Constitutional Law and Public Adm4nistration in India

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Non-Constitutional Bodies - VI (Planning Commission & RBI)

Let's learn about the erstwhile Planning Commission and NITI Aayog that has replaced it. In life, we need some sort of planning, right? Most of the times before we do anything, we tend to make plans and we try to execute these things according to the plans we have made. Yes, sometimes things happen spontaneously, sometimes things happen unplanned. However, most of us try to plan things ahead, maybe it could be a vacation or buying some stuff, could be anything. To give an example, suppose you want to buy a television, one wouldn't randomly go to a shop and buy the first television that he sees there or open an e-commerce website and place the order for the first television that pops up on his search. Ideally, what a person would do is firstly figure out how much money he has in hand. Suppose this person has 1 lakh rupees in his hand. He decides not to spend all of that money on a television, he wants to keep aside some money as savings. Say he decides to keep 60,000 rupees as savings. He is left with 40,000 rupees. It's not necessary that he has to spend all 40,000 but he is keeping aside 40,000 to buy this television. He decides to buy a 42-inch television which might cost him around 30,000 rupees. Once this budget of the television is decided, budget and size of the television is decided, he'll then decide where to keep this television, or this step can come before deciding the size of the television as well. Finally, he decides to keep it in the living room. Then, he might go to an electronic shop and tell the shopkeeper that, he wants a television that is of a particular size within the decided budget. Or if he wants to buy it online, he'll put on search filters and find the perfect television that fits to the description. Not everyone might plan the same. However, this is just to give an example as to how we plan things in our life.

Similarly, a country also needs some sort of social and economic planning for its proper development. That is why we had a Planning Commission and that is why we now have NITI Aayog. The establishment of Planning Commission was inspired from the Soviet model. Jawaharlal Nehru visited Soviet Union and he observed that there was much less inequality among people regarding distribution of wealth and Soviet Union fared well in the face of certain economic crisis, whereas other countries did not. In 1938, even before independence, we had a National Planning Committee under the leadership of Nehru, which was to look after the planning of the country in the future. Hence, even before independence, the country was conscious that it needs solid planning to progress. In 1946, an Advisory Planning Board under the chairmanship of KC Neogi recommended the establishment of a Planning Commission. Planning Commission was set up through an executive resolution in 1950. Hence, it was a non-statutory body as well as a non-constitutional body. Please note that Planning Commission was an advisory body, which means that the final say was up to the government whether or not to implement the recommendations given by the Planning Commission. Essentially, Planning Commission's recommendations had no binding power on the government.

The Planning Commission was established with an aim to find a balance between private and public partnerships, between rural and urban economies, to improve the living standards of the citizens, to increase production and to increase employment. You have already learned about Directive Principles of State Policies and that certain DPSPs are related to the economic or social aspect of an individual's life. For example, DPSPs on adequate means of livelihood, right to work, and equitable distribution of material wealth are related to various social and economic aspects of an individual's life. Because the Planning Commission was entrusted with the social and economic development of the country, it was one of the tools to implement DPSPs. The Planning Commission used to assess how much resources the country has and how to augment such resources. A country has different kinds of resources such as human resources. Human beings possess different levels of knowledge or skills that can be exploited. When the term "exploitation" is used in relation to resources, we are not talking about over-exploitation which might lead to the deterioration of such resources. We are talking about effective utilization of such resources. A country has capital resources like money, monetary resources. A country has natural resources as well.

Firstly, the Planning Commission will assess, or it will estimate how much resource our country has. And it will also see if any resource is lacking in number or if it is not up to the mark, then how to augment or how to increase such resources. Secondly, it will formulate a plan for the effective utilization of such resources so that we can get the optimum result out of such effective utilization. Thirdly, it will prioritize. A country has different avenues of development that it has to focus on. There is social development, economic development, and cultural development. It has different sectors that it has to focus on such as the agricultural sector, transport sector, energy sector and so on. It might not be possible for the country to focus on all of these avenues of development or all of these sectors simultaneously. So, Planning Commission used to prioritize which avenue of development it should focus on or which sector it should focus on. It also used to figure out the factors that were pulling our economy down and the area or the avenue of development in which we lag behind.

The Planning Commission was responsible for the formulation, implementation, and regulation of Five-Year Plans. So, India had five-year plans from 1951 to 2017. The first five-year plan from 1951 to 1956 focused heavily on the agricultural sector. During this period, the farmers were equipped with knowledge regarding modern agriculture. Their focus was on increasing yields. A lot of dam projects were also built during the first five-year plan period such as the Bhakra Nangal project, the Damodar Valley project, Tungabhadra project. The second five-year plan focused on the industrial sector, specifically the steel industry. Each five-year plan had a different focus area. Several units or institutions of the government were also under the Planning Commission such as the Institute of Applied Manpower Research, the Unique Identification Authority of India which was responsible for the issuance of the Aadhaar cards. The National Informatics Centre which is responsible for the development and implementation of the IT systems of the government was also under the Planning Commission.

