the Prime Minister. CAG was required to audit expenditure and report to the Parliament. This solved the dilemma which had baffled the Parliament for years, 'whether expenditure is to be controlled by in-expert parliamentarians or expert non-parliamentarians'.

After India became independent, it framed a new Constitution and established the position of CAG in its constitutional scheme. CAG was required to audit public expenditure and report to the Parliament. It also had to make the executive accountable for usage of public money, granted to it through budgetary allocations. Over the years, the role of government has substantially increased due to development planning and embracing the philosophy of a welfare state, resulting in a multi-fold increase in public expenditure. In keeping with the new demands, CAG has diversified its activities. It has entered the arena of performance audit, revenue audit and audit of PSUs (public sector undertakings) and

autonomous bodies which are substantially funded by the government.

Despite these initiatives, CAG faces the formidable challenge of putting in place a mechanism to ensure accountability in the usage of public money of the central and state governments. There are many publicly-funded institutions which evade audit. Government has embarked on new activities such as public-private partnership while leaving loopholes in the arrangement, which enables avoidance of public audit. Further, a good part of government's transactions have been computerised – they are prone to cyber attacks and computer frauds.

The existing institutional arrangement of the office of CAG does not seem capable of meeting current day challenges of public audit. That's primarily because it has not changed its administrative structure inherited from the colonial times and is virtually caught in a time warp. It is a highly centralised behemoth, with no delegation of duties to hundreds of field offices spread throughout India. It lacks professionalism and is devoid of effective power to prevent misuse and loss of public money and resources.

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It is imperative that the CAG be fundamentally restructured so that it can meet the current day challenges of public audit. This becomes relevant in an era of privatisation, globalisation and computerisation, where government operations have become increasingly complex. Napoleon had declared that, “institutions alone fix the destiny of nations” and Benjamin Disraeli, the eminent British Prime Minister had rightly observed, “it is institutions alone that can create a nation. Our courts, Parliament, and associations set the collective rule of engagement that provide for smooth and fair functioning of government, commerce and society”.

Audit in States - A Dysfunctional System

While India is a federal country, no statutory recognition has been given to the Accountants General (AG) /Principal Accountant General (PAG) who are responsible for auditing the finances of the states, which seriously impairs their functioning. There are numerous instances of chief ministers and other senior state functionaries trying to intimidate the AG when he has brought out uncomfortable facts during the course of an audit. He/she has no protection of law against unwarranted attacks. State AGs are also not able to deal effectively with the Public Accounts Committee (PAC) of the legislature. What's more, they are unable to take up issues of critical importance with state governments without

clearance from the headquarters. In many states, the PAC meets just a few times in a year and bulk of the audit reports get relegated as records without any action. There are huge ‘excess expenditure’ and ‘over-budgeted grants’ which remain unregularised for years, sometimes decades, in blatant violation of Article 205(b) of the Constitution.

The makers of the Indian Constitution were fully aware of the need to give a suitable status to the State AG, in view of our federal polity. The original draft, prepared by the drafting committee of the Constitution headed by Dr. B. R. Ambedkar had made a provision for Auditor-in-chief for the States.¹ (There was, however, a further provision, that the State Auditor-in-chief can be appointed only if the state legislature passes a resolution to that effect). The provision of the draft Constitution somehow got amended when draft articles came for approval of the Constituent Assembly and a single audit authority i.e Comptroller and Auditor General for centre and state was constituted.

“In Commonwealth countries such as Australia and Canada which have a federal structure, there are separate auditor generals for the central government and provinces, enjoying legal status with wide-ranging powers.”

The National Commission to Review the Working of the Constitution (NCRWC, 2002), which had made a detailed study of the public audit system, recommended that, ‘appropriate legal recognition of the important role of the Accountants General [be given] to enable them to perform their duties as friends, guides and philosophers of the State Public Accounts Committees. The State AGs need to be given greater authority by the CAG, while maintaining its general superintendence, direction and control to bring about a broad uniformity of approach in the sphere of financial discipline’. (Para 5.26.4)²

Every democratic country in the world with a federal structure has a statutory provision of separate audit authority for the provinces/states. In UK, CAG audits only the central government expenditure. Following devolution, new auditor generals have been set up in Scotland (2000) and Wales (2005) to audit the expenditure of the new Parliament and Assembly. Northern Ireland had a separate Auditor General since its foundation in 1921.

In Commonwealth countries such as Australia and Canada which have a federal structure, there are separate auditor generals for the central government and provinces, enjoying legal status with wide-ranging powers. In USA, there are separate auditor generals for all the states, responsible to state legislatures. The Single Audit Act of 1984 establishes uniform audit requirements for states and local bodies receiving



federal assistance. In Germany, the Federal Court of Auditors (FCA) and the audit authority of constituent states known as Lander are autonomous independent units of government audit. The fiscal arrangement of the Federation and Lander are intertwined, necessitating close cooperation between the two in conducting audits.

There is a need to give statutory recognition to PAC and to raise his status to that of a High Court judge so that he is able to deal with the state government on an equal footing. An enhanced status will help him enjoy greater autonomy in the finalisation of audit reports which are presented to the legislature, and deal more effectively with the state PAC.

Collegiate Decision Making - An Audit Commission

Every year, the CAG presents about 40 reports of the central government to the Parliament and another 90-100 reports of the state governments. They deal with an entire gamut of government's functions. Lapses in defence deals and mega-contracts, evasion of taxes, poor outcome of development schemes, inefficient functioning of public enterprises and malfeasance on the part of public officials causing loss to exchequer are all part of the wide spectrum. The audit reports often adversely comment on the decisions taken by the government at the level of cabinet, Prime Minister, Chief Minister and other ministers.

Therefore, a great deal of objectivity and application of mind is required while making the observations.

CAG is expected to go through all this material personally before approving them for presentation to either the Parliament or the state legislatures. It is simply not possible for an individual to go through such voluminous material and update oneself about the findings. This situation calls for radical reforms. As a result, NCRWC, headed by Justice M.N. Venkatachaliah (2002) had recommended thus: (Para 5.16.3):

"The Commission recommends the constitution of an Audit Board for better discharge of the vital function of public audit, but the number of members to be appointed, the manner of their appointment and removal and other related matters should be dealt with by appropriate legislation, keeping in view the need for ensuring independent functioning of the Board."

Many advanced democratic countries have a multi-member audit commission or board and a system of collegiate decision-making before the audit reports are presented to the national legislature. Continental European countries such as France, Germany, Italy, Belgium and Austria have a system of audit courts. These courts are equipped with wide powers and can order recovery of illegally spent money from public officials. In France, the Cour des Comptes (audit court) has seven chambers, each

headed by a president and having jurisdictional authority over a defined range of central government activity. The Cour always acts as a collegiate body under the leadership of the premier president. The draft annual reports on the accounts of the state and the management of the state services, agencies and companies are brought before the complete Bench. It is presided over by the premier president of the Cour and finalised after the collegial hearing of the audited entity.

In Germany, the President, Vice-President and Senior Audit Directors are members of the apex policy-making committee of the Federal Court of Auditors (Bundesrechnungshof). The committee works as a collective body and the contents of Bundesrechnungshof annual report, submitted to both the houses of the Parliament, are decided after giving the collegiate a hearing.

In Japan, there is an Audit Commission with three commissioners. All major decisions pertaining to audits are taken by the Commission, including finalisation of the audit report.

In Korea, the Board of Audit features seven commissioners including the chairman. Decisions on policy issues, such as audit and inspection, are taken with the approval of the council of commissioners who are required to reach a decision by majority.

In Sweden, the state audit office, known as *Riksrevisionen*, was



PHOTO CREDIT: Shambhu Chatak

reorganised in 2003, with the creation of three posts of auditor generals instead of one. The three auditors jointly decide on all policy matters while enjoying full autonomy for each of their areas of responsibility. In UK, the National Audit Office has been recently given a corporate structure with the CAG acting as chief executive and non-executive chairman, to broad-base decision-making.

In India there exists a strong case to convert CAG into a multi-member commission at the apex level. Each member may be assigned a specific sphere of responsibility such as audit of civil departments, defence services, revenue, commercial enterprises and such like. Subsequently, audit reports can be finalised as a collegiate body. The commission may have five to seven members, presided by the CAG, who may enjoy the same status and conditions of service as CAG, with CAG acting as the *primus inter pares* (first among equals). The Election Commission was restructured in 1993, and converted into a three-member outfit from a

single-member body. This has greatly enhanced its efficiency and credibility. It may be worth-mentioning that Human Rights Commission and Central Information Commission, which have been created by specific legislations are multi-member bodies both at the central and the state levels. They also function as collegiate bodies.

Evasion of Audit

Large numbers of autonomous bodies, which are funded or controlled by the central or state governments deliberately evade CAG audit. This seems in line with their complete disinterest in financial discipline and transparent dealings. They take umbrage behind complex arrangements through which public funds are routed to them, coupled with the ambiguous nature of the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971 or CAG's (DPC) Act, 1971.

A typical case is of Noida, Greater Noida and Yamuna Expressway authorities, who have been refusing to subject

themselves to audit by CAG. Their contention is that they are audited by the Examiner, Local Fund Account, which has a provision for such arrangement under the U.P. Industrial Area Development Act, the enabling legislation under which they are constituted. The position is untenable and inconsistent with the constitutional mandate of CAG. CAG should be allowed to do supplementary audit, in addition to preliminary and detailed audit by a designated agency, as is the case with many such autonomous bodies. *Common Cause* has taken up this matter and filed a PIL at Allahabad High Court (2015) and the matter is pending there. Meanwhile the new BJP government in Uttar Pradesh (UP), through an executive order (2017) has decided that these entities be audited by the CAG (AG of UP).

The framers of Indian Constitution had intended to give unfettered discretion to CAG to audit not only central and state governments' transactions, but any public body funded or controlled by them. The Supreme Court in 2014, in a case relating to the telecom service providers, ruled that the CAG has the authority to audit all bodies which deal with nation's resources and provide public goods and services.

Most democratic countries have legal provision to bring under the ambit of state-audit, any autonomous body or private company, where government has a substantive stake. In Germany and Japan, private companies



in which the government has invested substantially can be audited by the Supreme Audit Institution (SAI), irrespective of majority holding, but not so in India. Bharat Aluminium Co. Ltd. (BALCO) and Hindustan Zinc (HZL) were privatised some years back, but government still holds 49% shares in BALCO and 30% in HZL. It also has three of its nominees on their boards. While on the face of it government exercises substantial influence on their policies, but they evade parliamentary accountability.³ There is an urgent need to have a suitable enactment to the effect that every public entity which is controlled by the government or handles public funds and resources needs to fall under the ambit of CAG audit.

Empowering Public Audit

A fundamental task of public audit is to conduct Regularity Audit, which implies that public officials have followed provisions of laws, rules and regulations regarding usage of public money. It is also meant to ascertain that no irregularity, waste, fraud or misappropriation has taken place.

Audit parties visit hundreds of central and state government offices all over the country and examine millions of expenditure and revenue transactions. This exercise is undertaken to ensure that transactions have been incurred as per laid down rules and procedures. They often find that public officials misuse public

money and cause loss to the exchequer. When audit notices these irregularities, it points them out by way of audit objections. But very often, departmental officers don't take corrective action, and instead try to defend their positions. This results in voluminous correspondence going on for years, and audit objections dying with efflux of time. In the process, public money is lost forever.

Audit frequently faces great difficulty in getting departmental records. Audit parties visit government offices for a limited time-frame. Departmental officers adopt delaying tactics in giving access to records, which results in considerable waste of time and hinders audit scrutiny. The auditors are helpless as they enjoy no legal powers to compel timely submission of records.

CAG also conducts financial audit wherein it certifies the annual accounts of corporate entities and autonomous institutions. This is done to ensure that the accounts present a true picture of finances of these organisations. However, the management of such entities often delay the preparation of balance sheet and income & expenditure/profit & loss

“The framers of Indian Constitution had intended to give unfettered discretion to CAG to audit not only central and state governments’ transactions, but any public body funded or controlled by them.”

accounts. Also, they frequently do not follow the statutory time frame for their certification. Compounding the problem, they prepare erroneous financial statements and misrepresent their financial status. There are numerous entities whose annual accounts have not been certified for years together.

A committee constituted by the conference of chairmen of PAC and chaired by E Ayyapu Reddy, observed (February 1987): “It is very depressing to find that in spite of audit reports revealing loss of public funds or misuse or misapplication of public funds, there is no investigating agency charged with the duty to probe into these aspects and identify the culprits responsible for them.”⁴ It recommended that such audit paras which prima facie establish loss of public funds should be registered as First Information Reports. The committee further said: “The final step towards enforcing accountability relates to disciplinary and penal action against the inefficient and corrupt. Enforcing accountability can be realistic only when an officer or group of officers can be identified with an amount of clarity and certainty in proved cases of malfeasance and abuse of authority for greed or gain.” It called for a special enactment for dealing with delinquent officials.

In order to make the audit machinery effective there is a need to confer the following legal powers on it:

1. If, on preliminary investigation by field audit



party, it is found that there is loss of public money through negligence, unauthorised use and fraud, senior officers at the level of Accountant General/ Director of Audit should be given powers to summon departmental officers to give evidence on oath. After hearing and weighing evidence, if it is established that the loss was due to deliberate default and negligence of a public official, senior officers should have powers to adjudicate and pass orders for its recovery. The orders should also be sent for action to the concerned departmental officer's superior officers/ departmental head/ the concerned ministry.

2. If statutory provisions relating to preparation of annual accounts and their certification have not been followed and there has been deliberate attempt to falsify accounts, senior officers of the audit department should be given powers to impose monetary penalty on the concerned officers/ institution.
3. If records are not produced promptly within the required time frame, the audit department should be given powers to impose penalty on the departmental officers for obstructing audit investigation. A pattern similar to what is available to the Chief Information Commissioner under Right to Information Act can be followed.

All over the world, SAs have been entrusted with wide powers of investigation and adjudication to safeguard public money and property.

In France, the Cour des Comptes functions like a court and is assisted by a public prosecutor. If, during investigation the Cour finds that the official has failed to provide a satisfactory justification, he/she may be ordered to settle uncollected revenue or irregular expenses out of his/her own resources. Cases of fraud are communicated to the state prosecutors with a view to take criminal action.

In Japan, the Board of Audit has an adjudication system. If it finds an official guilty, it can order him/her to indemnify the loss. Disciplinary action can also be demanded when an official does not submit statement of accounts and /or voucher in violation of legal regulations.

In New Zealand, the Controller and Auditor-General is empowered to hold an enquiry under the Public Finance Act of 1977. He/she has powers for surcharge if it is found that there is loss of money or store caused through fraud, mistake, default, negligence, error or unauthorised use. If there is any unsatisfied surcharge, it is liable to be recovered as a debt in any court of competent jurisdiction.

