

Issues for Parliamentarians

To facilitate informed discussions among Indian Parliamentarians on key economic policy issues

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Parliamentarians' Forum on Economic Policy Issues (PAR-FORE)

The report and accepted recommendations should be placed in the public domain to enable all stakeholders to benefit from such a seminal work on the subject and a more informed decision making is facilitated, so that the intent of the government to curb corruption is converted into reality.

Too many vested interests, particularly in the hydrocarbons sector, status quoism, inertia and lethargy are blocking the progress in making the report public and turning its recommendations into policy.

Why is the Government afraid of releasing the Chawla Committee Report on Natural Resources?

Following a spate of corruption scandals in the resources sector, the Government of India established the Committee on Allocation of Natural Resources (Ashok Chawla Committee named after its chairman) on January 31, 2011 to find ways of how to allocate the natural resources to seekers through a transparent and democratic process.

The report, submitted in May 2011, was expected to guide the government to allocate natural resources in a more transparent, efficient and sustainable manner. The report, however, has not been made public though its contents have been extensively debated across ministries, industry associations, businesses, economists and other experts. It was also raised in the Parliament on August 09, 2012 when the coalgate issues were being discussed.

The report has been accepted by a Group of Ministers (GoM) headed by the Minister of Finance though details of the same have also not been made public. Reportedly, 69 out of 81 recommendations have been accepted (with some modifications) by the GoM. However, 12 contentious recommendations still remain unresolved. Expectedly, these relate to the ministries of coal, petroleum & natural gas and mines.

This Issue Note looks at various issues in each of the sectors and the major recommendations of the Committee. The report and accepted recommendations of the Government of India should be placed in the public domain to enable all stakeholders to benefit from such a seminal work on the subject and a more informed decision making is facilitated, so that the intent of the government to curb corruption is converted into reality.

Background

Allocation of natural resources has come under the scanner in the country over the last few years and triggered an intense debate in the wake of disclosures highlighting the prevailing opaque processes, dubious pricing and sub optimal utilisation of such resources exposing corrupt practices. The Ashok Chawla Committee was set up on the recommendations of a GoM constituted to consider measures that could be taken by the government to tackle corruption. The Committee was set up on January 31, 2011, at the peak of the 2G scam expose and prior to the arrest of the then Communication Minister for illegally allocating 2G spectrum causing huge loss to the exchequer and it submitted its report in May 2011. The objective was to help the government allocate natural resources in a more transparent, efficient and sustainable manner.

This attempt at promoting seminal work towards a policy on the allocation of natural resources was hailed unanimously and it was perceived as an eminent step towards tackling the malaise of corruption. It was expected to provide a

way forward to the host of burning national level issues around it, primarily: allocation of spectrum referred to above; amendment of the Coal Mines Nationalisation Act pending for over a decade specifically and the new Mines and Minerals (Development and Regulation) Act (MMDR Act) generally; creation of a Petroleum National Data Repository being discussed for over two decades; market determination of prices for natural gas; improving the process over the allocation of forests in India for conjunctive use; addressing the multiplicity of principles, rules and institutions for usage of water (re-drafting the River Boards Act 1956 and enabling River Board Authorities); rational framework for management and allocation of government land; etc.

The underlying recommendation of the Committee is the use of market-determined processes like auctions for allocation of scarce natural resources with well argued deviations in specific cases. The recommendations of the Committee have echoed in the recent Supreme Court (SC) decision on the 2G matter, which has brought the report under sharper and relevant focus.

Coal

At the time of independence, the coal industry was predominantly in private hands. Post independence, the government, in order to meet the growing power needs, legislated the Coal Mines (Nationalisation) Act, 1973 and this remains the main law that governs the mining of coal in India along with certain sections of the MMDR Act 1957, which governs mining more generally. Unlike other minerals, coal is a Union subject.

The coal industry is governed by two kinds of allotment: the allotment of mines and the allotment of coal.

The former gives an entity the right to set up a coal mine and extract coal for a designated end-use but the latter (allotment of coal) is done after mining is sold, allocated or granted to end users.

