



Is Good Economics not Good Politics?

- Working with Parliamentarians

A Souvenir on
Parliamentarians' Forum on
Economic Policy Issues (PARFORE)

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(PARFORE)**

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Foreword

CUTS got involved with the Parliamentarians in 2001, when the Competition Bill of India was being framed. That was the year when it brought out its first 'Bill Blow-up' – Competition Bill of India, 2001: A Right Step in the Right Direction (see page 15) – a four-page analytical policy paper on the single most important Bill to be tabled in the Parliament. Indeed it was a visionary move. During the last six years, the organisation has come with 10 more such Bill Blow-ups – each on a new policy issue.

Realising, however, that mere writing on an issue is not enough, CUTS went on to engage the Parliamentarians by launching a Parliamentarians' Forum on Economic Policy Issues (PARFORE), which was formed at the behest of five Members of Parliament (MPs) cutting across party lines – NN Krishnadas (CPI-M), Dinesh Trivedi (AITC), Suresh Prabhu (SS), Yashwant Sinha (BJP) and Madhusudan Mistry (INC) – in July 2005. That was the first initiative of its kind in India.

As a new concept, PARFORE offers a very good platform for Parliamentarians to share views and ideas on economic policy issues outside the more formal framework of the Parliament, which can educate and help create a better consensus on pressing issues affecting the country. Whatever be our affiliation, all Parliamentarians are patriots and believe in ameliorating the lot of the poor. I agree differences in views may exist, which can be debated and resolved.

In the first meeting of PARFORE held in New Delhi, in December 2005, the response was encouraging with 11 MPs taking proactive part in the discussion on two broad issues: Regulatory Autonomy and Accountability; and (ii) WTO Hong Kong Ministerial Conference: *What is at Stake for India?* The participating MPs endorsed that the PARFORE offers a fit platform for MPs to share views and ideas on economic policy issues on an informal basis. They agreed to the fact that this informal platform would help in inculcating better understanding, and subsequently, in reaching a consensus on contentious issues.

In order to provide PARFORE a more practical hue, CUTS focused on research, writing, and distribution of 'Issues for Parliamentarians' – also a four-page policy document – to facilitate informed discussions on key economic policy issues.

To update MPs with current information and facilitate discussions on relevant topics, an e-forum: PARFORE@yahoogroups.com has been created.

PARFORE was aimed at national level, and at the State level CUTS launched '*Vidhayak Samvaad*' on April 27, 2007 at Jaipur, under the chairmanship of the Rajasthan Assembly Speaker Sumitra Singh. In the '*Vidhayak Samvaad*' meetings, issues like water and electricity have been the focus of discussion among Members of Legislative Assembly (MLAs).

This Souvenir is a compilation of the activities, events and reflections of PARFORE. It presents a brief note on the overall performance of '*Vidhayak Samvaad*'. It contains all

the 11 Bill Blow-ups – from Competition Bill of India, 2001: A Right Step in Right Direction to The *Gram Nyayalayas* Bill, 2007 – and 12 Issues for Parliamentarians to help MPs understand the issues, so that they could weigh the pros and cons before discussing it in the Parliament and helping it become a legislation.

I believe this Souvenir would be of great help to the policy makers, MPs, MLAs, and other well wishers of CUTS in assessing the work done by the organisation. It will not be less significant for general readers, who are interested in economic policy issues that could shape the future of this country. I wish PARFORE to be a unique initiative and work towards the objectives for which it has been created.

New Delhi
July 16, 2008

Yashwant Sinha
Member of Parliament

Preface

I am very much pleased to pen the preface of the Parliamentarians' Forum on Economic Policy Issues (PARFORE) Souvenir. PARFORE has been an initiative of CUTS to bring Members of Parliament (MPs), cutting across party lines, on a single platform to mull over the core economic policy issues that come up for discussion in and out of the Parliament. Since 2001, CUTS has been involved with the Parliamentarians when it brought out its first Bill Blow-up entitled, 'Competition Bill of India, 2001: A Right Step in the Right Direction'. The response was overwhelming. What CUTS has done so far is to create awareness and consensus on key economic policy issues by capturing and presenting them in an analytical manner to the MPs for discussions before the Parliamentary Committees.

PARFORE is a non-partisan and an informal forum where MPs irrespective of party affiliations are able to air their views on a periodic basis on relevant economic issues in the areas of trade, competition, regulatory reforms, investment and their cross linkages. The moot idea behind the PARFORE is to discuss divergent opinions on the core economic policy issues reflected in and out of Parliament and media.

Those who contributed to the initiation of PARFORE are Suresh Prabhu of the Shiv Sena, Yashwant Sinha of the Bharatiya Janta Party (BJP), Dinesh Trivedi of the Trinamool Congress (TMC), Madhusudhan Mistry of the Congress and N N Krishna Das of the Communist Party of India (CPI-M). So far, over 38 MPs from both the Houses of Parliament have joined the forum. Its formal launch meeting was held in New Delhi in December 2005, when the regulatory policy framework of India was discussed by the MPs who participated.

During the second meeting, held in December 2005, Dr P C Alexander, the former Governor of Maharashtra and an independent Rajya Sabha MP, was elected as its chairman. The issue at stake was the 6th WTO Ministerial conference held at Hong Kong. The common feeling expressed by a group of MPs was that there has been a sea change in the negotiating skills of India and other developing countries in comparison to the Uruguay Round. Speaking at the Forum, Dr P C Alexander expressed fears that duty free and quota free (DFQF) market access to least developed countries (LDCs) is a cause of concern for India. Yashwant Sinha echoed similar concerns, particularly in case of textiles & clothing (T&C) trade with Bangladesh. Regarding the increasing complexity of international negotiations, specialists are needed in several areas of international dimensions, such as trade, energy, security, environment etc, and transferable generalists cannot continue as experts.

In the next meeting held in New Delhi in May 2006, there was unanimity across various political parties on the need to avoid proliferation of Appellate Tribunals. It was suggested that the Competition Appellate Tribunal proposed in Competition Amendment Bill should also be the appellate tribunal for all sectoral regulators. In this meeting, the views of Sharad Joshi, Rajya Sabha MP, were very important as he stressed on the responsibilities of the members of Competition Commission of India

(CCI). There was also a consensus on the issue of reducing the age limit of Chairperson of the CCI and other members to less than 65 years.

'Cross Party Structure of MPs Needed to Advise on International Negotiations' was the theme of the next PARFORE meet held at New Delhi in August 2006 where MPs were unanimously of the opinion that the Government should put in place a well informed structure of Parliamentarians to influence India's position *vis-à-vis* key issues under negotiation at various international fora. The MPs also discussed the 'Suspension of Doha Talks – Reasons, Possible After Effects & Implications for India' at the meeting. I had suggested setting up of an International Trade Department in the Ministry of Commerce, which was also earlier suggested by the Standing Committee on Commerce headed by Murli Manohar Joshi though not much headway was made on the recommendation.

Further, CUTS has been regularly coming out with Parliamentary briefs called 'Bill Blow-ups'. These Bill Blowups weigh the pros and cons of proposed socio-economic legislations in a simple language, listing out highlights, lowlights and action points to assist Parliamentarians understand the issue and make informed interventions in the Parliament resulting in better legislation.

CUTS has been bringing out notes called 'Issues for Parliamentarians' which helps MPs coming from diverse fields to understand various social and economic issues, and thereby enhance the quality of debates and interventions made in the Parliament.

At the State level, CUTS has launched a *Vidhyak Samvaad* at Jaipur and organised a few meetings in the Assembly premises with the Speaker, Sumitra Singh as the Chairman and facilitated discussions on two core issues: water and electricity.

It is expected that this Souvenir on 'PARFORE' would serve as a handy reference to all those involved in legislative and policy formulation, and who will be an active and informed partners in the progresses towards establishing a healthy economic scenario in India.

Jaipur
July 20, 2008

Pradeep S Mehta
Secretary General, CUTS

Reflections

“I am delighted to receive your letter of August 25 ...regarding the constitution of a Parliamentarians’ Forum on Economic Policy Issues. I would be delighted to associate myself with this Forum...”

*Mani Shankar Aiyar
Minister of Panchayati Raj*

“I am delighted to receive your letter regarding the proposed Parliamentary Forum on Economic Policy Issues. I fully agree with the idea of the proposed Forum to discuss the divergent opinions on the core economic policy issues reflected in and out of the Parliament and the media and am eager to join this Forum”.

*Dr P J Kurien
MP, Rajya Sabha*

“I would be glad to join the Forum as it can be very creative and helpful for economic policy decisions taken by our nation”.

*Alok Kumar Mehta
MP, Lok Sabha*

“This is indeed a great idea to provide Parliamentarians the Forum to discuss the core economic policy issues and to arrive at a consensus cutting across party lines...in the various fields of trade particularly in the present day economic scenario where India is on the path of emerging as an economic giant in the world...”

*Santosh Bagrodia
MP, Rajya Sabha*

“...at this point of time when economic reforms are sweeping our country and globalisation has become all pervading, having a Parliamentarians Forum on Economic Policy Issues on non-partisan lines is most appropriate and would be appreciated by one and all irrespective of what political party one belongs”.

*MV Rajasekharan
Union Minister of State for Planning, Government of India*

“...offers a very good platform for Parliamentarians to share views and ideas on economic policy issues outside the more formal framework of the Parliament, which can educate and help create a better consensus on pressing issues affecting the country. Whatever be our affiliation, all Parliamentarians are patriotic and believe in ameliorating the lot of the poor... where differences in views exist, and these are debated”.

*Yashwant Sinha
Bhartiya Janta Party and initiator of PARFORE*

“...11 MPs...from different parties, reflects the universal need for such an important forum, which is very welcome. CUTS could organise subsequent sessions with analysis on economic bills which are presented in the Parliament, so that we can understand them better and be able to effectively participate in the debates”.

*Dinesh Trivedi
Trinamool Congress and initiator of PARFORE*

“...CUTS is rendering yeoman service to Parliamentarians on several economic policy issues, by providing Bill Blow-ups, it could continue to organise seminars, and interested MPs would find time to attend. Addressing the gaps in the regulatory framework in India is badly required, and the papers produced by CUTS will help spur a good discourse”.

*Sharad Joshi
Swatantra Bharat Party's MP*

“...there are Parliamentarians from all political parties at PARFORE meetings, which is a very good sign. The forum should be able to create a better understanding without political compulsions”.

*Robert Kharshiing
Nationalist Congress Party*

A Background on PARFORE

CUTS began in 1983 from a rural development communication initiative, a wall newspaper *Gram Gadar* (village revolution). *Gram Gadar* is published regularly and reaches every nook and corner of Rajasthan, particularly remote areas where radio is the only medium of communication. It has been instrumental in providing a forum for oppressed classes to get justice. Today CUTS operates out of five programme centres and an advocacy centre in India, five overseas resource centres: two in Africa, one in the UK, one in Vietnam and one in Geneva with staff strength of over 100 persons.

Soon after CUTS came into existence, it was felt that to be able to make objective interventions, it is necessary to comprehend issues and understand their implications dispassionately, particularly those related to the poor and the disadvantaged. The early part of the decade of 1990s was spent in building internal capacity to understand such issues in their right perspective. CUTS also realised the importance of networking with like-minded organisations in order for the voice to be heard at the policy level. Since then CUTS has evolved as one of the premier non-government organisations (NGOs) conducting research, advocacy and networking with the following attributes:

- outcome-based centrist approach for research, networking and advocacy;
- focusing on areas where a vacuum exists; and
- working simultaneously at the grassroots to the international level, which helps in conducting policy advocacy in a coherent manner.