In Australia, the Auditor General may direct a person to provide him/her with any information asked for. Individuals may also be dictated to attend and give evidence before him/her. In addition, citizens are required to

produce any document in their custody or under their control. If an individual makes a false or misleading statement, he/she is liable to a penalty of up to 12 months' imprisonment. SAs of China, South Korea and Thailand are also invested with similar powers of recovery of government money used illegally by public officials. In USA, under the Budget and Accounting Act, the Comptroller General has the power of subpoena and in case of refusal, can ask the court to compel departments to respond.

Accountability of CAG

Equity demands that the state audit, which enforces accountability of government institutions for proper public money usage, should itself be 'accountable'. Recognising this fact, the National Audit Act 1983 of UK established the Public Accounts Commission, a parliamentary committee of MPs, which oversees the work of the National Audit Office (NAO). The commission approves the budget, scrutinises its costs and performance while appointing external auditors of the NAO. Similar formats exist in Commonwealth countries such as Australia and Canada. In USA, General Accountability Office (GAO) works proactively with Congressional committees, where most of its work is done at the behest of the Congress, which oversees the GAO's working.

In India, the relationship between the CAG and PAC, can be termed, in the best of times, at arm's length. There is hardly



any rapport or prior consultation between the two on subjects of audit reports to be presented. This dysfunctional system results in most CAG reports remaining unexamined by the PAC. CAG annually submits around 35-40 reports to the Parliament, each report containing 150 to 200 pages of highly technical material. It is simply not possible for the PAC to do justice to them as it can have at best 30-40 sittings in a year. Therefore, the CAG needs to drastically cut down the volume of reports submitted to the Parliament, and instead, improve their quality.

Take for example the report on the accounts of the Union Government, which is a certification of its Appropriation Account and Finance Account, prepared by the CAG.

The latest report (No 47 of 2017 for the year 2016-17, of November 2017), runs into 250 pages (including 75 pages of annexure) with incomprehensible and irrelevant content. This particular report has been repeating itself in the same language over a long period, with just a change of figures with each passing year. This hardly serves any purpose.

The objective behind this report is to point out 'excess expenditure over voted Grants' so that the PAC can examine it and recommend regularisation by the Parliament, as required under Article 115(b) of the Constitution. A short note spanning just a few pages can serve this purpose. Some experts feel that a good number of audit

reports and paras are junk and contain trivial objections that neither the PAC nor Parliament should be burdened with. While it is true that some of the reports are outstanding, highlighting issues of national importance, it is imperative that the work be streamlined.

For more details on the powers, duties and limitations of the PAC, please read Dr. Govind Bhattacharjee's article on Page 18.

The Indian Parliament, and more particularly the PAC has not hitherto exercised its authority to make the CAG accountable. CAG's wider responsibility entails sound management of the country's finances and prevention of waste and misuse of public resources. When judged by this parameter, it does not have a complimentary record. While the CAG has been guaranteed independence, it should not be equated with immunity from a review of its operations. CAG works on behalf of the Parliament and cannot claim himself/herself to be a headless fourth branch of the government. The NCRWC had observed, "To fulfil the canons of accountability the Commission recommends a system of external audit of C&AG's organisation be adopted for both the Union and State level." (Para 5.17)

Appointment of CAG - Lack of Transparency

The manner in which successive CAGs are appointed by the government is totally opaque, shrouded in secrecy and unmindful of norms or criteria. From the time the Constitution

came into effect, the first few CAGs were professionals from the Indian Audit & Accounts Service (IA&AS). However, only officers from Indian Administrative Service (IAS) are being appointed to the post since 1980s. They are mostly superannuated officers, who have held the post of secretary to government and are ostensibly being 'rewarded for services rendered.' The appointment of a generalist with no background in audits and accounts has a demoralising effect on the audit department and impairs its efficient functioning.

The arbitrary manner of CAG appointment has been a cause for greater concern. *Common Cause* has been at the forefront of the movement for transparency in CAG appointment and has approached the courts several times by filing PILs (Public Interest Litigation). Unfortunately, its efforts have not been successful yet. It has also been making representations to the President, Prime Ministers, Finance Ministers and the Chairman of the PAC on the importance of institutional integrity in CAG appointment. The Indian Audit & Accounts Service Retired Officers Association has also been taking up this issue with the concerned authorities.

India is perhaps the only democracy in the world where the executive enjoys the exclusive power of being appointed as CAG, violating the tenets of institutional independence. Most democratic



nations have enacted laws mandating parliamentary approval for the appointment of heads of SAI, so that he/she is not under the influence of the executive. In UK, whose parliamentary traditions we follow, the 100-year old Exchequer & Audit Act was amended in 1983, with an added provision that the CAG appointment will happen post the Prime Minister's address in the House of Commons. In such a scenario, the Prime Minister should also be acting in agreement with the chairman of the Committee of Public Accounts. Before the recommendation, a high-level search team under the Committee chairman selects the suitable candidate, after issuing an open advertisement. The aim is to make the process transparent and bipartisan while also appointing someone with integrity, managerial skills and from a professional accounting and auditing background.

Commonwealth countries such as Australia, Canada and New Zealand have adopted procedures similar to Britain. Their auditor generals are appointed on the recommendation of Committee of Public Accounts as well as approval of House of Representatives. USA has an elaborate procedure for its Comptroller General appointment. The President appoints him/her on the advice and consent of the Senate. The latter makes recommendations after taking into account approvals of a commission featuring members of the

House of Representatives and Senate. Countries with widely divergent political systems such as Germany, Japan, South Korea, Thailand and South Africa, have legal provisions for the appointment of the head of SAI with the approval of House of Representatives or with both the Houses of Parliament.

Unfortunately, the PAC has not asserted itself in India. It has never demanded to have a say in the CAG appointment. Though the chairmen of PAC have occasionally expressed the need to be consulted for CAG appointment, there has been no formal resolution passed by the committee to that effect. The matter has also not been taken up by the PAC or its members, who are all MPs, either in the Parliament or before the Prime minister and the President.

Concluding Remarks

Public audit is a check on the exercise of power being used arbitrarily, capriciously or in disregard of public interest. Audit is the only safeguard against financial maladministration and the only vehicle for enforcing accountability. This does not suit the politicians and top echelons of bureaucracy, who crave unbridled power and hence are votaries of a weak and ineffective audit. This is precisely why a non-professional person, who is ' beholden to them,' is appointed as the country's top auditor. To make matters worse, no structural reforms have been introduced to make CAG an effective institution.

Also, the Indian Parliament has not been making efforts to strengthen the accountability

institutions, due to our weak democratic traditions. The members of Parliament, particularly those belonging to ruling dispensations, are more interested in following the party line, and fail to see the broader national interest. However, there is a silver lining to this seemingly despondent scenario. As our democracy matures, citizens are standing their ground in demanding an honest, responsible and accountable government. A large number of public spirited people, academics and NGOs have expressed faith in accountability institutions like the CAG, and professed their unstinted support for it. It is for the audit department, its officers and staff to honour the trust reposed on them, work with dedication and perform their duty as the true guardian of the public purse.

(Endnotes)

1. For Constituent Assembly draft and background of its amendment see, B. P. Mathur, Government Accountability and Public Audit: New Delhi, Uppal Publishing House, 2007, pp. 91-106.
2. Government of India, Ministry of Law, Report of the National Commission to Review the Working of the Constitution Volume 1, New Delhi: 2002, Ch V, Parliament and State Legislature; available at <http://legallaffairs.gov.in/volume-1>.
3. Another question that may be asked here is, why is the government not disinvesting its shareholdings if these companies have been privatised?
4. Lok Sabha Secretariat, New Delhi, Accountability in Administration- Report of the sub-committee constituted by the Conference of Chairman of Public Accounts Committee held in September, 1986. February, 1987



LAPSES, FAILURES OR PLAIN CORRUPTION?

A Quick Sample of Violations Brought Out by the CAG

Shakeb Ayaz*

This article discusses a raft of reports that have impacted the ordinary citizen. After all, the national audit agency's job is to hold accountable the democratic state which has a social contract with its citizens and is their representative. To give you a flavour of a series of scathing audit observations, we are providing excerpts of some of the recent CAG reports on various public service programmes. These pertain to the Right to Education programme, Namami Gange programme, Pradhan Mantri Swasthya Suraksha Yojana (PMSSY), railway station line capacity, National Rural Drinking Water Programme (NRDWP), Bihar Public Sector Undertakings (PSUs) and Chennai Flood Management Plan (CFMP).

Lapses in PDS, Lapse in Judgment?

The CAG audit report has highlighted lapses in food and ration supplies in Delhi. It reported that eight vehicles, which ferried 1589.92 quintals of food supplies to various ration shops in Delhi were registered as buses, motor cycles, two and three-wheelers. Seeking explanation from the Aam Aadmi Party (AAP) government, the CAG report flagged pilferage of food supplies in the public distribution system (PDS). It

has also rejected the party's argument that wrong vehicle numbers in the records could be attributed to data entry errors. The report held the AAP government accountable for its failure to verify genuine ration card applicants, revealing that at least 2,453 phone numbers which got alerts did not belong to common people but were of ration shop keepers. The government, in fact, has come under vicious attack for being party to an organised food scam by Fair Price Shop owners.

The numbers paint a story of serious irregularities in the ration distribution system. The food department had issued 19,40,159 National Food Security (NFS) cards covering 72,48,385 beneficiaries as of March 2017. It is to be noted that NFS cards are for beneficiaries under National Food Securities Act, 2013. Findings of the CAG report disclosed that many people with

“The CAG report has underlined the failure of state governments to utilise a significant percentage of funds from the allocated corpus in order to implement the Right to Education Act (RTE).”

NFS cards in Delhi could also be in possession of such cards in other states, from where they have migrated. “The department allowed persons having Aadhaar issued by other states to become NFS beneficiary in Delhi without verifying their NFS status in their home state,” reads the CAG Delhi 2016-2017 report.

Right to Education, Right to Thrive

The CAG report has underlined the failure of state governments to utilise a significant percentage of funds from the allocated corpus in order to implement the Right to Education Act (RTE). A massive unspent balance of over Rs.87,427 crore remains in the corpus funds during the first six years of the Act in the kitty of 36 states and union territories. Bihar leads this infamous list by being unable to utilise Rs. 26,550 crore, even as learning outcomes in the state leave much to be desired. This distressing state of affairs has been brought out by many reports.

The CAG performance audit said that the states have shown a consistent inability to utilise funds and this under-utilisation ranged from 21-41% between 2010-11 and 2015-16. The RTE Act, under which the Sarv Shiksha Abhiyan is implemented

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	Name of state	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	Unspent Balance (2010-16) in Crore
1	Bihar	5774.09	3419.25	7653.13	5070.00	2722.70	1911.26	26,550.43
2	West Bengal	119.15	1572.60	413.41	2077.56	2335.42	1992.83	8510.97
3	Jharkhand	1738.95	1386.41	1725.36	907.39	1216.71	988.55	7963.37
4	Odisha	563.77	1945.27	1782.68	1505.37	1334.32	1209.00	7440.41
5	Uttar Pradesh	482.11	968.63	1025.41	874.23	1059.92	1147.71	5558.01
6	Andhra Pradesh	628.70	940.43	454.51	591.65	809.08	554.69	3979.06

Source: CAG report on Implementation of Right to Education Act, 2009

and which came into force in 2010, pitches for eight years of compulsory school education to all children aged between six and fourteen.

The report also pointed to a shortfall in the number of mandatory School Management Committee (SMC) meetings in schools of nearly all the states. In fact, the statistics in this regard are pretty alarming. In selected districts of Assam, the shortfall ranged from 70 to 73 percent in a year. In Kokrajhar district, none of the selected 30 schools held any SMC meeting during 2013-14. In Chhattisgarh, 85 percent SMC meetings were not conducted as per norms in selected 120 schools. In Madhya Pradesh, 158 out of 203 test-checked schools showed shortfall in SMC meetings.

Saving the Ganga: A Work in Progress?

In CAG's performance audit of 'Rejuvenation of River Ganga (Namami Gange)' or the National Mission for Clean Ganga (NMCG), it has been revealed that funds earmarked for cleaning up the Ganga remain unutilised. A flagship programme of the National Democratic

Alliance (NDA) government, Namami Gange aimed to accomplish, among other things, an effective abatement of pollution, conservation, and rejuvenation of the Indian subcontinent's trans-boundary river. The auditor slammed the government for unused funds, the absence of long-term planning and lack of pollution abatement works, pointing out that want of these mechanisms are hampering Ganga's rejuvenation.

The auditor analysed 87 projects worth Rs.7,992.34 crore and discovered that eight to 63 per cent of the funds were utilised during the periods 2014-15 and 2016-17. As of March 2017, money to the tune of Rs. 2,133.76 crore, Rs.422.13 crore and Rs.59.28 crore was lying unused with NMCG and various other programmes.

The CAG report has also noted that projects related to ghats and crematoria works were not implemented due to lack of requisite clearances. In addition, solid and liquid waste management could not be taken up in many districts of West Bengal, Bihar, Uttar Pradesh and Jharkhand. The authorities even

failed to monitor the progress of cleaning work.

The report pulled up authorities over lax monitoring of the cleaning project. The central pollution control could not spend over 82 percent of funds earmarked for monitoring.

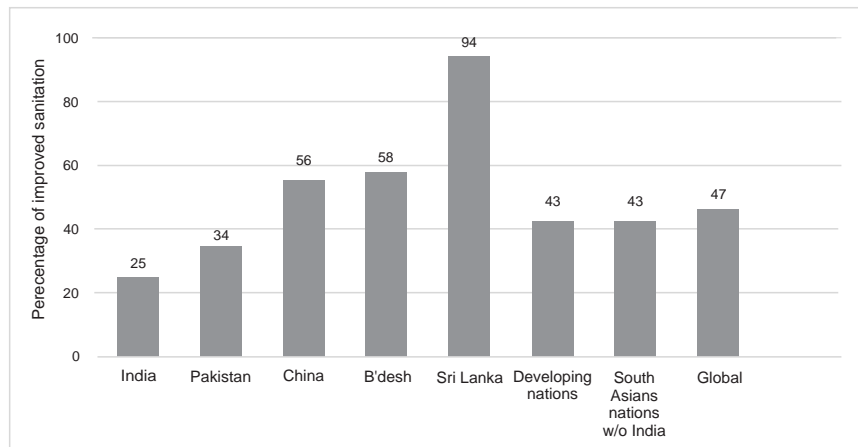
Will Clean India Remain a Pipe Dream?

