

**RESPONSE TO QUESTIONNAIRE FROM THE COMMISSION ON CENTRE - STATE RELATIONS, GOVERNMENT OF INDIA**

**COMMUNIST PARTY OF INDIA (MARXIST)**

**Conceptual framework**

1.1 What are your views on the overall framework and scheme of relations between the Centre and the States as contained in the Constitution of India and as they have evolved over time?

1.2 The framers of the Indian Constitution envisaged a unique scheme of Centre-State relations in which there is predominance of powers with the Centre. In the wake of developments that have taken place since then, the growing challenges and the emerging opportunities, please give your views whether any changes are called for in that scheme. If so, please suggest appropriate changes.

**Response 1.1 and 1.2**

*The Indian Constitution is federal in form but tends to be unitary in character. The federal principle gets circumscribed by the dominant powers vested with the Centre in the political, legislative, administrative and financial spheres. Strengthening the federal principle is necessary for meeting the aspirations of the people who are governed through state governments and for strengthening the unity of India. The “unity in diversity” requires a federal system which can accommodate the rich diversity and weld the variegated social structure into a strong Union.*

*The CPI(M) has always maintained that it is wrong to equate the unity of India with a strong Centre alone. A strong Centre requires strong states too. While the Central government has the responsibility for the defence of the country, its territorial integrity, maintaining overall economic development, conducting foreign policy and directing international relations and economic ties with other countries, it is equally important to devolve sufficient powers and autonomy to the states in their respective spheres. To counter the divisive forces which constantly arise and weaken people’s unity, provision of autonomy and equal powers to the states is one essential component to counter such forces and strengthen the Indian Union.*

*Over the decades since independence, the trend towards centralisation of powers in the hands of the Centre has proceeded in various ways. So it should be examined what are the provisions of the Constitution which have contributed to the trend of over-centralisation and what Constitutional reforms and measures are required to restructure Centre-State relations to make the system more federal in character. At the same time, there have been practices and the Centre’s working of the political, administrative and financial systems which have eroded and encroached upon the powers and the rights of the states. The terms of reference of the present Commission on Centre-State Relations have not addressed these aspects. The Communist Party of India (Marxist) expects the Commission to examine how to restore the balance between the Centre and the states.*

*Such an examination would show that there are glaring instances of the use of powers concentrated in the hands of Central government which militate against both democracy and the federal principle. The repeated use by the Centre of the draconian provisions of Article 356 of the Constitution to dismiss elected state governments and dissolve the elected state assemblies has been a major instrument for subverting the federal system and the autonomy of states. The constituents enjoy little power which makes them dependent on the Central government, restricting their development. This imbalance between the Central government and the states which is harmful for parliamentary democracy and the federal principle must be redressed.*

*The Constitution gives much of the development responsibilities to the States, and few of the sources of revenue. Recognizing the disproportionate development burden placed on states and the limitations they have in raising resource, there is a clearly laid out system of fiscal federalism. Unfortunately, there has been a growing tendency towards subversion of the rights of the states to resources by the Central Government, the Planning Commission, the Finance Commission, the Reserve Bank of India, etc.*

*Most of the developmental activities and day-to-day administrative activities are carried out by the State Governments. We should face up to the reality where it is primarily to the State Government that the people of any State in fact turn for discharging these responsibilities. As against these expected responsibilities of the States, one can then note the increasing trend of over-centralisation of powers – legislative, administrative and financial – in the hands of the Centre, and can strongly recommend that in proportion to the expected responsibilities of the States, there should be a significant redistribution of powers in favour of the States. Given the area, size of population, cultural and linguistic diversities, and disparities in the levels of social and economic development characterizing our country, a constitutional arrangement, which provides for a very large measure of devolution of resources and responsibilities to the constituent States, is a paramount necessity. Many of the tensions that have afflicted the country in the more recent years are symptomatic of the discontent caused by the absence of such a constitutional arrangement.*

*The first Left Front Government in West Bengal had adopted a 15-point memorandum in 1977 seeking a realignment of Centre-State relations. Several other political parties in India, since their inception, have also stood for a restructuring of Centre-State relations and greater federal autonomy. The Srinagar Conclave in 1983 brought together parties like the DMK, TDP, Akali Dal, the Republican Party of India, the Assom Jatiyabadi Dal and the J&K National Conference along with the Left Parties. In his note submitted at the Conclave, Chief Minister of West Bengal Jyoti Basu said, “Contrary to what is generally argued, the devolution of economic powers, resources and decision-making, instead of weakening the Centre, would actually strengthen its base”.*

*The major areas identified at the Srinagar Conclave, which have been repeatedly endorsed by subsequent conferences of the Chief Ministers, related to the administrative, legislative and financial spheres. In the administrative sphere, the major issues were the abuse of Article 356, the sending of Central forces to the States without their concurrence and the role of Governors. The major issues in the legislative sphere related to intrusions by the Centre into State-list subjects and delays in obtaining assents for important Bills passed by the State Assemblies. In the financial*

*sphere, the major issues related to increasing centralisation of powers in the Union Government in matters like resource mobilisation and allocation and other key areas of economic decision-making like Planning.*

*With the demand for restructuring Centre-State relations gathering momentum, the Union Government had also set up the Sarkaria Commission in 1983. While this Commission took about five years to submit its report, its recommendations failed to resolve most of the basic issues mentioned above, except for some minor improvements in the financial sphere, such as giving powers to the municipalities to issue tax-free bonds, endorsing the Chief Ministers' decisions on consignment tax, extending slightly the time frame for overdraft loans etc. It is unfortunate that even these recommendations of the Sarkaria Commission have not been implemented by the Union Government after nearly two decades.*

*While we see it as a positive development that the Centre has taken the initiative to address some of these issues, through the formation of this Commission, we would also like to bring to your attention the fact that its terms of reference and composition was entirely at the discretion of the Centre, done without consulting the states, before they were drafted.*

*Even though there was consultation while drawing up the questions, the final questions do not augur well for the States' views being reflected in the Report. Even as it raises very important issues, most of the time it asks leading questions that nudge in the direction of centralization in areas that clearly lie in the States' jurisdiction.*

### **Role of Governor**

1.3 In the Constitutional scheme, the Governor plays an important role in the relations between the Centre and States. Do you have any comments/suggestions to make regarding this role?

### **Response 1.3**

*In order to sustain the ethos of a democratic federal polity, the post of the Governor, we feel is an anachronism. Time and again, the ruling party/coalition at the Centre have chosen Governors for the states mainly to serve their political interests. Often Governors act at the behest of the Centre which actually means acting on behalf of the ruling party at the Centre. The partisan role of Governors has come up for public criticism and become a matter for serious political controversies on numerous occasions. There are hardly any such examples the world over, where the Centre, in a federal structure has a representative, appointed by it, residing in the state. This issue has been discussed repeatedly in the context of any debate on Centre-State Relations, including in almost all the Inter-State Council Meetings. If at all, the post of the Governor has to be retained, then it has to be done so, with some radical re-definitions of his role. Public statements of Governors criticizing the state governments for instance, need to be curtailed and the role of the Governors as Chancellors of State Universities will have to be revised.*

1.4 In the context of this role what are your views regarding the existing Provisions (along with conventions, practices and judicial pronouncements) relating to the appointment, tenure and removal of Governors?

**Response 1.4**

*Again, if at all, there is necessity for a Governor in the state, he or she has to be appointed strictly on the basis of the recommendations of the Chief Minister to the President of India. The Sarkaria Commissions' norms in this regard need to be followed strictly. The Chief Minister will have to suggest three eminent personalities, from among whom the President of India should appoint a Governor, based on consultations with the Chief Minister.*

*If the Governor at any point is found to be operating against the democratic norms of a federal constitutional structure, and is found to act against the interests of the democratically elected state legislative assembly, there should be a provision to recall the Governor.*

1.5 The powers and functions of the Governor under Articles 200 and 201 in respect of assent to Bills have come for debate on many occasions in the past. Please give your views in the matter.

**Response 1.5**

*As has often been discussed in several Inter-State Council Meetings, there should be a strict time limit set with regard to the assent for the Bills passed in the State legislature. While it should be strictly one month for the governor, the president should not take more than four months for the same. In case, there is a compulsion to withhold assent, the President should do so, but only by taking the Inter-State Council into confidence.*

**Constitutional scheme relating to local Governments**

1.6 With the passage of the 73<sup>rd</sup> and 74<sup>th</sup> Constitutional Amendments, Panchayats and Municipalities have been accorded Constitutional status and protection. However, the Constitution leaves it to the State legislature to further devolve to the local bodies powers, functions, funds, and functionaries. The experience of the implementation of these provisions varies widely from State to State. What steps should be taken in your view to make the devolution of powers and functions to the Panchayats and Municipalities and their implementation more effective?

**Response 1.6**

*It is ironic that recent years have witnessed further centralization of governance, when a lot has been spoken about decentralization. This has happened in at least five ways:*

- *by **destroying state finances and fiscal federalism** through worsening tax-GDP ratios, failing devolution, increased committed expenditure on interest, etc.*
- *by **creating centrally-sponsored and subjugate Panchayats** through an exclusive focus on their agency functions under rigidly pre-designed Programmes rather than genuine decentralization of planning;*

- by **instituting parallel structures and agencies** of various kinds like NGOs, hand-picked task-based Committees, etc. that undermine their jurisdiction and functional autonomy
- by **pushing for local 'self-sufficiency' in terms of finances** which echoes the dominant thinking in terms of withdrawal of Government finances from democratic state institutions
- by **non-implementation and even reversal of any progressive redistribution of land** and tenancy reform that would create a more egalitarian rural society and polity, conducive to genuine democratic and accountable decentralization

*The increase in the number of centrally sponsored schemes is a significant case in point. These schemes bypass the State Governments completely, and descend on the local bodies, with a set of rigid guidelines. The State Government, it has been repeatedly emphasized, will have to work in close cooperation with the local bodies for any effective step towards decentralized planning and implementation. It is the State Government and the local bodies, who, together, will have to work out a viable context in which developmental programmes and interventions can take place, making them credible agencies as agents of the people. Despite the aforementioned constitutional protection to local bodies, the Centre is trying consistently to push a system of centralized governance through the back door, through its fiscal control over local bodies and its centrally sponsored schemes, often in the name of 'capacity building'. It is as if, the Centre wants to decide exclusively the model of decentralized governance, where as the states are often perceived as incapable to undertake this fundamentally democratic task.*

*Devolution of powers to Panchayats and effective institutions of local self-government can only become a reality in a framework of administrative, fiscal and functional federalism, without any attempt by the Centre and the local bodies, to by pass the State Governments. Moreover, a minimum level of untied Local Self-Government expenditure as a ratio GDP or combined Government expenditure (Centre and States) needs to be set as a target by the Finance Commission. Funds devolved to the local bodies should be routed through the State Governments, on a mandatory basis.*

*Recently, there has also been an increasing tendency to entrust certain forms of governance to NGOs, who have no democratic accountability and consider themselves answerable only to their funders or donors. In the case of many centrally sponsored schemes, the NGOs are recognized as implementing agencies themselves, which seriously undermines the credibility and autonomy of elected local bodies on the one hand, and is a step backward in realizing a greater participation of people in planning and policy making on the other.*

## **Legislative Relations**

1.8 In the course of the working of the Constitution certain subjects/entries in the Seventh Schedule have been transferred from one List to another. What in your view should be the principles and practices that may govern the transfer of legislative items from the State List to Union List/Concurrent List or vice versa? Is there any need for change of procedure in this regard? Do you have any suggestions on this issue?

1.9 What in your view has been the impact on Centre-State relations as a result of the changes that have taken place with the transfer of items from one List to another in the Seventh Schedule? Please provide specific instances of such impacts.

1.10 Are the existing processes of prior consultation with the States before undertaking any legislation on a matter relating to the Concurrent List effective? What suggestions do you have in this regard?

**Response 1.8, 1.9 and 1.10**

*The existing nature of distribution of legislative powers is biased towards the Centre. Art. 248 gives Parliament exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List, including the power of making any law imposing a tax not mentioned in either of those Lists. Such residuary powers should vest with the states, which would require suitable amendments in Article 248.*

*Article 249 is an overarching provision that empowers Parliament through two thirds majority in the Council of States to legislate with respect to a matter in the State List in the national interest. This should be omitted.*

*Article 252 gives Parliament the power to legislate for two or more States by consent and adoption of such legislation by any other State on Subjects on the State List. This in effect confers the same powers on Parliament to transgress into State subjects as in a situation where a Proclamation of Emergency is in operation as in Articles 249 and 250.*

*A full-fledged review of the principles enshrined in the Constitution, the practices and the items in the Concurrent List needs to be done on a priority basis, with the objective of transferring more items and powers to the States.*

*In particular, the Concurrent List should not be treated essentially as the Union List, which is the present trend due to the powers of Parliament emerging from Articles 249, 252 and 254. The present mechanisms involved in prior consultation with the States before any legislative action related to items in the Concurrent List exists only on paper. The Inter-State Council Meetings should be effectively used for strengthening of this process of consultation, on a regular basis, even with respect to any Central Legislation in the making.*

*Any law that relates to items on the Concurrent List should require the following two steps prior to passage:*

*Approval by a two-thirds majority in both houses of Parliament (since the Rajya Sabha represents the Council of States) and concurrence of more than 51 per cent of the states.*

*Article 254 has to be amended along the same lines to ensure that differences in legislative approach between Parliament and State Legislatures to matters on the Concurrent List and repugnancies/inconsistencies arising thereof are resolved democratically through consultation and consensus. At the moment, the Article gives precedence to Parliament over the states in cases of inconsistency between laws made by Parliament and laws made by the Legislatures of States with respect to one of the matters enumerated in the Concurrent List. The law made by Parliament, whether passed before*

*or after the law made by the Legislature of such State, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void, unless the State Law has received Presidential assent after reservation for consideration.*

*More subjects along with residuary powers should be transferred to the states and the Centre should not transgress on the States' subjects. The transgression sometimes takes place administratively, through centrally sponsored schemes, which is discussed in greater detail below.*

### **Administrative Relations**

1.11 The Constitution makers seem to have given predominance to the Union vis-à-vis States in the matter of administrative relations. In view of past experience, does the present system warrant any change?