Good governance, therefore, emerged as one of the central themes of CUTS' work in all its programme areas, namely:

- Consumer Protection;
- International Trade & Development;
- Competition, Investment & Economic Regulation;
- Human Development; and
- Consumer Safety.

For more details, please visit: <http://www.cuts-international.org>

CUTS has been working in the area of promoting transparency and accountability at all levels of governance through increased people's participation, using various tools and techniques such as budget analyses, policy reforms, campaigns, surveys, advocacy and so on over the past decade. Some of them are illustrated below:

In the year 1999, a project entitled, 'Promoting State Accountability and Citizens Empowerment through Budget Analysis', was taken up with the support of Ford Foundation, New Delhi under which a detailed analyses of budget plans and development schemes meant for targeted group of the society, viz. women, landless labourers and marginal farmers were carried out. The analysis focused on the manner in which funds were allocated, utilised, misutilised or unutilised at various levels of the government hierarchy. The findings through analysis were disseminated among civil society and policy makers in order to inform and educate women, landless labourers and marginal farmers of their rights and benefits and provoke action by the citizens to make the government more open and accountable by initiating policy changes.

Through a continuing project on involvement of consumers in power sector reforms, which started in the year 2001 with the support of Friedrich Ebert Stiftung (FES), CUTS has been working to sensitise the Government machinery at the state, district and block levels, as well as political leaders at all levels, resulting in greater involvement of public in the governance process.

In the year 2003, a detailed analysis of budget allocation in Rajasthan *vis-à-vis* expenditure incurred on children was undertaken by CUTS and findings were presented to the State Government, which formed the basis in framing the Rajasthan State Child Policy.

The World Bank, in July 2004, through the project 'Global Stocktaking on Social Accountability Mechanisms for Asia and the Pacific', identified CUTS interventions for a case study on pro-poor spending. The Philippine Centre for Policy Studies (PCPS), as commissioned by the World Bank, did the stocktaking.

With the support of Swiss Agency for Development and Cooperation (SDC), a project 'Panchayati Raj Institutions Support and Mobilisation Programme (PRISMO)' was implemented in the year 2004 in Chittorgarh district of Rajasthan with the aim of empowering the Panchayati Raj Institutions (PRIs) to function appropriately under the purview of the 73rd Constitutional Amendment. The project aimed to build capacities of the PRIs, especially women to undertake community and people-centred development activities.

The World Bank supported a project entitled 'Participatory Expenditure Tracking & Survey (PETS) on Mid Day Meal Scheme (MDMS) in Rajasthan' in the year 2005. The project aimed towards a scientific analysis of total budget planned and sanctioned by the Central and State Government during five years (2001-05). A detailed analysis of implementation of the MDMS was done, by conducting participatory surveys in selected schools of Chittorgarh district. Under the project, the problems and their impact on education for all, food security and empowerment of the target groups was studied. Awareness building on the public expenditure processes in order to create an informed and "critical-minded" society to contribute towards introducing regular improvements in effective implementation of the MDMS in the State was attempted.

Bill Blow-ups

The above-mentioned interventions at the grassroots were closely related to the overall policy making with involvement of a wide spectrum of stakeholders towards good and better governance. A natural corollary was examination of bills tabled in the Parliament, particularly those relating to the socio-economic issues. CUTS took up this activity on its own in the year 2000-01, when the Competition Bill of India was being framed through researching, writing and distribution of 'Bill Blow-ups.'

Bill Blow-ups are parliamentary briefs, which weigh the pros and cons of a bill tabled in the Parliament in a simple language to assist the busy MPs in understanding the issues and thus enhance the quality of debates so that better laws are enacted. One important dimension of any reform process is to enact the right kind of laws; and for the same a country needs well-informed Parliamentarians.

The Bill Blow-ups have received accolades from not only the Parliamentarians but also line Ministries, academia, media and the civil society.

MV Rajasekharan compliments thus: "I know CUTS has been doing extremely useful work in providing information on various bills... It helps people to get a better understanding of the Bill as well as different perspectives on the Bill...I would like to

take this opportunity to congratulate you for the good work...please keep it up. Please do convey my best wishes to all those who are involved in bringing out such a piece of work”.

K Francis George, MP (LS), Kerala wrote: “ ...I am also very thankful to you for sending valuable information on various issues and bills which come up in Lok Sabha”.

List of Bill Blow-ups

- Competition Bill of India, 2001: *A Right Step in the Right Direction*
- Communications Convergence Bill
- Biological Diversity Bill, 2000: *A blueprint for the monopolisation of biodiversity or its beneficial use?*
- The Infant Milk Substitutes...Amendment Bill, 2002: *More a Formality than an Attempt to Address the Real Concerns?*
- 98th Constitutional Amendment Bill: *Seeking to Create a National Judicial Commission*
- Small Enterprises Development Bill: *A Step in the Right Direction?*
- Patent (Amendment) Ordinance, 2004
- The National Rural Employment Guarantee Bill, 2004
- The Petroleum and Natural Gas Regulatory Board Bill, 2005
- The Competition (Amendment) Bill, 2006: *What needs to be done?*
- The Gram Nyayalayas Bill, 2007

For more information, please visit: <http://www.parfore.in/BillBlowups.htm>

Inception and Launch

In July 2005, five Parliamentarians cutting across party lines proposed setting up of a Parliamentarians' Forum on Economic Policy Issues (PARFORE). The five Parliamentarians were NN Krishnadas (CPI-M), Dinesh Trivedi (AITC), Suresh Prabhu (SS), Yashwant Sinha (BJP) and Madhusudan Mistry (INC). The idea behind the Forum is to discuss the divergent opinions on the core economic policy issues reflected in and out of the Parliament and media.

MPs Get Together to Float Economic Forum

Five Parliamentarians cutting across party lines have joined hands to float a Parliamentary Forum on Economic Issues, originally conceived by Consumer Unity & Trust Society. The MPs who would be part of the forum are former Finance Minister and BJP Leader Yashwant Sinha, Suresh Prabhu (Shiv Sena), Madhusudan Mistry (Congress), Dinesh Trivedi (Trinamool Congress) and N N Krishnadas of CPM. The idea behind such a Forum is to hold discussions on the divergent opinions on the core economic policy issues reflected in and out of Parliament and the media, the society said in a statement.

Source: *Business Standard*, July 22, 2005

The PARFORE was conceived as non-partisan and informal forum where MPs are able to air their views on a periodic basis on the core economic issues in the field of trade, competition, regulatory reforms, investment and their cross linkages.

CUTS, dedicated to research and advocacy on basic economic issues towards economic development and consumer welfare, hosts this Forum as a neutral

New Forum on Economic Policy

A 'Parliamentarians' Forum on Economic Policy Issues', comprising 45 members of various parties, has been launched here. Meant to be a bi-partisan platform to address economic issues, it has been set up by CUTS International, a research, advocacy and networking group, working on policy issues. The MPs, who were present at the launch, felt that India needed a stronger regulatory framework and that regulators should be made accountable to Parliament instead of to ministries.

Source: The Hindu, December 10, 2005

organisation by facilitating venue for the meetings and by providing research-based inputs for discussions. Besides, CUTS enables the policy and law makers to think and guide both the establishment and the public about what is in the best interests of the nation. Formation of PARFORE was widely reported in the media.

So far 38 MPs have joined the Forum and their numbers are increasing steadily. The launch meeting of the PARFORE was held in New Delhi on December 07, 2005 that discussed the issue of regulatory independence and accountability.

For more details of such meetings, please visit: <http://www.parfore.in/Meetings.htm>

PARFORE complements the efforts of CUTS towards good governance as it affords a platform for not only closer interaction with policy and law makers but also airing of divergent viewpoints. The main activities of PARFORE are to:

- facilitate meetings on core economic issues;
- carry out research, writing and distribution of Issues for Parliamentarians; and
- ensure moderation of an electronic discussion forum.

CUTS moderates a discussion forum on yahoo for PARFORE.

Issues for Parliamentarians

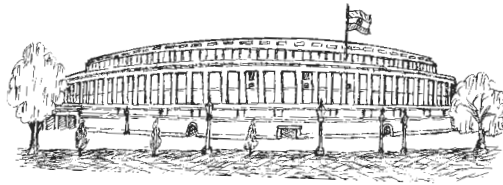
Researching, writing, printing and distribution of 'Issues for Parliamentarians' to facilitate informed discussions on key economic policy issues particularly at PARFORE meetings is another major activity. The 'Issues for Parliamentarians' are intended to help MPs coming from diversified fields to better appreciate various social and economic issues, and enhance the quantity of debates and interventions in the Parliament.

Commenting on one of the 'Issues for Parliamentarians', one of the MPs wrote: "It is indeed very kind of you to have sent me the same, which I find very interesting and useful. I would like to take this opportunity to convey my congratulations and best wishes".

So far, 12 'Issues for Parliamentarians' have been printed, which are mentioned below:

- Regulatory Autonomy and Accountability
- WTO Hong Kong Ministerial Conference: *What is at Stake for India?*
- Airport Modernisation Saga: *What Next?*
- Amendments to Competition Act 2002: *The Way Forward*
- Indian Post Office (Amendment) Bill 2006: *Need To Think Out of Box*
- Achieving the Goals of Multilateral Environmental Agreements
- Vague & Dodgy Responses: *Whither to Go from Here?*
- Special Economic Zones (SEZs) in India

- Need to Take a Re-look at Central Non-merit Subsidies
- Competition and Regulation in Indian Retail Sector
- National Competition Policy for India
- Ensuring Quality in Indian Higher Education



Bill Blow-ups

A Bill Blow-up is like a policy paper, which weighs the pros and cons of the proposed bill in a simple language to help the busy MPs understand the issue. It lists both the highlights and the lowlights of a bill. CUTS publishes Bill Blow-ups, from time to time, on important socio-economic legislations that come up before the Parliament.

In this souvenir, a glimpse of each Bill Blow-up is presented along with URLs for readers to access the full text.

Competition Bill of India, 2001

A Right Step in the Right Direction

1/2001

In the light of the changed economic scenario of India and the world, the existing competition regime under the Monopolies and Restrictive Practices (MRTP) Act, 1969, has lost its suitability. The Competition Bill, 2001, that seeks to repeal the existing regime, aims to promote and sustain competition in markets by preventing anti-competitive practices and creating a conducive economic environment. It further aims to protect the interests of consumers, while ensuring freedom of trade. Though the overall direction of the Bill is good, certain areas need reconsideration. Members of Parliament can improve it.

The Bill at a Glance

Highlights

- Registration of business agreements dropped.
- Four anti-competitive agreements, viz., price-fixing, output restriction, market allocation, and bid rigging prohibited *per se*.
- Regulation of mergers & acquisition above a threshold and prior notification optional.
- 'Abuse' of dominance and not 'dominance' is frowned upon.
- Higher penalties for offences, up to 10 percent of the average of the turnover for the last three preceding financial years.
- Members of the Commission to be selected by a Collegium.
- Unfair trade practices omitted – pending UTPs cases to be transferred to the consumer courts.
- Emphasis on competition advocacy.
- Constitution of 'Competition Fund'.

Lowlights

- Independence of the Commission under threat, as it is required to adhere to the policy guidelines from the Central Government from time to time.
- The Bill appears soft on serious competition abuses like hard core cartels.
- Competition abuses due to intellectual property rights not addressed at all.
- Windows for the appointment of retired judges and civil servants as Members and/or Chairperson still open.
- Relationship between the proposed Competition Commission and other sectoral regulators not very well defined.
- 'Exemptions' from the Act (Bill) is left on the discretion of the Central Government without any guidelines.
- Transfer of certain cases from the MRTP Commission to the consumer courts not very well defined.