According to CAG, though Swachh Bharat Mission (SBM) launched by Prime Minister Narendra Modi on October 2, 2014, aimed for complete eradication of open defecation in the country by 2019, similar targets against the problem were earlier set for 2012, revised to 2017 and again put out for 2022. In September 2014, Nirmal Bharat Abhiyan was restructured as SBM with revision of some components. The audit pertains to the period 2009-14.

The CAG quoted UNICEF/ World Health Organization (WHO) reports saying that not only is India performing below developing countries, but is also lagging behind Pakistan, Bangladesh and Sri Lanka in the context of providing sanitation facilities to its population.



Use of improved sanitation 2012 (%)



Source: UNICEF & WHO (2012). *Progress on Drinking Water and Sanitation: 2012*

Under the Total Sanitation Campaign, which aimed to accelerate sanitation coverage across the country by 2012, only 25 per cent of rural population could be provided access to improved sanitation. This was far below the global level of 47 per cent.

The CAG audit reveals the failure of the sanitation programmes in achieving the set targets and pointed out planning-level weaknesses in their implementations. More than 30 per cent of individual household latrines were defunct due to poor construction quality and non-maintenance. Only 52.15 per cent latrines for below poverty line and 44.18 per cent for above poverty line could be built against the set target during 2009-14.

A Punctuality Programme that Leads to Delays

Passengers travelling on Indian Railways often complain about excruciating delays in train

journeys. Barring the elite Rajdhani and Shatabdi trains, which also ply late at times, at least 30 per cent of passenger trains have been found running late during 2017-18.¹ The CAG has indicted the railways for setting wrong priorities and has discovered serious problems with its ambitious Rs. one lakh crore station redevelopment plans. Crucial enhancements of railway infrastructure like improving station line capacity, length of the platforms, washing pit lines and stabling lines have been ignored, despite more trains being handled at stations. Inevitably, this has led to delays in train arrivals and departures.

The audit took into account data from 15 stations on parameters

“The CAG audit reveals the failure of the sanitation programmes in achieving the set targets and pointed out planning-level weaknesses in their implementations.”

like number of trains handled, platforms, washing pit lines and stabling lines for March 2007, March 2012 and March 2017. It pointed out that despite an increase in the number of trains, the above facilities were not improved.

And Not a Drop to Drink: Potable Water Woes in Rural India

In a recent report, the CAG has pointed out how lack of planning and fund management hampered the implementation of the National Rural Drinking Water Programme (NRDWP) in villages, anganwadis and schools. By 2017, NRDWP aimed to provide all rural habitations, government schools, and anganwadis access to safe drinking water. However, the report noted that safe drinking water could only be provided to 44 per cent rural population, and 85 per cent schools and angadwadis.

Only 18 per cent people in villages were given access to potable drinking water (55 litres per capita per day) through piped supply against the target of 50 per cent.

The findings also noted that annual action plans (AAP) of states for the implementation of NRDWP not only lacked a bottom-up approach but also effective fund management and planning. Money to the tune of Rs. 8,788 crore (10%) remained unutilised, while Rs. 359 crore was diverted for work not covered by the scheme.



Twenty-one states did not prepare water security plans at any of the three levels, including Uttar Pradesh, Bihar, Andhra Pradesh, Madhya Pradesh, Rajasthan and Maharashtra. Gujarat, Tamil Nadu and Tripura failed to prepare water security plans at village and district levels whereas they weren't accomplished at the village and state levels in Chhattisgarh and Telangana.

In addition, AAPs were prepared in 10 states without any input from the district level. The auditor observed delayed submission of AAPs and lack of community involvement in its preparation. These deficiencies were enough to derail the rural water programme.

Accountability Challenges in Bihar PSUs

Indicating a massive fraud, the CAG audit of Bihar PSUs revealed that at least 56 PSUs had not finalised their accounts in the last three years, while 65 state-run companies have arrears pending in their accounts since the last 40 years.

The auditor cautioned that delay in non-finalisation of accounts or their non-preparation are fraught

“The CAG audit of National Rural Health Mission (NRHM), a flagship programme of Union Health Ministry revealed an unspent balance of Rs. 9,509 crore in 2015-16.”

with the risk of misrepresentation of facts and other anomalies.

It studied the performance of 18 PSUs out of 30 which have been in a working condition. Ten out of these 18 units have earned a profit of over Rs. 278 crore and seven suffered a loss of Rs. 1438 crore. Nearly Rs. 1160 crore of public money has been lost due to investments in these PSUs, while the quantum of loss in the other 56 could not be calculated as they were yet to finalise their accounts for the year 2016-17. Despite the staggering loss, the state government had chosen to extend budgetary support of nearly Rs. 4,500 crore to at least 10 of these PSUs.

Natural Calamity or Man-made Disaster?

The national auditor has termed the devastating Chennai floods of 2015, which killed 300 people, a man-made disaster. It has indicted the government of Tamil Nadu of turning a blind eye while all water bodies, river flood plains and city lakes were being encroached by the land mafia. The CAG report tabled at the state assembly in June 2018 also noted indiscriminate discharge of water from the Chembarambakkam reservoir near Chennai, which burdened the Adyar river and led to floods. At least 29,000 cusecs of water was released against the recommendation of 12,000 cusecs.

The state government and city administration were clueless about the catastrophe. They neither anticipated nor made

any emergency disaster plan to combat such a calamity. In fact, the preparation process of these entities could be gauged from the fact that concerned departments and the Disaster Management Authority constituted in 2013 never bothered to meet until the city was flooded. The government was sitting on an expert committee recommendation, which had suggested the creation of two new reservoirs upstream of Chembarambakkam Lake, for storage of additional water, the auditor noted.

Is Rural India Healthy? The Debate Continues

The CAG audit of National Rural Health Mission (NRHM), a flagship programme of Union Health Ministry revealed an unspent balance of Rs. 9,509 crore in 2015-16.

The audit also flagged several shortcomings in sub-centres, primary health centres and community health centres in the 28 states and union territories covered under the study.

Some essential drugs were not available in 24 states, which include Assam, Bihar, Chhattisgarh and Telangana. In eight of these states, essential drugs like Vitamin-A, contraceptive pills, ORS packets, RTI/STI drugs and obstetric kits were not available.

(Endnotes)

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A VILLAGE FESTIVAL CALLED SOCIAL AUDIT

Public Participation Makes the Real Difference

Sowmya Kidambi and Rakshita Swamy*



In 1994, when the first public audit (*jan sunwai*) of development expenditure in a panchayat in rural Rajasthan was held, little did one think that it would herald a national legislation for Right to Information. The small but momentous event, which was held in a farmland under a retired paratrooper's parachute, formed the bedrock of what would in later years emerge as a discipline called the 'social audits'.

The emergence of social audit as a demand in terms of democratic participation was simultaneous to the progress being made by the campaign for enacting and implementing the Right to Information (RTI) Act 2005. It is no coincidence that the most popular slogan of the RTI movement, '*Hamaara*

Paisa, Hamaara Hisaab' (our money, our accounts) was in fact a demand of people to audit government accounts as a means of exercising their democratic right.

The inception of platforms such as *jan sunwais* which entailed reading out of records in the midst of the community in an open public place and corroborate its narrative with actual reality, intuitively aligned with the natural principles of audit. Citizens, individually and collectively, understood the critical role that access to information, independence of the platform and documented evidence played in the *sunwais* for them to result in institutional change.

A decade-long experience in advocating for the citizen's right

to access public information held under state control, and use it as a foundation to evaluate the performance of the latter had its first victory with the legal mandate of social audit under the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) 2005. The MGNREGA (under Section 17 of the Act) became the first legislation, in the country and in the world, which mandated social audits in gram panchayats to evaluate the performance and expenditure of a government programme.

The statutory recognition of social audits enabled what began as a *jan sunwai* process in 1994 to today undergo a metamorphosis and emerge as a legally binding practice. Social audits have now been acknowledged and advocated by the central government, state governments, the CAG and Supreme Court as an institutionalised mechanism of citizen oversight over public programmes and expenditure.

Origins of Social Audits in Erstwhile AP

The process whereby government saw the benefit of social audits in cross verifying development expenditure

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at the grassroots began with the erstwhile composite state of Andhra Pradesh (AP). The southern state experimented and then scaled up the process to cover not just the Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGS) but other welfare schemes as well. The experiment began in 2006, with the department of rural development undertaking the initiative.

The initial phase of the social audit process included a pilot of the National Food for Work Programme (NFFWP) and training a cadre of master trainers who would help replicate the process in other districts. A training module was developed along with guidelines on how the social audit process would be carried out, defining the role of each stakeholder, including the implementing and the auditing agency. A series of pilots were carried out along with a mass social audit in Ananthpur district, learnings from which went on to lay the road map of scaling up the process across all the MGNREGS district.

The AP government set up the first independent Social Audit Unit (SAU) called the Society for Social Audit, Accountability and Transparency (SSAAT) in 2009. It also ensured the society's financial independence by allocating 0.5 percent of the total scheme fund towards social audit and the allied transparency and accountability initiatives. The functional independence of the unit was established by setting up a governing body to oversee the society's operations. The

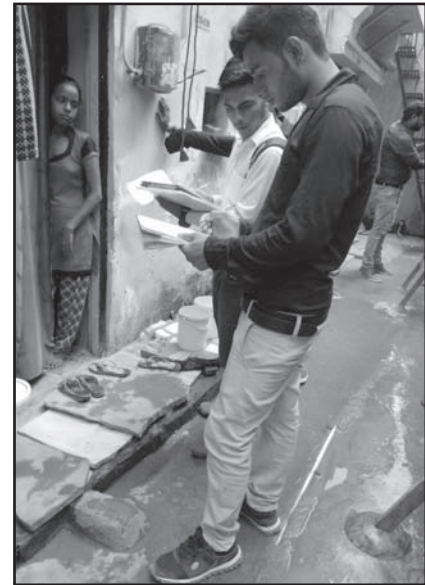
governing body members would be a mix of representatives from the civil society as well as government officials.

In 2010, the Andhra government decided to identify a Civil Society Organisation (CSO) representative well versed with the social audit process as the director of SSAAT, to ensure that the SAU was seen as truly independent in letter and spirit. The social audit exercise that began in the composite state of AP has continued post-bifurcation, with Telangana opting to expand its scope. Apart from MGNREGS, other welfare schemes brought within its ambit include Integrated Child Development Services (ICDS) Scheme, Mid Day Meal Scheme, Integrated Watershed Management Programme, Swachh Bharat Abhiyan, Integrated Child Protection Scheme, Stree Nidhi Credit Co-Operative Federation etc.

The Social Audit Process

The social audit process entails accessing records from the departments implementing state schemes and programmes. These records have details of the beneficiaries as well as aids they received. The social audit resource persons who work full time with SSAAT, identify rural youth, mainly from the beneficiaries' families, and train them to understand various provisions of the scheme.

In addition, they are educated on benefits provided, scrutinising records and even carrying out field-level verifications. Teams



of village social auditors, guided and facilitated by a battery of resource persons, then carry out verification by meeting every single beneficiary. In case there are physical assets, those are verified as well to see if what has been recorded in the documents actually exist or not, and if people have received the benefits recorded against their names. The social auditors also assess the work done and are able to figure out whether it is useful. The entire activity is an exercise in fact-finding rather than fault-finding. The social audit process culminates with a gram sabha meeting where all issues identified in the audit are read out and clarifications from those present (beneficiaries, gram sabha members and members of the implementing agency) are sought.

This is followed by a public hearing at the block level, where all gram panchayat reports as well as discussions that took place are read out. The hearing is presided over by the head of



the implementing agency or an officer deputed by the district collector and corrective action is initiated on each of these issues. Specific efforts are made both during and after the process to focus on grievances of the beneficiaries and in resolving the same. Cases of corruption and malpractices as well those that are disciplinary in nature often take a long time to be addressed since principles of natural justice need to be followed. For the poor, however, getting their grievances addressed tends to be a far more overarching need than punitive measures against erring officials.

In 2017-18, nearly 9000 gram panchayats, covering 434 mandals, with an expenditure of Rs 2379.26 crore under MGNREGS have been audited by SSAAT, Telangana, for which they were provided with records worth Rs 2144.91 crore (90.11% of the total expenditure). The total deviation identified by the social audit teams was Rs. 203.05 crore, which constitutes nearly 10% of the scheme funds spent on the programme. Eighty-five percent of the issues identified during the social

audit exercise were accepted by the presiding officer during the process. Hundred percent verification of labourers and worksites have been done in the 10 rounds of social audit that have been completed so far in Telangana.

The awareness levels achieved through the social audit process have meant greater participation of workers in it and the MGNREGS (as validated by the World Bank and the Accountability Research Center, American University, through independent research studies). The social audit process has been quoted in various international research journals on good governance as one of a kind and paved the path for institutionalisation of the process across the country. SSAAT has trained the highest number of village social auditors (VSAs) in the country with almost 1.5 lakh youth being trained to date. Many of them have gone on to become resource persons with the society.

The potential role of social audits as a reliable means of feedback and educating citizens is well-

established. Their function as a platform to inform decision-making and facilitate grievance redressal has been recognised by both the legislature and the judiciary. After the MGNREGA, the National Food Security Act (NFSA), 2013 and the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 became two more legislations mandating social audit as the institutional mechanism of monitoring their implementation. The Ministry of Rural Development (MoRD) through orders and guidelines also extended the incorporation of social audits to the Pradhan Mantri Gram Sadak Yojana (PMGSY), Pradhan Mantri Awas Yojana (PMAY), National Social Assistance Programme (NSAP) and Swachh Bharat Mission (SBM). Meghalaya became the first state in the country to pass an exclusive legislation on social audit, extending it to 21 programmes. The Supreme Court, after recognising the potential of social audits in facilitating citizen oversight into programmes meant for public welfare, ordered social audits in the implementation of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) (BOCW) Act, 1996 and The Juvenile Justice (Care and Protection of Children) Act, 2000 (JJ Act).

Social audits have so far, unfortunately and inaccurately, been perceived as only post facto “fault-finding” exercise, where irregularities, fraud and



misappropriation in running a programme are identified. However, alternately, social audits can be seen as an ongoing process through which citizens participate in the planning, implementation and monitoring of the programme. Audits need to be deliberately positioned to emerge as a platform for sharing information about schemes and enhancing awareness amongst people about their entitlements. They are required to be the tool for identifying households eligible and deserving of government services but are not enlisted as beneficiaries. In addition, they are meant to be a mechanism for recording peoples' voices and identifying priorities that can become inputs for planning, and are means of registering grievances which help identify systemic shortcomings in programme implementation. Finally, they are also processes to examine records, so that even the hint of corruption and malpractice can be analysed and publicly investigated. Social audit enables a democratic dialogue and unpacking of decisions. It is not about taking one position vis-à-vis the other, but an exercise to enforce mature collective deliberations.