1.12 Articles 256 and 257 of the Constitution confer powers to the Union to give directions to the States. How should these powers be used in the best interest of good governance and healthy Centre-State relations?

### **Response 1.11 and 1.12**

*The present system of predominance of the Union Government in matters of administrative relations needs to be definitely reviewed in favor of the State Governments. Article 256 requires every State to comply with the laws made by Parliament and extends the executive power of the Union to giving directions to a State that may appear to be necessary for that purpose. Giving a higher status to the Union, Article 257 takes this further and requires that States do not impede or prejudice the exercise of the executive power of the Union, and allows the Union to give directions to States as it considers necessary. Articles 256 and 257 are repugnant to the spirit of federalism. These provisions should be amended, and directives may be issued by the Central Government to the State Governments only in extremely rare cases after adequate consultations and consent of the Inter-State Council.*

1.13 The provisions relating to All India Services under Article 312 are a unique feature of Centre-State relations in India. What measures do you recommend for promoting better governance and harmonious Centre State relations through these Services?

### **Response 1.13**

*All India Services like the IAS, the IPS, etc. whose officers are posted to the states but remain under the supervision and disciplinary control of the Central Government must be abolished. There should only be Union services and State services and recruitment to them should be made respectively by the Union Government and the State Government concerned. Personnel of the Union Services should be under the disciplinary control of the Union Government and that of the State services under the disciplinary control of the respective State Government. The Central Government should have no jurisdiction over the personnel of the State Services.*

### **Mechanisms for Inter-Governmental Consultation**

1.14 Consultation between the Union and the States is a common practice in federations to facilitate administrative coordination. Several institutional arrangements including the National Development Council, the Inter-State Council, Zonal Councils, and the National Integration Council exist for the purpose of formal consultations. Are you satisfied that the objective of healthy and meaningful consultation between the Centre and the States is being fully achieved through the existing institutional arrangements? What are the ways in which these processes can be further streamlined and made more effective?

1.15 Apart from the Inter-State Council several other institutions have been created to promote harmonization of policies and their implementation among States. Prominent among these are the Zonal Councils. In addition, there are a number of inter-State consultative bodies e.g., National Water Resource Council, Advisory Council on Foodgrains Management and Public Distribution and the Mineral Advisory Board. Then there are Central Councils of Health, Local Self Government and Family Welfare, Transport Development, Education, etc. What is your appraisal of the working and efficacy of these institutions/arrangements in securing inter-governmental cooperation? Do you think they play a useful and effective role in setting standards and effective coordination of policies in vital areas? What are your suggestions in this regard?

1.17 In disputes leading to much litigation between the Union and the Central Government Public Enterprises, the Supreme Court had suggested an administrative mechanism to resolve such disputes through negotiations and consultation. This mechanism has helped to resolve many disputes without having to go to Courts. Do you think such an institutional arrangement can work for resolving administrative, financial etc. disputes between the Union and the entities of the States?

1.18 Article 247 contemplates establishment of additional Courts by Parliamentary legislation for better administration of laws made by Parliament with respect to matters in the Union List. However, the Constitution is not so explicit in respect of establishment of additional Courts to better administer laws made by Parliament with respect to matters in the Concurrent List. What are your suggestions in this regard?

### **Response 1.14 and 1.15, 1.17 and 1.18**

*The institutional bodies through which the issues related to Centre-State relations are supposed to be discussed and resolved are the Inter-State Council, the National Integration Council, the National Development Council, the Planning Commission, the Finance Commission and the Boards of the Reserve Bank of India and other financial institutions. However, the past record shows that neither have these bodies given effective representation to the States's views in terms of both composition and Terms of Reference/Agenda, nor have their decisions succeeded in providing a fair deal to the States. In fact, these bodies have functioned almost as an extension of the Union Government or its agencies, with an implied bias in favour of concentrating power at the Centre. They are often created through an executive or administrative order of the Union Government and therefore perceive themselves as Union Government appointees and representatives. This needs to be changed and the institutional*



arrangements developed into representative and functional bodies with appropriate statutory backing.

**Inter-State Council:** *The functioning of the Inter-State Council, which had gathered some momentum in the earlier years, has once again lost steam. Despite the Council arriving at several decisions regarding implementation of the Sarkaria Commission's recommendations, the Union Government has not implemented them. The decisions of the Inter-State Council therefore have to be made binding on the Union Government, through appropriate Constitutional amendment. All major non-financial issues involving Centre-State relations have to be discussed and decided by the Inter-State Council. The schedule of meetings of the Council as well as the Standing Committee of the Council has to be made mandatory. The Secretariat of the Inter-State Council should have better representation from the States. As of now the constitution and the convening of the inter state council is at the discretion of the President and Article 263 states that "If at any time it appears to the President..." Apart from empowering the President to establish such a Council by order, it also leaves the duties, organisation and procedure to the discretion of the President.*

*Suitable amendments should be made in Article 263 so that it becomes mandatory for the Central Government to constitute the Council with Chief Ministers of all the States and Union Territories as members, and convene meetings at least twice a year. All administrative, executive, legislative and other non-financial matters should fall within the purview of the Council. All decisions of the Council should be binding on the Union and State Governments as far as they conform to the Constitutional division of functions and powers.*

**NDC and Planning Commission:** *The National Development Council has to be developed as an effective instrument for Centre-State co-ordination on all financial and developmental issues and should be given, through an appropriate amendment, a statutory and Constitutional status as was suggested in the Srinagar Conclave. The NDC should comprise Chief Ministers of all the States and Union Territories. The meetings of the NDC should be more frequent (at least once in every quarter), and its functioning should not be one of hastily imposing a pre-conceived view of the Centre as a consensus on the States, as is now often practised. Instead, each issue should be discussed seriously with written notes from the Union Government and the States, and decisions should be taken democratically and implemented expeditiously.*

*The Planning Commission should act as an executive wing of the NDC with statutory and Constitutional backing. Unlike the present composition of the Planning Commission where members and experts are all nominated by the Union Government, there should be adequate representation of the States – both as members as well as experts – with at least one from each region with periodic rotation among the States in a region. The restructured Planning Commission must not act primarily as a representative of the Union Government as it is now, but should also represent the interests of the States.*

*In order to uphold the federal spirit, there should be representatives of the States in Finance Commission, if necessary, in rotational manner with representatives of the States from the different zones. There should be similar representation of the States in the Board of the Reserve Bank of India, all the Nationalised Commercial Banks and All-India Financial Institutions.*

*In recent years, the Empowered Committee of State Finance Ministers has opened up an effective and lively mechanism for Centre-State and Inter-State consultation on financial issues. With focused attention, the same mechanism may be attempted in some of the major spheres of political-economic concern.*

*There are several other national and inter-State issues, which are important for Centre-State relations. These include major irrigation projects, erosion of major rivers, central investment in CPSUs, railways, national highways, ports, airports, etc. In each of these issues, the interests of the Centre and States are involved, and it is necessary to ensure inter-State balance in taking decisions. There are also issues like strengthening the PDS, BPL identification and administration of the Essential Commodities Act, which have become very relevant in the backdrop of inflation. The present scheme of the National Calamity Relief Fund needs to be changed in order to increase the corpus of funds for the States. In view of the inter-State competition over mineral resources, there is a need to set some common norms regarding extraction of minerals. The royalty rates on coal and other minerals should be revised more frequently and charged on an ad valorem basis. It is also important to involve the State Governments in the policies of credit disbursement by the banks and financial institutions, particularly to ensure proper allocation of priority sector lending and an inter-State balance in the sphere of the loan disbursement. Effective resolution of these and other issues requires robust institutional arrangements within which Centre-State and inter-State consultations can take place on a regular basis and decisions reached.*

1.16 Treaty making is a part of the powers of the Union Executive. In the process of implementing these treaties some obligations at times may be cast on States also. What would you like to propose to take care of the concerns of the States?

### **Response 1.16**

*The present Constitutional scheme with regard to treaty making power being exclusively in the domain of the Union Executive needs to be urgently reviewed. The Constitution should be amended to make legislative approval mandatory for any international treaty. Besides, several international treaties like the WTO agreement have serious implications for the States, especially with respect to State subjects like agriculture. In all such cases, consultation with the States and consent of the Inter-State Council must also be made mandatory. We also recommend strongly that any proposed international treaty should be ratified by both houses of Parliament by two-thirds majority. This would require an Amendment of Article 253.*

### **Emergency Provisions**

1.19 A body of opinion holds that safeguards corresponding to Clauses 7 and 8 of Article 352 may be incorporated in Article 356 to enable Parliament to review continuance of a proclamation under Article 356(1). What is your view on the subject?

### **Response 1.19**

*The issue of Article 356 must be taken up for radical revision and not just seen as some safeguards being incorporated in the Article from clauses 7 and 8 of Article 352. As*

*we stated at the outset, this is the most misused Article of the Constitution. Articles 356 and 365 should be amended so that a presidential proclamation can be issued in a state only where there is a serious threat to national unity or the secular fabric of society. Further, the safeguards set out in the Supreme Court judgement on the S. R. Bommai case should be built upon. The Standing Committee of the Inter State Council had proposed a consensus paper for amendments in Article 356 of the Constitution in July 1997. These should be accepted. The amendments suggested include : approval of Parliament may be obtained to proclaim within a period of one month; approval of Parliament should be by a majority of the total membership of each House and by a majority of not less than two-thirds of members of each House present and voting; Parliament alone may decide whether the state Assembly should be dissolved or should be kept under suspended animation. The other clauses in the proposed consensus paper regarding the issuing of a show cause notice to the state government and the report of the Governor to the Union government be a “speaking document” etc should be also accepted. Along with these provisions, the safeguards corresponding to clauses 7 and 8 of Article 352 may be incorporated in Article 356.*

*Article 355 also needs to be amended. The term internal disturbance is related to “public order” which is the first entry in the State list. The proposal for Central deployment of paramilitary forces in a state in a situation which the Centre would consider as “internal disturbance” without the state’s concurrence is unacceptable. Article 355 should be amended on the lines suggested above for Article 356. Apart from external aggression, only a serious threat to national unity or an assault on the secular principle can be taken cognizance of.*

### **Economic and Financial Relations: General**

2.1 In implementing the strategy of planning adopted by India after Independence, the Centre had assumed the lead role in formulating five-year plans with controls and licensing to implement them, and the States were required to play a supporting part. After economic liberalization many of the controls and licenses have been largely done away with and the States have regained much of their economic policy making space. Do you think the shift has been adequate and beneficial? Can you also highlight the specific areas in which further reforms may be required at the State level which can improve governance in general and the implementation of schemes and programmes of the Government?

2.8 There is widespread criticism that the funds provided by the Centre are not properly utilized by the States and there are reports of substantial leakages. In order to provide incentives to the States for better fiscal management and efficient service delivery there is a suggestion that all transfers to the States should be subjected to conditionalities and also tied to ‘outcomes’. States on the other hand argue that in their experience the funds are not released by the Central Government in a timely manner. What are your suggestions on the subject?

2.12 What has been in your view the impact of the fiscal responsibility laws in your State?

## RESPONSE 2.1, 2.8 and 2.12

### (i) *Erosion of Autonomy*

*After the introduction of policies of economic liberalization, fiscal conservatism and deregulation, there has been considerable weakening of the fiscal condition of state governments and consequent erosion of their policy making space. This has happened through a combination of factors. There has been a slowdown in genuine decentralization or federalism with inadequate devolution of finances and powers. The States' autonomy to formulate policies in areas falling within their constitutional jurisdiction has in fact narrowed.*

*Central policies have played the most significant role in weakening the fiscal health of the states on the one hand and forcing centrally-determined policies on the other..*

*These policies of the Centre fall under seven categories:*

- i. falling resource mobilization and tax effort by the Centre;*
- ii. centralization of resources;*
- iii. increasing discretion with the Centre in deciding transfers to the states;*
- iv. conversion of statutory transfers to conditionality-linked transfers;*
- v. declining devolution and failure to meet Finance Commission commitments to state finances; and*
- vi. escalating committed expenditure on interest and salaries and pensions due to the Pay Commission recommendations.*
- vii. Proliferating Centrally Sponsored Schemes, with rigid centrally determined design in terms of technique, institutions, outcomes, etc.*

### (ii) *Role of Finance Commissions*

*The 11th Finance Commission began the process of **forced fiscal reforms on state governments**, taken forward by the 12th Finance Commission, both of which imposed high and **extra-constitutional conditionalities** on states.*

- i. The 11FC and the 12FC have aggressively pushed reforms by converting statutory transfers into conditional funds, using debt relief as leverage. For example, on the basis of recommendation of the 11<sup>th</sup> FC, 15 per cent of the States' entitlement of revenue deficit grant was to be withheld unless the States had complied with the reduction of 5 per cent of revenue deficit as a proportion of revenue receipts in every year over the period 2000-2005 and **public sector enterprises reforms, power sector reforms, phasing out subsidies**, etc. through the **Medium-Term Fiscal Reform Programme**. This was despite strong protests from the States, and serious dissent within the 11<sup>th</sup> FC itself expressed even in the form of a strong Dissent Note, on the very constitutionality of such a move.*
- ii. Another important issue relates to the conditionalities associated with debt relief and debt consolidation. This has been tied up with the neo-liberal conditionality imposed by the 12<sup>th</sup> FC of enactment by the States of **Fiscal***

**Responsibility and Budget Management (FRBM) Acts**, which requires bringing out annual reduction targets of revenue deficit and fiscal deficit with total elimination of revenue deficit to zero by 2008-09. This is a very restrictive condition, imposed uniformly without regard to the initial conditions of the States. In addition, it suffers from a mechanical and inadequate understanding of the components of revenue expenditure. According to the accounting principles laid down by the Comptroller and Auditor General of India, all grants to the local bodies (i.e. Panchayats, municipalities), to the aided schools and colleges, expenditure on account of salaries of doctors, medicines, etc. are classified as revenue expenditure. If the States are to make an effort to achieve the targets of FRBM Act, then there may not be much fiscal space left for them for development expenditure. This would amount to withdrawal of the welfare and developmental role of the States. It has also resulted in the paradoxical situation of states' holding onto large cash balances and yet being prevented from undertaking development activities due the absurd and arbitrary limitations on deficits. This mechanical neo-liberal conditionality has also started showing signs of design failure. The uniform prescription was oblivious of the widely different problems and magnitudes of the proportions of revenue deficit to revenue receipts among the States, and it created an anomalous situation in the Centre-State relations.