Select Issues	Select Recommendations in Brief
<p>Adequate statistics regarding annual production of coal but difficult to determine how much coal is allocated through various processes every year. Not entirely clear what principles are used to make allocative decisions – the minutes of the Standing Linkage Committee (Long Term) – SLC (LT) inadequate</p> <p>Only 15 percent of the allotted captive mines are in production and producing four percent of their peak output</p> <p>Many blocks allotted perceived to be inferior to the one mined by Coal India – these are often in remote areas and riddled with land acquisition problems, environmental clearances, etc. Any excess coal mined has to be sold to CIL at a notified price which is below the market price</p> <p>Quantity allocated through e-auctions is often lower than the quantity offered despite a large demand</p> <p>Captive mining and e-auctions are a move towards market based allocation but are small measures and have shortcomings arising out of lack of suppliers; limit on the number of buyers and lack of a price discovery mechanism. No coal transaction platform</p> <p>The amount of coal that can be extracted economically given the technological and feasibility constraints</p>	<p>Standardise format of minutes for all SLC (TL) meetings on allocation specifically recording justifications for acceptance and rejection of applications</p> <p>Imported coal could be offered through a coal transaction platform. Allow independent mining firms to take part in auctions for captive blocs with suitably notified groups of end users</p> <p>Improve the regularity of the quantity and predictability of location of e-auction coal to allow development of associated logistics. Allow existing state-owned allottees of captive blocs to sell to registered and approved end users through the platform. Surplus coal from captive mines could be sold to the platform for onward sale to end users. Expedite clearance procedures and consider bidding out blocks for which clearances have been pre-obtained</p> <p>Create a platform for transaction of coal – can be owned by CIL to meet the current regulatory needs. The platform to register all approved end users such that sales to any registered user would automatically satisfy the end use requirement</p> <p>Conduct a study on optimal rate of extraction given the available technology and reserves to examine whether it is prudent to increase coal imports in the short run to preserve domestic options</p>

The governance structure is unique where the Ministry of Coal (MoC) controls it through state-owned enterprises: Coal India Limited (CIL) and Singareni Collieries Company Limited (SCCL). There are four ways in which parties can obtain coal: i) allocations through linkage/screening committees; ii) e-auctions; iii) captive mines; and iv) smaller allocations through state governments.

While the country needs more coal, there exists a gap between production and consumption. Production is limited because of administrative and incentive problems.

Minerals

The Union Ministry of Mines is responsible for survey and exploration of all minerals, other than natural gases, petroleum and atomic minerals; for mining and metallurgy of non-ferrous metals and for administration of the MMDR Act, 1957. In performance of its functions, the Ministry is assisted by the Geological Survey of India (GSI) and Indian Bureau of Mines.

The state governments are the owners of onshore minerals though the Constitution mandates the powers to the Parliament to regulate in the matter through legislation. In case of offshore minerals, the ownership vests exclusively in the Union Government.

Currently, there are three kinds of mineral concessions, namely, the Reconnaissance Permit (RP), Prospecting Licence (PL) and Mining Licence (ML). These three types of concessions are designed for specific purposes, based on the awareness of the state government on the mineralisation in an area. After the enunciation of the National Mineral Policy, 2008, the level of information is described in terms of the United Nations Framework Classification (UNFC), which provides a code for the purpose.

Indian mineral production has struggled to catch up with the kind of demand that the recent spurt in economic growth has created. In cases like iron ore, Indian production has helped sustain economic growth in other countries. Yet