Synergy with the CAG

Expenditure of the central and state governments that directly impacts socio-economic development estimates around Rs 17 lakh crore (FY 2013-14). This translates into nearly Rs 2700 crore being spent in each district, the bulk of which is planned and implemented through urban and rural local

bodies. However, the monitoring of this expenditure goes beyond the direct supervision by the CAG, thereby leading to a big gap in accountability of such a large quantum of public funds. It is here that social audit as a mechanism can be seen as an essential complement to the formal audit process. A synergetic relation between the CAG and social audits, can help each distinctive form of audit expand its boundaries.

In the past 10 years, there have been many points of formal and informal collaboration between the MoRD and CAG on social audit, which now need to be understood, studied and advocated for long term institutionalisation. These synergies, once systemised, will help make social audits a process independent of the implementing agencies. Rather, they will serve as a collaborative exercise helping in the improvement of implementation and for taking corrective action, thereby delivering on the mandate of a true audit.

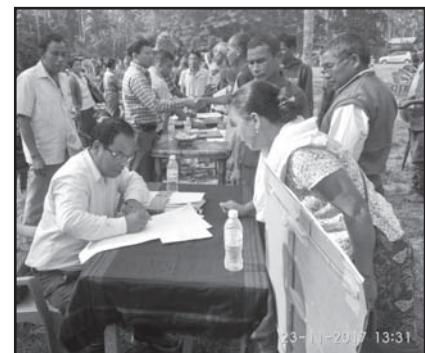
Therefore, to summarise, the practical interventions resulting in institutional synergy and linkage between the formal audit process of the CAG and social audit mechanism included:

- Sharing of social audit reports of programmes by social audit units with the state PAGs to enable the latter to prioritise sectors and areas while planning their own audit calendar
- State AGs sharing exemption reports flagging probable

violations of guidelines with the social audit units to direct the latter to look into it in more detail through social audits

- Local Fund Audit reports being provided as one of the key documents to the social audit teams. This was to enable the wider outreach of these reports amongst the local community and use them as a base to build on through house-to-house verification
- Members of the state AG office serving as members of the SAU governing boards and selection committees, to facilitate their institutional participation in decision making
- Joint training exercises
- Detailing of auditing standards of social audit such that the social audit protocol is one that is aligned to the minimum standards and benchmarks of a CAG audit

The social audit processes themselves represent the emergence of a new discipline. Methodologies have emerged and evolved from the democratic framework of citizen monitoring and public hearings as they have begun to be institutionalised in law and practice. Social audit





agencies have strongly felt the need for mentoring and making use of the supreme audit institutions' universal and established principles of independence and minimum standards of effectiveness. Social audits therefore serve as feedback/input and cannot be seen as a substitute for public audit by the CAG. They are also very useful as a concurrent monitoring tool, a platform to build awareness amongst beneficiaries and as an effective means to redress of grievances at the grassroots level.

Conclusion

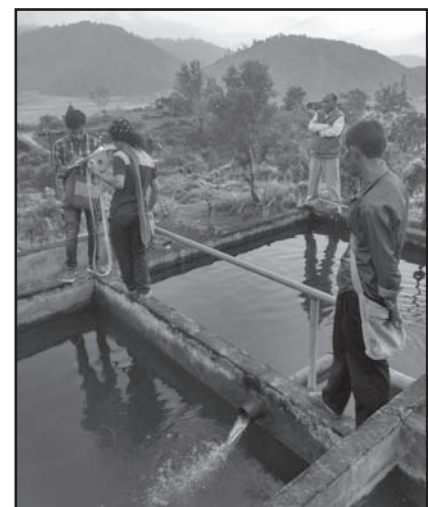
While a lot has transpired in the field of social audit in the past decade to remain optimistic, it is also important to reflect on the challenges that the process has faced. Interference by governments in the decision-making and autonomy of social audit units as well as non-provision of complete records prior to the social audits, are real trials confronted by the process. Further, intimidation of social audit facilitators at the ground level and extremely poor corrective action on their

findings and grievances- these are all challenges that limit the potential of this audit form. Moreover, there is an increasingly widening scope of social audits across a range of social sector interventions. This forces social audits as a discipline to respond to challenges such as dealing with its applicability in urban areas, or in dealing with sensitive contexts such as abandoned children living in shelter homes. The agency of social audit is increasingly sought to be included in other public programmes (such as pensions, housing, expenditure under Fourteenth Finance Commission grants etc.) as a legitimate means of enhancing transparency and accountability in public spending at the grassroots level. Incorporation of social audits is therefore cutting across a range of ministries.

There is critical need for an independent organisation to nurture and mentor the process of social audits so that they are conducted in an independent and effective manner on the field. The organisation is also required so that these audits can be applied across

programmes implemented by various departments/ministries while adhering to minimum standards of audit. In this regard, the potential of setting up an independent National Social Audit Advisory Board (similar in nature to the Government Accounting Standards Advisory Board) to facilitate the role of incorporating social audits in various social sector initiatives that go beyond the scope of any one department/ministry can be explored. Such a board can serve as a national resource centre on social audit that can provide technical assistance to support both government and CSOs in institutionalising social audits across the country.

The continuing synergy between social audit and CAG's audit also gives an opportunity for audits as a mechanism to work in collaboration with anti-corruption and grievance redress frameworks. This cooperation should be reinforced so that audit findings, in addition to being reported, can also lead to systemic changes in governance and deliver on its true constitutional mandate.



FUTURE OF POLICING—VISION 2025

Annual Conference on Police Reforms Day

Radhika Jha, Anshi Beohar, Dhruv Shekhar*



Mr. Prakash Singh, Chairman of Indian Police Foundation, and a panel of distinguished guests at the inaugural session

Common Cause, in collaboration with the Indian Police Foundation and Bureau of Police Research and Development (BPR&D), organised the Annual Conference on Police Reforms Day at the India International Centre on September 22, 2018. The panellists included Minister of State for Human Resource Development (HRD) Dr. Satya Pal Singh, former judge of Supreme Court and Chairman of the Law Commission Justice Balbir Singh Chauhan, Director General of BPR&D Dr. AP Maheshwari, as well as eminent civil society members and state functionaries.

The panel discussion was followed by a session on “Future of Policing—Vision 2025” by young police officers. We present here a curated report on both the panel discussions and quick excerpts of the proceedings.

Mr. N Ramachandran, President, Indian Police Foundation

Mr. Ramachandran went on to explain the reason behind setting the reform target year as 2025. He stated that 2025 is a random number— one which should only be representative of both the medium-term and long-term future. He ended his address by recognising the need for

reimagining the police structure of India, one which should be in consonance with the aspirations enshrined in the Constitution.

Dr. Vipul Mudgal, Director, Common Cause

Dr Mudgal said Common Cause works on probity in public life and governance reforms. Its Status of Policing in India Report is in the public domain. He asked if we were moving towards or away from police reforms. Are the encounters becoming a rule rather than an exception and do we condone mob violence? He said the fear of the police needs to be low while the trust in it high.

Mr. Prakash Singh, Chairman, Indian Police Foundation

Mr. Singh elaborated on the institutional malaise which afflicts the issue of police reforms. Be it the inability of courts to check whether their directions have been followed or the police administration to follow through with internal reforms, everyone seems to be dragging their feet on this grave ailment. Emphasis was placed on three reasons why police reforms are essential. First, the growing number of

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Young IPS officers of the panel

individuals with questionable backgrounds contesting elections appears to be on a rise across the past three general elections. This is a scenario that may one day lead to India being labelled a criminal state. Second, an emerging economy like India requires an effective law and order system to continue its growth. The last reason for police reforms is to ensure that better police may be created to negate internal security threats in regions like J&K, north east India and large parts of central India.

Dr. A.P. Maheshwari, DG, BPR&D

Dr. Maheshwari stressed on the role BPR&D is playing with regard to community participation in reforming the police set-up as well as public perception of the same. According to him, there is a need for police officials to reinvent their understanding by being empowered to offer a variety of services.

The police is required not only to be proficient in new technological tools but also to be emotionally stable. The latter is important as they are often the first line of assistance to victims and the aggrieved. He then explained how the evolving nature of threats created by the cyber world necessitated the need for constant upgradation in terms of personnel knowledge. Dr. Maheshwari also called forth experts across domains to come and collaborate with the BPR&D

in order to ensure effective policing.

Mr. Rajiv Jain, Director, Intelligence Bureau

Mr. Jain's address was centred on the transformative impact of technologies on the ascent of India, and hence, on our daily lives. He spoke about the all-permeating presence of technology in our lives and stated how millions of Indians are in possession of smartphones



Minister of State for the Ministry of Human Resource Development Dr. Satya Pal Singh



Panellists from all walks of life along with Indian Police Foundation President Mr. N Ramachandran

today and are accessing Internet services. He noted that new technologies are simultaneously creating problems as well as new solutions to both new and traditional problems. Mr. Jain acknowledged that while police officers are seeking proficiency in operating new technologies, they should not forget to acquire soft skills such as showing empathy towards the victims.

Mr. Rajiv Gauba, Union Home Secretary

Mr. Gauba stated there is no need for retrofitting police reforms. Instead, questions need to be asked about the scope, content and direction of these reforms. The central premise of his address revolved around three issues. First, police reforms need to be seen in the context of the overall governance reform and accountability framework. Second, there's a serious need for internal organisational reforms of the police, particularly at the district level. Last, it's necessary to leverage the full

potential of technology for a modern police force.

Dr. Satya Pal Singh, Minister of State for HRD (Higher Education)

Dr. Singh advocated for reforms that should not merely be limited to the police. Rather, there should be overarching reforms for the entire government apparatus. Drawing from his own experiences as a police officer, he stated that there is an institutional discipline problem within the police. He further noted that while there is a great deal of discussion on the modernisation of the police force, equal focus needs to be reposed on their commitment to the cause. He prescribed the reorientation of the education system in order to accomplish this goal. At the end of the day, the main aim is for police officers to not just be competent but also humane and committed to the cause.

Mr. Amitabh Kant, CEO, NITI Aayog

Mr. Kant drew the audience's attention to the rapid technological and demographic change that India is experiencing. However, he stressed on the need for an efficient and dynamic law and order system for these events to transform into continued and tangible economic growth. Referring to various studies, he stated that the primary problem identified by Indian citizens was crime. Thus, in order to improve the quality of life of Indian citizens, there's an urgent need to reform the law and order structure. To that end, he advocated laying down a set of indicators like law and order, on which states should be ranked for their performance.

Ms. Maja Daruwala, Commonwealth Human Rights Initiative (CHRI)

Ms. Daruwala's address was focused on questioning the

colonial disposition of the police as a centrally managed entity whose mandate was to maintain law and order and protect property. She stated that the police must not give up its autonomy. Rather, there is a need for operational autonomy. Citing the example of the United States, she stated that this operational autonomy can come by way of greater community participation and deployment of police officers in their own communities. This should be done so that officers are invested in maintaining law and order in areas in which they reside.

Justice Balbir Singh Chauhan, Former Chairman, Law Commission

Justice Chauhan reminded the audience that the established legal system has voiced concerns about the police since the beginning. According to him, "Our law does not trust the police who have been given the authority to investigate and take the matter to the court." He discussed numerous provisions in the IPC, Code of Criminal Procedure (CrPC) and the Indian Evidence Act, as well as cases like Mohammed Naim, which reflect the aforementioned distrust.

Vision 2025: The Young Police Visionaries

Piyush Mordia, DIG, BSF, pressed for more sensitivity from police personnel towards victims of crime. He enlivened his speech with an anecdote



Radhika Jha of Common Cause presenting the findings of SPIR

on proactive policing. Mr. Mordia narrated how his team in Gorakhpur went beyond the standard operating procedure to assist the family of a doctor who had been kidnapped. Police officers helped family members of the doctor in dealing with the media and rescheduling his daughter's examination, among other things.

KB Vandana, DIG, NIA, brought out the need for a democratic, sensitive and responsive policing which is also accountable and smart. Her conception of Vision 2025 is one in which the police are humanitarian, just and fair. She also looks forward to a policing landscape in which female officers are truly empowered and are provided a fair share of representation.

Anup John Kuruvilla, DIG, Kerala Police, pressed for the holistic empowerment of constabulary. He also felt the need to move towards a system without hierarchy that supports transparency and accountability,

while respecting the rights of the people. He noted that the Constitution provides various rights to people and the CrPC is an instrument for the rightful discharge of policing duties. Mr. Kuruvilla also pointed out that when someone is arrested, it is done for the larger social good by trampling over the fundamental rights of the person arrested. Keeping this perspective in mind would also impact the behaviour of the police personnel.

K Sunil Emmanuel, DIG, NSG, votes to identify goals that will touch the lives of Indian citizens and should be understood from the view of the common man with respect to the police. Non-registration of crimes is the biggest grievance of citizens and there's a need to develop a transparent mechanism in dealing with FIRs. Lack of regular training, absence of housing and medical facilities as well as unavailability of station-based amenities have an impact on



the behaviour of the police. Inevitably, it also affects the way they treat people.

Shalin, DIG, NSG, underscored the need for domain expertise, especially in the context of niche areas of policing, as generalised training is not enough to meet specific challenges. He felt there is a need for benchmarking and standardisation of the service template by learning from best practices of concerned agencies elsewhere. Optimum results can only be achieved by comparing their templates and replicating them. In order to improve techniques, best practices must be incorporated in training modes, drills and tactics, with a focus on monitoring and learning.

Jitender Rana, Senior Commandant, CISF, pointed out that law and order is an important catalyst for any kind of economic development. He averred that police is seen as a monolithic organisation and they are supposed to respect political authority, bureaucracy and other sister organisations. The inherited policing system was once subservient to imperial power and it continues to operate in the same way. Police stations are deprived of resources and are not capable of dispensing the service required of them. The need of the hour is to strengthen police stations as well as the personnel/agencies that interact with and assist the public.

Sanjukta Parashar, SP, NIA, has a wish list for Vision 2025, which

includes institution building, perception management and providing delivery-oriented service with a special focus on gender mainstreaming. She feels that an immediate, public and tangible reward for excellence would go a long way in motivating police personnel. She also maintained that functions like law and order, protective policing, etc. need to be separated from investigation.

Anil Paris Deshmukh, SP-Vigilance, Rajasthan Police, maintained that police needs to improve training and content of training while increasing focus on professionalism. He advocated for conducting reviews of police personnel and offering them promotions/postings/transfers on the basis of only professionalism and performance. Mr. Deshmukh is also of the view of making the police system independent of specific individuals.