The States and the Central Government should jointly constitute the Finance Commission and select its Members through the ISC. The TORs must be drawn up jointly by both parties through consultation and ratification by the ISC in line with the mandate already provided by the Constitution. The Constitutional position of equivalence and neutrality between the Central Government and the States must be maintained.

#### **(ii) Governance and Efficiency**

The emphasis on efficiency or governance factors that underwrite private sector profits rather than maintenance, capacity utilization and slack reduction have led to alteration of user charges to cover costs, surrender of non-priority enterprises through privatisation or disinvestment reduces the states' freedom to design economic policies, including issues like price of power, number of school teachers and doctors they can have, subsidy to farmers, user charges for government services, etc. and pushes fiscal adjustment through phasing down of subsidies, levy of user charges and restructuring state electricity boards and other corporations. Several States might prefer to subscribe to a pricing policy that is based on the users' capacity to pay rather than full cost recovery and they have the jurisdiction and authority to do so. Such conditionality forced the States to impose a virtual ban on recruitment and that created genuine problems in delivery of welfare services and developmental activities of the States.

Devolution and access to resources must not be linked to the institution, mode and price of services, amenities, etc. like raising user charges, privatization and greater financial self sufficiency. The devolution of funds should not transform statutory transfers into discretionary and conditional grants. In order to improve efficiency, the FCs must provide for expenditure on operations and maintenance, suitable renovation and modernization of plants and machinery in its Transfers while assessing the

*commercial viability of such Projects and make specific provisions for increasing capacity utilization to improve efficiency and reduce costs.*

***(iii) Delays in Fund Release***

*This too creates a great deal of problems in programme implementation, fund utilization and future fund flows. It works against the backward states. The procedures and timing must be streamlined.*

2.2 Although the States are now expected to play an active role in promoting economic growth and poverty alleviation by providing infrastructure, delivering basic services efficiently and maintaining law and order, it is alleged, that most States have not kept pace with the reform process. On the other hand it is said that the discretion and priorities of the States, are affected by the imposition of the Centre's priorities, inter alia, through Centrally Sponsored Schemes. What are your views in this regard?

2.9 Centrally Sponsored Schemes have emerged as an important instrument of the planning process. There is a view that such schemes may or may not be supplementing the States' own Plan schemes. What are your suggestions in this regard?

2.10 Substantial funds are now being transferred by the Centre directly to Panchayats, Municipalities and other agencies bypassing the States on the ground that the States have sometimes been tardy in the devolution of funds to these bodies. What is your view on this practice?

**RESPONSE 2.2, 2.9, 2.10**

*There are two types of Centrally Sponsored Schemes (CSS) from the point of view of the States' budget: the traditional and the functional CSSs which go through the State Budget; the Additional Plan Assistance (APA) and Special Plan Assistance (SPA) CSSs that completely bypass the State Budget and go directly to the para-state agencies and local bodies. The second type of CSSs are proliferating most rapidly. Not surprisingly, the Government appears to be confused about the total number of CSS, with varying estimates.*

*Not only have the earlier transfer of State subjects, such as education, to the Concurrent List been left un-reversed, but further intrusions have also been made into the State List in terms of proliferation of the so-called CSSs. **The resources for CSS are acquired through taxes which should be a part of the common pool and not left to the sole discretion and use by the Centre.** A decision to transfer all CSS with funds to the States if they were in areas under the State list was already taken in 1996 at the Conference of Chief Ministers convened by the Prime Minister on May 4, 1996. Although several exercises have been carried out in this regard from time to time, there has been no effective resolution of this issue. In fact, more and more CSSs, are being introduced by the Central Government.*

*While over the years Central transfer to the States as a proportion of the Centre's revenue receipt has fallen, the proportion of transfer of funds with conditionalities in the form of Grants-in-Aid has increased from 40.9% in 1980-81 to nearly 49.3% in 2005-06 (RE). The Budget documents of 2007-08 show total resource flow from the*

*Centre to the states as 7.26 per cent of GDP. Compared to this, the quantum of resources going directly to districts and other implementing agencies is very high at 1.22 per cent of GDP, more than any other head of grants or transfers, amounting to 37.5 per cent of tax devolution to the states in 2006-07.*

*The existing practice of CSSs has diluted the fiscal transfer system, to the extent that normal assistance for state plans, which is devolved according to the Gadgil formula, is less than 48 per cent of the total state plan size. **Under the present regime, grants have become primarily purpose-specific or tied with a host of conditionalities imposed by different central ministries, reducing the States and Panchayats to mere agencies of the central ministries.***

*In some of the CSSs, the share of the States' financial burden is also being unilaterally increased. For instance, despite repeated objections by all the Chief Ministers, the Centre has taken a decision to increase the share of the States in the Sarva Shiksha Abhiyan Programme from 25 % steadily to 50 % under the Eleventh Five-year Plan. Many States are frequently unable to provide the matching shares and consequently forego attendant central transfers which are subsequently reallocated to relatively better-off States as additional allocation, worsening horizontal imbalances.*

*The State Governments are not consulted at the stage of conception, design and rule making. States are therefore compelled to commit resources for straight-jacketed Schemes that do not reflect their priorities or can be effectively implemented, as they are rigid and out of sync with local realities. Such specific-purpose transfers have tended to reduce the states to mere implementing agencies with rigid Guidelines that deny location-specificity and local initiative.*

*What is more, the conditionalities frequently encroach upon the legislative autonomy of the States. A case in point is the JNNURM, which requires the State to reduce Stamp Duty rates to at most 5 per cent, a rate which can only be prescribed by the Legislative Assembly. This represents the intrusion of the executive into the space of the legislature, which is as problematic as centralization. In the past two decades, the legislature is repeatedly receiving diktats on legislation from the Judiciary, the Executive, semi-judicial bodies like the 12FC and multi-lateral and bi-lateral agencies like the ADB, the World Bank, etc.*

*Since 2002-03, a considerable percentage of such transfers are sent directly to autonomous agencies bypassing the states, despite the fact that in many CSSs the states too are required to make matching contributions. Local officials tend to ignore the State Government on these Schemes since they have to co-ordinate directly with New Delhi.*

*As important is the imperative to conduit transfers to autonomous agencies (local bodies, parastatals, DRDA, etc) strictly through the states. The Centre and states can work out an accountable and speedy mechanism for fund transfer to district, PRI and other agencies, the federal character of our fiscal and political economy should not be undermined. The states have to intermediate between agencies at lower levels and the Centre.*

*Thus, this sizeable funding of CSS to the tune of about 60 per cent of the Central Assistance is resulting in an expanding role of the Centre in the State sector, by sidestepping the States and placing district functionaries directly under the control of the concerned central ministries and giving over half the Central Assistance as Additional Central Assistance, which is not within the purview of the Gadgil formula (or FC criteria) with a great deal of discretion with the concerned central ministries in allocations and disbursement.*

*To the extent that Central expenditure on CSS is a unilateral withdrawal from the sharable pool, thereby reducing the size of the pie, these should be transferred, with funds, to the States. There can be broad guidelines worked out for Central Schemes on the basis of discussions between the Centre and the States, allowing for flexibility in design and implementation. An appropriate periodic joint Centre-State review may be worked out. (The only exception to this could be Schemes backed by Central legislation for which the Centre contributes over 80 per cent, as in the case of the National Rural Employment Guarantee Act.) This will not only promote decentralization and uphold federalism, but would also be more cost-efficient and goal fulfilling since it allows location-specificity in design and are better suited to meet their socio-economic objectives.*

2.3 It has been the practice of the Planning Commission to get Five Year Plans including the Approach papers approved by the National Development Council with a view to ensuring involvement of the States in the planning process. Besides, discussions are held by the Planning Commission every year with the States individually, to decide the size of their Annual Plans and to accord approval. Do you think that the current practice is satisfactory or are any changes called for in the interest of better economic relations between the Centre and the States?

2.5 To all appearances and also from the Constituent Assembly debates it seems the Finance Commission was envisaged by the Constitution to be the principal channel for transfer of funds from the Centre to the States including those which were meant for development purposes. However, substantial transfers now take place through other channels such as, the Planning Commission and Central Ministries so much so that it is now said that such transfers have significantly impacted on fiscal federalism and the devolution of financial resources. Do you think that the present system of transfer of funds is working satisfactorily? Is there a need to restore the centrality of the role of the Finance Commission on devolution of funds from the Centre to the States?

2.7 Transfers made by the Planning Commission by way of assistance for State plans are supposed to be guided largely by the Gadgil formula. Of late however the proportion of formula based plan transfers has come down. How do you view this development and what are your suggestions in this regard?

### **RESPONSE 2.3, 2.5, 2.7**

*The objective of general-purpose transfers is to make up for fiscal inadequacies of states arising from an inferior capacity to mobilize revenue and higher responsibility of states in providing public services. These should essentially be way of 'untied' grants.*



*State autonomy has got seriously undermined through the current trend in Central transfers to states with a growing utilization of discretionary and specific-purpose transfers outside formula-driven norms of the Finance Commission and Planning Commission and their direct passage to parastatals, Panchayats or districts to implement CSSs, bypassing the states. Furthermore, the Constitutional agency for determining vertical and horizontal transfers, the Finance Commission, has got relegated to determining the sharing of lesser and lesser resources. The Planning Commission has made serious inroads into the Finance Commission space. Even though the earlier discretion in the quantity of plan assistance and loan-grant components was replaced in 1969 with the adoption of the National Development Council (NDC) (Gadgil) formula, discretionary transfers were re-introduced through the initiation of several schemes by Central ministries and the CSSs. This was afforded a certain degree of legitimacy due to the States' own inability to assign adequate resources for important social and economic services.*

*States have broadly six sources of finance to fund their revenue and capital expenditure: (1) Statutory unconditional transfers recommended by the Finance Commissions on the basis of objective and transparent criteria; (2) Rule based fiscal transfers by the FCs that link the transfer to numerical indicators of state level fiscal discipline initiated for the first time by the 11FC; (3) Planning Commission's normal plan assistance on the basis of the revised Gadgil formula in an objective, transparent and unconditional manner to be used as per the priorities and specificities of the States. Even though the Planning Commission itself is an extra-constitutional body, the normal plan assistance has acquired the stature of statutory transfers (4) Discretionary and conditional grants/transfers controlled and disbursed by central ministers sent directly to district authorities, parastatals and societies as Centrally Sponsored Schemes, bypassing the state budgets. (5) Multilateral and bilateral lending institutions influence state level fiscal policy through reforms-linked sectoral and structural adjustment lending (6) Loans and borrowings from the Central Government, the nationalised banks and the National Small Savings Fund, besides ways and means advances from RBI on terms and quantities determined strictly by the RBI and Central government*

***We have a preference for FC transfers, since these are Statutory transfers and hence the States' constitutional right. Unfortunately, the mandate of the Constitution has been eroded by the 11FC and 12FC by adding conditions to the transfers, tying them to pre-determined use and specific schemes. We therefore strongly recommend a bulk of resources be brought under and transferred from the sharable pool by the Finance Commission without attaching conditionalities that erode the autonomy of the States. The assistance for State plans too must be formula driven in an objective and transparent manner without withdrawals from this pool towards CSS and other funds (JNNURM, AIBM, etc).***

*The only fair principle for sharing of Central taxes, market borrowings, etc. with the States is the ratio of Central taxes net of transfer to the States and the State taxes including the share of Central taxes is equal to the ratio of the needed development expenditures of the Centre and the States respectively. This makes the State's share of Central tax revenue and market borrowings as at least 50 per cent. Given the fact the States have been meeting over half the expenditure of the combined government sector in keeping with their constitutional obligations and functions, the states must receive at*

*least 50 per cent share in taxes (including cesses, surcharges and excise). The 29 to 30 per cent maximum limit set by the FCs is both unrealistic and unfair.*

***The FC should also fix a minimum guaranteed devolution of central taxes from the Centre to the States in absolute terms, on the basis of expected revenue and percentage share for vertical devolution. Any resource mobilization over and above this should be shared in the recommended ratio.***

2.4 The National Development Council and the Inter-State Council are among the fora available for facilitating the coordination of economic policy making and its implementation. However only limited use seems to have been made of these institutions for the purpose. Coordination is achieved more through interaction between the Central Ministries and the States. Do you think the present practice is adequate for ensuring harmonious economic relations?