Select Issues	Select Recommendations in Brief
<p>The draft MMDR Act appears to adhere to a competitively bid process for allocation of mineral concessions, yet in practice, it forecloses such an option in many cases</p> <p>The Ministry of Mines concludes that auctions may not be practicable for the huge number of small deposits though it may be possible for large deposits and within them, better suited for large surfacial deposits</p> <p>Aspirations of state governments to develop local industry based on availability of natural resources should consider whether the state benefits from freely surrendering what could be significant auction revenues</p> <p>The current system for sharing benefits has certain limitations and an alternative structure, including specific portions to be earmarked for transfer to non-lapsable funds should be considered. The method of fixation of rates of royalty should move forward decisively on the basis of <i>ad valorem</i> rates</p> <p>Sustainability issues in mining revolve around depletion of forest cover and loss of biodiversity; water pollution and depletion; air pollution and pollution from non-closure of mines</p>	<p>A scheme be evolved for reform linked capacity building of State mining departments to develop their capabilities for analysing data and offering suitable prospects for competitive award</p> <p>The GSI should expeditiously complete its geophysical and geochemical mapping (with the help of outsourcing contracts) to develop potential areas for prospecting that can be competitively awarded</p> <p>In the proposed MMDR Act, sections on bidding should be capable of accommodating a variety of policies and processes to allow states to move towards clear and appropriate bidding processes. Further, the proposed MMDR Act should not preclude forms of allocation that are open, transparent and competitive</p> <p>The incidence and structure of royalty should be through a transparent process so as to represent a fair value for the mineral and a significant portion of the revenue be used to ensure all round development of mineral bearing areas</p> <p>Regulations related to mine closure should pay attention to the rehabilitation of the environment and support for workers and communities who were dependent on mining activity for sustenance</p>

mineral bearing areas in the country remain underdeveloped. Balancing the need to discover minerals and provide for an extraction regime that shares the revenue fairly between the discoverer, the state and the affected people along with mitigating its social, intergenerational and environment costs is needed.

Petroleum

Ever since oil was struck off the Maharashtra coast in 1960s and the first well sunk at Bombay High in 1974, it has been the country's hope that domestic supplies will reduce our dependence on imported oil – yet this dependence has only increased over time.

The notion of allocation in petroleum can be extended to both: allocation of blocks for exploration and production and to the allocation of the product. The Committee focused on the issue of allocation of blocks alone.

The allocation process under the New Exploration Licencing Policy (NELP) is seen as a benchmark for transparency, yet it can not be deduced that it has also resulted in efficiency and sustainability partly due to the post award system not being as transparent as the award itself.

Select Issues	Select Recommendations in Brief
<p>The NELP adopted since 1999 provides a level playing field to private investors as applicable to National Oil Companies (NOCs). It is critical to be able to monitor the extent of investment during the exploration phase (compliance of bid conditions) and production (appropriate revenue sharing). The Management Committee (MC) performs these functions. An Open Acreage Licencing Policy (OALP) is under consideration which requires creation of a National Data Repository (NDR) which has been on the cards for long. The post bid, the process and staffing of the MC and regulatory issues have transparency concerns</p> <p>Block wise data suggests inadequate participation and the NELP cannot be said to have succeeded in attracting foreign investment</p>	<p>Expedite creation of an NDR by linking databases of NOCs and other private firms and structure information available with DGH as a common database. An OALP be allowed to operate this database. Once a request for a block is received, it would be offered through the normal tender process without any special provisions for the identifying bidder</p> <p>Increase focus on mid-sized firms as part of the marketing process</p> <p>Directorate General of Hydrocarbons be reconstituted into a technical office for contract administration with transparent procedures such as more public disclosures of matters relating to investment, audit and exploration and placing documents approved by the MC in public domain</p> <p>Establish an upstream regulator which (alongwith the technical office) should not have staff on deputation from regulated companies</p>

Natural Gas

Gas, besides having lower greenhouse gas emission than other fuels, is likely to outlast petroleum supplies. Transmission pipelines are being authorised through auctioning and negotiations are progressing on the Turkmenistan-Afghanistan-Pakistan-India (TAPI) pipeline.

In natural gas there are two kinds of allotments: of blocks and of the gas itself. The former gives an entity the right to extract and market but the latter is done post production of gas where it is allocated to specific end-users (fertiliser, power, etc).

Gas will be a critical natural resource for India's development needs primarily for its energy security but also for food security. It is imperative that India explores its basins for available gas and uses the same effectively to maximise public interest.