Gaurav Sharma, Additional DCP, Delhi Police, observed that police personnel often stop looking at themselves as citizens, which ends up impacting their conduct. When we view the police force as an organisation catering to its members, we must also assess what we are offering it in return. Changes need to be systemic and not just internally within the police. Police need to function impartially and without any discrimination. Citizens must also understand and maintain the sanctity of "100."

Vijayanta Arya, Additional DCP, Delhi Police, envisioned 2025

as a time when a person visiting the police station is aware of his/her rights and duties as well as that of the police personnel. She hoped that by that period gender isolation of women in police shall cease. As far as capacity building is concerned, she felt that police officials are enthusiastic to work even when resources are low, but they do not want to be targeted as collateral damage.

Neha Pandey, Ministry of Home Affairs, stated that every police officer has a vision but he/she needs both time and independence to implement it. She felt it was necessary for the constabulary to develop soft skills. There's also an urgent requirement to improve its living and working conditions, working hours and domain expertise, especially with new challenges being thrown by fake news and social media. Security and surety of tenure are other concerns she voiced.

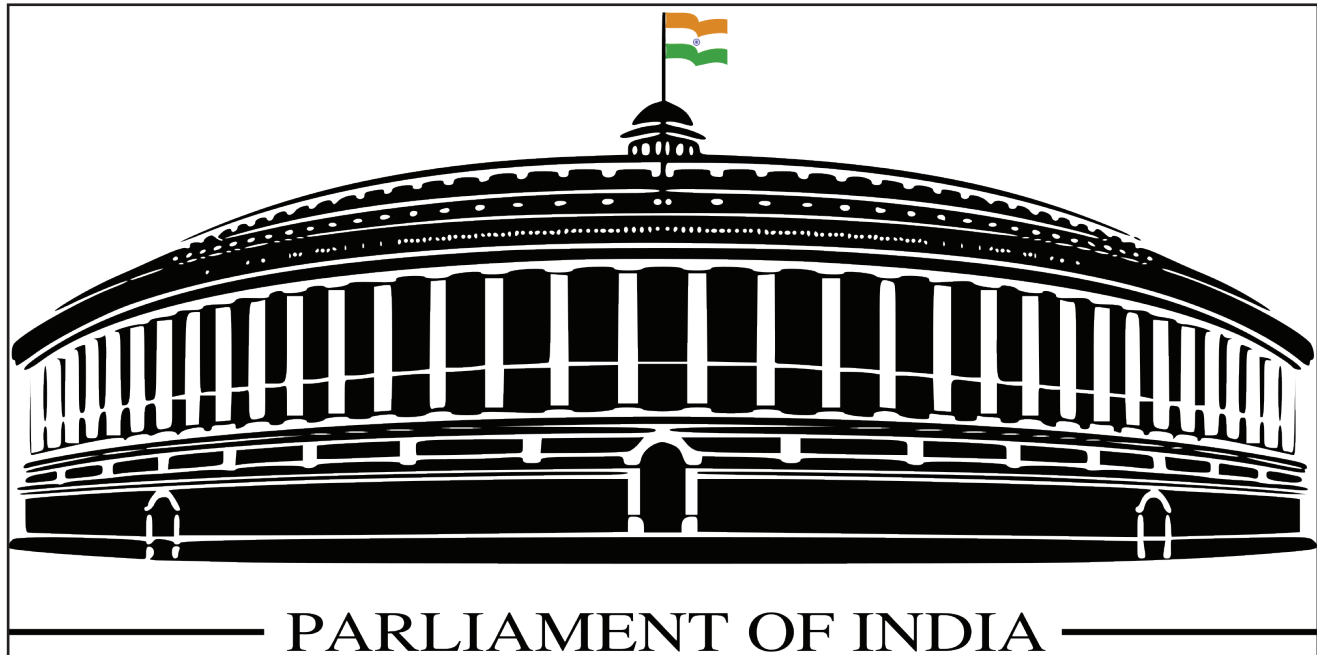
Deepak Gauri, DCP, Delhi Police, emphasised on the need for creating a humble policing system. He assumed there is a need to examine present capacities to determine future needs. Once the arrogance of being a police official is shed, a lot of things will automatically change. Officers often let individual interests override their duties. People are in a hurry to publicise their achievements offline and on social media. There is a need to improve constantly.



PARLIAMENTARY OVERSIGHT OF CAG

Auditor and PAC: An Uneasy Relationship

Dr. Govind Bhattacharjee*



A nation can never afford to forget its history. When CAG's Performance Audit Report on the "Allocation of Coal Blocks and Augmentation of Coal Production" was tabled in Parliament in August 2012, the country witnessed a lot of high-pitched drama and hyperbole. The BJP, then in opposition, promptly demanded the resignation of Prime Minister Manmohan Singh who was also the Coal Minister during most of the period in question. On the other hand, the Congress spokesperson, Manish Tewari, slammed the CAG for not understanding the basics of 'development economics' on the ground that auctioning of

coal blocks would have hiked the input cost for power plants, making electricity costlier. But the response of the then Minister of State in the Prime Minister's Office, V Narayanasamy, was a case study in how politicians often use an ingenuous bundle of half-truths, quarter-truths and outright lies to distract attention, so as to defend corruption and confuse gullible citizens. The Hon'ble Minister stated that CAG's coal report was only a "draft report" without any proof (and hence without substance), and that it had to be "tested by the Parliament" and "examined by the Public Accounts Committee (PAC)" before any definitive conclusion

could be drawn, while grudgingly admitting that "unfortunately the CAG has a constitutional mandate".

It is not often that a Union Minister displays such ignorance of constitutional provisions and parliamentary procedures regarding the CAG and his reports. Article 151(1) of the Constitution mandates that the reports of the CAG would be submitted to the President who "shall cause them to be laid before each House of Parliament." It is not a "draft report" once it is submitted by the CAG to the President. Similar to the minister's repeated assertions about the

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PAC: A History and Functions

The PAC was conceived to hold the government accountable for its actions. The Committee on Public Accounts was first set up in 1921 in the wake of the Montague-Chelmsford Reforms. It was chaired by the Finance Member till 1949. Realising that this restricted the free expression of views and criticism of the executive, the Constitution of India made PAC a parliamentary committee. The PAC is now constituted every year under Rule 308 of the “Rules of Procedure and Conduct of Business in Lok Sabha.” Its 22 members are elected every year according to the principle of proportional representation - 15 from the Lok Sabha and seven from the Rajya Sabha. By convention, since 1967, the Chairman is appointed by the Speaker from the Opposition party members of the Lok Sabha. A minister cannot be a member of the PAC. The PAC commands considerable respect in our parliamentary system and enjoys a higher status than other parliamentary committees.

Rule 308(1) defines the functions of the PAC, which primarily includes examination of appropriation and finance accounts of the government and the report of the CAG thereon. However, the PAC is at liberty to examine any other matter as well. In that sense, its functions extend “beyond the formality of expenditure to its wisdom, faithfulness and

examination of CAG reports by the PAC, statements have been made, for example, by Sheila Dixit, the then Chief Minister of Delhi. She made identical comments when the CAG’s Commonwealth Games reports kicked up a furious storm of indignation at unprecedented corruption. She too attempted to downplay the scam, extraordinary in the context of an international sporting event, and tried to deflect the uncomfortable questions raised.

“The citizens are never told by politicians that the PAC only makes recommendations which are in no way binding on the government, which may reject any or all of its suggestions.”

The former Chief Minister strived to get around them by asserting that the PAC would examine the report and would take appropriate action. It was

claimed that if anyone was found guilty, they would of course be brought to book. Nothing was heard of what the PAC had examined and what action had been taken against the guilty. The nation later learnt with disbelief that the CBI has forgotten to mention the name of a certain Suresh Kalmadi in the charge-sheet it had framed in the case.

The citizens are never told by politicians that the PAC only makes recommendations which are in no way binding on the government, which may reject any or all of its suggestions. The contention that once the report goes to the PAC, all ills will be remedied, is nothing but a tactic at prevarication. These are strategies politicians are adept at using in order to stonewall any opposition or charges against them. The PAC reports are also not taken up for discussion in the Parliament, which is why people are remarkably ignorant about what happens to the CAG reports and PAC recommendations.



economy". The Committee can thus examine cases involving losses, nugatory expenditure and financial irregularities, and call upon the concerned ministry/ department to explain the action taken to prevent a recurrence of such irregularities. It can "record its opinion in the form of disapproval or pass strictures against the extravagance or lack of proper control by the ministry or department concerned". While it discusses financial discipline, a detailed examination of the questions involving principle and system is a major function of the Committee, though it steers clear of questions of policy in the broad sense.¹

The Committee selects the most important paragraphs from the audit reports for detailed examination after consultation with the CAG and submits its reports on them to the Lok Sabha. Unlike in the UK, the Indian CAG is not an officer of the Parliament or the PAC, but has been described as the "friend, philosopher and guide of the PAC." After examining the CAG's reports, the PAC submits its recommendations to the lower house and the government is required to submit Action Taken Notes on them within six months. These notes, after consideration by the PAC, is presented to Parliament as the Action Taken Report.

The PAC usually calls secretaries of the concerned ministries/ departments to depose before it, but they often get away by promising action, which rarely goes beyond issuing circulars

and directives. The PAC is supposed to be apolitical, base its observations only on the merit of the case and look at each issue professionally and dispassionately. Its recommendations should be prudent, practical and pragmatic to address the problem adequately. By and large, all PACs have remarkably lived up to these expectations. However, perhaps for the first time in its history, during the examination of the CAG report on 2G scam, this covenant of non-partisanship broke down irreparably, when the entire committee was divided along political lines and the report could not be finalised.

The CAG submits around 40 reports pertaining to the Centre every year, besides three to five reports pertaining to every state. But the PAC, for constraints of time and non-availability of its members who are usually busy with their own constituencies, is unable to examine more than five to 10 percent of the

“The Committee selects the most important paragraphs from the audit reports for detailed examination after consultation with the CAG and submits its reports on them to the Lok Sabha.”

observations contained in these reports. To deal with the huge number of reports and paragraphs submitted by the CAG to Parliament, the PAC usually works through its sub-committees. There are currently eight sub-committees, each dealing with specific areas like reports on revenue, expenditure, railways, telecom, defence, etc. A system similar to the PAC also operates in every state. CAG's reports on commercial undertakings are discussed by a separate Committee of Parliament/ State Legislatures known as the Committee on Public Undertakings (COPU).

Table 1: Number of Audit Reports and Paras - Central Reports

	AR 2014-15		AR 2015-16		AR 2016-17	
Wing	PAAs	Paras	PAAs	Paras	PAAs	Paras
Civil + PT	3	62	6	74	4	59
Defence	-	122	3	36	-	44
Scientific	-	44	2	13	1	15
Revenue	8	86	6	26	3	28
Railways	4	50	3	33	2	8
AB	4	-	3	22	6	-
Commercial	-	23	-	34	-	49
Total	19	387	23	238	16	203

(PA: Performance Audit, each is considered a topic for the PAC. Paras refer to compliance/ financial audit observations, each of which is also considered a topic.)

(AR: Audit Reports, AB: Autonomous Bodies)

Table 2: Meetings held-Union Government Reports (except Commercial, discussed by PAC)

Year	2013-14	2014-15	2015-16	2016-17	2017-18
Topics proposed	161	81	62	119	161
Topics Carried Over from Past	49	60	90	156	49
Fresh Topics Selected	120	48	56	181	120
Topics Discussed	22	30	27	66	22
No of Meetings Held	43	49	58	81	43

Table 1 shows the number of performance audit reports and compliance/ financial audit observations reported in the CAG's Audit Reports presented to the Parliament during the three-year period 2014 to 2017. Table 2 shows the number of topics selected by the PAC during the five-year period 2013 to 2018, and those actually discussed by it. It is evident that only a miniscule number of topics could be discussed by the PAC out of the total number selected, which again was a small

fraction of the total number of observations contained in CAG reports.

Matters are worse in the state PACs, with many paragraphs pending for discussion for the last decade or more in many states, which casts serious doubts on the efficacy of the PAC mechanism itself.

Table 3 shows the number of reports presented to the respective Lok Sabhas by the Central PAC. While their numbers vary widely, since the

13th Lok Sabha, the number of reports presented has consistently been going up. However, what actions, if at all, the government has taken on those reports is not known. As already stated, the PAC reports contain only recommendations and the government is at liberty to reject any or all of them, after citing reasons which may be arbitrary.

Constitutional Mandate of the CAG

An All India Conference of PACs of Parliament and State/Union Territory Legislatures was hosted in 2015 after a gap of 14 years, which examined the changing role of PAC and the structural and external challenges faced by it. The conference highlighted that during the 15th Lok Sabha, the then PAC had suggested that it should be consulted before the appointment of the CAG, who should be part of the legislature, as is the practice in the UK and Australia. Among its major recommendations were the engagement of experts for examining technical subjects, giving power to the CAG and PAC to examine PPP projects and bringing finances of NGOs under the audit's purview. It also stressed on setting a time limit for ministries to furnish Action Taken Notes on audit observations and PAC recommendations. The need for complete independence of CAG, making it a part of the PAC, need for harmony between CAG at the centre and the states and the need for better accountability of CAG were also underscored.

Table 3: Reports presented by the PAC¹

Lok Sabha	Tenure	No. of Reports Presented
1st Lok Sabha	1952-57	025
2nd Lok Sabha	1957-62	043
3rd Lok Sabha	1962-67	072
4th Lok Sabha	1967-70	125
5th Lok Sabha	1971-77	239
6th Lok Sabha	1977-79	149
7th Lok Sabha	1980-84	031
8th Lok Sabha	1984-89	187
9th Lok Sabha	1989-91	022
10th Lok Sabha	1991-96	119
11th Lok Sabha	1996-97	024
12th Lok Sabha	1998-99	011
13th Lok Sabha	1999-04	063
14th Lok Sabha	2004-09	084
15th Lok Sabha	2009 -14	100
16th Lok Sabha	2014 -	102



An assortment of issues that could increase the capacities of the Supreme Audit Institution as well as safeguard it were also identified and discussed. The need for the legislature to recognise and protect the institution of CAG whenever it comes under attack and the tendency of state government officials to refuse and delay records and files to audit were focussed on. Other topics that came under the scanner during the conference were the tendency of the government to keep audit out of public spending, and the need to make PAC recommendations mandatory and not to treat it as a mere advisory body.²

The suggestion that CAG should be made accountable to the Parliament sparked a great deal of controversy in the context of constitutional guarantees and autonomy provided to the audit institution. An MP asserted that “CAG should also be answerable to someone” and that “Parliament is supreme.” Responding to the statement, a former CAG who did not wish to be identified, contested that “Parliamentarians have always held that Parliament is supreme. But, actually it is the Constitution that is supreme. The CAG is meant to be autonomous according to the Constitution. Tomorrow they may want the Election Commission to report to Parliament.”