#### **RESPONSE 2.4**

*The constitution of the Inter-State Council under Article 263 of the Constitution in 1990 was a long overdue step taken with the hope of resolving the major issues in Centre-State relations. Since then, ten meetings of the Inter-State Council have been held (last meeting was held in December 2006) and an equal number of meetings of the Standing Committee of the Council have taken place. But even then, not only have the major problems not been resolved, but new problems have also emerged. Recently, the UPA Government set up this Commission on Centre-State relations in April 2007. However, the States were not consulted prior to the formation of this Commission. Therefore neither the terms of reference nor the composition of the Commission reflect the pressing needs and aspirations of the States. Even when the 13<sup>th</sup> Finance Commission was constituted, these forums were not used to consult with States on composition or TORs. This has resulted in a paternalistic relationship between the Centre and the States with the Centre as the 'senior' partner rather than one that recognizes the greater functional responsibility of the States in socio-economic development with lower own resources.*

*Therefore, the present practice is far from adequate not only for ensuring harmonious economic relations, but more importantly, for delivering development to vast sections of our people.*

*The States must have a far greater role in determining policy and constituting bodies on federal fiscal and other issues through the NDC and the ISC.*

#### **System of Inter-Governmental Transfers**

2.6 Transfer of funds from the Centre to the States through revenue sharing and grants with the mediation of a statutory body viz., the Finance Commission, was envisaged by the Constitution makers to redress the imbalances in the finances of the States resulting from an asymmetric assignment of financial powers and functions to the States – the vertical imbalance. The disparities in the capacity of the State Governments to provide basic public services at a comparable level - horizontal imbalance - it was believed would also be alleviated through such transfers. There have been twelve Finance Commissions so far and the thirteenth has since been constituted. By and large the

institution of the Finance Commission has come to be regarded as a pillar of India's federal system. What is your assessment of the role of the Finance Commission and the results achieved in terms of redressal of vertical and horizontal imbalances?

## **RESPONSE 2.6**

*Recognizing the disproportionate development burden placed on states and the limitations they have in raising resources, the Constitution set up a system of vertical (Centre to States) and horizontal (amongst States) transfers by the Finance Commissions. Unfortunately, the asymmetry in function and finance and ensuing vertical imbalance has increased in recent years, which is manifest as a marked rise in pre and post devolution deficits of states, a growing gap met by borrowings, resulting in high debt and interest burden. **The constitutional provisions notwithstanding, the states have not received adequate resources from the Centre for government spending on social and economic development and the gap across states has not reduced***

***The more important powers of revenue-raising have remained concentrated in the hands of the Centre. To take just one example, in 2004-05 the total development expenditure of the States, at Rs 3.62 lakh crores, was more than 1.5 times that of the Centre, but State Governments received only 38% of the total revenues collected in the country. In addition, the devolution of Central taxes and grants from the Centre to the States has not occurred as was envisaged in Chapter-I, Part XII and Article 275 of the Constitution. The devolution of Central taxes and grants (net of interest payment by the States on Centrally imposed loans) as a proportion of total revenue receipts of the Centre fell from 32.7% in 1990-91 to 29.5% in 2004-05. This problem has been exacerbated by the neoliberal economic policies of the Central Government, which have included sharp reduction in import duties, reluctance to enhance the rate of direct taxes for the richer groups and inadequate attention paid to unearthing of tax-evaded black money. As a result, the actual collection of Central taxes fell significantly short of the amount recommended by the Eleventh Finance Commission. **Regardless of the fixation of the share of States in total Central taxes at 29.5 per cent by the 10FC and 11FC, the proportion was achieved only once in 1997-98 during the relevant ten year period. Furthermore, the divergence between the actual and the fixed ratio has only grown. Therefore, not only has the States' share of Central taxes remained low at 29.5%, but the actual amount received by the States has also been substantially lower, by nearly 19%, from what was recommended by the Commission over the reference period (2000-05).*****

*In the past, States have assessed the flow of their revenue and expenditure for the five years covered by the relevant FC in order to estimate their non-Plan Revenue Deficits for awards from the FC. However, the 12<sup>th</sup> FC evolved its own normative criteria-based methodology to project revenue and expenditure estimates for the States and the Centre over the next five years. States had argued at the time that this methodology was arbitrary and heavily biased in favour of the Centre. For example, while the Centre's revenue receipts were shown to rise by only an additional 1.17% of GDP, backward states were assumed to achieve 11-12% growth rates of State incomes. GSDP growth rates and buoyancy factors too were highly ambitious, and the non-tax revenue estimates were unrealistically high. Five per cent return or dividend on equity in PSUs and recovery of 90% operation and maintenance costs in irrigation were not only*

*prescribed but also taken as achieved in the subsequent calculations of pre-devolution deficits.*

*Furthermore, non-Plan revenue expenditure (NPRE) was assumed to grow moderately and NPRE projections made by the 12<sup>th</sup> FC were substantially lower than the experience and estimates of the states. The targets fixed on the basis of these unrealistic higher growth rates of tax and non-tax revenue and underestimation of NPRE has deprived the States of a substantial amount of revenue deficit grant, meant to be filled by the FC, and is less than a fourth of the assessment made by the States. Instead of the normative approach, an ex ante need-based approach in line with the functional responsibilities of the States should be adopted to evaluate the resources of the States reasonably.*

*Horizontal imbalances also tend to persist among different States. Many States are frequently unable to provide the matching shares and consequently forego attendant central transfers which are subsequently reallocated to relatively better-off States as additional allocation, worsening horizontal imbalances. As regards criteria and relative weights in determining the inter-se shares of the states in the central taxes, progressivity should be the guiding principle.*

2.11 The States' power of borrowing is regulated by Article 293 of the Constitution. What do you suggest should be done further to facilitate the States' access to borrowing while keeping in view imperatives of fiscal discipline and macro economic stability?

*In the name of stabilization in the 1990s, interest rates on loans from the Centre remained very high. While market rates plunged downwards, the state governments, unlike the Central Government, did not benefit from this decline. The state governments paid far higher rates than the Central Government; with the former effectively subsidized the latter's retirement of high interest debt. The interest rates on the loan component of Central Plan Assistance, international multilateral agency loans, small savings that are collected by the states themselves, market borrowings from banks remained high and are all administered by the Central Government. This centrally-controlled high interest rate regime resulted in a spiraling debt burden on states.*

*The Reserve Bank of India restrains state governments' flexibility in market borrowing in a number of ways. It denies access to the market for resources beyond limits set by the Bank, ranging from 5 to 35 per cent of gross borrowings, depending on the fiscal indicators of the state. The most restrictive condition imposed by the RBI is that market borrowings cannot be used to finance revenue deficits. This ignores the fact that state finances are in doldrums largely on account of high interest-debt from the central government, and low-cost borrowing to finance capital investment or even swap high-interest debt will only improve fiscal health. Another perverse condition makes the amount that can be borrowed inversely proportional to the need, i.e. the size of the deficit. The higher the fiscal and revenue deficit, the lower the limit set by the **RBI**. Furthermore, the Bank has undermined state government guarantees by stating that these should not be a key consideration in loans to the public sector.*

*The Centre also sets the share of total market borrowings for the States, and this has fallen from near equality in the 1950s to only about 15 per cent currently, with the Centre garnering the major chunk of 85 per cent.*

*In keeping with the development responsibilities of the States, the share of market borrowings of the States should be increased from the ridiculous 15 per cent to 50 per cent immediately, at interest rates not exceeding 6 per cent.*

2.13 Do you think that in the light of experience and the requirements of a modern economy, it is time now to give a fresh look to the entire scheme of assignment of tax powers between the Centre and the States? If so, please give your suggestions with detailed justification.

### **RESPONSE 2.13**

*One of the most disturbing recent trends in fiscal federalism is the exclusion of growing sources of revenue from the sharable pool. The specified share is not that of gross tax revenue but is exclusive of Cesses and Surcharges and the cost of collection. In recent years, the Centre has increasingly resorted to frequent and prolonged imposition of Cesses and Surcharges to raise revenue, and therefore their exclusion from the shareable pool of Central Taxes causes a substantive denial of resources to the States. Between 1995-2000, Cesses and Surcharges were nearly 3 per cent of gross tax revenue, falling marginally to 2.7 per cent by 2002. The 12FC estimated the share of Cesses and Surcharges to rise to 12 per cent during its award period. The Central propensity to put a sizable part of Central tax revenue beyond the reach of the States must be checked. Even if the Central Government has justifiable reasons for levying cesses and surcharges, they should, without exception, become part of the divisible pool. The 10 FC took the correct position when it recommended that the “gross proceeds” should be shared between the Centre and the States. But the Eightieth Amendment restricted the divisible pool to only net proceeds, adding to the vertical imbalance between the Centre and the States. The “gross proceeds” and not the “net proceeds” should be distributed between the Centre and the States through necessary Amendment of the Constitution.*

*Recent trends in India’s growth pattern clearly show the much faster growth of the service sector as compared to industry and agriculture. Quick to commandeer the taxation of the exceedingly profitable and rapidly growing service sector, the Centre has regrettably usurped the entire power of levy of service taxation through a Constitutional amendment. The 88th Constitutional Amendment Act excludes taxes on services levied by the Centre under Article 270 from the common pool. Clearly, given the higher income growth in the services sector, this is a potentially more buoyant and expanding source of revenue, over which the Centre has exclusive discretion. The State Governments are far better positioned to maximise revenue from the service tax, due to their proximity and reach. At least some service taxes maybe earmarked and transferred to the state government.*

*The States have for long and with good reason argued in favour of transfer of at least residuary powers in the Constitution, especially residuary powers of taxation of services to the States. **The States should be given residuary powers, and, at the very least, the concurrent powers of taxation of all services.***

*Additional excise duties on sugar, tobacco and textiles and grant in lieu of railway passenger fares — each of which constitute important revenue sources for the states —*

*are assigned different weights by different Finance Commissions, on an arbitrary and discretionary basis. The Central Government must direct the 13<sup>th</sup> FC must work out fair and objective criteria for assigning weights to these heads. In the interest of the States, it is also necessary to revise the royalty rates on coal (and other minerals) more frequently and charged on ad valorem basis, and also to ensure that coal royalty be paid at the latest revised rates without any discrimination among the States.*

The Union has also not fully operated Article 268 and 269 which could have allowed the states to their resources. At several points in time, additional surcharge on income tax and additional duties of excise have become mechanisms for withholding resources from the states. All such measures that help the Union withhold resources from the States must be discouraged.

### **Domestic Trade Tax reform: Introduction of Tax on Goods and Services (GST)**

2.14 The system of domestic trade taxes in India is set to undergo a radical change with the introduction of Tax on Goods and Services (GST). Several models are available for operating the GST in a federal country. What in your view would be the model best suited for our country? You may also like to suggest the institutional arrangements that may be needed to implement the desired GST.

### **Unified and Integrated Domestic Market**

3.1 One of the major benefits of a federation is to provide a common market within the country. In order to foster the growth of the common market, Article 301 of the Constitution mandates that trade, commerce and intercourse within the Indian Union shall be free. However, it is stipulated that restrictions on the free movement of goods etc. may be imposed in 'public interest' (Article 302). Invoking public interest, both the Centre and the States have imposed restrictions of various kinds on the movement of goods like food grains and so on. Besides restrictions on the movement of food grains, the impediments to the operation of a common market are imposed in several other ways such as, providing minimum price for products namely cotton or sugarcane and monopoly procurement of commodities such as cotton etc. While such actions by a State require approvals by the Centre, it is said that approvals have been granted in many cases almost as a matter of routine.

What in your view should be done to ensure the operation of the common market in the Indian Union? How can the mandate contained in Part XIII of the Constitution be carried out effectively?

3.2 Article 307 of the Constitution provides for the creation of an institution to oversee the operation of the mandate of a common market in the country. What are your views on setting up a Commission/Institution under Article 307 for this purpose?