Select Issues	Select Recommendations in Brief
<p>The gas sector in India is in a state of flux. After a long history of purely administered pricing and allocations, substantive freedom has been provided to gas producers to determine prices but it is being debated as to how to make allocation and pricing more transparent in the light of power and fertiliser sectors accounting for nearly 75 percent of the total gas production</p> <p>The stated objective of pooling gas prices is to prevent price shocks to consumers. Would it be possible to pool prices and create sectoral pools? Are efforts needed to develop gas markets?</p>	<p>The bias in favour of fertiliser (urea) may be corrected through extension of the nutrient based subsidy scheme as announced in the budget for 2011-12. A time horizon of 3-5 years can be earmarked for this purpose. Similarly for the power sector the peak and energy deficits should be met in full but the bidders should be limited to those willing to subject themselves to regulated tariffs</p> <p>The allocation and pricing recommendations should be applicable to future discoveries and contracts of gas. A competitive gas market should be ensured by development of a natural gas trading platform</p> <p>The most critical need in the medium term is rapid development of a natural gas grid and gas distribution network in a fully transparent manner</p> <p>As gas markets become increasingly competitive, the government and regulatory agencies should withdraw from their roles in deciding price and allocation</p> <p>Shale gas exploration policy should be drafted only after understanding the potential environmental impacts and conducting a public consultation process</p>

Spectrum

The Indian telecommunications sector has witnessed much growth and turmoil in the recent past. The number of mobile subscribers has gone up from 0.3 million in the first quarter of 1997 to 688 million (though the numbers might be much less as many subscribers keep two or more sim cards) in September 2010. Mobile tariffs have plummeted with attendant declining average revenue per user (ARPU).

The fact that Unified Access Service (UAS) licences were issued in 2007 and 2008 at an entry fee fixed in 2001 and the auction of 3G licences in May 2010 fetched substantial revenues for the exchequer, has underlined the need to separate the rights to use spectrum from the service licences and move to a more market related allocation of spectrum.

The Telecom Regulatory Authority of India (TRAI) is an independent regulator established in 1997 by the Government of India to regulate the telecommunications business with authority to make recommendations *suo moto* or on a request from a licencor on specified matters.

Transitioning to market-related processes for allocation of spectrum and development of a liberal regime has been recommended with a more robust regime for spectrum regulation including spectrum legislation.

Select Issues	Select Recommendations in Brief
<p>A study of global practices revealed that allocation of spectrum falls in one of the three categories: administrative allocation, allocation on the basis of a 'beauty contest' and market-related processes including auctions</p> <p>In line with the recommendations of TRAI, spectrum should be de-linked from licences and a unified licence covering all telecom services should be evolved</p> <p>Creation of a spectrum market for access services by liberalising merger and acquisition (M&A) guidelines and by permitting spectrum trading are being discussed</p> <p>Spectrum is a scarce resource and should be utilised optimally, effectively and efficiently. For this, a mechanism to include objective and measurable criteria backed by a rigorous mechanism is being discussed</p>	<p>Spectrum for telecom access services should be made available through suitable market-related processes</p> <p>All future licences should be unified licences and spectrum should be delinked from licences</p> <p>Usage of spectrum should provide for incentive/disincentive measures including rollout obligations with strict oversight</p> <p>There is a need for more liberal M&A guidelines keeping a minimum number of service providers to ensure competition allowing scope for spectrum sharing and spectrum trading</p> <p>A comprehensive and integrated legislative framework for spectrum management should be in place for optimal and efficient use of spectrum resources</p>

Forests

Forests are on the Concurrent list of the Seventh Schedule to the Constitution of India and the main Union legislation regulating and promoting its protection is the Forest (Conservation) Act, 1980. Section 2 of the Act prohibits state governments to permit use of forest land for non-forest purposes or de-reserve reserved forest land without prior approval of the Union Government. The Ministry of Environment & Forests (MoEF) is the nodal Union Ministry.

In 1995, reacting to a petition, the SC, *inter alia*, extended the definition of forests to include application of the Act to land that could be described as a forest in the dictionary sense. In the same decision, the SC also removed the misconception that only if forest land was being diverted to commercial use would prior approval be required from the Union Government. The SC also imposed a complete ban on felling of trees except under certain circumstances. Later, the SC restrained the Union Government from permitting regularisation of any encroachments and set up a Central Empowered Committee.