Action Points

- Purpose or objective should be in the main body of the Bill rather than provided as the Preamble. **(Preamble)**
- Hard-core cartels need to be tackled through a 'carrot and stick' approach, which is not the case. **(Clauses 3 and 27)**

- Despite the increasing importance of intellectual property rights issues (under TRIPs etc), the Bill does not adequately deal with them. The matter has potential to be dealt within a separate chapter altogether. **(Clause 3(5))**
- No provision for the regulation of those mergers & acquisitions that do not fall within the meaning of 'combination' yet has the potential to affect competition adversely. **(Clauses 5 and 29)**
- Appointing retired judges and civil servants as the Members or Chairperson of the Commission is undesirable for two reasons: it breeds corruption as judges and civil servants succumb to the establishment to get sinecures after retirement, and secondly most of them are ill-equipped to deal with economic issues. **(Clause 10(1)(a) and (b))**
- No scope for the Commission to cooperate with and seek cooperation from its counterparts in other countries in case of cross-border competition concerns. Merely having an extra-territorial clause may not be enough. **(Clause 32)**
- The Bill requires the proposed Commission to give its opinion on possible effect on competition policy (competition advocacy) only on a reference made by the Central Government and that too only for future policies. Instead the Bill should empower the Commission to make recommendations to the Government on its own motion, covering both current and future law and policy. **(Clause 47)**
- By making the Commission dependent on its grants, the Government is taking away the much needed financial autonomy. The Commission should be funded from the Consolidated Fund of India. **(Clause 48)**
- Similarly, by making the Commission bound by its policy directions, the Government is taking away the independence of the Commission and has raised the scope of political interference. This is in contrast with what has been recommended by the High Level Committee on Competition Law and Policy in 2000. **(Clause 53)**
- The power for exemptions from the purview of the Bill has been left upon the Government without any proper guidelines, having a potential to be misused. The exemptions should be well debated. **(Clause 52)**
- Transfer of the subject area of 'unfair trade practices' from competition law to consumer protection law is welcome, but cases pertaining to unfair trade practices in a commercial transaction should be retained under the Competition Act. **(Clause 64)**

For full text, please visit:
<http://www.parfore.in/pdf/Bill-Blowup-1-2001.pdf>

Communications Convergence Bill

1/2002

The proposed Communications Convergence Bill 2001 of India (CCB) aims to deal with regulatory issues in the current set-up arising from 'convergence' in the communications sector. One of the purposes of this is to establish a structured mechanism to promote, facilitate and develop, in an orderly manner, the carriage and content of communications in the current scenario of increasing convergence between communications related technologies. The Bill proposes the establishment of the Communications Commission of India, which would replace the existing separate regulators in telecommunications, broadcasting and multimedia.

The Bill at a Glance

Highlights

- The Bill is timely and in line with changes in the communications sector brought by technological advances.
- It intends to bridge the gaps between existing communications regulation regimes.
- It proposes the establishment of the Communications Commission of India (CCI) to end the overlap between regulatory institutions.
- The Government of India's privilege to provide telecommunications services as a monopoly is withdrawn.
- Licenses will no longer be given by the Government, as is currently the case in telecommunications, but by the statutorily established CCI.
- The Commission is to be staffed by eminent persons in the fields of literature, performing arts, media, culture, education, tele-communications, broadcasting and information technology, finance, law, etc.
- The Commission's guiding principle will be, *inter alia*, that the communication sector develops in a competitive environment and in the consumer interest.
- The Bill also proposes the establishment of an appellate tribunal.

Lowlights

- Lack of transparency and clarity in the rules.
- A separate Information Technology (IT) Act may continue to exist, even though the Bill proposes to regulate multimedia.
- The CCI will not necessarily be established at the same time as the Bill comes into force. Therefore the overlap between the existing institutions could continue even after the enactment of the CCB.
- The independence of the Commission could be thwarted by the obligation to follow (policy) directives from the Central Government.
- The Bill provides discretionary powers to regulate, without any check on transparency, clarity or non-discrimination.
- It continues to rely on a 'vertical' approach to regulation in which several 'functions' are performed by a single regulator.
- Infrastructure regulation is not specifically differentiated from content regulation
- The Commission will be dependent on Government for funding.
- The Bill provides the Central Government wide powers to make exemptions.
- There are no safeguards against arbitrary and discriminatory application of the rules.

Action Points

- The Commission's powers to make regulations should be embedded in a legislative framework that will provide transparency, clarity and non-discrimination.
- The Bill should push for a regulatory framework where separate 'functions' are carried out by different regulatory institutions.
- The final word as to what constitutes a 'policy' directive should not be left to the Central Government, but for the judiciary to decide.
- There should be a clear division between infrastructure licensing and content licensing.
- The transitional provisions should be bundled in a separate section.
- The Bill should aim to remove entry barriers and not create them through extensive licensing procedures. Therefore the guiding principle should be to abolish licensing requirements wherever possible, especially in infrastructure development.
- The Bill should include proper safeguards to service providers against arbitrary decision-making.
- The IT Act should be subsumed into the Convergence Act in the near future as part of an evolutionary approach.
- The responsibility for content regulation could be handed over to an existing body like the Prasar Bharati Board.
- Adequate safeguards should be in place to prevent the government from influencing the CCI through funding.

For full text, please visit:
<http://www.parfore.in/pdf/Bill-Blowup-1-2002.pdf>

Biological Diversity Bill, 2000

A blueprint for the monopolisation of biodiversity or its beneficial use?

2/2002

The Biological Diversity Bill, 2000, is meant to secure the conservation, sustainable use of and equitable share in benefits arising out of the use of biological resources and the associated knowledge. However, it does not fully measure up to this declared purpose and India's international obligations. The Bill has little to do with conservation and sustainability of biological resources. Neither does it adequately address issues of access and benefit-sharing of biodiversity to the advantage of local communities. Moreover, traditional knowledge, an integral resource in biodiversity, is not covered by it. Instead, the Bill seems more intent on consolidating the requirements of the conventional intellectual property rights (IPR) regime. Overall, there is need to have more substance that would enhance biodiversity conservation, inculcate its sustainability and benefit the local communities.

The Bill at a Glance

Highlights

- It fulfils some requirements of the United Nations Convention on Biological Diversity (CBD) to legislate for conservation of biodiversity, its sustainability and its equitable benefit sharing (*Preamble*).
- It attempts to create a framework within which biological resources may be gainfully exploited through the access and benefit-sharing arrangements provided (*Clauses 3, 6 & 7*).
- It provides for rules to curtail the unrestrained exploitation of Indian biological resources by foreign corporations (*Clause 6*).

Lowlights

- It threatens to turn Indian biodiversity into a genetic marketplace, as it is more an instrument of commercial exploitation of biodiversity, as opposed to its conservation and protection.
- It subordinates the goals of the CBD through the encouragement of the conventional intellectual property regime (*Clause 6*).
- It deals mainly with access to biodiversity by foreigners, yet the property rights framework developed has limited practical impact (*Clause 19*).
- It denies the fact that biodiversity is tended by various actors, as it places much stress on sovereignty and individual property rights, such that common property arrangements are not provided for (*Preamble*).
- There is cursory treatment of traditional knowledge associated with biodiversity. It merely requires that the Central Government 'endeavours' to respect and protect this knowledge (*Clause 36 [iv]*).
- The institutional framework proposed to implement the Bill is highly bureaucratic.

Action Points

- To eliminate areas of overlaps and inconsistencies, the Bill should be reviewed to ensure the co-ordination of all relevant biodiversity legislation for the Bill's effective implementation.
- The stated objectives of conservation and sustainable use of biological diversity should be better addressed and the commercialisation focus of this Bill be reduced.
- Conditions for access to biodiversity should be reviewed to ensure that the local communities are granted more control over negotiation of access and the approval process.
- There should be less emphasis on IPRs, which are being entrenched with respect to genetic resources. The Bill should instead, strive to give the local communities the power to defend their rights as it does to the state to fight bio-piracy.
- Benefit-sharing arrangements should be in favour of the communities and not an instrument to perpetuate private ownership over biological resources. The mechanisms provided should be reviewed.
- The Bill should provide for certain common property arrangements or community rights. Private property arrangements advocated for in the Bill sideline the importance of community rights.
- There should be better protection of traditional knowledge and folklore. The Bill accords them inadequate protection, though they are in public domain.
- The government should reduce the amount of control and involvement in much of the process of exploitation of biodiversity. Otherwise, this may work against the development or innovation of genetic resources.

*For full text, please visit:
<http://www.parfore.in/pdf/Bill-Blowup-2-2002.pdf>*

The Infant Milk Substitutes...Amendment Bill, 2002

More a Formality than an Attempt to Address the Real Concerns?

1/2003

The recent developments and findings of international agencies as well as researchers reveal that ideally the infant thrives best on exclusive breast-feeding for the first six months of life and continued breast-feeding, together with complementary foods for the first two years. The Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Amendment Bill, 2002, seeks to amend the existing Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992, (the Principal Act), accordingly. The Bill, however, has no provisions with regard to, *inter alia*, effective promotion and protection of breast-feeding; adequate monitoring of the implementation of the Act.; and mandatory writing of warning and other information in Hindi and other local languages on labels of the products within the scope of the Act.

The Bill at a Glance

Highlights

- The definition *inter alia* of “advertisement” is widened to include ‘electronic transmission’ and ‘audio visual transmission’. Thus, substantially prohibiting any kind of advertisement within the scope of the Principal Act.
- The period for exclusive breast-feeding of infants is extended from first four months of age to six months, along with a recognition of the need for continued breast-feeding up to two years of age with complementary foods.
- Any kind of promotion of the products within the scope of the Principal Act is completely prohibited, by inserting *Clause (j)*, defining “promotion”. Similarly, the Bill prohibits any kind of sponsorship, contribution, etc., to a health worker or any association of health workers by any producer, supplier or distributor of the products covered by the Principal Act.

Lowlights

- The Bill leaves out the much-desired provision to protect breast-feeding rights of women within the health system, the work place and the community.
- It fails to provide for the creation of a mechanism to monitor the implementation of the Principal Act to study company practices and examine the plethora of products, brands, packages and advertisements in the market place.
- There is no provision, either in the Principal Act or in the Bill, to promote the culture of breast-feeding; educate the masses about the importance of exclusive breast-feeding and the health hazards of improper use of breast-milk substitutes; and ensure adequate nourishment for pregnant and lactating women below poverty line.

Action Points

- There should be a provision in the Bill to establish a mechanism involving NGOs to monitor the implementation of the provisions of the Principal Act.
- Use of pictorial methods to illustrate the superiority of breast-milk, important notice and hazards of improper use of the concerned product should be made mandatory. Besides, provision for the labels of the products covered by the Act should carry the same information in Hindi and other local languages.
- The provision for confiscation of the products that violate the provisions of the Principal Act should be made stricter. This could be done by not allowing such products to be returned to their respective producer/manufacturer or seller, coupled with heavy penalty for such violation. Therefore, the Bill should have suitable provisions to amend the Principal Act accordingly.
- There is a need to develop social support systems to protect, facilitate and encourage breast-feeding and eliminate factors that inhibit it. The Principal Act should be amended accordingly.
- Provision for educating and informing people about the critical importance of exclusive breast-feeding and other related issues is a must. This would be an attempt to arrest the high rate of malnutrition and its associated ills amongst the children.
- The Principal Act should accommodate provisions ensuring adequate nourishment for poverty-stricken pregnant and lactating women. The Bill needs to be revised accordingly.
- Since the legislation is required to deal with various aspects of breast-feeding, it is imperative to change its name suitably. A suggested name could be 'The Protection of Breastfeeding Rights and Regulation of Infant Milk Substitutes Act'.
- The government should reduce the amount of control and involvement in much of the process of exploitation of biodiversity. Otherwise, this may work against the development or innovation of genetic resources.