Indeed, the demand was rather strange and bizarre, but one can be certain that such appeals would be raised in future too. The constitutional mandate

of the CAG is to ensure the accountability of the executive. The executive is controlled by the legislature. If CAG is made accountable to the legislature, then there will be no protection for his/her independence in extreme situations, particularly when there's a single ruling party at the Centre. The government can then prevent audit scrutiny of transactions it has reasons to hide, and withhold CAG's reports from being tabled in legislature whenever the same has the potential to damage its electoral prospects.

The attack on CAG after the presentation of the 2G report inside and outside the Parliament was extraordinary. The brazen, no-holds-barred verbal assaults heaped upon the institution by senior ministers of the ruling dispensation who denigrated it and questioned its credibility on a daily basis is something which had never happened in the past. It is also something that ought not to be forgotten ever. In the backdrop of these events, the suggestion to make the CAG accountable to Parliament would make a mockery of all the safeguards built into the Constitution to ensure the independence of this public interest watchdog. It would rather facilitate the scope for dilution of those safeguards by an authoritarian government in the future. It would also violate the UN-approved international treaties and agreements that India is signatory to, like the Lima Declaration or Mexico Declaration, which assert CAG's

independence in the most unambiguous terms, even when the CAG is made an agent of Parliament:

The independence of Supreme Audit Institutions provided under the Constitution and law also guarantees a very high degree of initiative and autonomy, even when they act as an agent of Parliament and perform audits on its instructions. The relationship between the Supreme Audit Institution and Parliament shall be laid down in the Constitution according to the conditions and requirements of each country. (Section 8, *Relationship to Parliament, Lima Declaration*)

While respecting the laws enacted by the Legislature that apply to them, SAs are free from direction or interference from the Legislature or the Executive in the selection of audit issues; planning, programming, conduct, reporting, and follow-up of their audits; organization and management of their office; and enforcement of their decisions where the application of sanctions is part of their mandate. (Principle 3, Mexico Declaration)

In fact, both the executive and legislature should rather strive in unison to uphold the CAG's authority and unfettered independence, instead of trying to constrain these through legislative/ constitutional amendment. The CAG does not have the power to obtain any record he/she needs within a specific time, something even an ordinary citizen enjoys under



the Right to Information (RTI) Act. He has no power to penalise or even recommend initiation of disciplinary proceedings against those who refuse to cooperate with his/her officers by withholding essential records/ documents and responses to his/ her queries. The government has the discretion to lay the CAG's reports before the legislature at a time chosen by it, there being no time limit prescribed in the CAG's DPC Act or the Constitution. Many state governments have used this loophole to withhold the reports perceived as damaging or inconvenient till impending elections. Since the contents of the reports are protected by legislative privileges, voters are denied any knowledge of events that may influence their choice, besides obviating the scope for timely legislative scrutiny and remedial action. This inevitably militates against the concepts of public accountability and public interest.³ Of course the Supreme Audit Institution also urgently needs to put in place measures to ensure improved systems of internal accountability and quality control of their report contents. They must also improve the quality of their recommendations which, save a few good exceptions, are often rather poorly framed and lacking in insight. However, that does not mean that the powers of the CAG should be curbed and his independence fettered.

When it comes to empowerment of the CAG, the government's record is dismal. CAG had proposed an amendment to

the DPC Act to UPA-I seeking comprehensive audit of public funds and bodies rendering public services. It had also called for ensuring a structured, time-bound response to the audit observations, but the government has so far remained unmoved. The procedure for appointment of the CAG remains shrouded in secrecy and opaqueness, but no government has shown even the slightest inclination to remedy that. Irrespective of their political affiliations, all governments fear that a transparent process may result in an outcome which might sweep them off their feet in the event of some unforeseen and unfavourable contingency. This would bring even bitter political rivals to collude and collaborate for undermining the spirit behind the constitutional provisions related to the CAG.

International practices with respect to the CAG vary widely. Even where the CAG functions as an officer of Parliament, like in UK or Australia, the established conventions, strict media and public scrutiny, as well as other ethical practices zealously protect the CAG's independence. In these countries, the PAC proceedings have never been hamstrung by the fractious nature of debates between rival political parties as witnessed during the discussions on CAG reports on 2G or Coal scams. A comparison with those countries would thus be inapt.

Audit Institutions Across the Globe

In most Commonwealth countries which follow the so-

called Westminster model of audit institution, the Auditor-General, whose reports form the bedrock of Parliamentary oversight, reports directly to Parliament/PAC. In some countries, the Auditor-General is an officer of Parliament which guarantees his/her independence from the executive, like UK or Australia. In others, like India, CAG is independent of both the executive and the legislature. But in all these countries, including India, Parliament or PAC is fully empowered to examine any issue, *suo moto*, which has not been reported by the Auditor General but which affect the delivery, accountability, transparency or integrity of the public system of financial governance. How then the system is working in UK or Australia where the CAG is functioning under the control and direction of the Parliament, and why can the same system not work in India would be a legitimate question.

In India, the institution of the CAG is not audited, which is a major weakness in the system. The CAG in India has introduced a loose system of peer review by other members of the global SAI (Supreme Audit Institution) community (INTOSAI). This does not serve even the minimal requirements of assurance on the adequacy of internal controls existing within the organisation. Accountability of the CAG and his/her organisation must be ensured by devising a proper system. However, politicians should be kept out of it because they will use every opportunity

to subvert the institution and damage its credibility, being directly impacted by its reports.

Three constitutional watchdogs at Westminster are known as Officers of Parliament- the Comptroller and Auditor General, Parliamentary Ombudsman and Parliamentary Commissioner for Standards. The term Officer of Parliament indicates a special relationship with Parliament. It emphasises the independence of the officer to be protected by strong safeguards like restrictions on his dismissal and direct appointment of staff as non-civil servants.

The core idea is to protect the independence of such an officer from the government or the official Opposition, who might be guided more by partisan considerations than by public interest. The basis of such independence is set out in the statute itself in unambiguous terms.⁴ During the 1990s, other Commonwealth countries like Australia and New Zealand similarly amended their respective audit acts to make the Auditor General an Officer of Parliament with similar powers. The US Government Accountability Office has, since its inception, acted as a legislative branch agency. It reports on a wide variety of subjects ranging from federal fiscal issues and debt control, to aviation security, gun control and counter-terrorism matters.⁵

The idea behind the creation of an Officer of Parliament was thus to safeguard the

“The core idea is to protect the independence of such an officer from the government or the official Opposition, who might be guided more by partisan considerations than by public interest.”

independence required by the officer to discharge his/her duties which may run counter to what the government wishes. It was also meant to protect him/her from ministerial caprices, while ensuring his/her accountability. Mechanisms like protection against arbitrary dismissal do serve this end, but they also determine his relationship with the Parliament. There needs to be a balance between independence and interdependence so that the power of an unelected officer over the elected may not harm the system. Essentially, the architecture of a robust audit structure must be defined by elements like:

- Transparency in appointment
- Independence from government and political opposition
- Reporting responsibilities to Parliament and its committees
- Institutional support for the officer within Parliament
- Power to recruit, appoint and dismiss staff at the disposal of the officer
- Availability and assurance of adequate funding and resources at all times
- Authority, power and

wherewithal to perform and discharge the assigned duties including investigative and enforcement powers on behalf of Parliament

Experts assess that CAG's status as an Officer of the House of Commons in UK has enhanced his/her relationship with the latter. It has also protected his/her independence and autonomy under the National Audit Act of 1983. Members of the House of Commons often approach the CAG requesting for inquiry into specific subjects, which the CAG may or may not oblige, just as he/she may not always accept the recommendations of the PAC regarding what to investigate. Although other departmental select committees of the House of Commons may discuss the National Audit Office (NAO)'s reports and use them for policy decisions, CAG is never called to appear as witness before them. His/her authority to conduct economy, efficiency and effectiveness audit is enshrined in the Audit Act itself, which precludes him/her from examining matters related to policies of the elected government.

Being an Officer of Parliament⁶ also has its own advantages. It gives the CAG Parliamentary privileges and freedom from arrest or obstruction in the discharge of his/her duties. Most importantly, failure or denial by a department/ ministry/ office to provide the CAG with documents requisitioned by him/her would make them guilty of



contempt of the House as well as in breach of the relevant statutes.

I am not sure if such powers and discretion would ever be given to the CAG in India, even if he/she is made an officer of our Parliament. To ensure such independence, the first and foremost requirement is that the process of appointment of the CAG be made rule-based, transparent, objective and consultative.

In India, despite several PILs, such openness and transparency still remains wishful thinking. Also, the process of appointment of the CAG is likely to remain arbitrary, opaque and politically-determined in the foreseeable future. Would the government and the political Opposition ever agree to amend the Constitution or CAG's DPC Act to make the CAG appointment process as objective as in the UK, to be ratified by the Parliament? Instead, the ultimate objective of Indian politicians is to gain control over the institution of the CAG by any means and make it subject to their wills and wiles.

Despite the executive and legislative indifference, if not obstruction, to expanding the powers of the CAG, the existing constitutional safeguards have so far ensured the institution's political neutrality. They have

also bolstered objectivity in selection of audit areas, robustness of processes and procedures and integrity in reporting. Even the judiciary has not been spared. Apart from the Election Commission, no other institution commands as much respect and credibility as the CAG. Despite the flaws and shortcomings and less than perfect internal controls, the reports of the CAG are widely consulted by researchers, academics, media and policymakers. They are also keenly followed by the common citizen. During the last 150 plus years of its existence, the institution of CAG has so far stoutly stood the test of time, zealously guarding its independence, objectivity and political neutrality. It has successfully weathered the relentless political onslaught, refusing to be drawn into nasty partisan politics. If, as a nation, we cannot protect one of our most cherished institutions from the crafty machinations of politicians, it will indeed speak very poorly of our democracy and civil society.

(Endnotes)

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3. A private member's Bill, introduced in 2013 by MP Mr. Baijayant Panda and subsequently withdrawn for lack of support, sought to compulsorily ensure tabling of CAG reports to the legislature by the executive within seven days of their receipt from the CAG.
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5. Mathur, B. P. (September 3, 2012). "CAG has only done its job". The Daily Mail. Retrieved August 21, 2018 from <http://www.dailymail.co.uk/indiahome/indianews/article-2197813/CAG-job.html>.
6. The UK Act does not define an Officer of Parliament. Only New Zealand has developed a set of criteria designed to identify Officers of Parliament which include: (1) An Officer of Parliament must only be created to provide a check on the arbitrary use of power by the Executive; (2) An Officer of Parliament must only be discharging functions which the House of Representatives itself, if it so wished, might carry out; and (3) Parliament should consider creating an Officer of Parliament only rarely.



MAKING CAG MORE EFFECTIVE

Audit Must be a Tool of Good Governance

K. P. SHASHIDHARAN*

Public audit is an inevitable constitutional mechanism for ensuring effective public financial management and good governance in a democracy. In India, public audit must play a more predominant role in improving the three-tier governance in national, state, urban and local bodies. To achieve this objective, the following key points need to be kept in consideration.

First, the public audit institution must be enabled to discharge its constitutionally mandated responsibilities impartially, dispassionately with due diligence, without fear or favour. Second, the reports of the public audit institution must be relevant and time-bound. They should also meet quality specifications with valuable inputs for outcome-oriented corrective and preventive actions by the executive. Third, the major stakeholders, i.e., the legislature, executive, media, civil society and citizenry must find value for money in audit outputs for the expenditure incurred in the auditing process. This can be viewed as a return on investment or the tax payers' money. Fourth, the report should offer workable solutions to the executive rather than establishing known facts culled out ingeniously from



the executive files with just a negative twist in narration. Fifth, the public audit machinery should not be relegated to the status of the proverbial barking of a watchdog. This tends to go unnoticed on most occasions and may not alert the executive towards being wiser and vigilant. Seventh, only when the reports contain SMART (Specific, measurable, attainable and realistic) inputs and pragmatic result-driven recommendations, will the public audit project a better image before the executive.

Ultimately, only when the public audit products can assist the executive in fixing problems with innovative thinking, incisive data analytics, foresight and credibility

for improving governance quality, will the dream of an effective national audit institution be realised.

Utility of Audit Reports

Effective audit reports can facilitate valuable inputs for midcourse policy correction, informed decision-making, prudential financial management and quality public service delivery. While auditing, the institution must focus on how effectively the scarce public resources can be mobilised, utilised and managed. It should pay attention to how far the planned results have been achieved. In case something went wrong midway, it should evaluate how things could be set

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right in future. Although policy formulation and programme implementation are the exclusive prerogative of the government, a responsible public audit analysis can always shine the spotlight on complications encountered in the process. Subsequently, it can suggest remedial and preventive measures to be undertaken to improve public administration.

Public audit has an overriding role of ensuring transparency and accountability in enforcing effective legislative oversight over the executive performance. Its function is to uphold financial propriety, discipline and strengthen a prudential public financial management system. The audit focuses on operational excellence and performance of the executive as well as reliable financial reporting. It scrutinises whether government departments and agencies have complied with due procedures. It works towards safeguarding of public assets along with assessing systemic and procedural flaws and deficiencies in the internal controls. Besides, it also helps

in detecting, preventing and deterring fraud.

Proactive audit is the need of the day, as opposed to fault-finding, time consuming reports. The regressive pinning down of the executive approach should also be stayed clear of. Rather, public audit products must instil confidence among citizens and stakeholders through effective oversight, insight, and foresight. While oversight helps to detect and deter corruption, insight provides inputs to decision-makers by means of an objective evaluation of policy and programme execution. Foresight brings into focus new trends with emerging risks and challenges, and helps devise plans to transform them into new opportunities.

Different types of audits such as financial audits, compliance audits, performance audits, thematic audits, IT audits and environment audits provide valuable data analysis, inputs and an independent expert third party assessment to improve governance. These audits then empower the legislature and other stakeholders like media and citizens to hold the government accountable for its actions.

Audit helps promote credibility

“Public audit has an overriding role of ensuring transparency and accountability in enforcing effective legislative oversight over the executive performance.”

and better customer service from the government functionaries and reduces corruption. To do so, the public audit machinery should have adequate autonomy and competence to perform its duties. The appointment of the CAG must be based on considerations of merit, integrity, competence, track record and suitability for the job. It needs to be ensured that the party in power does not use the office for rewarding its favourite officers by choosing them as CAG, compromising the above criteria. The constitutional post of CAG must be kept at a high pedestal and aloof from partisan selection process. Often, there is a possibility of selection of certain officers who took controversial decisions, for the CAG's post. This could lead to conflict of interest, incapacitating the individual to discharge the duties and responsibilities objectively. This needs to be avoided. Only eligible, competent officers of unblemished track record and proven professionalism must be appointed. Finally, officers and staff make up the backbone of public audit institutions. To make public audit effective, the office must have requisite autonomy, independence and competence to perform its functions.