Therefore, although forests in India continue to remain a major source of timber, its use for other purposes such as mining, laying of pipe/transmission lines, roads etc. are potentially more contentious.

The Committee feels that action should as well-informed as possible with an effort not to foreclose future options.

Select Issues	Select Recommendations in Brief
<p>Transparency and delays in forest clearances forms the major issue for discussion</p> <p>Payments for diversion of forest land to non-forest purposes attract the Net Present Value (NPV) of the forests which is often problematic</p> <p>Utilisation of forest land for non-forest purposes is being done on case to case basis under the extant guidelines</p>	<p>A scheme should be evolved for reform linked capacity building of state forest departments to improve accessibility of information, predictability and reducing the time taken for clearances. An <i>ab initio</i> classification of forests based on ecological value should be open for discussion with stakeholders by making use of the website of MoEF. Minutes of State Advisory Group (SAG) should be available thereon</p> <p>Amounts paid under various mandates should be project-wise. Re-adjusting payments under NPV should be considered as the forest land has value over and above the value of land itself</p> <p>Permission of the SC should be sought to evolve guidelines for de-reservation of land currently classified as forest, which is not and cannot be re-claimed as forest</p>

Land

India's accelerated pace of urbanisation is being exacerbated by the rural-urban migration. The Union government departments and organisations are the largest owner of landed property. Both the Centre and state governments can make laws on the matter. There is a federal law: Land Acquisition Act, 1894. The Railways and the Highways authorities have separate laws for acquisition of land.

Land resources allocation policies and procedures fall under two categories: a) land alienation by the Union government organisations/bodies, and b) land alienation or

Select Issues	Select Recommendations in Brief
<p>Each Ministry/Department follows a policy which has been approved internally – there is a lack of detailed and credible inventory</p> <p>The price discovery of land for optimum realisation is difficult.</p> <p>There is a felt need for a high level of oversight body and land exchange Management Committee</p> <p>Long term leases are difficult to regain and should be avoided</p> <p>Lack of transparency and clarity in policy for land use</p>	<p>To ensure optimum realisation of value, an institutional framework for a centralised and transparent data bank evidencing ownership, land use, utilisation, etc. should be developed in addition to satellite images and GIS mapping</p> <p>Needed to supervise exchange of land from one Union department to another</p> <p>It is preferable to have a policy of outright sale of land</p> <p>There should be transparency and clarity in form of guidelines or policy on all land-related matters with transparent competitive bidding or e-auction</p>

allotment by the Housing boards or Development authorities under state governments. The Committee has restricted its scope to the Union government.

The land sector is critical for the economy considering the high stakes involved. For sub optimal use of land, it is imperative that a transparent and uniform policy is framed.

Water

Water is a state subject in the Constitution but is subject to Union intervention on issues such as inter-state rivers and inter-state water disputes. The Union also legislates about shipping and navigation on national waterways, on tidal and territorial waters and ports. The Union enacted the River Boards Act, 1956 and the Inter-State River Water Disputes Act, 1956. A National Water Development Agency (NWDA) was constituted in 1982 to carry out water balance and to study optimisation of water resources. The National Water Resources Council (NWRC), created in 1987, is assigned drinking water supply needs, irrigation, hydro power, navigation and industrial and other uses.

The problems related to irregular and uncertain water supply in urban areas, rural areas lapsing frequently from ‘covered’ to ‘uncovered’ status, overuse and depletion of ground water, inefficient use in big and medium irrigation projects and persistence of water-related conflicts indicate that allocation of water-related issues require to be addressed urgently.

The report discusses allocation of water in the context of agriculture and irrigation and reforms needed to rationalise allocations of groundwater.

For over six decades of post-Independence existence, the issues of holistic water management have not engaged the attention of the planners at the national and state levels. This has led to the prospect of a water crisis.