For full text, please visit:
<http://www.parfore.in/pdf/Bill-Blowup-1-2003.pdf>

98th Constitutional Amendment Bill

Seeking to Create a National Judicial Commission

2/2003

In view of the mounting pressure to have a statutory body to look into the affairs of higher judiciary, including appointments and transfers of judges, the 98th Constitutional Amendment Bill seeks to create a National Judicial Commission. However, a closer look of the Bill reveals drawbacks in its recommendations, which once again gives a more-than-desired say to the Executive in the matters of Judiciary. The suggested composition of the Commission has its inherent shortcomings, which is bound to reflect in its decisions, and thus, may not be able to achieve its avowed objective of strengthening the *independent* character of the Third Pillar of Democracy – the Judiciary.

The Bill at a Glance

Highlights

- The Bill seeks to create a National Judicial Commission (NJC);
- The Commission would make recommendations for appointment of judges in higher judiciary and transfer of High Court judges, and thus, provide an institutionalised mechanism for appointment and transfer of judges in higher judiciary;
- The recommendations made by the Commission for appointment and transfer of judges in higher judiciary would be binding on the President, and this would reduce chances of friction between the Executive and the Commission;
- The Commission would draw a code of ethics for judges in higher judiciary; and
- It would be empowered to conduct inquiries in cases of misconduct and deviant behaviour of a judge, either on the basis of complaints made or *suo motu*. This would help ushering in judicial accountability.

Lowlights

- The Bill has given the Executive a much larger role in the composition of the Commission, which may undermine the independence of Judiciary;
- The Bill does not provide for any transparent procedure that the Commission should follow in making appointments and transfers of judges in higher judiciary; and
- The recommendations made by the Commission, subsequent to the inquiry conducted in cases of misconduct and deviant behaviour of judges, to the Chief Justice of India (CJI) or the Chief Justice of a High Court is not binding on them. Thus, in cases, where the recommendations made by the NJC are not accepted by the authorities concerned, controversies are bound to arise, and this may undermine the institution of NJC.

Action Points

- The most important step would be to correct the composition of the NJC;
- The participation of the Executive in the Commission should be limited to the Union Minister of Law and Justice;
- Two eminent citizens to be appointed should be either eminent jurists or eminent lawyers or legal academicians of high repute;
- One of them should be appointed by the President in consultation with the Chief Justice of India and the other in consultation with the Prime Minister;
- The provision to associate the Chief Minister of a state in case of an appointment and transfer of a High Court judge with the Commission should be done away with;
- The Bill should provide for a transparent and time-bound procedure for the appointment and transfer of judges;
- The recommendations made by the Commission on the basis of the inquiry conducted in cases of misconduct and deviant behaviour of erring judges should be binding on the authorities concerned, just as the recommendations made for appointment and transfers are binding; and
- The report of any such inquiry committee should be made public in order to boost transparency and enhance judicial accountability.

For full text, please visit:
<http://www.parfore.in/pdf/Bill-Blowup-2-2003.pdf>

Small Enterprises Development Bill

A Step in the Right Direction?

1/2004

The small-scale sector has acquired a prominent place in the socio-economic development of the country. This sector plays a major role in providing employment and livelihood to millions of people. It provides employment to approximately 200 lakhs of people. The production value of this sector at constant prices is approximately Rs. 5,15,000 crores. This sector also contributes significantly to India's exports. It is estimated that the share of small scale industry in India's exports is anywhere between 35 to 40 percent. Hence, the need to foster this sector.

In India, a plethora of law exists for the small-scale sector, which often overlaps leading to complexities. Thus, the demand to have a comprehensive legislation for the small-scale sector is gaining pace.

Keeping this in mind, the Government has introduced a Bill in the Parliament, which is known as the Small Enterprises Development Bill. This parliamentary brief takes a close look at some of the pros and cons of the bill.

The Bill at a Glance

Highlights

- A legislative attempt to extend a comprehensive policy package for the development of small enterprises.
- Establish a statutory body in the form of a National Small Enterprises Development Board to formulate policies for small enterprises.
- Makes it statutory for banks and other credit agencies to follow the guidelines issued by the Reserve Bank of India (RBI) in advancing loans or credit to small enterprises.
- The grievances in respect of access to credit or finances will be heard by the Banking Ombudsman.

Lowlights

- Recommendations made by the National Small Enterprises Development Board will not be binding on the Central Government and this will undermine the importance of the Board. Further, this Board cannot make recommendations to the Central Government on reservation policy.
- The structure of the board is such that it looks like a council.
- Bill sustains the legacy of inspector raj by incorporating stringent inspection guidelines.
- No provision for an ombudsman or an alternative dispute resolution mechanism for matters such as confiscation of property or grievances other than those related to credit.
- Measures of trade support make it mandatory for the Central Government to notify from time to time its procurement policy but not for the state governments (and through them for other bodies at the sub-national level).

Action Points

- The National Small Enterprises Development Board should be given more powers. The recommendations made by the Board on policy matters should be made binding on the Government. Furthermore, the Bill should enunciate the criteria of selecting various members of the Board.
- The bill should provide for a “clustered” approach for inspections.
- There should be a provision for an Ombudsman for all matters and disputes pertaining to small enterprises.
- A clustered approach should be adopted to carry out inspections.
- The Bill should provide a social security scheme for workers of the small enterprises.
- The applicability of the Industrial Disputes Act to small enterprises should be modified so as to provide enough flexibility to small enterprises in their functioning.
- The Bill should give power to the Central government to direct the state governments regarding the execution of all or any of the provisions of this Act.

*For full text, please visit:
<http://www.parfore.in/pdf/Bill-Blowup-1-2004.pdf>*

Patent (Amendment) Ordinance, 2004

1/2005

The President of India has promulgated The Patents (Amendment) Ordinance for the purpose of bringing the existing patents law into conformity with the obligations undertaken in the Agreement on Trade Related Aspects of Intellectual Property Rights. This is mainly related to the introduction of product patent protection in all fields of technology. The product patent prohibits others from making, using, offering for sale, selling or importing the patented product. As a result, the product patent gives a monopoly to the patent owner for the production of patented article during the term of the patent (20 years). Therefore, product patent protection for medicines and agro-chemicals creates a monopoly and eliminates competition in the market.

The Bill at a Glance

Highlights

- The Ordinance makes the Indian patent regime compliant with the obligations given in the TRIPs Agreement.
- The Ordinance expands the patentability criteria from drugs and agro-chemicals to other fields of technology, such as embedded software.
- The Ordinance has provided compulsory licensing for export of patented pharmaceutical products.
- Deletion of the provisions relating to Exclusive Marketing Rights (EMRs), and introduction of a transitional provision for safeguarding EMRs has been granted.

Lowlights

- The Ordinance does not make use of all the existing flexibilities given in the TRIPs Agreement.
- The Ordinance has relaxed the grounds on which granting of patents is opposed. Various checks provided in the Act to prevent frivolous patents do not exist anymore.
- The Ordinance has taken away the power of the Controller to take *suo moto* steps to refuse grant of patent on grounds of anticipated publication.
- The Ordinance provides for the patenting of microorganisms and non-biological and microbiological processes. It should have waited till the mandated review of Art 27.3(b) of the TRIPs Agreement was done.

Action Points

- India should fully take advantage of flexibilities available under TRIPs in order to safeguard accessibility and availability of drugs and medicines. The Government is going far beyond what is required under WTO rules.
- Should take away the provision regarding patenting of 'microorganisms', 'non-biological and microbiological processes' as they are under review by the WTO, ever since 1999.
- Should provide for a clear and wider definition of certain terms, like patentability of pharmaceutical products, microorganism and public non-commercial use, in order to avoid ambiguity.

- Should restore powers to the Controller to take *suo moto* steps to refuse grant of patent on grounds of anticipated publications.
- 'Opposition to Grant of Patent', as originally provided in the Patents Act 1970, is extremely important and relevant. It should not be diluted.
- Should simplify the compulsory licensing procedure, as the existing procedure is too lengthy and complicated.

For full text, please visit:
<http://www.parfore.in/pdf/Bill-Blowup-1-2005.pdf>

The National Rural Employment Guarantee Bill, 2004

2/2005

The National Common Minimum Programme (CMP) states: "The United Progressive Alliance (UPA) government will immediately enact a National Employment Guarantee Act. This will provide a legal guarantee for at least 100 days of employment to begin with on asset-creating public work programmes every year at minimum wages for at least one able-bodied person in every rural, urban poor and lower middle-class household."

Does the National Rural Employment Guarantee Bill 2004 that was tabled in parliament on December 21, 2004, promise to ensure all these? This brief takes a look at some of the pros and cons of the Bill.

The Bill at a Glance

Highlights

- Focuses mainly on the improvement of rural areas.
- To an extent, helps in reducing rural under-employment.
- Establishing employment as a right would add substance to the concept of entitlements.
- Workers to be engaged in productive activities, thus improving the provision of important social and economic services.
- Additional income will help greatly in raising the living standards of people, particularly the large majority of poor households living below the poverty line.
- Unemployment allowance provided if an eligible applicant is not provided work as per the provisions of this law within the prescribed time limit.
- Central Government shall establish 'National Employment Guarantee Fund' and States shall constitute 'State Employment Guarantee Funds'.

Lowlights

- Bill does not guarantee when and where it will apply. It gives a very wide discretion to the government to switch off the employment guarantee provisions at any time.
- The scheme, restricted to poor households, is not of universal application, which may be interpreted to mean as those below poverty line (BPL).
- No guarantee for minimum wages; these could be superseded by a central notification, which is against public policy.
- Inadequate safeguards for women. Care should be taken not to exclude them.
- Only one member, even from among the members of the joint family, will be eligible as per the present scheme. A very vague definition of 'household' is given.
- The Bill is highly conditional, depending on the states economic capacity. Each state has to meet 30-40 percent of the total cost. Most of the states in our country are nearly bankrupt.
- Focus of the Bill is only on specific types of works.
- The Bill gives maximum discretion and power to the Central Government to modify or restrict almost every aspect of the law.
- The Bill does not cover urban areas, whereas the CMP promised so.

Action Points

- The Bill should specifically lay down the period within which the Act shall come into force.
- The Bill should be made for universal application rather than being restricted to the 'poor household'. It should gradually cover the whole country in a specified time frame – say five years.
- There should be a provision for individual work entitlement or at least 30-40 percent of the total employment generated should be reserved for women.
- Total funding should be meted out by the Central Government, rather than asking State Governments to provide the matching half.
- Wages fixed by the Central Government should not go below those fixed by the Minimum Wages Act.
- The Bill should contain a strong Preamble, objects clause and provisions for incremental extension.
- The role of *panchayati raj*, social audit and transparency must be ensured.
- Need for bringing out an effective Right to Information Act, for its proper implementation.