Learnings from USA: Government Accountability Office

The Supreme Audit Institution of the federal government of the United States of America purposefully changed its name to the Government Accountability Office (GAO).



GAO is not just an accounting office, but an institution that helps the legislature in enforcing accountability of the executive through effective legislative oversight. GAO is an 'independent, nonpartisan, professional services agency in the legislative branch of the federal government'. It is the 'Congressional watchdog' with a mission 'to support the Congress in meeting its constitutional responsibilities and to help improve the performance and ensure the accountability of the federal government for the benefit of the American people'.

In accordance to the mandate entrusted to it, the GAO examines how public funds are utilised, evaluates federal programmes, outcomes of projects as well as operations and activities of the executive. In addition, it provides analysis and recommendations. The purpose is to enable the US Congress to exercise effective oversight on government policy and funding decisions. GAO learns continuously from its experiences as well as from outside and improves its results, impact, values and outcomes. It strives hard to give value for money and return on investment by contributing reports that have an impact on the economy, efficiency, and effectiveness of the federal government. To do so, it uses innovative methodology in its financial audits, programme reviews and evaluations, policy analyses, legal opinions, investigations, and other services. Since its creation through the Budget

and Accounting Act of 1921, and expansion of its mandate in 1945 as well as through subsequent legislations, GAO has been investigating "all matters relating to the receipt, disbursement, and application of public funds" and to "make recommendations looking to greater economy or efficiency in public expenditures." It audits the financial transactions of government corporations, establishes accounting standards for the federal government, evaluates internal controls and financial management. What's more, it annually audits the consolidated financial statements of the United States government. The agency oversees the national and international trends and challenges, while evaluating their implications for public policy. Thereafter it provides recommendations to improve the outcome of government agencies and helps in instilling trust in the taxpayers.

GAO is able to achieve its results mainly through the actions taken by the Congress and federal agencies, based on its recommendations. GAO provides 'professional, objective, fact-based, nonpartisan, non-ideological, and balanced information to the Congress and other stakeholders'. The legislation enables the GAO to perform a wide range of functions, including public auditing, engagement with stakeholders, providing legal opinions and conducting policy analysis. GAO focuses its attention on important issues where legislative solutions may

“GAO is able to achieve its results mainly through the actions taken by the Congress and federal agencies, based on its recommendations.”

be called for, and on federal programmes and operations that are vulnerable to fraud, waste, abuse and mismanagement.

Transcending its role as an agency that's tasked with auditing government revenue and spending, GAO spreads itself in other directions as well. The agency keenly looks at what shapes US and its place in the world. The goal and strategic objectives of the organisation are explicit: 'provide timely quality service to the Congress and the federal government to address current and the emerging challenges to the wellbeing and financial security of the people' and to 'respond to changing security threats and challenges of national security and global interdependence'. GAO evaluates government's fiscal position as well as risk management by testing and validating internal controls for prudential financial administration, output and outcome in government operations and programme execution¹.

Not surprisingly, GAO has prepared its strategic plan 2018–2023 with an explicit mission to support the US Congress in meeting its constitutional responsibilities. It has also pledged to help improve the performance and accountability



of the federal government, thereby benefitting the American people. Its contribution is an astounding: \$ 73.9 billion in financial benefits, and for every \$1 investment in GAO, the organisation returns \$128. GAO is credited with 1280 improvements in federation operations.

GAO operates with about 3000 employees having multidisciplinary academic qualifications with creditable contributions. It has handled 2600 bid protests and issued 500 legal decisions thereby contributing \$ 73.9 billion in financial benefits. Comparison of CAG of India (its mandate, about 50,000 work force and quality of audit products) with GAO will provide valuable lessons for us.

Learnings from OECD

Organisation for Economic Co-operation and Development (OECD) in its 2016 report, "Supreme Audit Institutions and Good Governance: Oversight, Insight and Foresight", maps the activities of 10 leading Supreme Audit Institutions (SAIs), in Brazil, Canada, Chile, France, Korea, the Netherlands, Poland, Portugal, South Africa and the United States. It finds that all SAIs have untapped potential to go beyond their traditional oversight role in order to bring valuable inputs and evidence that help the executive to formulate better policies. SAIs have a role to help restore citizens' confidence in public institutions and to ensure effective utilisation of scarce resources. This goes a long way in maximising value for

money and outcome. SAIs are increasingly providing deeper insights into the trends, overlaps and gaps. They must also be able to provide foresight to tackle challenges before their respective nations so that they can face the future with confidence.

Red Flagging Issues of CAG of India

In India, Article 148 of the Constitution deals with the appointment of CAG by the President. However, the process of appointment is not given in the Constitution. This can lead to the executive's prerogative to resort to non-transparent selection processes, resulting in the appointment of individuals rewarded for taking controversial or partisan decisions to help the government in power. The CAG is constitutionally bound to function judiciously and objectively, without fear or favour, an ethic that may be compromised if the selection is done arbitrarily and is based on executive discretion.

Post-independence history of the CAG office establishes the non-transparent selection process. Inherent obligation of the selected officer to the party who selected him/her as CAG can possibly result in bias in subject selection of the reports and contents included or left out. It could even dictate the position taken in the report, exclusion of names, omission of facts, misinterpretation, usage of questionable statistical methods so as to arrive at unreliable and doubtful results.

The tendency of diluting facts, being partisan instead of objective reporting, and colouring findings can be observed in many CAG reports such as those on Bofors, 2G spectrum and coal block allocation. In these reports, the figures changed drastically from the drafts to final versions.

More Issues and Concerns

What can be done to enhance the effectiveness of the CAG? Is it sufficiently accountable for its action? Is the selection of topics for audit and audit processing fully transparent? Who ensures the quality of its reports? In cases of politically sensitive issues, can the CAG, appointed by the executive, take a nonpartisan stand? What is the value for money and return on expenditure by the CAG in monetary terms? Are the reports sufficiently strategic and useful for the stakeholders? Is the work environment and culture inclusive and conducive to effective team building and leadership? These, and many more questions remain unanswered in our quest to make the CAG an efficient, non-partisan and transparent body.

Improving the effectiveness of the CAG is the need of the hour. If parliamentary oversight over executive is to be effective, there must be quality CAG reports aiming at better governance outcomes and citizen welfare. Most of the 100 odd CAG reports produced annually are not able to capture public attention, being outdated and



“The history of CAG’s functioning in India reveals systemic flaws.”

based on facts well-known within the executive as well as on borrowed wisdom.

The father of the Indian Constitution, Dr. B R Ambedkar envisioned the CAG of India as the most important officer under it. Therefore, the appointment of CAG must be absolutely objective and merit-based. What is left unspecified in Article 148 can be specified. What criteria should be used to appoint the CAG of India and who shall be considered? What should be the qualifications, specialisations, personality attributes or credentials that need to be considered for eligible candidates? Should there be a collegium to select the CAG, and if so, what should be its composition?

Many suggestions have come but the government has not yet made the selection process foolproof. Should the CAG be an officer of the Parliament as in UK and USA? What are the pros and cons of both the systems? In the present system, independence of the CAG’s selection of audit products, timeframe, reporting style, content, tenor and product specifications are determined by one solitary individual.

The history of CAG’s functioning in India reveals systemic flaws. Acton’s famous quote, ‘power tends to corrupt and absolute power corrupts absolutely’ may be understood as a warning

against undiluted powers of the CAG, which may be used at times to achieve motivated ends.

On the flip side, there is nobody to help the CAG of India when he is in trouble, as he is neither an officer of the executive nor an officer of the Parliament at present. When controversial reports are discussed, objectivity of the institution is questioned and partisan accusations are aired so as to pin down the national auditor.

The Way Forward

What should be the best way to make CAG of India more effective? Can there be a Parliamentary debate on pros and cons of the present system vis a vis that of an alternative system of Supreme Audit Institution, based on economy, efficiency, effectiveness, outcome and value for money?

There also needs to be an informed debate as to whether there should be a body of SAI chaired by a first among equals, replacing the existing audit emperor scenario. In the current format, the top management gets treated as puppets or courtiers to the audit emperor. India’s Supreme Audit Institution can follow in the footsteps of the country’s Election Commission, and have a body of audit specialists headed by a chief, who is nothing but the first among equals. This would lead to more transparency and objectivity in selection of topics for audit reports and what is to be included and excluded in reporting. It would also

introduce a sense of integrity into the timing of the reports, modus operandi of the process as well as style, contents and language of reporting.

Post-retirement assignments are barred for CAG, but even then some CAGs take them up, leading to debates on misinterpretation of the true spirit of constitutional provisions. CAG products become ammunition in the hands of the Opposition parties in Parliament looking for the perfect opportunity to come to power, when reports are written in a sensational style, using questionable statistical projections. Ultimately SAI India must not be seen as a post-retirement award for serving bureaucrats who compete in seeking favours from the government.

Delay in placing CAG’s reports in the legislature has been resorted to by the executive to avert proper discussion on it by elected representatives. It is alleged, at times, that the draft reports are intentionally leaked to the media. Non-production of vital records at critical junctures weakens the institution and affects its performance. The Comptroller and Auditor General’s (Duties, Powers and Conditions of Service) Act, 1971 does not provide any legally tangible powers to summon, question, prosecute or take action against the executive for non-cooperation and failure to produce the required records to be used as audit evidence. In such eventuality, many vital audit observations may get



automatically diluted or even eliminated. CAG is, therefore, often called a tooth-less watchdog of the Constitution.

The CAG reports on the allocation of 2G Spectrum, coal block allocation for mining, revenue sharing of the Krishna Godavari (KG) D6 Gas Block, and issues pertaining to Delhi electricity distribution companies were all challenged in the court of law by the aggrieved parties. In a 2014 judgment by the Supreme Court, a Bench of Justices K S Radhakrishnan and Vikramjit Sen upheld the constitutional validity of the CAG's audit of all public-private partnership projects wherever there is a revenue sharing agreement with the government, and the legitimate share of the government is to

be determined. The reports are made by CAG on his/her own discretion, but are scrutinised by the Public Accounts Committee (PAC) formed under the Rules of Procedure and Conduct of Business in the Lok Sabha and state legislatures.

The PAC has the power to receive evidence, summon persons and papers as well as record and receive oral evidence. The Supreme Court held that "CAG has the power to examine the propriety, legality and validity of all expenses incurred by the government" and "the office of CAG exercises effective control over the government accounts." It has also held that "duties and powers conferred by the Constitution on the CAG under Article 149 cannot be taken away by

the Parliament." The Supreme Court's verdict includes the CAG as part of the basic structure of the Constitution. It limits the supremacy of Parliament in amending constitutional law. The constitutional provisions and the CAG's (DPC) Act, 1971, with subsequent amendments, define the CAG's mandate, scope, duties, powers and other conditions of service. Besides giving it adequate powers to perform the mandated duties, the inherent debilitating factors should be set right to enhance the effectiveness of the public audit system in India.

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COMMON CAUSE PETITIONS ON CAG

A Thorough Selection Criteria 'Must' for an Effective Institution

Swapna Jha*

The Comptroller and Auditor General of India is an oversight agency whose vast potential stretches beyond its constitutional auditing mandate.

So far, the appointments to the post have been based on an opaque and arbitrary method. The common thread running through the last several CAG appointments is fairly well established. Only an officer holding the rank of Secretary to the Government of India has been appointed as CAG. Inevitably, the arbitrariness in the appointment compromises the independence of this high functionary.

The Story So Far

Several appeals to the court for transparency in the appointment of this crucial constitutional post have met with little success so far.

Common Cause has been campaigning since 1996 for a transparent, broad-based procedure for the CAG appointment. As the term of C G Somiah approached its end in March 1996, *Common Cause* filed a writ petition in the Supreme Court (SC). It sought directions to evolve and follow a policy, including guidelines prescribing the requisite

“*Common Cause has consistently stood for a thorough selection criteria and emphasised on a candidate's high degree of professional knowledge and background as well as impeccable integrity.*”

qualification/ experience, for the appointment but the petition was rejected.¹ The government later appointed V K Shunglu as the new CAG, the criteria for whose selection were never made public. In 2007, Public Cause Research Foundation filed a writ in the apex court with similar prayers, which also met the same fate.²

Common Cause has consistently stood for a thorough selection criteria and emphasised on a candidate's high degree of professional knowledge and background as well as impeccable integrity. It has maintained that the appointing authority must cast its net wider rather than insisting on just one service. The contenders should be experienced in financial management, audit and accounting procedures, rounded off with a deep understanding of the complexities of governance and a vision of the future of our democratic polity.

Common Cause also made representations to this effect to the Prime Minister, Finance Minister, Lok Sabha Speaker and Chairman of the Public Accounts Committee (PAC), who happened to be the Leader of the Opposition in Lok Sabha, outlining the grounds and possible mechanisms for making the process objective, transparent and accountable. A well-researched and comprehensive memorandum on the subject was addressed to the Chairman of the PAC on November 23, 2012, when the term of Vinod Rai, the then CAG, was drawing to a close.

When the Union Government named the incumbent Defence Secretary as the next CAG, his appointment was challenged, inter alia, on the ground of a serious conflict of interest in a PIL filed in the Supreme Court on June 3, 2013. Dr. B P Mathur, former deputy CAG and a governing council member of *Common Cause*, as well as Kamal Kant Jaswal, director of the society, filed a writ petition along with several former public servants. It was alleged that the CAG appointment was liable to be declared void for being arbitrary and made through a procedure unable to stand the test of constitutionality. The petition also argued that the

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appointment was illegal on the ground of conflict of interest, and violated the principle that no person shall be a judge in his own cause. Declining to entertain the petition, the SC asked the petitioners to approach the High Court concerned for relief.

A petition on the same grounds was accordingly filed in the Delhi High Court (HC). The HC upheld the appointment of the CAG, observing that it had been made as per past conventions. It also declined to direct the government to frame a transparent procedure for the selection. The HC dismissed the petition on August 13, 2014, declining to review the appointment on merit under the guise of judicial review.³

A Special Leave Petition against the order of the Delhi HC was filed on September 2014 and was dismissed on February 11, 2015 as the SC could not see any good ground to interfere with the impugned judgment and order.⁴

In August 2017, when the government named the present CAG, Rajiv Mehrishi, *Common Cause* protested by issuing a press release, criticising the government's failure to set a high benchmark to fight systemic corruption.