### **RESPONSE 2.14, 3.1, 3.2**

*The GST will clearly have wide-ranging consequences on the resource position of the centre and states, and the design of the system must be simple, fair and easy to administer while preserving fiscal autonomy and revenue neutrality of all the states; without a further deterioration in vertical fiscal imbalances. This is an extremely*

*difficult task, and must be worked out separately by the Centre and states, not through the FC. The tax rate (with the possibility of different rates) charged by each level of government must be left to the particular government and is a matter that lies outside the purview of the FC. The Empowered Committee of Finance Ministers of States is already gripped with the matter and is likely to make recommendations on the same issue. These recommendations should be discussed in the ISC and NDC and be approved by the States. This matter cannot be resolved through Union diktat.*

*The FC of course needs to build in the impact of the rate structure and design of the GST on the level of vertical imbalance. This is especially the case in a 'unified GST' regime, since a Task Force has already recommended a rate structure of 12 per cent for the Centre and 8 per cent for the States. Even if one agrees that the GST will indeed widen the tax base, if States have to reduce rates of tax levy from current levels and relative to the Central Government, this is bound to worsen vertical imbalance in a situation of equal or higher expenditure burden of the States.*

*It is not necessary to invoke Article 307 at the moment to set up any Commission/Institution. The ISC and the NDC may consider invocation of the Article through consensus as and when required, but such a step should not be taken by executive order.*

2.15 Once GST is introduced will there be a case for continuing with taxes on production, such as excise duty?

*Since in this context, the Empowered Committee of State Finance Ministers has already resolved most of the relevant issues in designing and implementing the Value Added Tax, and is in the midst of handling these issues in the context of Goods and Services Tax, this Committee may work with all the States, the concerned Union Ministries, the NDC and Inter-State Council in working out a balanced solution to the issue of integrated domestic market in the federal structure.*

## **Local Governments and Decentralized Governance**

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

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

### **RESPONSE 4.2**

*The primary responsibility for providing resources to the PRIs rests with the central and state governments, in that order. There is a recent tendency to view the institutions of local self-government as 'self-sufficient' rather than 'self-governing', typically*

*through increase in user charges and other levies. While there is merit in giving PRIs residuary powers, the overarching framework has to be one of devolution of funds, functions and functionaries to the PRIs instead of restricting their effectiveness and abilities through pressures to become self-sufficient.*

*While the State Governments will provide the necessary funds to the Panchayats and the Municipalities, there is a simultaneous need of transfer of funds from the Centre to the States in terms of additional share of Central taxes and specific grants. These funds should be placed with the State Governments, and the State Governments must not be bypassed in this regard.*

*Allocation of funds to the three-tier Panchayats and the Municipalities by the States should be on the basis of recommendations of regularly constituted State Finance Commission and be based on objective formula related to parameters (such as population, percentage of disadvantaged groups etc.), without any discrimination.*

*Many state governments do not implement recommendations of SFCs despite paying them lip service, which must be reversed by the States. However, devolution from the Centre to the States should not be conditional upon this.*

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

### **RESPONSE 4.3**

*A brief response to this question is yes!*

*In order that decision-making process is not imposed from above, it is important to provide "untied" funds to the three-tier Panchayats and also to the Municipalities, and not through specific schemes with rigid conditionalities. For this, not only is there a need for transfer with funds of Centrally Sponsored Schemes for the Panchayats and the Municipalities to the State Governments for subsequent allotment to these local bodies, but the funds to be provided by the State Governments should also be, as mentioned earlier, untied. Broad objective may be indicated and results may be jointly monitored.*

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



#### **RESPONSE 4.4**

*See our response to 2.3, 2.5, 2.7 and 2.10*

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

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

#### **RESPONSE 4.5 and 4.6**

*The dichotomy between the capabilities of the PRIs and their powers underlying this question is to our mind completely false. In fact, even though on the face of it may be true that today PRIs lack necessary technical and management skills, the delegation and devolution of financial, functional and administrative powers along with training and capacity building inputs is a prerequisite both for efficient planning and programme implementation as well as effective decentralization. It is also important to once again emphasize the centrality of equitable land reforms as an important precondition for democratic and decentralized government.*

*First and foremost, the principle of subsidiarity must be strictly adhere to, wherein functions are devolved to the most appropriate and closest tier without overlap. Secondly, all staff and functionaries of line departments that are involved in works falling under the 29 functions of the XIth Schedule should be transferred to the appropriate PRI. Thirdly, all the parallel committees/agencies constituted largely to implement CSS should be dissolved immediately and the PRIs should re-constitute the ones considered necessary at the Gram Sabha. All such agencies/institutions/organizations should be brought under the control of the PRIs after their selection at the Gram Sabha. Fourthly, to the extent possible, elected representatives and not government functionaries should head all the Committees. Finally, if this is done, there is no need to reduce tiers.*

1.7 What has been your experience in the functioning of District Planning Committees and Metropolitan Planning Committees as envisaged under Articles 243 ZD and 243 ZE respectively of the Constitution? What are your views on the steps needed to be taken to effectively promote the concept and practice of independent planning and budgeting at District and Metropolitan levels?

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

### **RESPONSE 1.7 AND 4.7**

*Before answering the question in detail, we would like to clarify what we understand by the term “independent planning and budgeting”. We do NOT subscribe to the neo-liberal position that local or district governments should be financially self-sufficient. Though they should of course raise own resources in an equitable and progressive manner, the quantum of resources raised by Panchayats’/Municipalities’ can neither be a precondition nor a limitation on their expenditure. The primary responsibility of providing finances rests with the Centre and States. Therefore, ‘independence’ in this context should imply location-specific need-based development prioritization and planning without the imposition of Central and supra-locational designs and strategies.*

*Financial, functional and administrative devolution along with clarity of roles is a prerequisite for participatory decentralized planning and budgeting. District level planning is crucially dependent on a sense of independence and empowerment, backed with the requisite funds, staff and powers. It is important that planning bodies at the district and metropolitan level effectively accommodate elected representatives of the people as well as call for the inputs of independent experts. District planning bodies should also be enabled to monitor programmes, so that they don’t remain merely consultative bodies without any statutory powers to intervene. It is at the level of district planning that the State Government and elected representatives of local bodies could integrate their tasks and create a common context to work together. Members of all India Services often do not take adequate efforts to strengthen the functioning of district level planning bodies, and end up doing all the planning reducing the district bodies to mere rubber stamps to approve their plans. This violates the democratic process by which representative committees could learn and work together with development officials, for the sake of the people.*

*Thus, unfortunately, even after a decade and a half of the 73<sup>rd</sup> and 74<sup>th</sup> Constitutional Amendment Acts, constitutional bodies like District Planning Committees are not functional in most districts of the country. Even though the constitution and functioning of DPCs is mandatory and indeed vital, progress on this front in most parts of the country is tardy. An important reason underlying this is that the role of DPCs is reduced to a mere formality since the quantum of untied or general-purpose funds for genuine local area planning is very low, with much of the district resources tied up in CSSs. The DPCs also lack technical and administrative skills, and end up perforce*

*delegating their powers to officials for this reason. The Committees are often headed and sometimes even dominated by officials rather than elected representatives. Even amongst elected representatives, there is far greater representation of 'higher' tiers rather than the Gram and Block Panchayats, with the Minister as Chairperson and in some cases all members are nominated by the State Government instead of being elected.*

*DPCs have been unable to successfully facilitate rural-urban linkages. Planning is not synchronized, with joint project planning a formality not leading to integrated project implementation. This is particularly important at the Block level given the proliferation of small towns at that level. Inter-sectoral and inter-department coordination does not take place and is in fact resisted resulting in multiplicity in planning agencies, esp. in urban areas.*

*On the basis of this analysis, the most crucial recommendations for strengthening DPCs and district planning are as follows: Election of members to DPCs, with a domination of Elected Panchayat Representatives with due representation to all tiers and women; DPC to be chaired by an elected PRI member; devolution of funds, functions and functionaries to PRIs through untied general-purpose transfers; provision of sufficient financial support, dependable office and support staff ; capacity building of members on the role and functions of DPC and the nitty-gritty of integrated planning for social and economic development; orientation and training programme in Campaign mode for PRIs in participatory planning and implementation; adoption of an integrated approach to urban and rural planning; removal of multiplicity of planning agencies, esp. in urban local bodies; the empowered DPC must ensure that each local body in the district prepares a Development Plan, consolidate plans prepared by PRIs and Municipalities in the district, review implementation of Development Plan periodically and monitor, evaluate & review all schemes and programmes being implemented in the district*

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

#### **RESPONSE 4.8**

*There is no problem per se in differences over development policy and implementation strategy between PRIS, state governments and even the central government. In fact, it is a sign of a healthy democracy. The difficulty is when there is an overlap of functions and the 'higher' tier starts imposing its views on the lower and a contestation ensues. Obviously, on several issues the State Government would be the most appropriate agency, while on others it could be the Gram Panchayat. So the most critical input in avoiding needless conflict and lack of co-ordination is to effect suitable and clear division and delegation of powers and then no tier usurp or interfere in these in the name of 'superiority' or 'seniority'.*

*The District Planning Committees should be constituted everywhere with an elected representative heading it (not a bureaucrat) giving due representation to elected representatives from all tiers of PRIs. The DPC is the best forum for resolving differences of this kind.*

4.9 What roles do you envisage for the local Governments in infrastructure creation specially mega-projects which may involve acquisition of land and displacement of people in areas under the jurisdiction of the local Governments? Local Governments should have a major role to play in decision making on issues relating to management of land resources especially change of land use from agricultural to urban and industrial purposes, acquisition of land for public purposes etc., to ensure greater stakeholder participation and reduce possibilities of conflict between local, state and national interests. What are your views in this regard?

**RESPONSE 4.9**

*Prior to discussing the role of PRIs in land use policy, land acquisition and displacement, it is important to state that the present Land Acquisition Act and the proposed amendments as well as the Rehabilitation and Resettlement Bill are highly inadequate in addressing the issues of equitable and balanced development. The land use plan of the states should be drawn up after widescale consultation with PRIs and experts and be a purely administrative exercise. The Gram Sabha and PRIs should clearly have an important role in vetting and scrutinizing land acquisition proposals based on three yardsticks: (i) public purpose, (ii) least displacing and (iii) in accordance with land-use policy and plan through Social Impact Assessment and public consultation with affected Gram Sabhas. In cases where the views of the PRIs/Gram Sabhas and other tiers do not match, the State Government should be bound to give Speaking Orders with reasons for disagreement.*

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

**RESPONSE: 4.10**

*The management, planning and development of large urban agglomerations and mega-cities is indeed challenging, and is best left to the most proximate government, namely the State Government and the municipalities. The resources required for infrastructure development and provision of basic services are of course huge and the Centre will have to play a key role in extending untied funds for the same.*

*Security has two aspects: the underlying causes and the agency that provides it. It is most important to address the political and socio-economic problems that give rise to insecurity and to provide security through accountable and democratic state agencies.*

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

#### **RESPONSE 4.11**

*A comparative assessment of the Sixth Schedule and the 73<sup>rd</sup> Amendment 1992 (STA) demonstrates the fact that while the former is subject to interference, supersession and dissolution by the Central government through the Governor, the STA aims to create institutions of local self-government for decentralized development with statutory financial devolution to the Panchayati Raj institutions, even though the experience is uneven across the country. Sixth Schedule status was granted in most if not all cases as a response to demands for greater autonomy. Unlike the STA, the Sixth Schedule confers few development functions to the district councils, and this creates two parallel structures with overlapping functions and authority. The provision of resources and formulation of a strategy for development is the Collector's prerogative. Thus, the Collectors and state government staff wield enormous power and act as an agent of the state government accountable to their cadres and line departments and not the ADCs and village assembly, which in effect, undermines local self-government and autonomy. The introduction of the Sixth Schedule without concomitant democratization and reform resulted, in many instances, in the consolidation and strengthening of the Chiefs' authority, except in areas where popular uprisings took place.*

*The Sixth Schedule was introduced in the hill districts of Assam after Independence. Under this Schedule, autonomous tribal councils could be formed in tribal areas and governed by their own self-governing institutions. Areas under this Schedule were to have separate elections, their own customary patterns of land tenures, and, amongst other things, a council fund for which they could raise resources. The Sixth Schedule can be an effective instrument only if it is backed by the political will to create truly autonomous district councils and by a progressive movement to democratise traditional power structures. It can provide some degree of autonomy to the tribal areas with adequate devolution of functions and finances; curtailment of powers of the Chiefs, observance of the principle of subsidiarity, establishment of a clear guiding principle of jurisdiction and pre-eminence, and curtailment of the excessive power and discretion vested in the Governor.*

- *It is necessary to delimit the scope of the provision of prior consent of the Governor by stating that the assent has to be granted within a specified period of time, and that in case it is not it should be referred to an independent statutory commission.*
- *The problem of overlapping power structures needs to be sorted out if the district councils are to enjoy any degree of autonomy. Almost every provision of the Sixth Schedule says that the Governor's decision will prevail in case of a conflict between the state government and district councils. These provisions need to be altered to clearly identify and demarcate the exclusive powers of the district councils that can only be changed by the State Assembly.*

- *There should be a formation of an independent Finance Commission to pass and regulate the implementation of the budget prepared by the district councils. This Finance Commission should also regulate and make guidelines for the division of royalties between the state government and the district councils.*

## **Criminal Justice, National Security and Centre-State Cooperation**

### **Role of the Union in the matter of Internal and National Security**

5.1 Article 355 of the Constitution stipulates “it shall be the duty of the Union to protect every State against external aggression and internal disturbance...” Although Public Order and Police come within the State List, Deployment of Central forces in any State in aid of the civil powers including jurisdiction, privileges and liabilities of members of such force while on such deployment are subjects of the Union List. In the context of recent developments of prolonged extremist violence and cross-border terrorism in certain States, the role and responsibility of the Central and State Governments to contain such disturbances have come up for examination in meetings of the Centre with the States.

This is an issue, which has a vital bearing on the life and security of the people and deserves urgent attention. Given the mandate of Article 355 and the division of powers in respect of internal and national security, do you think the role and responsibilities of the Centre and States in the matter of controlling internal disturbance often spread over several States require delineation through supporting legislation?

5.2 By convention and in practice, Central forces are deployed to control “internal disturbance” only when specific requests are made to that effect by individual State Governments. Article 355 of the Constitution enjoins the Union to protect States against external aggression and internal disturbances. What courses of action you would recommend for the Centre to effectively discharge its obligations under Article 355?

### **Response 5.1, 5.2**

*On the issue of internal security, there should be a constitutionally proper application, and not misinterpretation of Article 355. As already mentioned earlier, the term 'internal disturbance' in Article 355 is related to 'public order', which is the first entry in the State List. Perception of the State Government in this regard is therefore of prime importance, and that the Central Government will take necessary steps, such as sending Central Reserve Force, after the concerned State Government has requested for it. There is a need for Constitutional amendment to safeguard the interest of the States in this regard.*

### **Social and Communal Conflicts**

5.3 Maintenance of communal harmony in the country is one of the key responsibilities of both the Union and the State Governments. The Government is expected to ensure that communal tensions and communal violence are kept under control at all times. What according to you should be the role, responsibility and jurisdiction of the Centre vis-à-vis the States –

- (a) During major communal tensions particularly the ones which may lead to prolonged and escalated violence? and;  
(b) When such prolonged major communal violence actually takes place?