For full text, please visit:
<http://www.parfore.in/pdf/Bill-Blowup-2-2005.pdf>

The Petroleum and Natural Gas Regulatory Board Bill, 2005

1/2006

The Ministry of Petroleum & Natural Gas has, so far, regulated the petroleum and natural gas sectors through various policies and notifications. In this regard, the Ministry is also supported by various Acts and Rules developed by our Government from time to time. However, with recent changes and likely growth in the market, the Ministry has proposed to establish a regulatory body to oversee the development and growth of this sector, as a whole. The Ministry, therefore, introduced the Petroleum and Natural Gas Regulatory Board (PNGRB) Bill, 2005, in the Rajya Sabha, on December 21, 2005. The Bill provides for the setting up of the PNGRB, to regulate the downstream petroleum and natural gas sectors.

The Bill at a Glance

Highlights

- Constitution of a PNGRB, comprising one chairperson and four members, to ensure uninterrupted and adequate supply of petroleum, petroleum products and natural gas and to promote competitive markets. [Chapter II]
- Board to look into downstream issues like refining, processing, storage, transportation, distribution and marketing of petroleum, petroleum products and natural gas. [Section 11]
- To foster fair trade and competition in the market between entities engaged in such activities and thus protect the interest of consumers. [Section 11(a)]
- Apart from common-carrier approach, proviso for contract carrier approach also adopted to attract investment. [Section 11(c)]
- Board to monitor price of notified petroleum, petroleum products and natural gas and take corrective measures to prevent restrictive trade practices and ensure equitable distribution of petroleum products. [Section 11(f)(iii)]
- Board given the power to register and authorise all concerned entities involved in this sector. [Chapter IV]
- To establish a strong affiliate code of conduct for governing entities in this business. [Section 21(1)]
- Constitution of a PNGRB fund to meet administrative expenses like salaries, allowances and pensions payable to the officers and employees of the Board. [Section 39]
- Appellate Tribunal established under Section 110 of the Electricity Act, 2003, would be considered as the common appellate tribunal for the petroleum, natural gas and electricity sectors. [Section 30]
- Power given to the Central Government to issue directions and intervene in matters adversely affecting public interest in certain exigencies. [Chapter VIII]
- Proviso for maintenance of a data bank of information system on activities relating to petroleum, petroleum products and natural gas to enable planning and development. [Section 51]

Lowlights

- Lack of clarity in fixing of transportation rates. [Section 2(zn)]
- Likely conflict over the jurisdiction, in case of dispute relating to restrictive trade practices. The Bill makes reference to restrictive trade practices, but does not clearly specify the role of PNGRB *vis-a-vis* Competition Commission of India (CCI).
- The Bill does not address the concern relating to fair access to government negotiated imported raw materials.
- The Bill lacks clarity on the right of first use, once the Board declares an existing pipeline or a network as a common carrier or a contract carrier. [Section 21]
- Financial independence constrained by government interference in various ways. [Section 39(3)(i)]

Action Points

- Transportation rates should be fixed after being negotiated by the parties, failing which, the regulator should decide.
- The Bill should clearly lay down whether it will be the PNGRB or the CCI that will have jurisdiction in case of disputes relating to restrictive trade practices.
- The Bill should address fair and equitable distribution of government negotiated imported raw materials.
- The Bill needs clarification regarding the manner and the appropriate authority that would determine the requirement of an entity, which enjoys the privilege of right of first use.
- The PNGRB should prepare its budgetary requirements, which should be linked with its work plan for a certain time period. The budget should be approved by the Parliament.

For full text, please visit:
<http://www.parfore.in/pdf/Bill-Blowup-1-2006.pdf>

The Competition (Amendment) Bill, 2006

What needs to be done?

2/2006

The Competition Act, 2002 was enacted to replace the Monopolies and Restrictive Trade Practices Act, 1969, which was found to be inadequate in the changed economic environment. However, the Act was challenged in the Supreme Court on the grounds that it did not adhere to the doctrine of separation of powers between judiciary and the executive as recognised by the Constitution of India. Pursuant to the litigation, the Government has proposed to amend the Competition Act and split the competition authority into two: the Competition Commission of India and a Competition Appellate Tribunal. Though the overall direction of the Bill is good but certain areas need to be reviewed by the Parliament before giving its consent on the Bill.

The Bill at a Glance

Highlights

- Constitution of Competition Appellate Tribunal (CAT).
- Pending Unfair Trade Practices (UTPs) cases to be transferred to consumer courts.
- The Competition Commission of India (CCI) empowered for appointing administrative staff.
- Division of a dominant enterprise to be ordered by CCI itself, instead of recommending to the Central Government.
- In case of an opinion given by the CCI on a reference made to it, the sectoral regulators (statutory authorities) have to issue speaking orders.
- In formulating any policy, now even a State Government can make a reference to the CCI for its opinion on possible effects of such policy on competition.

Lowlights

- Provisions to deal with abuse of Intellectual Property Rights (IPRs) are weak.
- Interface between CCI and regulators remains at the discretion of the regulators.
- 'Exemptions' from the Act is left to the discretion of the Central Government without any guidelines.
- Financial and functional autonomy of the CCI impaired through provisions such as Government's power to allocate the budget; power to supersede the CCI; and power to issue policy directives without due process.
- Extends not only leniency provisions to all colluding parties and before the submission of report by the Director General (DG), can induce cartel members to come forward and cooperate, but also widens the goal posts of corruption.
- Local-level checks on anti-competitive practices will get diluted by doing away with the provision to establish regional benches.
- Complete lack of public consultations (in contrast to the case of The Competition Act, 2002) in the process of drafting the current Bill.

Action Points

- IPR abuses should be covered explicitly under the proposed Act; define 'unreasonable conditions' and specify the remedies (Sec. 3(5) of the Act).
- The Act should empower CCI to *suo moto* give its opinion on possible effect on competition (competition advocacy) instead of only on a reference made by the Government (Sec. 49).
- Parliament itself should approve the budget for the CCI and not leave it at the will of the Government, thus ensuring autonomy (Sec. 50).
- 'Exemptions' to the Act should not be left on the discretion of the Central Government, but it should be exercised publicly and in consultation with CCI (Sec. 54).
- The relationship between CCI and sectoral regulators needs to be defined properly, with CCI having jurisdiction over behavioural aspects of the regulated sector, while the sectoral regulator having to deal with structural issues. Mutual consultations should be mandatory.
- Policy directives to CCI should be issued only after a wide and thorough consultation process. Government should place in public, comments received from CCI and other stakeholders (Sec. 55).
- Powers given to the Central Government to supersede CCI on the grounds for example, public interest, etc., severely undermines the independence of the Commission and hence should be removed (Sec 56).
- Establish regional offices (not benches) of CCI to keep a check on anti-competitive practices taking place at local level (Sec. 22).
- The procedure for selecting Chairperson and Members should be clearly defined and transparent (Sec. 9).
- Appropriate mechanisms ensuring transparency in the grant of leniency to cartel members willing to cooperate. This would help counter any possibility of corruption (Sec 46).
- CCI has been empowered to deal with anti-competitive practices outside India, but to operationalise it, the Act should also empower CCI to cooperate with and seek cooperation from its counterparts in other countries (Sec. 32).

For full text, please visit:
<http://www.parfore.in/pdf/Bill-Blow-up-2-2006.pdf>

The Gram Nyayalayas Bill, 2007

1/2007

The *Gram Nyayalayas* Bill, 2007, provides for the establishment of *Gram Nyayalayas* for the purpose of providing access to justice – both civil and criminal – to the citizens at the grassroots level and to ensure that opportunities for securing justice are not denied to any citizen for reasons of social, economic or other disabilities and for matters connected therewith.

The Law Commission of India in its 114th Report on *Gram Nyayalaya* suggested its establishment so that speedy, inexpensive and substantial justice could be provided to the common man. The *Gram Nyayalayas* Bill, 2007 is broadly based on the recommendations of the Law Commission. This parliamentary brief takes a close look at the pros and cons of the Bill.

The Bill at a Glance

Highlights

- The preamble of the Bill resonates Article 39A of the Indian Constitution which requires the State to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.
- The Bill focuses on the *panchayat* level (clause 4), covering both criminal and civil cases (clauses 14 and 15) and classifies the *Gram Nyayalayas* as the lowest court of subordinate judiciary in a state [clause 3(3)].
- It envisages day-to-day hearing [clause 33(9)], disposal of criminal cases within 90 days [clause 23(3)], pronouncing judgement within one week from the date of the last hearing [clause 24(1)] and instant judgement after hearing where recording of evidence is not required in any dispute or matter of a civil nature [clause 33(4)].
- It would assist in reducing the workload of the District Courts [clause 21(1)] and ensure justice for the poor at their doorsteps on payment of a nominal court fee of Rs100 in civil cases [clause 33(1)].
- The *Gram Nyayalayas* have been assigned the duty to make efforts for conciliation and settlement of civil disputes for which a panel of Conciliators has been proposed (clauses 31 and 32).
- The Bill proposes the *Gram Nyayalayas* to be guided by the principles of natural justice and not be bound by the procedure laid down in the Code of Civil Procedure, 1908 or the rules of evidence as laid down in the Indian Evidence Act, 1872 [clause 32(2)].
- The decision on an appeal against the order of the *Gram Nyayalayas* by the District Court shall be final in a civil case and no further appeal or revision has been provided for (clause 41).
- The *Nyayadhikari* shall periodically visit the villages under his/her jurisdiction and conduct proceedings in close proximity to the place where the parties normally reside, thus functioning as a mobile court.

Lowlights

- *Nyayadhikaris* are expected to take up cases based only on a complaint or a report from the police. No *suo moto* powers are laid down [clause 14(1)].
- Clause 24(2) lays down delivery of judgement to both parties free of cost but clause 33(12) speaks of payment of such fees as may be prescribed by the State Government for copies of the order.

- Clause 11(1) envisages the *Nyayadhikari* to visit villages 'periodically' without prescribing number of visits.
- No uniformity has been prescribed in appointment of Conciliators particularly regarding their qualifications, tenure, method of appointment and remuneration [clause 31(1)].
- *Nyayadhikari* who has been removed on the basis of incompetence is also barred from other appointments in Government [clause 8(2)].
- Tenure of service and transferability as *Nyayadhikari* should be laid down.
- The objective of ensuring speedy justice would be undermined through the provision for adjournments, which is the major cause for delay.
- The Bill has no provision to ensure that sufficient infrastructure and facilities would be provided by the State Government for the efficient functioning of *Gram Nyayalayas*.
- The Bill is silent on the pecuniary jurisdiction of the *Gram Nyayalayas*.

Action Points

- There is a need for empowering *Nyayadhikaris* with *suo moto* powers. Such power is vital to ensure delivery of justice to the rural community in India.
- The dichotomy between clauses 24 (2) and 33 (12) should be addressed by letting the former prevail. Providing copies of judgements free of charge to both the parties would be in consonance with the spirit of the Bill.
- One of the main objectives of the Bill is to provide justice at the doorsteps and to meet the same, specific guidelines should be incorporated in respect of *Nyayadhikari's* visit for dispensation of justice through mobile courts at villages rather than leaving it to the discretion of the *Nyayadhikari*. Whenever a minimum number of cases pertain to a particular village, the hearing should be necessarily held on the spot [clause 11 (1)].
- To reduce nepotism and external interference and to provide skilled and just professionals, some minimum qualifications should be determined for the appointment of Conciliators (clause 31).
- *Nyayadhikari* who has been removed on the basis of incompetence should not be barred from other appointments in Government [clause 8(2)].
- The Bill is silent on the tenure of the *Nyayadhikari*. Perpetuity has its own demerits and the tenure and transferability of the *Nyayadhikari* should be built in (clause 9).
- Provisions in the Bill regarding adjournments [clause 33(9)] need to be reviewed to cut down on delays. To fulfil its basic objectives of speedy justice at the grassroots level, the Bill has armed the *Nyayadhikari* with directions 'not be bound by the procedure laid down in the Code of Civil Procedure, 1908' but to be guided by the principles of natural justice. Further, the *Gram Nyayalayas* have also been vested with powers to proceed *ex parte* if any of the parties does not appear [clause 33 (7)].
- The Bill calls for a high degree of coordination for implementation between the State Government and the High Court as the Table I substantiates. Provisions for ensuring the same in a time bound period would be a Herculean task and needs to be addressed.
- Pecuniary jurisdiction of the *Gram Nyayalayas* should be laid down.