Parliamentary Review

Conscientious parliamentarians have made similar demands on numerous occasions. On May 25, 2012, Gurudas Dasgupta had written to the then Prime Minister Manmohan Singh, stressing on the need for a

collegium, featuring the PM, Leader of Opposition in the Lok Sabha and Chief Justice of India, to choose the CAG. Singh rejected the demand while holding that the Opposition already played a definitive role in the scrutiny of CAG reports through the PAC.

A baby step in the right direction was taken by the National Commission to Review the Working of the Constitution headed by Justice M N Venkatachaliah. The Commission observed in one of its two reports:

"...the appointment of the C&AG should not be the exclusive purview of the executive and a high level committee consisting of the Prime Minister, the Union Finance Minister, the Speaker of the Lok Sabha, the Leader of the Opposition and the Chairman of the Public Accounts Committee should be empowered to make the appointment... The Commission would, however, recommend that a healthy convention be developed to consult the Speaker of the Lok Sabha, before the Government decides on the appointment of the C&AG so that the views of the P.A.C. are also taken into account."⁵

Views of PAC Chairmen

The technical passage of CAG reports is pretty elaborate. The audit reports are submitted first to the President in case of the Union and then make their way to the Parliament. Once tabled in the Parliament,

the reports stand referred to the PAC for examination. Inevitably, the independent and efficient functioning of the CAG enhances the credibility of reported financial information of the government, impacting both the Parliament and the PAC. Hence, the lack of transparency and disregard for professional qualifications in CAG appointments have come under scrutiny from the PAC. In February 1996, when a new CAG was about to be appointed, Ram Naik, the then PAC Chairman, took up the CAG selection issue with the President and PM and suggested that the PM and Leader of Opposition in Lok Sabha jointly choose the right candidate. He also demanded that a selection criteria be laid down.

Subsequently, in a conference of the central and state PACs, Dr. Murli Manohar Joshi, the then PAC Chairman, recommended that the control of the executive be minimised, if not eliminated altogether. It was suggested that a small collegium or screening committee could examine the candidates and recommend a panel of three to the President to make a choice out of this candidate pool.

CPIL and Common Cause Vs Union of India (2010): A Summary

The writ petition filed in the Supreme Court by Centre for Public Interest Litigation (CPIL) and Common Cause sought to declare as void the appointment of Shashi Kant Sharma as India's new CAG. The petition pointed



out that the appointment of Sharma as CAG was liable to be declared non est or void as it was made arbitrarily by a procedure that did not withstand the test of constitutionality. It was liable to be declared void also on the ground of conflict of interest, and *Nemo iudex in causa sua*, i.e. no person shall be a judge in his own cause.

The petition sought a direction for the future to the Union of India to frame a transparent selection procedure based on definite criteria by calling for applications and nominations and also to ask the government to set up an objective selection process by constituting a broad-based non-partisan committee for the appointment.

The petition alleged that the process was entirely arbitrary and opaque, and thus completely violative of rule of law as well as several judgments of the SC itself. Also, the zone of consideration had been restricted to civil servants, a limitation not found in the Constitution. The response of the government to an RTI application filed on February 21, 2013, seeking information on the system of appointment, etc. clearly revealed that there was no search committee, criterion, system, call for applications or nominations. Rather, it was discovered that the system of selection was arbitrary.

The petition stressed that though the CAG selection method had not been prescribed by the Constitution, it was obvious that the process had to be

constitutional, non-arbitrary and accomplished in a manner that enabled choosing the best person for office. It also pointed out that the selection procedure would have to be consistent with Article 14 of the Constitution, which mandates non-arbitrariness, non-discrimination and transparency.

Emphasising the importance of the post, the petition stated that the top auditor's reports are submitted to Parliament and thereafter remitted to the PAC for detailed examination. Every year, the CAG submits to the Parliament 15 to 20 audit reports relating to central government transactions. In addition, the CAG submits audit reports for each of the 28 state governments to their respective legislatures.

This exercise covers in aggregate expenditures of Rs 13 lakh crore and revenue receipts of Rs 11 lakh crore and borrowings of Rs 2 lakh crore. Diverse subjects covered by the reports run the gamut from implementation of development schemes, defence deals and privatisation of public sector undertakings to public private partnership, transfer of natural resources and effectiveness of tax machinery. The plea maintained that if the CAG is to discharge the onerous responsibility of his/her office, only a person of the highest professional competence and unimpeachable integrity should merit an appointment to the post.

The petition admitted that the status of the CAG under Indian Constitution was superior to its

counterparts in other countries. This was so because it is not just a statutory institution but a constitutional one, and the CAG is the auditor for both the Union and the states, unlike in other federal systems. Therefore, great care must go into his/her selection primarily owing to the institution's crucial role in our constitutional scheme, but also because once appointed, the incumbent will have a long tenure of six years.

(Endnotes)

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- 3 N Gopalaswami & Ors v Union of India & Anr (2014), Writ Petition (Civil) 4653 of 2013, High Court of Delhi, <http://commoncause.in/uploadimage/case/1452367233WP%204653%20of%202013%20Date%2013-Aug-2014.pdf> (Retrieved September 24, 2018).
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COMMON CAUSE UPDATES

Supreme Court

Contempt Petition on Non-Appointment of Lokpal:

The petition for appointment of Lokpal filed by Common Cause was disposed by the SC in April 2017 maintaining that the Lokpal Act was a perfectly workable piece of legislation. However, the government failed to appoint the Lokpal nine months after the Apex Court verdict. Common Cause filed a contempt petition seeking Court's directions against the government's wilful and deliberate failure to fully comply with the aforementioned judgment.

The matter was taken up on February 23, 2018 and thereafter in March, April and May, 2018. The Centre had on May 15, 2018 informed the Court that senior advocate Mukul Rohatgi has been appointed as an eminent jurist in the selection committee for Lokpal appointment. The Supreme Court on July 2, 2018 directed the Centre to apprise it within 10 days about the time frame for Lokpal appointment.

A Bench comprising Justices Ranjan Gogoi and R Banumathi asked the government to file an affidavit within 10 days giving details of the steps which are likely to be taken for appointing the Lokpal. The Bench posted the matter for hearing on July 17, 2018, when the Centre

informed the SC that the Lokpal selection committee had decided to meet on July 19 for constituting a search panel. This panel would be responsible for recommending names to be considered for Lokpal appointment. As the selection committee was scheduled to meet on July 19, 2018, the Bench fixed the matter for further hearing on July 24, 2018, without passing any orders. On July 24, 2018, the Attorney General (AG) submitted an affidavit stating that a meeting of the selection committee was held but the names for the search committee were not finalised and therefore another meeting would be held soon.

Expressing dissatisfaction over the Centre's response, the Bench directed it to file a fresh affidavit giving relevant details of the search committee within four weeks. The matter was listed on August 24, 2018 but could not be taken up.

Writ for Police Reforms: The battle for police reforms has been going on for the last 22 years. The Supreme Court took 10 years to give a historic judgment in 2006 in the petition filed by Prakash Singh, Common Cause and NK Singh. Since then it has been a struggle to get the Court's directions implemented.

On July 3, 2018, responding to an interlocutory application filed

by the Ministry of Home Affairs regarding the appointment of acting Director General of Police (DGP) in the states, the Supreme Court gave a slew of directions to ensure that there were no distortions in such appointments. It laid down that the states shall send their proposals to the Union Public Service Commission (UPSC) three months prior to the retirement of the incumbent DGP. The UPSC shall then prepare a panel of three officers so that the state can appoint one of them as DGP.

To curb the practice of appointing Acting DGP by the states, the Court directed that the UPSC should ideally empanel officers who have at least two years of service under their belts, giving due weightage to merit and seniority. It also held that any legislation/rule framed by any of the states or the central government running counter to the direction shall remain in abeyance.

Declining modification of its previous order on comprehensive guidelines regarding the appointment and removal of DGP by state governments, the SC on July 30, 2018, granted liberty to the petitioner to file plea for clarification in the event of a sudden vacancy in the DGP post. On September 7, 2018, the state of Jammu and Kashmir



approached the SC after it had appointed the new DGP, pending “regular arrangement.” The SC declined to interfere as the state had indicated how the acting DGP appointment was an interim measure. It stressed that the decision was taken in the wake of peculiar circumstances as well as law and order situation.

On September 20, 2018, while allowing the newly appointed acting DGP to continue in office, the SC asked the state to comply with the procedure as sought for by the UPSC, within five days of the order. The Apex Court also directed UPSC to take a decision thereafter within four weeks. The matter is required to be listed after six weeks.

Combating the Criminalisation of Politics:

On September 25, 2018, the Constitution Bench declined to ban politicians with criminal cases from contesting elections, holding that it cannot interfere in the legislative domain. The Court disposed of our petition (filed jointly with the Public Interest Foundation) and referred the matter to Parliament, requesting it to enact appropriate laws in this regard.

To secure the interest of the citizens, the Bench prescribed the following directions to the Election Commission of India (EC).

- The form filled up by each candidate for EC must state in bold letters details of criminal cases pending against him or her
- The candidate is required to inform the party about

pending criminal cases against him/her

- The party has an obligation to put up on its website information pertaining to candidates with criminal antecedents
- The candidate as well as the political party shall issue a declaration in widely-circulated newspapers of the locality about criminal antecedents of the candidate. They shall also give wide publicity in the electronic media. The Bench emphasised this by stating “When we say wide publicity, the same shall be done at least thrice during the campaign”.

The Bench agreed on the issue raised by petitioners, claiming, “A time has come that the Parliament must make law to ensure that persons facing serious criminal cases do not enter into the political stream”. However, it declined to pass directions to the EC as requested in the petition as it felt that the judiciary lacked this power. Thus, despite our petition being disposed of, the situation remains unaltered till the Parliament decides to enact laws to prevent criminals from becoming legislators.

Illegal Mining in Odisha: There has been much progress since the final judgment on August 2, 2017. On this date the Court imposed 100 per cent penalty on companies indulging in illegal mining – mining without forest and environmental clearances, mining outside lease/permitted area and mining in excess of what had been allowed. In

September 2017, Common Cause filed an application for clarification of issues arising out of the judgment. The Court vide order December 13, 2017 stated that in case of non-payment of compensation and dues, the state of Odisha shall close the mining operations of the erring mining lease holder. This was an answer to our prayers. The Central Empowered Committee (CEC) formed by the SC, consisting of Justices GS Singhvi and Anil R Dave, was asked to ascertain whether there had been any violation of Section 6 of the Mines and Minerals (Development and Regulation) Act, 1957 and violation of Rule 37 of the Mineral Concession Rules, 1960.

The CEC report (4/2018) calculated the total compensation amount for environmental and forest clearances as Rs 19174.38 crore due from 131 mining lease holders. The report further stated that as on December 31, 2017, an amount of Rs 8289.87 crore had been paid by various lessees. During the hearing on January 30, 2018, the SC directed the state of Odisha to take coercive steps to recover the unpaid dues from defaulting mining lease holders.

Arguments in the interlocutory applications and objections to the CEC Report (4/2018) filed by Sarda Mines, Rungta Group and Essel mining & Ind. Ltd. were concluded and the matter listed for October 26, 2018. Judgment concerning Sarda Mines Pvt. Ltd. has been reserved.



Delhi High Court

SIT on Over Invoicing Requested by CPIL and Common Cause:

Common Cause and Centre for Public Interest Litigation (CPIL) have approached the Delhi High Court seeking a direction for a thorough investigation by a Special Investigation Team (SIT) into the over-invoicing of imported coal and equipment. The over-invoicing was carried out by various private power companies as detailed by Directorate of Revenue Intelligence (DRI) in several of its investigative reports. In the last three or four years, major instances of such over-invoicing have been unearthed by the DRI. In these cases several prominent and influential companies are involved. Unfortunately, no action has been taken against such entities as yet.

The matter has been listed for hearing on October 11, 2018.

National Green Tribunal

Chardham Road-Widening Project:

In response to a Common Cause petition, the National Green Tribunal (NGT) has appointed a seven-member committee to monitor violation of road construction rules and to address environmental concerns in the Chardham Project.

The petition was filed by Common Cause under Section 14, 15 and 18 of the NGT Act, 2010. It pointed out that due to the widening of NH108 as part of the Chardham Project, debris and muck were being dumped directly into the

Bhagirathi River. Further, the requirement of Environmental Impact Assessment (EIA) was bypassed by dividing the 900 km road project into stretches measuring less than 100 km each. Warning of impending disasters, particularly during the monsoon months, the petition stated that the indiscriminate dumping of muck could lead to an altered course for the river. This would also cause excessive pollution, landslides and floods. The petition sought directions, among others, on following the principles of road design in the hill areas, and submission of a time-bound muck disposal plan. The matter was tagged along with another case, OA 99/2018 (*Citizens for Green Doon v Union of India*).

This petition was disposed of on September 26, 2018 by the bench headed by Justice Goel, and Justices Jawad Rahim and S P Wangdi, which cleared the Chardham project. The NGT refused to interfere in the scheme of widening the NH108, as the notification of August 22, 2013 granted exemption to national highways that are less than 100km long. The NGT chose to ignore that the petition had been filed to expose this very government scheme.

However, based on an annexure filed by Common Cause showing how EIAs are necessary in all road construction projects of more than 5km (G.B. Pant National Institute of Himalayan Environment & Sustainable Development report), the Tribunal held that a Rapid EIA is necessary in the project.

That's because the project has detailed elaboration on slope stabilisation, muck disposal and muck management, compensatory afforestation, disaster management, etc.

The green panel said it was inclined to clear the project with requisite safeguards in view of the larger public interest. The tribunal noted that structural stability of muck-dumping sites was not satisfactory and there was possibility of some caving in during excessive landslides and other natural disasters.

The NGT directed the authorities to devise a mechanism to provide pedestrian pathways for devotees who undertake *padyatras* to religious places, viz. Yamunotri, Gangotri, Kedarnath and Badrinath. It also asked them to come up with a policy, whereby diesel vehicles older than 10 years and petrol vehicles over 15 years are prohibited to ply along the entire road length of the project.

The Tribunal accepted Common Cause's plea to set up an expert committee. It directed that the committee will comprise a former judge of Uttarakhand High Court, representatives from leading research institutes such as the Wadia Institute of Himalayan Geology and others, Secretary of Environment and Forest Department, Uttarakhand, as well as the concerned District Magistrates. It was directed that the committee be set up within three weeks of the order, and that it should continue to function till the completion of the project.



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Common Cause is a non-profit organisation which makes democratic interventions for a better India. Established in 1980 by the legendary Mr. H D Shourie, Common Cause also works on judicial, police, electoral and administrative reforms, environment, human development and good governance.

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COMMON CAUSE VISION

An India where every citizen is respected and fairly treated

MISSION

To champion vital public causes

OBJECTIVES

To defend and fight for the rights and entitlements of all groups of citizens

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