Select Issues	Select Recommendations in Brief
<p>Allocation of water through irrigation systems is only 68 percent of the targeted potential and there is a gap between the potential created and potential realised. This is mainly due to inefficient management</p> <p>The share of groundwater in irrigation is about 70 percent out of which the share of tubewells alone is 40 percent leading to the stage of groundwater anarchy</p> <p>Absence of basin level planning has led to mismatches between total water entitlements of an area and water availability in that area</p> <p>Multiplicity of legislations has blurred clear ownership on the subject</p>	<p>There should be a comprehensive national legislation on water</p> <p>The River Boards Act 1956 should be amended to include groundwater and the Boards should be assigned a managerial role in management of water resources</p> <p>Aquifer level mapping, hydrogeological studies and pilot projects should be initiated in different settings</p> <p>The focus on command area management should be restored and merger of command area development programmes with Accelerated Irrigation Benefit Programme scheme be contemplated</p>

Overarching Issues

The Committee has also made recommendations on some overarching issues:

- Policy documents should be converted into suitably conforming rules. Such rules, being justiciable, are more transparent instruments for governing a sector.
- A few broad institutional ground rules for regulators such as distancing the administrative machinery for appointment and removal of regulators, stable budget, adequate staff, appropriate remuneration, ensuring technical capacity, etc. have been recommended.
- Powers to licence, determine statutory levies should rest with the Sovereign. The regulator may make recommendations after a consultative process.
- Where deemed necessary, as a result of legacy issues, effort should be made to ‘level the field.’ Moving to a new licencing regime and allowing existing licencees the opportunity to move voluntarily, after paying a special levy.

Box 1: SC's Judgment on the Presidential Reference in Allocation of Natural Resources

The February 02, 2012 verdict on the 2G issue cancelled 122 telecom licences awarded in 2008 and held that the government should have adopted the policy of auction instead of a flawed first-come, first-served policy. On April 12, 2012 the government moved a presidential reference querying, *inter alia*, whether auction was the only permissible method for disposal of all natural resources across all sectors and in all circumstances and what was the possible scope for interference by courts with policy making by the government.

A constitutional Bench of the Supreme Court headed by the Chief Justice ruled on September 27, 2012 that:

- The Constitution does not mandate auction-only policy for allocation of natural resources;
- The 2G case order of February 02, 2012 on auction-only policy cannot be applied to other cases;
- Revenue maximisation is not the object of policy of allocation of natural resources;
- It respects the mandate and wisdom of the executive in such matters; and
- All allocations of natural resources have to be guided by common good and that courts can strike down any arbitrary allocation.

As far as the Chawla Committee is concerned, the Bench noted that it is pending acceptance by the government and it would be inappropriate for it to place judicial reliance on it.

- Wherever possible, the government should embed necessary clearances within a special purpose vehicle, before bidding to reduce time taken and to generate better revenue.
- Transparent mechanisms of allocation of natural resources need to be supported by investment in complementary physical and social infrastructure for efficiency and sustainability.

Conclusion

The common threads across the recommendations pertain to merits of transparency, public disclosure, consultation, capacity building, competitive bidding, and expeditious clearances. Ingraining such attributes in the process of allocation of natural resources would go a long way to curb corruption.

It has been reported in the media that out of 81 recommendations made by the Committee, 69 have been accepted by the GoM as clarified by the government before the Supreme Court on August 30, 2012, 11 are under consideration and that one has not been accepted. The government, therefore, appears frozen on the outcome of the report of the Committee. Too many vested interests, particularly in the hydrocarbons sector, *status quoism*, inertia and lethargy are blocking the progress in making the report public and turning its recommendations into policy.

ISSUES FOR DISCUSSION

The Chawla Committee, set up at the peak of 2G scam, was hailed unanimously as an eminent step towards tacking the malaise of corruption.

- ◆ Why, then, is the report being kept under wraps when transparency is being cited as a cornerstone by the Government in policy-making and as a duty under the RTI Act?
- ◆ Subsequent to the 2G scam, natural resources such as coal and gas have also hogged the limelight. Is the Government not ignoring the cries of crony capitalism?

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