For full text, please visit:
<http://www.parfore.in/pdf/Bill-Blow-up-1-2007.pdf>



'Issues for Parliamentarians' (Issue Note) is a research-based brief policy paper aimed to facilitate informed discussions among Indian Parliamentarians on key economic issues. It carries a key mantra 'Good Economics is Good Politics' in order for the MPs to appreciate that economic growth of the country is the sum and substance of good politics. Each issue covers a specific economic topic that has a greater bearing on the lives of the people, and is explained after thorough research and consultations.

A short summary of each issue is presented in this souvenir along with URLs for readers to access the full text.

Regulatory Autonomy and Accountability

1/2005

In this first Issue Note that CUTS brought out, the current regulatory autonomy and accountability scenario is explained, with a focus on why regulatory agencies have not been able to live up to their expectations. It discusses various reasons as well as the outcomes of under performance of the regulatory agencies. In order to ensure autonomy and accountability in regulatory agencies, the Issue Note provides some fundamental questions for MPs to take into account, so that better economic governance could be realised.

For full text, please visit:

http://www.parfore.in/pdf/1-2005Regulatory_Autonomy_and_Accountability.pdf

WTO Hong Kong Ministerial Conference: What is at Stake for India?

2/2005

There were some key issues before Indian Government on the eve of WTO Hong Kong Ministerial to be discussed, for example, agriculture, industrial growth and services in order to fetch gains not only for the country but also for the other developing countries. This Issue Note provides valuable inputs to the policy makers and negotiators to focus on these issues in the Ministerial, so that developing countries', including India's interests could be saved.

For full text, please visit:

http://www.parfore.in/pdf/2-2005WTO_HongKong_Ministerial_Conference.pdf

Airport Modernisation Saga: What Next?

1/2006

The Government initiated a move towards modernisation of Delhi and Mumbai airports in early 2005, and invited bids for it. However, the entire bidding process was mired in controversy for not being transparent. The Sreedharan Committee, appointed to look into the integrity of the bidding process, even disqualified a bidder and suggested the Government to set up a Special Purpose Vehicle. This Issue Note, after providing the details of bidding process, leaves the reader with a pertinent question.

For full text, please visit:

http://www.parfore.in/pdf/1-2006Airport_Modernisation_SAGA_What_Next.pdf

Amendments to Competition Act 2002: The Way Forward

2/2006

Since the Monopolies & Restrictive Trade Practices (MRTP) Act did not deliver as expected due to the inherent weaknesses, the Government enacted the Competition Act, 2002 to provide more teeth to deal with competition issues. This Issue Note presents the four core areas that Competition Act focuses on, and outlines a comparative description of the existing provisions *vis-à-vis* proposed amendments. Also, it poses some key questions for MPs to discuss in the Parliament.

For full text, please visit:

http://www.parfore.in/pdf/2-2006Amendments_to_Comp_Act2002.pdf

Indian Post Office (Amendment) Bill 2006: Need to Think Out of Box

3/2006

In order to meet the challenges of technology and competition, liberalising the mailing industry, and bringing qualitative improvement in postal services in the country, Department of Posts proposed the Indian Post Office (Amendment) Bill 2006. This Issue Note analyses the proposed amendments and offers some alternative ways to make the said amendments more effective.

For full text, please visit:

http://www.parfore.in/pdf/3-2006Indian_Post_Office_Bill2006.pdf

Achieving the Goals of Multilateral Environmental Agreements

4/2006

At present, there are 200 major multilateral environment agreements (MEAs) in existence in the world though the state of global environment is deteriorating. This Issue Note explores various protocols and conventions on environment to which India is a signatory. It lists the required policy actions and major issues concerning the MEAs for policy makers to deliberate on a much wider perspective.

For full text, please visit:

http://www.parfore.in/pdf/4-2006Achieving_Goals_Multilateral_Envi_Agreements.pdf

Vague and Dodgy Responses: Whither to Go from Here?

1/2007

Questions raised in the Parliament serve a very important process of democracy. The case-for-questions scandal in India as well as in the UK has brought forth a pertinent question: whether Parliamentarians are genuinely concerned with the issues or try to mislead the House. This Issue Note highlights the process of question framing and their answers in Parliament with examples from India, South Africa, New Zealand and Scotland to allow the MPs to know the lacunae in the system. Besides, it provides some key issues for discussion to overcome the lacunae.

For full text, please visit:

http://www.parfore.in/pdf/1-2007Vague_Dodgy_Responses.pdf

Special Economic Zones (SEZs) in India

2/2007

The Export-Import (EXIM) policy of 1997-2002 introduced a more comprehensive and liberal concept to establish Special Economic Zones (SEZs) in order to correct the shortcomings of the Export Processing Zone (EPZ), which was established in 1965, and to make SEZs an engine of growth complemented with an attractive fiscal package. This Issue Note covers the entire gamut of SEZs in India: definition, issues, fact sheet etc., with an example from Chinese experience. It lists the required policy options on SEZs in addition to important issues for policy makers to discuss.

For full text, please visit:

http://www.parfore.in/pdf/2-2007-SEZs_In_India.pdf

Need to Take a Re-look at Central Non-merit Subsidies

1/2008

Subsidies have a tendency to self-perpetuate and create political vested interests. Moreover, subsidies result in inefficient resource allocation and unintended economic effects. Even subsidies act as hurdle. This Issue Note discusses justification for providing subsidies and the sectors in which subsidies are given in addition to the broad benefits accrued from it. The Issue Note lists some key issues for policy makers to discuss while providing or negating subsidies.

For full text, please visit:

http://www.parfore.in/pdf/1-2008Need_take_Relook_atCentral_Nonmerit_Sub.pdf

Competition and Regulation in Indian Retail Sector

2/2008

In recent times, retail sector has witnessed unprecedented growth. However, the sector is highly unregulated, and fragmented in India with 97 percent of the business running under unorganised retailing. Hence, competition and regulation needs a thorough review. This Issue Note provides a detailed structure of the retail sector, including traditional unorganised and modern organised retailers. It highlights the challenges facing the retail sector in addition to key issues for discussion.

For full text, please visit:

http://www.parfore.in/pdf/2-2008Comp_Reg_in_Indian_Retail.pdf

National Competition Policy of India

3/2008

In India, there is a consistent need for a functional competition regime. Though the Competition Act, 2002 provides for a law, it is yet to be implemented in full. This Issues Note advocates a National Competition Policy (NCP) that can actualise harmonisation in various government policies, which affects competition behaviour. It explains the objectives of such a policy, its elements, and historical perspectives. The Issue Note highlights important issues, including those for discussion that are to be taken into consideration while developing a NCP for India.

For full text, please visit:

http://www.parfore.in/pdf/3-2008National_Comp_Policy_In_India.pdf

Ensuring Quality in Indian Higher Education

No 4/2008

Though quality is an important declared objective of India's higher education policy it is not backed by necessary steps to engage requisite faculty and infrastructure and develop quality consciousness across the learning processes. This Issue Note addresses the question: how can the quality of higher education be ensured? Is it essential to de-link the accrediting agency? What remedial action should be taken if the quality of a higher educational institution is not found satisfactory and how can it be ensured that the design of higher education is in sync with market demand? Can updating the syllabi regularly according to the requirements of market help? It analyses and answers these vital questions for further debate and policy action.

For full text, please visit:

http://www.parfore.in/pdf/4-2008Ensuring_quality_in_indian_higher_education.pdf

PARFORE Meetings

FIRST MEETING

Launch Meeting of PARFORE

New Delhi, India, December 07, 2005

A group of 11 Members of Parliament (MPs) from a cross section of political parties formally launched the Parliamentarians' Forum on Economic Policy Issues (PARFORE) in a meeting hosted by Consumer Unity & Trust Society (CUTS) in New Delhi.



Pradeep S Mehta, Secretary General, CUTS welcomed all the participants and informed them that the Forum has received assents from 38 MPs, who wish to create a non-partisan forum to address the economic policy issues which can help India move forward. The PARFORE is set up as a result of a collective initiative taken up by five MPs representing different political parties. Since the very beginning, CUTS has been at the forefront of facilitating the entire process.

In this inaugural meeting, the PARFORE discussed two crucial issues: (i) Regulatory Autonomy and Accountability; and (ii) WTO Hong Kong Ministerial Conference: *What is at Stake for India?* For this, CUTS prepared and distributed 'Issue Notes' in advance on both with the objective of providing a brief to the Parliamentarians.

Regulatory Autonomy and Accountability, was discussed at length, and the participants felt the need for a closer attention to it. The MPs expressed concern on the need to address the gaps in the regulatory framework in India. Further, the practice of appointing retired bureaucrats in regulatory bodies was also debated, a trend which the MPs wanted to stop.

On the WTO Hong Kong Ministerial, MPs opined that all matters should be discussed in depth after the Ministerial.

The participants endorsed that the PARFORE offers a fit platform for MPs to share views and ideas on economic policy issues on an informal basis, which would help in inculcating better understanding, and subsequently, in reaching a consensus on contentious issues.

A suggestion was, therefore, made to CUTS to continue preparing detailed analysis on various bills, which are to be presented in the Parliament, and organise such meetings to discuss them. It was felt that such a discussion would help MPs in understanding the bills better and hence facilitate their effective participation in the debates.

Some of the MPs present were: Yashwant Sinha, Dinesh Trivedi, N K Premchandran (all of them are initiators of PARFORE); Sharad Joshi, K R Sambasiva Rao, Khabiruddin Ahmed, Ram Singh Kaswan, Sartaj Singh Chatwal, Robert Kharshing, Manoj Bhattacharya and Annasahib Patil. Many of the MPs, who endorsed the participation, could not turn up because of winter session of the Parliament.

“Addressing the gaps in the regulatory framework in India is badly required, and the papers produced by CUTS will help spur a good discourse”, said Sharad Joshi. “My worry is that all new regulatory bills provide a regulatory authority, which are going to be manned by retired bureaucrats. It appears that the bills are being drafted to find jobs for civil servants after their superannuation, rather than addressing the core concerns of the law”, he added. Marxist MP, Manoj Bhattacharya, said: “Increasingly, we are having more non-regulated sectors in India, while the imperative is to create and place sound regulators in the best interest of the people”. He felt that the government is inclined towards a neo-liberal approach to economic management, which was not desirable.

Participating in the discussion, Robert Kharshing expressed concern over the growing inequality in the country – a failure of the delivery system of the government.

It was decided that CUTS would draw up calendar for the year 2006 and organise meetings of the PARFORE in New Delhi, on Wednesdays during the Parliamentary sessions.