5.4 Likewise, what are your views on prevention and control of sectarian violence or any other social conflicts that may lead to prolonged and escalated violence?

5.5 In the light of the above two questions, what according to you should be classified as a major and prolonged act of violence? What parameters would you like to suggest in defining a major and prolonged act of violence?

5.6 In the above context what steps would you suggest for making the role of the National Integration Council more effective in maintaining and sustaining social and communal harmony in the country?

5.7 How can the media in your view play a constructive role in preventing and containing communal and sectarian violence?

**Response 5.3, 5.4, 5.5, 5.6 and 5.7**

*Maintenance of communal harmony in the country is a major responsibility of both the Union and the State Governments. An Empowered Committee of the Union Home Ministry and the State Home Ministers should meet regularly, to locate the roots of the problems and work out preventive and control measures for expeditious implementation and monitoring.*

*It is through consistent means of addressing issues related to social and economic deprivation that any idea of preventive action against communal or sectarian violence becomes meaningful. If inter-state forums become the facilitating mechanisms for a meaningful engagement to address such issues, then, the ideal of social and communal harmony will not be seen entirely as a problem of 'law and order' but as one crucially related to development. The National Integration Council should function with this basic understanding and imbibe this as an operative principle. In fact, it is through such measures that preventive action assumes significance. During times of prolonged violence, the Union will have to work to support the State Government, through dialogue and negotiations. The media can play a very positive role precisely by highlighting the social basis of communal and sectarian tensions, in order to sensitize all sections of society. This is an area, where the media will have enable itself to meet up to the challenge of being responsible and sensitive to those who are at the receiving end of sectarian strife. Rather than sensationalizing violence, the media could do better in providing a balanced perspective and render itself meaningful.*

**Crimes affecting National Security**

5.8 Several expert committees constituted by the Government from time to time for reforming criminal justice administration have consistently recommended the need for classifying crimes threatening national security as a separate category requiring differential treatment. These are crimes generally masterminded by criminal syndicates across State and National boundaries using illegitimate or ostensibly legitimate channels mostly with the support of anti-national elements. This category may include

crimes such as terrorist violence, economic crimes like money laundering, production and distribution of fake currency and stock market frauds, trans-national crimes like drug trafficking, arms and explosives smuggling etc..

Given the potential danger to the security of the country arising from such inter-state and trans-national crimes, which crimes in your view merit inclusion in such a category?

5.9 Given their characteristics as mentioned in 5.8, inter-State and transnational crimes do warrant different procedures for investigation and prosecution as compared to other crimes. A Central Agency with special expertise and resources working in co-ordination with international security agencies on the one hand and the State police on the other, is the model recommended by expert committees to tackle the problem. What are your views in this regard?

5.10 The Central Agency so constituted as a result of issues raised in 5.9 above would not be able to operate effectively without the cooperation and support of the State law and order machinery. What are your suggestions in this regard?

### **Response 5.8, 5.9 and 5.10**

*Internal Security is as much a concern for the State Governments, as it should be central responsibility of the Union Government. Further centralization of powers at the Centre, will not help in effectively handling crimes that have serious implications for the country. In fact, the Union should help in enabling the State Law and Order machinery through material support and quality training and equipping them to handle increasingly sophisticated operations of criminals. Central Agencies will have to share their expertise with state agencies if any cooperation between them has to become feasible.*

### **Natural Resources, Environment, Land and Agriculture**

6.1 The Inter State River Water Disputes Act, 1956, provides for inter alia the constitution of a tribunal by the Central Government, if a dispute cannot be settled by negotiations within a time frame of one year after the receipt of an application from a disputant State; giving powers to tribunals to requisition any data from the State Governments, the water management agencies etc; a data bank and an information system being maintained by the Central Government at the national level for each river basin; empowerment of the Central Government to verify data supplied by the State Government; a time frame for tribunals to give an award and for the decision of the tribunal after its publication in the official gazette by the Central Government to have the same force as an order or decree of the Supreme Court. Broad principles for sharing of river waters are still under discussion between the Central Government and the States.

Are you satisfied that the measures taken so far have contributed effectively to the resolution of inter-State river water disputes? What additional measures do you suggest for strengthening the implementation of the existing Constitutional provisions and other laws? What in your view should be the role of the Central Government in implementing and monitoring the existing inter-State water sharing agreements and in ensuring



compliance and implementation of the awards of tribunals, court decisions and agreements/treaties?

6.2 Water as a resource, particularly river waters, is an issue of great complexity and sensitivity in terms of ownership and control, conservation, optimal and sustainable use, sharing and distribution and it is apprehended that this may result in serious tension and possible civil strife in future. Proper management of the resource requires striking a balance between national interests and the interests of the States through which the rivers flow. In this context several proposals have been considered including the transfer of water from one river basin to another, more prudent use in intra-basin areas, sharper focus on rain water harvesting and water management strategies etc. What are your views in the matter to ensure better management of this valuable resource keeping in view both national interests and the interests of individual States? Can the concept of integrated planning and management of river basins under a joint authority be introduced on a larger scale?

6.3 Continuing from the foregoing, what in your view should be the nature of Centre-State cooperation in mitigating the effect of floods and management of drainage and irrigation particularly when these issues have inter-State and international implications?

6.6 Storage or reservoir or dam based projects are often conceived as multi purpose projects providing not only power but also irrigation, navigation, drinking water and flood control benefits. At the same time such projects have higher environmental and social externalities. The issue of fair sharing of social and environmental costs and benefits between downstream/command areas and upstream/catchment areas has been a major problem leading to suboptimal utilization of this valuable resource.

What role do you envisage for the Central Government for achieving greater cooperation among the various stakeholders in developing a consensus on such projects?

#### **RESPONSE 6.2, 6.3 and 6.4**

***INTERLINKING RIVERS:*** *The National Water Policy 2002 recommends the interlinking of surplus and deficit river basins, as the only solution to drought and interstate disputes amongst deficit states (a position also taken by the Supreme Court). However, the position that interlinking of rivers is acceptable, sound and beneficial for the larger good is not established.*

*At the moment, water management is a state subject. The project is based on centralization and privatization of water resource management: to form a 'national water grid' in much the same way as the electricity grid, monitoring and transferring water from surplus to deficit basins, and to develop a national water balance within a fifty year perspective on the basis of a study by the Central Water Commission (National Water Development Agency). The NWDA proposed linking the deficit rain-fed Peninsular river basins to the surplus snow-fed Himalayan rivers. The strategy is to move the country's eastern waters south and those of the many small west-flowing rivers east and north to augment both irrigation and power generation.*

*However, there are several problems with this Plan. It calls for a huge amount of regional cooperation with neighbouring countries; most of all from Bangladesh, Nepal and Bhutan. India proposal for a gargantuan Brahmaputra-Ganga gravity link canal to Bangladesh was rejected by them in the seventies on several justifiable grounds. The Department of Water Resources scientifically rejected the alternative Siliguri chicken-neck link as technically and financially non-viable. Even neighbouring states within a basin disagree on the criteria and quantum of riverwater sharing for the Mahanadi-Godavari-Krishna-Pennar-Cauvery peninsular link. Worse, it requires a high degree of centralization and concentration of financial and technical decision-making powers with the Central Government/Authority, undermining the States.*

*One basin is distinguished from another through its natural ridge line, and physical linkages will involve tunneling, lifting, arduous rerouting around these natural barriers. This grandiose centralized design of long-distance water transfers from one basin to another involves a very high and ongoing monetary and energy cost. The water in the surplus season will have to be stopped and stored in large reservoirs, and the transfer and release of the stored water at discrete or even regular intervals will require long conveyance systems. The magnitude of displacement of people and the environmental costs have yet to be subject to careful scrutiny, but are unlikely to meet the feasibility criteria. The government told the Supreme Court that it could link peninsular rivers by 2035 and Himalayan Rivers by 2043, and then make the final linkage between the two. However, even those in favour of the Project concede that this will be a very time consuming and long drawn process, requiring anywhere between 50 to 100 years. The then attorney general informed the Supreme Court that the scheme would cost Rs 70,000 crore. However, the government has since raised this estimate manifold, to Rs 560,000 crore for which huge tenders will be floated to the private sector.*

*Even this high cost could be justified if it were established without question that the strategy would deliver and effectively mitigate the misery on account of droughts and floods. However, the proposal did not curry much favour with a feasibility study done by a high-level National Commission on Integrated Water Resources Development Plan some years ago. In light of the fact that this is a proposal that has been severally recommended and rejected in the past 40 to 50 years for reasons valid even today, perhaps resources of this magnitude are better utilized in providing irrigation and drinking water through less dramatic but more tried, tested and reliable ways.*

*Since water is a scarce, fragile and precious resource, Water Resource Management should be done through public investment by local and state governments through federal/decentralized planning, implementation and management using appropriate technology, micro, minor, major or watershed based. As a part of this strategy, a special emphasis should be placed on the use of surface and ground water and a proper mix of minor, medium and large irrigation projects, drainage and flood control.*

*Drinking water security and food security should be the primary aims of water use, both at the sub-national and national level. Pricing policy should reflect the principles of 'ability to pay', 'equity' and 'food security'. Dryland areas should be given special focus keeping in mind their extreme location specificity and fragility, since they are vital for food security.*

*In managing any natural disaster (such as floods, cyclone, drought etc.), the financial corpus of State Calamity Relief fund should be fixed by considering the extent of damage caused by natural calamities in the last five years and the rate of inflation. Keeping the concern for global warming in view, the corpus of National Calamity Contingency Fund should immediately be doubled.*

*RIVER BASIN AUTHORITIES: River water sharing has always invoked high regional passions and often resulted in discord between states. From Ambedkar onwards, government policy and legislation has always tried to come to terms with the complexity and multiplicity of issues involved in water sharing of interstate rivers. One set of problems arises from the regional inequality in the natural distribution of surface water resources; the second arises from the sheer locational advantage on account of existing facilities and where the state is positioned in the basin. In order to address these issues, the idea of a river basin authority has been mooted for a long time. The National Water Policy (NWP) 1987 too made this suggestion.*

*The NWP 2002 proposal for a River Basin Organization undermines the states' powers through the setting up of a parallel statutorily empowered body, with the states relinquishing a great deal of their Constitutional federal powers in water resources management. The solution for inter-state disputes over river water sharing cannot be the centralization of powers over water resources in any way, institutional, technical or financial. To prevent parochialism or regionalism to override considerations of inter-regional and interstate equity and to prevent states exercising monopolistic powers merely on the basis of their location, the Inter State Council should set up an Empowered Sub Group to evolve sound and transparent criteria through consultation, and once accepted, to be adhered to strictly.*

*In case States that share rivers so desire, they may set up a mechanism for co-ordination under the direction and control of basin states but with a more representative and democratic character, and with the scope and powers of the river basin organisations decided by the basin states themselves.*

*NATIONALIZATION OF RIVERS: Recent demands to nationalize rivers have to again be viewed with extreme caution because advocates for nationalization of what are currently federal resources are essentially recommending centralization of resources and gigantic projects of unprecedented financial, temporal and spatial dimensions. Demands for nationalization of rivers must be seen in light of the preference the present central government has for the following:*

- i. Mega ventures like interlinking of rivers*
- ii. Privatization of water resources development*
- iii. Corporatization of management and regulatory institutions*
- iv. Centralization of economic policy decision making*

*We strongly oppose the strategy of centralization through usurpation of powers over river water resources from state governments and local bodies. The State governments should continue to exercise their federal Constitutional powers.*

*ROLE OF CENTRE: The role of the Centre should be advisory and facilitative, without any usurping of the powers and jurisdiction of the States as written in List-II of the*

*Seventh Schedule under Article 246 of the Constitution or the powers of the PRIs under the XIth Schedule of the Constitution. Additional funds should be devolved by the Centre to State and local governments for this purpose.*

6.4 Pollution of our rivers poses a serious threat to the quality of available water, biotic resources, human health and safety and our natural heritage. Adequate efforts to tackle the problem through technology oriented national and state level programmes backed by peoples participation have been lacking. Even Missions such as Ganga / Yamuna Action Plan(s) and other river action plans have yielded limited results. What steps - legal, administrative, technological, economic and financial - would you suggest for a resolution of the problem?

6.5 The subject of land improvement figures at Entry 18 in List-II of the Seventh Schedule under Article 246. Most of the States have not taken sufficient measures to optimally utilize the nutrients present in the residue of treated sewage or in the river waters by way of sullage and sewage flowing into them (part of the solid waste settles at the river bottom and is retrievable during the period of lean flow) and recycling the available water resource to improve the fertility of soil and increase the productivity of land.

In this context there is an increasingly perceived need to have in place a national strategy for control, regulation and utilization of sullage and wastewater to improve the quality of soil, land and other nutrients with the objective of augmenting agricultural yield, more so due to mounting water scarcity and changes in precipitation owing to climatic changes. What are your suggestions for countering the resulting loss to the country?