SECOND MEETING

De-briefing of the Hong Kong Ministerial

New Delhi, India, December 21, 2005

The second meeting of PARFORE was held in New Delhi in the wake of the 6th WTO Hong Kong Ministerial Conference. A general opinion of the participants was that Hong Kong WTO Ministerial was a success, as a second failure after the Cancun fiasco would have been disastrous for the multilateral trading system, and affected the developing world adversely.

“India through its liberalisation is moving forward. Our average tariffs came down to 20 percent. However, it is feared that this autonomous liberalisation will weaken our negotiating position in the WTO”, observed Yashwant Sinha.

Speaking at the Forum, Dr P C Alexander expressed fears that DFQF to LDCs was another cause for concern.

“The success of Hong Kong Ministerial provides an opportunity to make the final jump towards the successful conclusion of the Doha Round”, said Sharad Joshi. “Our civil servants are better prepared, but we need to do our homework very carefully, particularly in tariff negotiations. They have to be very vigilant because modalities are to be negotiated in the coming months. The devil is in the details”, observed Joshi.

Many members felt that the Forum should also discuss international environment agreements, of which there is scarce understanding among Parliamentarians and policy makers. Former Environment Minister, Prof. Saifuddin Soz seconded the proposal. “In future, Kyoto Protocol will become another Uruguay Round, and we will be caught unaware”, said Suresh Prabhu.

MV Rajasekharan, expressed concern on the plight of tea and coffee sectors being hit by global competition. Other members who participated in the meeting included Suresh Prabhu, Manoj Bhattacharya, Sharad Anantrao Joshi, Prof. Saifuddin Soz and E M Sudarshana Natchiappan.

THIRD MEETING

Amendment to the Competition Act 2002

New Delhi, India, May 17, 2006

CUTS organised the third PARFORE meeting at the India International Centre, New Delhi, to discuss pertinent aspects related to the proposed Amendment to the Competition Act 2002.

At the meeting, there was unanimity across various members on the need to avoid a proliferation of Appellate Tribunals. They were of the view that the Competition Appellate Tribunal should also be the appellate tribunal for all sectoral regulators.

“There should be only one Appellate Body covering all sector regulators instead of a multiplicity of Sectoral Appellate Bodies to hear appeals against the orders of their respective sectoral regulators”, said Dr P C Alexander.

The meeting observed that there has often been an overlap between the functions performed by various regulatory agencies; hence setting up of an appellate body for each regulatory agency can lead to forum shopping in similar cases and possibility of divergent decisions.

The meeting also felt that the Competition Commission of India (CCI) should consist of a Chairperson and not more than six members as proposed in the Amendment Bill. However, there should be a provision for appointment of part time members, who could be appointed due to their expertise on a case to case basis. The members felt that since this practice was being followed in many countries and also by Telecom Regulatory Authority of India (TRAI), it would enable expeditious disposal of cases in India as well.

Stressing on the responsibilities of the members of CCI, Sharad Joshi, said that every Bill creates an authority but the final Act does not lay down proper guidelines for carrying out the work. This should not be repeated in the case of the Competition Amendment Bill especially since part time professionals are not currently envisaged. The work outline should be clearly defined and allocated for speedier results.

There was a consensus on the issue of reducing the age limit of Chairperson and other members to less than 65 years. "It has been observed that most of the Authorities so created become parking slots for retired bureaucrats. This should not happen in CCI. Hence, every effort should be made to restrict the age limit to less than 65", said Jayaben Thakkar, the BJP MP.

It was felt that there was a need to overhaul the entire system of regulation. The purpose of any Act is to protect the interest of the public from economic monopoly and this must always be kept in mind while formulating any law.

On the need to improve the supervisory role of Parliament, the Forum was of the view that a Parliamentary Standing Committee on Competition and Regulation should be constituted. The Committee should call all the regulatory authorities and CCI for a hearing and submit its Report to the Parliament.

Among others, Suresh Prabhu, Dinesh Trivedi, N N Krishandas and representatives from consumer and civil society organisations (CSOs) were present in the meeting.

FOURTH MEETING

Suspension of Doha Talks – Reasons, Possible After Effects & Implications for India

New Delhi, India, August 21, 2006

The fourth meeting of PARFORE was organised in New Delhi, to discuss issues related to Doha Round of trade negotiations. 'Suspension of Doha Talks – Reasons, Possible After effects & Implications for India' was the specific topic for discussion.

Among the noted Parliamentarians present in the meeting were Yashwant Sinha, Suresh Prabhu, Dr P C Alexander and Sharad Joshi. The participants were unanimous that the Government should put in place a well-informed structure of Parliamentarians to influence India's position *vis-à-vis* key issues under negotiations at various international fora. The MPs further suggested that the Government should try to gather the views and opinions expressed in the Parliament before engaging itself into multilateral trade negotiations. For this purpose, a core team of informed MPs cutting across political parties should be formulated to advise the Government on the steps and issues involved in the negotiations.

The Parliamentarians felt that the suspension of Doha Round of negotiations was not a victory for India. It was, in fact, a set back on multilateralism as most of the countries would now go for bilateral agreements.

Endorsing the views expressed by the other Parliamentarians, Yashwant Sinha, said that India must not let Doha Round fail completely. "Let Doha Round come to some conclusion by next year else it will have a dampening effect on all international negotiations. We should leave agriculture aside for the time being and negotiate on other issues, including services, which contributes more than 50 percent to our gross domestic product (GDP)", Sinha said.

Sounding pessimist, Dr P C Alexander said that the developing nations must realise that we would not get anything from the developed world just because development agenda was on the WTO table.

“Stand of the US in multilateral trade negotiations has always been obstinate. We need to take the subsidy item more seriously than we have done till now. Agriculture subsidy by US on commodities and European Union (EU) on dairy and milk products must be given top priority in all future meetings”, Alexander observed.

Citing the example of cotton subsidy in US, Dr Alexander said that subsidy on cotton in US was almost equal to the price of cotton and this was the reason that the American farmers could undersell and Indian farmers have suffered badly because of cheap import of cotton.

Sharad Joshi said that it was in India’s interest that it does not allow the talks to collapse. He suggested that India should use the Marakesh Agreement to make US and EU bring down subsidies.

In his address, Pradeep S Mehta suggested setting up of an International Trade Department in the Ministry of Commerce, Government of India. Earlier, this was suggested by the Standing Committee on Commerce headed by Murli Manohar Joshi though not much had happened on the recommendation. Mehta said that India was entering into a large number of non-multilateral agreements like free trade agreement (FTA) with Sri Lanka, Comprehensive Economic Cooperation Agreement (CECA) with Singapore, including another FTA with Thailand, which is in progress. But the negotiating capacity in the area of trade was limited with the Trade Policy Division of Ministry of Commerce having insufficient staff strength in the face of huge load of work to handle.

FIFTH MEETING

Assessment of the Potential Costs and Benefits of Special Economic Zones in India

New Delhi, India, May 03, 2007

CUTS International organised the fifth meeting of PARFORE at Council for Social Development (CSD), in New Delhi that discussed an important issue entitled ‘Assessment of the Potential Costs and Benefits of Special Economic Zones in India’. Dr P C Alexander chaired the discussion. Initiating the discussion, Pradeep S Mehta introduced the subject and referred to a study on that, recently undertaken by CUTS.

Most participants expressed their views on Special Economic Zones (SEZs) and cautioned that concerns of various stakeholders must be adequately addressed before any land acquisition takes place. Majority of Parliamentarians called for a revamp of SEZs policy to ensure inclusive growth and peace in the country.

Chairing the meet, Dr Alexander remarked that small and medium-sized enterprises (SMEs) should be given enough space in these SEZs as they are generating more employment and tax revenue. He argued that the social impacts of land acquisition should be adequately addressed.

While criticising the large size SEZ with 50 percent (earlier 65 percent) of non-processing area and perpetual ownership of such lands in the hands of developers, Santosh Bagrodia said that it would lead to rebirth of ‘Zamindari’ system in the country. He was opposed to granting large-scale tax benefits to the industrial units established

in SEZs as it could lead to tax revenue loss without giving rise to adequate employment and export generation.

Commenting on the issue, Dinesh Trivedi emphasised that prosperity can take place only when there is peace. There should not be any land grabbing and forceful evacuation of farmers from their lands, not even by the State Government. While supporting the SEZ policy Trivedi advocated for farmers to be made partners in progress.

Rahul Bajaj, Member, Rajya Sabha advocated for a balanced regional development through dispersal of industries across the length and breadth of the country. He said that SMEs be given adequate attention. To avoid the risk of conversion of SEZs into real estate business Bajaj strongly argued for having at least 75 percent, if not 90 percent of the total area of SEZs as processing one.

Sharad Joshi pointed out that though farmers love their land they are ready to sell it in today's changed scenario for their own betterment. Moreover, to protect the interest of the farmers land should be acquired through competitive bidding, Joshi added.

MV Rajasekharan said that food security be given the top most priority as even a miniscule drop in the food production could affect the people. He felt that the SEZ Act in its present form cannot be accepted and should be redrafted to prevent agriculture land being acquired for SEZs. He also referred to Mahatma Gandhi's approach of 'there go my people and I follow them', thus putting the people in the centre of everything that the Government does.

Gireesh Kumar Sanghi, Member, Rajya Sabha, while stressing the need for SEZs in the progress of the country, pointed out that due to SEZs farmers are receiving the right price for their land. He was of the opinion that land should be acquired with consensus, not force.

SIXTH MEETING

Competition and Regulation in India – A Status Report 2007

New Delhi, India, November 22, 2007

CUTS organised the sixth meeting of PARFORE in New Delhi to discuss the outcomes of its study report 'Competition & Regulation in India, 2007' under the project entitled, 'India Competition and Regulation Report' (ICRR).

Important issues which were discussed at length during the meeting included: adoption and implementation of a National Competition Policy; importance of harmonisation of state level and central regulatory agencies during the process of implementation of regulatory reforms; and systemic reforms like selection of regulatory authorities and their functioning needs.

Responding to the recommendations of CUTS' report, Natchaippan, MP, Rajya Sabha suggested that systemic issues could be taken up to the Parliament. He suggested that CUTS can prepare papers on issues especially related to judicial reforms and personnel as well. Natchaippan, being the Chairperson of the Parliamentary Standing Committee, assured to take up such issues personally, which can be presented in the Parliament.

Referring to CUTS' recommendations, Robert Kharshiing said that Parliamentary Selection Committee for regulators should be formed and selection process of members on such committee also should be neutral and fair. For example, he explained the selection committee could comprise the PM and opposition leader for fair selection process of regulators. CUTS recommended that the Regulators should be directly accountable to the Parliament.

Addressing the meeting Pradeep Mehta suggested that as a adoption of XIth Plan document by National Development Council (NDC) is in process, important issues, such as lack of capacity building, improvement in the debt market, large number of public-private-partnership (PPP) projects and contract design or implementation should be addressed. Further highlighting the need for competition policy, Mehta said that although the process is gradual, implementation of competition policy in other countries show substantial increase in their economies, for example, in Australia, competition policy has helped five-six percent growth in its economy.

Apart from media persons from PTI, DD News and Senior journalist Mythili Bhusnurmath, S Deepa from British High Commission, New Delhi participated in the discussion.

SEVENTH MEETING

The Political Economy of Regulation in India – What do we need to do New Delhi, March 31, 2008

This was the seventh PARFORE meeting with a panel discussion on 'The Political Economy of Regulation in India –What do we need to do'. It was organised by CUTS Institute for Regulation & Competition (CIRC), a new initiative of CUTS that focuses on economic and infrastructure regulation, and competition policy and law. The objective of the meeting was to evolve a consensus on implementation of an effective regulatory regime in India.



The panel discussion comprised of distinguished Parliamentarians including: Santosh Bagrodia (Cong), Sharad A Joshi (Ind), Suresh Prabhu (Shiv Sena), and Vallabhbai Kathiriyaa (BJP).

Pradeep S Mehta welcomed the guests and initiated the discussion. Creon Butler, Deputy High Commissioner of UK, delivered the opening address while Nitin Desai, Chairman, Managing Committee, CIRC, moderated the discussion.

The meeting posed the key question: has India not been able to develop a genuine arm's length relationship between the political process and the regulator? The issue of independent regulator needs the centre stage in the discussion which includes the appointment, remuneration, budget etc. The meeting took note of the capacity building of MPs, so that they could exercise their powers as informed representatives of the people.

Interaction with MPs on Select Issues

Parliamentarians often feel starved of research assistance and analytical work for healthy and meaningful debates affecting common people. Given their political and other duties, they sometimes feel constrained in terms of time to read lengthy analysis. Further, many issues under discussion are of such technical nature as to deter MPs from making adequate analysis. Over the years, CUTS has been approached by various on MPs to provide critical inputs on various relevant socio-economic policy issues.

On the Competition Act

- Sanjay Paswan, on reading CUTS' Bill Blow-up on the Competition Bill of India, 2001, notes "when I started reading this six-page excellent document, I could not stop till I finished..." He recalls having got in touch with the head office of CUTS at Jaipur requesting for more information on the subject that was provided and used by him and other MPs during the debate in the Parliament.
- Rahul Bajaj approached CUTS in September 2007 for the Bill Blow-up on the Competition (Amendment) Bill, 2006: *What needs to done?* A detailed response was sent covering the amendments, particularly those relating to overlap with intellectual property rights (IPRs) and sector regulators, constitution of selection committee and its procedures and independence and autonomy of the Commission.
- Similarly, VP Singh, MP (BJP) approached CUTS in 2007 when the Competition Amendment Bill, 2006 was being debated in the Parliament. A set of documents was sent to him to facilitate his interventions in the debate.

Other Issues

- In the year 2002, the then Minister of Information Technology & Communications, decided to take help from CUTS on policy matters. Among others, Secretary General of CUTS suggested that real estate in the custody of the Postal Department should be made use of. This helped the Minister in initiating a policy and he later acknowledged 'that was one of many instances when my interaction with CUTS resulted in concrete outcomes'.
- On another occasion in the recent past, Nitin Desai, former Under Secretary General, UN was delivering a lecture on climate change and Suresh Prabhu was chairing the meeting. Suresh Prabhu requested Pradeep S Mehta to organise a PARFORE meeting on climate change, which CUTS would organise shortly.

Vidhayak Samvaad

Background

Taking inspiration from PARFORE, CUTS initiated a similar forum at the state level called *Vidhayak Samvaad* in Rajasthan, which would not only discuss the economic issues, but also strive to coordinate between the Centre and State. It addresses the basic issues and plays a key role in implementing related policies and programmes aimed towards people's welfare based on thought-provoking discussions at a common platform. Through *Vidhayak Samvaad* CUTS intends to engage MLAs, similar to MPs at PARFORE, to discuss economic issues relevant to the state.

Objectives

The main objectives of the *Vidhayak Samvaad* are to:

- discuss basic and structured policy issues related to the development of the public and the state, such as road reconstruction and safety, electricity, water, population control etc. in addition to economic issues;
- send suggestions and recommendations of the forum to the Central and State Government and advocacy thereof; and
- ensure the participation of common people on issues of public interest.

Forum Creation

It all started with CUTS' long deliberations with subject experts, known political leaders and scientists. In the deliberation period, CUTS received varied opinions and reactions on the issue on which much thought was given before coming to a concrete conclusion. There were individual level discussions with five important MLAs of five important political parties of the State, viz. C P Joshi, Nathu Singh Gurjar, Amra Ram, Jeetmal Khant and Subhash Chandra Sharma. All of them praised CUTS' unique thinking as a purposeful step and learnt the concept of 'PARFORE' with keen interest. It was followed by the preparation of a letter signed by the five MLAs addressed and dispatched to all the MLAs of the state, asking them to become members of the forum. In response, several MLAs sent their consent, while others welcomed the formation of such a forum with open arms.

PHASES OF PROGRESS

First Meeting

The first meeting of the *Vidhayak Samvaad* was organised on April 27, 2007 in the State Assembly premises under the chairmanship of Sumitra Singh, the Honourable Speaker of Rajasthan Legislative Assembly. This meeting discussed two important issues: water and electricity. In order to give the discussion a definite direction and focus, CUTS prepared an analytical 'Issue Note' on the two subjects and sent it to the MLAs in advance, so that they could be better prepared in highlighting the problems associated with these issues.

With the words, "necessity is the mother of invention", Sumitra Singh inaugurated the first informal forum and endorsed that water and electricity are not only the two most essential needs of the people, but also the foundation of development. She



L to R: Pradeep S Mehta, C P Joshi, Sumitra Singh and Nathu Singh Gurjar

praised CUTS for such a unique initiative and called the MLAs to rise above party politics and take up the issues of public interest with utmost seriousness.

In this first meeting of *Vidhayak Samvaad*, along with Sumitra Singh, 25 MLAs actively participated, which included: Dr C P Joshi, Congress; Dr Nathu Singh Gurjar, BJP; Surendra Pareek, BPJ; Brij Kishore Sharma, Congress; Devi Singh Bhati, Rajasthan *Samajik Nyay Manch* (RSNM); Rao Rajendra Singh, BJP; Mohan Lal Gupta, BJP; Rajkumari Sharma, BJP; Bharat Singh, Congress; Hari Mohan Sharma, Congress; Harlal Singh Kharra, Independent; Hemraj, Independent; Heera Lal, Independent; Kalu Ram Yadav, Independent; Mohan Meghwal, BJP; Madan Rathore, BJP; Punji Lal Parmar, Congress; Raiyajji Meena, Congress; Ram Narayan, Congress; Surya Kant Vyas, BJP; Vijay Bansal, Indian National Lok Dal (INLD). Some useful suggestions were provided by the MLAs on the issues, which were developed into a draft report and sent to all the MLAs of the state for their perusal.

MAIN SUGGESTIONS FROM THE FIRST MEETING

Water

- **Establishment of Water Regulation Commission:** It was suggested that instead of temporary arrangement of water, there is a need for permanent solution. There should be strict implementation of laws prohibiting water exploitation. It was felt that there is a need for a mechanism to control the wastage of water along with its proper consumption. For this, the establishment of the Water Regulation Commission would be necessary, which could control the overall management of water, including control over its sources and balanced development of consumption.
- **Environment and Health:** It was felt that there is a need for giving proper attention towards the conservation of environment along with the promotion of residential constructions in rural and urban areas. The Government should prepare water policies keeping in mind the state's geographical regions. Besides, it should pay attention to the standards of water quality that are good for human health.
- **Sprinklers and Drip System:** The farmers need to be encouraged to adopt sprinkler and drip system for the irrigation purposes for which they could be paid subsidy.

- **Encroachment:** There is an urgent need for strict action against the encroachments in the water catchments area.
- **Misuse:** The maps for constructing building in residential areas need to be passed by the concerned department only when the applicants furnish information regarding the proper arrangement for water conservation.

Electricity

- **Usage:** There is a need for control over excessive use of electricity.
- **Theft and Low Voltage:** There is a need for a concrete policy on electricity theft and low voltage.
- **Projects:** The Government needs to keep in mind the geographical set up of the state while preparing projects on electricity.

Common Suggestions

- **Establishment of All Party Committee:** The MLAs felt the need for the establishment of an all party committee to tackle the issues of public interest like water and electricity. This committee should develop policies keeping the financial resources in mind.
- **Price Fixation:** MLAs were of the opinion that reasonable prices for services like water and electricity should be fixed, so that the consumers could value the importance of these services, while the Government would be able to check the misuse of water and electricity in addition to the wrong use of the subsidy.
- **Awareness:** For better and judicious use of water and electricity, there is a strong need for generating awareness among the people. In this regard, active participation of private institutions and NGOs can help spread awareness on the issues.

Second Meeting

Under the chairmanship of Sumitra Singh, the second meeting of the *Vidhayak Samvaad* was held in the State Assembly premises on September 18, 2007. A total of 21 MLAs took active part in this meeting, in which they reviewed the suggestions that were put forward on the issues of water and electricity in the first meeting of April 2007, including the implementation aspects of those suggestions.

The dignitaries who attended the second meeting were: Sumitra Singh (Speaker), Ram Narayan Bishnoi (Deputy-Speaker), Dr CP Joshi, Dr Nathu Singh Gurjar, Bharat Singh, Devi Singh Bhati, Harlal Singh Kharra, Rakesh Meghwal, Madan Rathore, Ramnarayan Meena, Amra Ram, Shankar Singh Rajpurohit, Jogeshwar Garg, Banne Singh Rathore, Joga Ram Patel, Virendra Beniwal, Murarilal Meena, Suresh Meena, Sanyam Lodha and Mohamamd Mahir Azad.



MLAs in discussion at the 2nd Vidhayak Samvaad

Decisions Taken in the Second Meeting

- **Establishment of an All Party Committee:** It was decided that a 15-member All Party Committee would be established under the chairmanship of Sumitra Singh. This committee, after discussing every aspect of important issues related to the public, would provide suggestions to the Government to make the necessary changes in the policies, rules and regulations towards a better solution to the problems. Issues related to water and electricity are also included in it. Sumitra Singh will provide her valuable direction in the formation of this committee.
- **Regulatory Commission:** The Annual Report of the Rajasthan Electricity Regulation Commission will be placed before the State Assembly for discussion. An All Party Committee will initiate a debate for the formation of a Water Regulation Commission.
- **State Water Policy:** MLAs would initiate advocacy towards the announcement of a Water Policy for the state, so that the water management aimed to serve the public could be realised soon.
- **Participation of NGOs:** MLAs would write request letters to the MPs for increasing the role of NGOs in direct participation in policy making, including the implementation of their suggestions.
- **Support and Recommendations:** MLAs would give proactive support to the issues and suggestion raised by CUTC and would press the Government with their recommendations in this regard.

Implementation of the Decisions

All the important points discussed and decisions taken in the second meeting were drafted into a document and sent to all the MLAs and the honourable Speaker was requested to help establish an All Party Committee. Taking an immediate step, Sumitra Singh has created a 15-member All Party Committee under the chairmanship of Dr Nathu Singh Gurjar. The other members of this committee included: Shanti Lal Chaplot, Shiv Charan Mathur, Hari Mohan Sharma, Devi Singh Bhati, Rao Rajendra Singh, Dr Chandra Shekhar Baid, Surendra Goyal, Joga Ram Patel, Ram Kishore Meena, Juber Khan, Mohammad Mahir Azad, Virendra Beniwal, Madan Rathore and Suresh Chaudhary.

Future Plan

- Consultation with coordinators for holding meetings of the All Party Committee for proper implementation of the decisions taken on the water and electricity issues;
- Presentation of issues of public importance with facts and figures before the All Party Committee from time to time;
- Ensuring the opinion and participation of common people on the decisions, suggestion and policy making efforts taken by the All Party Committee;
- Creating coordination between the Centre and State Governments on the policy making and its recommendations on basic issues; and
- Working to get the policies and decisions find a place in the political manifestos of the different political parties, so that a 'win-win' situation for the implementation of the policies could be realised.



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