#### **RESPONSE 6.4 and 6.5**

*There is no need or Constitutional basis for central interference on this matter. The problem of pollution/sullage and wastewater management prevails across the country, but its solution has to be extremely location-specific. Keeping this in mind, the Inter State Council may set up a Sub Group on Pollution Control/Control, Regulation And Utilization Of Sullage And Wastewater comprising State Governments (since it is a State subject) which may co-opt experts in the field to work out an appropriate strategy which may be recommended to all States subject to their consent.*

*Additional funds should be devolved by the Centre to State and local governments for this purpose.*

#### **Forests, Land and Agriculture**

6.7 With the adoption of the National Environment Policy 2006, greater powers have been delegated to the States to grant environmental and forest clearances for infrastructure and industrial projects having investment of upto a specified limit. While one body of opinion is of the view that it will have a harmful effect on ecology and disrupt the fragile equilibrium in our environment, others look upon this as a welcome initiative which will facilitate timely implementation of development projects.

Do you think that the existing arrangements are working satisfactorily? How do you think the conflicting interests of development and environmental conservation can be better reconciled?

**RESPONSE 6.7**

*We welcome the devolution of these powers to the States. The problem with the clearances is not so much the level of government that gives them, but the procedure and criteria adopted for the same. It is important to provide far greater and authentic information on costs and benefits; hold more democratic and wide-ranging consultations; and evolve transparent and objective criteria for project approval.*

6.8 There is a view that the inadequacy of minimum infrastructure facilities for forest dwellers and general lack of economic opportunities has greatly contributed to the escalation of dissatisfaction and alienation among them. This also raises security concerns. The ‘Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Tribes) Act, 2006’ which confers land ownership rights on Scheduled Tribes and other traditional forest dwellers in the event of their being in occupation of the said land as on 13th December, 2005 is perceived as a major step towards containment of unrest and tension. Do you agree with this assessment? What further steps can be taken to build sustainable models of conservation by involving tribal and other forest dwelling communities?

**RESPONSE 6.8**

*The ‘Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Tribes) Act, 2006’ is an important step towards the creation of better opportunities and provision of basic needs for tribals. However, it is not sufficient in itself. First and foremost, the Act needs to be properly implemented and confer rights to cultivated land, community resources and minor forest produce. Second, the important provision in the Act of land for development purposes on the recommendation of the Gram Sabhas needs far greater attention. Third, financial resources have to be provided for the construction and running of schools, hospitals, anganwadis, ration shops, water bodies, etc. Fourth, the PRIs must have far greater role in determining land use and forest resource management.*

6.9 Some of the States have contended that they have to maintain and conserve large tracts of forests and green cover for national and global benefit at the cost of the economic interests of the State. Similarly mountain States, particularly those that are a part of the Himalayan ecosystem have to constrict the economic exploitation potential of the region for the benefit of the ecosystem as a whole. In other words, these States provide ecological services essential for the country as a whole as well as for the entire global community. These States have argued for compensation to them and the communities who perform the role of stewardship of these valuable ecological assets. What are your views in this regard?

**RESPONSE 6.9**

*There is a symbiotic relation ship between different ecosystems of this country and indeed the entire world. Some regions may be more fragile than others, but the linkage*

*through externalities is universal. This cannot form the basis for compensation. On the other hand, if regions with a particular ecology have suffered greater neglect or need more resources and should have a special status, an argument should be made in those terms to which we will need to respond specifically but are not opposed to in principle. In the management of ecology and environment, the efforts made by the States in controlling different forms of pollution, particularly the steps taken by the States to increase the forest and tree cover, should be encouraged in terms of providing from the national level special incentive grant to the States for forest conservation and similar steps.*

6.10 Regulation of mineral resources including hydrocarbons comes within the competence of the Centre by virtue of Entries 53, and 54 and 55 of List I of the Seventh Schedule. Entry 23 under List II similarly empowers the States to regulate the development of mines and minerals subject to the provisions of List I. The States have been seeking a greater role in the decision making processes relating to the regulation of mineral resources e.g. in the determination of the royalty rates, periodicity of rates revision etc. What steps, in your view, should be taken to evolve an integrated policy on the subject that would reconcile the interests of the States with the sustainable exploitation of mineral resources including hydrocarbons in the national interest?

#### **RESPONSE 6.10**

*There is no need or Constitutional basis for central interference on this matter. In the sphere of mineral resources, including hydrocarbons, the States strongly feel that they have been denied their legitimate share of revenue due to the refusal by the Government of India to increase in every two-year interval the rate of royalty on coal and all other minerals, thus violating the recommendations of the Sarkaria Commission in this regard. This denial of revenue to the States has not only been for coal and all other minerals but has also been for royalty on natural gas (including the basis of pricing). Not only have such revisions of royalties been delayed, but such revisions have also been applied in a discriminatory manner. The 13FC must work out fair and objective criteria for assigning weights to these heads. In the interest of the States, it is also necessary to revise the royalty rates on coal (and other minerals) more frequently and charged on ad valorem basis, and also to ensure that coal royalty be paid at the latest revised rates without any discrimination among the States. The States should have a greater role in the decision making processes relating to the regulation of mineral resources e.g. in the determination of the royalty rates, periodicity of rates revision etc.*

#### **Infrastructure Development and Mega Projects**

**7.1** Mega projects, such as infrastructure projects related to national/inter-State highways, river interlinking major irrigation works, large scale power generation, etc are characterized by long gestation periods, heavy capital investment requirements and complex ownership and management structures involving multiple stakeholders. These projects both in their creation and operation are dependent on smooth and well-coordinated Centre-State and inter-State relations. There are several instances of such projects getting thwarted or delayed or their operations getting affected by inter-State or Centre-State problems at a heavy cost to society. Please give your suggestions for creating an enabling policy and institutional framework, innovative structures and

mechanisms for stakeholder participation and systems and procedures for quick reconciliation of conflicting approaches so that national interests prevail.

7.3 In the case of mega projects, often actions and interventions in one State impact on another. The construction of a large dam in one State, for instance, may lead to large scale displacement of people in another without commensurate benefits accruing to that State. What are your suggestions for evolving a national consensus on rehabilitation policies and strategies and conflict resolution mechanisms.

### **RESPONSE 7.1 AND 7.3**

*The most important causes of time overruns and delays in the completion of mega projects is the delay in fund release, poor design of the project without adequate consultation with state governments and other stakeholders at the conceptual and design stage and the vicious cycle of time overruns leading to cost overruns leading to procedural delays. Conflicts between states are a smaller problem. The bigger problem that needs to be overcome requires greater co-ordination and consultation between the Centre and the States. It is also important to institutionalize this by making it mandatory to get the ISC's approval of Projects involving more than one state through a representative Sub-Committee for Project Approval set up for this purpose. It is especially important to have the consent of stakeholders who will bear the brunt of the negative externalities of mega projects. The Central Government through its Ministries, the Planning Commission or any other financial institution/bank should not approve any inter-state, state or Central Projects unless the ISC's Sub-Committee for Project Approval has obtained the consent of the concerned States. Funding sources should be clearly identified before commencement and release should be planned in an optimal and practical manner.*

7.2 Mega projects involve large scale acquisition of land and consequential problems associated with compensation, displacement of people and their relief and rehabilitation and resettlement. Would you suggest any policy changes in the existing processes of land acquisition and payment of compensation thereof? Likewise, is there a need for bringing in any changes in the rehabilitation and resettlement policies in order to minimize displacement, ensure fair compensation for the project affected people and provide them commensurate livelihood security?

### **RESPONSE 7.2**

***Land Acquisition Act:** At the moment, the legal framework for land acquisition for public purpose is provided by the Land Acquisition Act, 1894 (LAA), last amended in 1984. Over the years, judicial exposition has highlighted its numerous lacunae, as has the ground experience of its adverse impact on the livelihood of those giving up land and being displaced. The Land Acquisition Act should be comprehensively amended to ensure that while pursuing genuine public interest, it is made more democratic, transparent and accountable, safeguarding the rights and interests of displaced persons and securing their livelihoods through improved and sustainable livelihood-generation and fair compensation. The Government's proposed amendments to the LAA unfortunately, do not address several core deficiencies and anomalies, while introducing several amendments that are examples of the cure being worse than the disease.*

*Acquisition by Companies and individuals should be kept strictly under the purview of the Act and all market based land acquisition that involves changes in land use and displacement must be regulated under this Act. There should be no free play of market forces and by-passing of the State in land acquisition and land use changes. Definition of interested persons in the LAA Bill should include the non-landed and non-cultivating persons dependent on the land and local economy for livelihoods and common property through a clear procedure for filing of claims. The loss of access to common property resources too must be listed and compensated.*

*Public purpose should be clearly and unambiguously defined and limited to certain types of pro-poor, redistributive, employment-intensive and public good oriented activities, which are Government-owned to the extent of at least 50 per cent. The decision of what constitutes public purpose should be democratized and the legislature involved along with the PRIs. This should not remain in the hands of the executive alone Public consultation with affected Gram Sabhas should be mandatory along with Social Impact Assessment. All project proposals should be scrutinized based on three yardsticks: (i) public purpose, (ii) least displacing and (iii) in accordance with land-use policy and plan.*

*The Act must shift to a methodology in which compensation ensures long-term livelihood security through employment and improves living standards. The Government must shift from market-based valuations to 'fair' valuation that is computed as the highest amongst the following: market prices, replacement cost, augmented value and present discounted output value. In addition, there must be far higher solatium given the compulsory nature of the acquisition. The affected persons should also get a share in the increased income arising from the change in land use, which is expressly prohibited in Section 24. Shares and Debentures should be given over and above the compensation, as a part of 'profit-sharing' and not as a portion of the compensation. Employment and skill upgradation must be essential features of compensation. In all cases of displacement, rehabilitation and resettlement must precede the physical possession of the land by the acquirer.*

### ***Rehabilitation and Resettlement***

*The demand for a Rehabilitation and Resettlement Bill was based on the understanding that it is better to have a law since statute rights defined (or denied) in law are binding, while a R&R Policy would only have persuasive value that can be ignored by both the Government and Courts. Seen in this light, the present Bill is an important step towards recognizing rehabilitation and resettlement rights of displaced persons. Unfortunately, however, the proposed Rehabilitation and Resettlement Bill, 2007 is toothless as it is full of platitudes without any binding provisions. The several conditions associated with rehabilitation and resettlement and the un-enforceability of different provisions render the proposed legislation ineffective. It focuses more on form and governance framework with a multitude of Committees and processes rather than granting substantive rights.*

*All displacement should come under the purview of the R&R Act without any numerical restrictions of the number of displaced families. "Affected Area" must include all areas of displacement irrespective of the cause, extent and frequency. Similarly, all displacement, whether involuntary or voluntary, should be covered.*

*Common Property Resources and users must be included in the definitions of Affected Families and Areas. Adult unmarried women and unmarried dependent sisters should*



*be treated at par with their male counterparts. It should cover to all holders of forest rights under The Scheduled Tribes and Other Traditional Forest Dwellers Recognition of Forest Rights) Act, 2006.*

*There must be a procedure for application and verification of claims by people. The verification process must involve the Gram Sabha. There must be a proper appeals process against faulty exclusion. Social Impact Assessment (SIA) should be done by an Expert Committee comprising official, elected representatives, representatives of affected persons and non-official experts. It should be done in all cases of displacement. There must be consultations with the persons likely to be affected. The R&R committees at various levels must not be dominated by officials and there must be a strong presence of elected representatives and of the affected families.*

*Employment for the displaced persons in the projects has been linked to the “availability of vacancies and suitability of the affected person for the employment”. If employment for displaced persons cannot be provided in a project, the affected persons must be provided guaranteed employment for 200 days each year at the statutory minimum wages for unskilled rural/urban labour. References at several points to limiting certain types of compensation to only those below the poverty line (BPL) should be removed. Complete rehabilitation must precede displacement. All assets/compensation must be in the joint name of spouses. The provision of land in irrigation projects should be compulsory. The option of lump sum payment in lieu of all entitlements must be deleted since it is effectively a nullifying clause.*

## **Socio-Political Developments, Public Policy and Governance**

### **Political Developments**

8.1 India is characterized by ‘unity in diversity’ consistent with a pluralistic identity. Recent decades have been marked by significant increase of socio-political mobilization around sectarian identities. Fears have been expressed that political developments emanating from such mobilization pose a threat to the unity and integrity of the country. Do you agree with this assessment and if so what are your suggestions for a long- term solution?

8.2 Another significant political development has been the growth and ascendancy of regional parties. These parties have now come to legitimately play a major role in governance at the national level. Given the possibility of this trend continuing, what would you suggest should be done to harmonize national and regional interests for better Centre-State relations?

8.3 In contemporary federations, different types of political configurations exist with various kinds of coalitions being formed among political parties, other groups and individuals. In India the multi-party coalitions have increasingly become the trend. In this context, what measures would you suggest to ensure that the national vision and wider collective purpose are always paramount and do not get distorted.

8.4 With the passing of the 73<sup>rd</sup> and the 74<sup>th</sup> amendments to the Constitution in 1992 more empowered local level political leadership has emerged. New areas of political

tensions and conflicts among Central, State and Panchayat/Municipal level leaderships have consequently arisen. How can these conflicts be resolved and their relationship harmonized? Please give your suggestions.

**Response 8.1, 8.2, 8.3 and 8.4**

*One of the main issues that we are arguing for in this note is that over centralization of powers in the hands of the Centre has an adverse role in ensuring equitable development across the country. Rational devolution of powers and decentralization to democratic institutions at the local level is definitely one way to address uneven development. Market centered economic policies at the Centre has only aggravated regional imbalances in growth, which has reflected in highly dynamic regional political mobilizations that often assume sectarian character. It is important therefore that this Commission recognizes the serious implications of over-centralization in its developmental aspects rather than restricting its scope and analysis to procedural and organizational forms. Unless and until democratic participation of the people at the grassroots level is promoted and institutionalized, the problem of sectarian political mobilization cannot be addressed through formal institutional mechanisms.*

*On the other hand, the dynamism of politics at the local level is equally important for a vibrant democracy. Recognizing and engaging with newly emerging political leadership is vital in this regard. Instead of viewing them as liability, the democratic aspirations behind such political processes need to be accommodated for better governance. Decentralized planning and implementation with increased responsibilities to this new leadership will ensure that localized concerns are reflected at the national level. Ignoring the democratic content of new forms of political mobilization will aggravate uneven development. Cultivating a responsible and secular political leadership demands courage from the Centre to provide increased responsibilities to local bodies.*

**Social Developments**

8.5 Socio-economic developments have resulted in large scale migration from the under developed to the better developed regions within the country. This has sometimes affected the established demographic patterns and has tended to cause social tensions. This development has serious implications for Centre-State and inter-State relations. With the free movement of citizens guaranteed by the Constitution, what measures would you suggest to contain such social tensions?

**Response 8.5**

*The constitutional guarantee of free movement has to be defended by all means. It is mobility that has enabled vast sections of the labouring people to encounter and yet participate in an economy, which is not oriented to assure them a quality life. While it is good that the Commission has recognized the problem of acute regional imbalances in growth and consequent demographic changes, we would like to emphasize again that the most important cause behind these large scale movements of population continues to be growing regional disparity on the one hand and a stagnant rural economy on the other. The cause for both is inadequate public investment in infrastructure, social and economic services, extension work, etc. Falling public investment as a percentage of*

*GDP, rising input costs, inadequate expansion in remunerative off-farm employment and rural industrialization, rising price of food and other essential items, worsening access to the public distribution system are amongst the many factors tending to 'push' people out of the stagnant regions. However, their destinations are hostile to their entry because here too there is a retreat from pro-poor employment-intensive development.*

*Thus the blatant pursuit of neo-liberal policies by the Central Government since the 1990s has been singularly responsible for the intensification of disparity between regions and states. The only solution is to make more finances available to agriculture, rural development, employment generation and backward areas for inclusive, employment-intensive growth and development in order to reduce the pressures for out-migration.*

### **Public Policy and Governance**

8.6 Article 37 of the Constitution states that the principles laid down in Part IV are fundamental in the governance of the country and it shall be the duty of the State to apply these principles to making laws.

(i) Have the Directives been accorded due regard by the Centre and the States in making laws and in formulating policies and programmes?

(ii) What are those Directives, which require more legislative attention from (a) the Union Parliament, and (b) the State Legislatures?

8.7 What in your view are the elements of good governance that need to be addressed? What parameters would you consider appropriate in order to judge the performance of a State? What are your views about the existing monitoring, review and evaluation mechanisms to ensure delivery of effective outputs and outcomes of the schemes and programmes in the field?

### **Response 8.6 and 8.7**

*When planning is decentralized, monitoring and implementation become integral to the responsible implementation at the local level, from the State to the Districts and below. Any notion of unified standards will not help in addressing the diverse conditions of implementation. Performance indicators and parameters will have to be developed locally, by the same people, who also engage in decentralized planning. The case of increasing centrally sponsored schemes with their rigid guidelines, we have found, are so insensitive to actual conditions on the ground. On top of this, parameters of monitoring and evaluation to such schemes are also decided centrally, leaving no room for any innovation and flexibility to the local bodies for effective implementation. With the absence of any form of dialogue with the local bodies, the design of centrally sponsored developmental schemes end up being ill conceived with respect to the demands of diversity. The States and local democratic institutions will have judge themselves and they should be assisted in this process, rather than fixing thoroughly insensitive standard at the national level.*

8.8 The task of governance is no longer confined exclusively to Governments, but includes a wide range of stakeholders – the organized private sector, public-private partnership institutions, civil society organizations, user and consumer groups, special interest groups, associations of industry and a variety of other non-state organizations.

In many spheres of activity, earlier performed primarily by Governments, e.g., education, health care, infrastructure creation and management, such organizations now play a very important role at various levels. In view of their growing significance these organizations may have to be seen as important players in a multi-level federal order.

In the context of these developments, what measures would you suggest for the participation of these emerging stakeholders in the scheme of governance to address the growing challenges of ensuring good governance for promoting the welfare of the people?

8.9 In the context of the increased role of many non state organizations in the delivery of public services, please give your views on:

(a) What can be done to ensure that such organizations take due account of social responsibilities and public good in their functioning?

(b) How can the discipline of human rights and the philosophy of the Directive Principles be brought into the scheme of such organizations?

(c) How can the principle of democratic accountability in the delivery of public services be extended to these organizations?

### **Response 8.8 and 8.9**

*To seek democratic accountability from non-state organizations in the delivery of public services is a contradiction in itself. The entry of such so called multiple stake holders in the arena of public services delivery has in our view, distanced the state from holding itself accountable from one of its most fundamental duties, ascribed to it constitutionally. To expect this new genre of non-state, 'development industry' to absorb Directive Principles in their organizational schema is to defy the logic of their own interests. No other organizational forms but the State can substitute for delivering quality services to the people. NGOs cannot replace the State, in whatever name and labels that they tend to assume.*

*These NGOs also tend to undermine elected local bodies and their representatives. Service delivery should be the task of the Panchayats/Municipalities and Government Line Departments and not NGOs.*

### **Social, Economic and Human Development**

9.1 Development strategies, particularly those aimed at correcting regional imbalances, often require looking at the region as a whole. Regions are often defined by topographic, agro-climatic, ethno-geographic and social and cultural similarities and may comprise two or more States. There is merit in looking at the core strengths of the entire region and basing strategies on such strengths irrespective of State boundaries. This would require new forms of inter-State cooperation for synergistic development. What are your suggestions for achieving such cooperation?

### **RESPONSE 9.1**

*Agro-climatic regional planning is extremely important, but has to take place under the state and local government. Natural and administrative boundaries often do not coincide, but the planning authority has to be the appropriate government. Within this*

*framework, any voluntary cooperation across states is welcome and can be recommended/suggested by the Inter State Council.*

9.2 One of the criticisms faced by the central sector and Centrally Sponsored Schemes is that they tend to have a uniform prescription for all situations without adequate regard to regional and local specificities and suffer from lack of flexibility.

Do you think such criticism is justified? If yes, what are your suggestions to remove them? What measures do you suggest for customization of programmes and schemes to suit the differentiated needs of States and Local Governments?

**RESPONSE: See Response to 2.2 and 2.9**

9.3 Quality of education at all levels and in all fields has been a matter of concern. There is need for developing common acceptable standards and having an effective system of accreditation, certification and quality assurance systems and procedures. Given the Constitutional provisions what respective roles, according to you, can the Centre and States play individually or collectively in working out a coordinated strategy in this respect?

9.4 What steps can be undertaken by the Centre and States in a coordinated manner to preserve and promote academic disciplines which are getting marginalized by a variety of socio-economic developments?

9.5 One of the challenges faced by policy planners in the country is lack of uniform social and economic measurement standards (including poverty, health, education, etc.). This applies across Central departments as well as between States. This is an important issue because these measurements are utilized for the allocation of resources to the States.

How can uniform national standards for the measurement of these indicators be formulated? What are your suggestions with respect to Centre-State cooperation in the joint formulation of these standards?

**RESPONSE 9.3, 9.4 AND 9.5**

*Until 1976, education was a State subject. Since its transfer to the Concurrent List by the 42<sup>nd</sup> Constitutional Amendment in 1976, the Central Government has launched a few centrally sponsored schemes, which are nowhere near the promised 6 per cent of GDP.*

*The fundamental right to free education of children of ages 6-14, as supposedly granted by Article 21A since December 2002, is yet to acquire the stature of other fundamental rights, since the central government has not yet passed the required legislation. It is imperative to ensure that such legislation, which meets the requirements of universal access to quality education, is passed during the tenure of the present government*

### ***Basic considerations***

*Some background points must be noted in this context:*

1. **Central support and central legislation:** Legislation at the national level is required to meet the requirements of Article 21A; this is a right that has to be guaranteed by the Central Government rather than by individual state governments. Therefore, proposals for a model bill to be enacted individually by State Governments are not adequate to meet the constitutional responsibilities of the Government and cannot be accepted.
2. **Financial commitment:** There must be specified financial commitment, with central resources (distributed through the Finance Commission as suggested below or provided directly by the Centre) providing the bulk of the additional funds required to ensure the Right to Education. A financial memorandum must be included in the bill (as in the case of the National Rural Employment Guarantee Act).
3. **Time frame:** It is important to specify the period within which universal education of reasonable quality is sought to be achieved, possibly a maximum of five years.
4. **Common schooling and the responsibility of private schools:** The common schooling paradigm, which was an important part of the CABE committee recommendations on the Right to Education, must be retained. Therefore, there should be an emphasis of shifting to neighbourhood schooling as far as possible. In line with this, there must be legal requirements for ensuring free education in private schools to a minimum proportion of underprivileged children.
5. **Schedule of norms and standards:** To ensure a minimum quality of education, it is important to have a schedule of norms for all schools to follow. This requires defining the parameters of quality, such as infrastructure, teaching methods, teacher qualifications, remuneration etc.
6. **Specification for teachers:** Since teachers are critical in ensuring a minimum quality of education, laying down well-defined norms for the minimum qualifications of teachers is particularly important. The current tendency is to define a teacher simply as a person who teaches in the classroom.
7. **Justiciability:** Any right, including the Right to Education, is only meaningful if it is justiciable. The responsibility of the Government, at both the Central and State levels, must be recognized and made justiciable.
8. **Redressal mechanism:** To ensure justiciability, a redressal mechanism should be outlined and an appropriate procedure must be set in place for students or parents in case the right is not upheld.
9. **Universal schooling:** School education must be provided to all, which necessarily requires that children of the disadvantaged, landless and minority communities must be integrated, along with children with disabilities or special needs. This requires not only common schooling but also that there should be no distinction made in terms of the type of schooling provided within the government system, for children from different social, economic and cultural

*backgrounds. (Obviously, in all cases, the school system should be flexible enough to cater to particular needs of students.)*

### **Recent policy moves**

- 1. The move to reduce central funding of the Sarva Shiksha Abhiyan from 75 per cent to 65 per cent and eventually to 50 per cent is extremely retrograde and militates against the right to education. It must be immediately reversed.*
- 2. Similarly the allocations for the proposed SUCCESS programme for secondary education must first of all ensure adequate allocations to ensure the right to education up to Class VIII, and in addition provide for additional resources to expand secondary and higher education. The current allocations for secondary education proposed in the Eleventh Plan are completely inadequate for these goals.*
- 3. The pattern of funding of SSA and the emphasis on expansion of enrolment has led to the emergence of parallel streams of schooling, with “Education Centres” operating with minimal infrastructure and resources, which cannot be accepted as schools. There must be emphasis on minimum quality norms, which in turn requires changes in the minimum financial norms per student as well.*
- 4. Any attempt to avoid central legislation with financial provisions, for example by allowing state to enact their own legislation, must be resisted. It is incumbent upon the central government to ensure this right, with appropriate financial provision. State governments may enact their own supplementary legislation as long as it is in basic conformity with the central legislation.*

### **The proposed legislation**

- 1. **Financing the right to education:** It should be noted that state governments already bear the brunt of financing school education (estimated to be around 84 per cent of the total expenditure). While universal education is nearly achieved in some states, in several others it will simply not be possible without significant additional funding, which is simply not available with the concerned state governments. Also, there are major issues of inferior quality that stem from inadequate funding even in states where enrolment has been increased.*

*The proposed legislation leaves it to the discretion of the central government as to how much of the additional expenditure required will be provided by the central government. Instead of this, it is proposed to ensure the allocations in a transparent manner through Finance Commission awards. According to this, the Finance Commission would ensure additional resources for the right to education to all states, on a per capita basis. This will not discriminate against states that have already ensured near universal education, and will provide resources to those states that have large gaps in current provisioning. In addition, in some states with large gaps, there are likely to be large requirements of additional infrastructural spending to ensure the right to education – such allocations should be made by the Planning Commission.*

*(If such a system of financing the right to education is not accepted, it is imperative to ensure that the central government provides additional resources*

*to all states for filling gaps, as long as the state government is spending at least 20 per cent of its annual budget on school education. However, this should be only be the second best option.)*

- 2. *The need for flexibility:*** *While the minimum norms for quantity and quality in schooling must be laid down by the central legislation and rigidly adhered to, it is important to allow for flexibility in the mode of provision. For example, the current norms for SSA are excessively rigid and do not allow for regional, spatial, and rural-urban differences. The proposed legislation is also very rigid. For example, it lays down the exact nature of decentralisation of management (amounting to a highly centralised notion of decentralisation) even down to specifying the required composition and powers of the School Management Committees and District Education Committees. Instead, state governments should be allowed to choose their own manner of provisioning, as long as it meets certain basic criteria as well as the norms for quantity and quality.*
- 3. *Punishment for not ensuring the right.*** *The proposed legislation is extremely weak in terms of the responsibility of the state, as well of private schools that do not conform, and does not provide for adequate complaint and redressal mechanisms where the right to education is not adequately provided. Instead the onus of blame, along with the susceptibility to punishment, is placed on parents/guardians. This unfairly discriminates against poor and marginalised sections.*
- 4. *Regulation of private provision of school education.*** *The law should allow some scope for monitoring of private schools, in terms of ensuring a transparent admissions process, ensuring participation of non-fee paying students according to the specified criteria, regulation of fee structures, as well as meeting minimum set standards for quality of teaching and infrastructure. These should be accompanied by defining transparent and norm-based procedures for the recognition of private schools.*