Even though the Planning Commission was an advisory body and the recommendations of it had no binding power, gradually it became very important and powerful. The Prime Minister of India was the chairperson of Planning Commission. It also had a deputy chairman who was responsible for the day-to-day functioning. He had the power to take part in cabinet meetings even though he did not have the right to vote. But the very fact that he was able to take part in cabinet meetings, shows that the position of deputy chairman was a very important position. The Planning commission also had ex-officio members such as the Finance Minister and the Planning Minister. Whenever this term ex officio member is used, please understand that we are talking about people who became part of or who became members of a particular body or an institution by virtue of the position that they are holding. So, Finance Minister or Planning Minister becomes ex-officio members of Planning Commission by virtue of the position that they are holding.

Planning commission also had other members but please note that there were absolutely no representatives from any of the states or union territories in the planning commission. Planning Commission was not just making plans for the development of the center. They were supposed to formulate plans for the development of the whole country. However, there was absolutely no representation from the states in the planning commission. There was another body which had a representation from the states which was the National Development Council. Once Planning Commission has formulated plans, it was supposed to bring this plan before the National Development Council. This council had members from all states, all Chief Ministers were in the National Development Council.

On August 13, 2014, the BJP government announced that they are scrapping Planning Commission, and a new body will be established in its place. On 1st January 2015, the National Institution for Transforming India or NITI Aayog replaced erstwhile Planning Commission. NITI Aayog was established through an executive resolution. So, just like planning commission, NITI Aayog is also a non-statutory, non-constitutional body. NITI Aayog is a premier think tank which means that it gives directional and policy inputs to the government. It designs long-term strategic policies and programs and also tenders advice to central and state governments. What were the reasons why Planning Commission was replaced? As mentioned before, even though Planning Commission was just an advisory body, gradually it became too powerful that at one point the Administrative Reforms Committee had remarked that it had become a parallel cabinet or a super cabinet. Secondly, the concept of federalism was slowly withering away because the flow of development was top-down. The center decides everything, and it was in a way imposed on the states and union territories. Another criticism leveled against the Planning Commission was that there was a huge overlap of functions of the Planning Commission and the Finance Commission. the Finance Commission is a constitutional body. However, the rationale given by the government for replacing NITI Aayog is that India in the recent years had undergone a major transformation socially, economically, technologically, and demographically. And because of this India needs a new body for implementing planning in its country and that is why NITI Aayog was established.

Under NITI Aayog, the states have a more empowered role and policy designing is not done in a top-down manner. It will be done in a bottom-up approach and there is improved synergy and collaboration between the states and the center. The chairperson of NITI Aayog is the Prime Minister. It has a Governing Council which consists of Chief Ministers of all states and Lieutenant Governors of all union territories. It also has Regional Council. If there is an issue between certain states or union territories, regional council can be summoned by the chairperson, and it will function for a fixed period of time. Such regional councils will consist of Chief Ministers and Lieutenant Governors of the concerned states or union territories. NITI Aayog also has special invitees which are experts, or it also has regional councils. So, if there is an issue between certain states or union territories, Regional Council can be summoned by the chairperson, and it will function for a fixed period of time. NITI Aayog also has full-time members as well as part-time members. It has ex-officio members who are four members from the council of ministers. There is also a Chief Executive Officer who is an officer of the rank of secretary. NITI Aayog also has special invitees who are experts or specialists which are nominated by the chairperson. The underlying theory behind the establishment of NITI Aayog is that there shall be effective implementation of cooperative federalism which was the underlying theory behind Planning Commission as well.

However, it did not materialize completely. NITI Aayog also has three specialized wings. These are the Research Wing, the Consultancy Wing, and the Team India Wing. Team India Wing consists of representatives from the state and ministries. It establishes a direct communication channel between the state and NITI Aayog. There are certain offices attached to NITI Aayog such as the National Institute of Labor, Economics, Research and Development and the Development, Monitoring and Evaluation Office.

Reserve Bank of India

The next non-constitutional body that we will learn about is the Reserve Bank of India (RBI). RBI is the Central Bank of India which was set upon the recommendation of the Royal Commission on Indian Currency and Finance in 1926. The issue of establishing RBI as the Central Bank of India was brought up again by the Indian Central Banking Enquiry Committee in 1931. Three years later the Reserve Bank of India Act was enacted and thereby the RBI as the Central Bank of India was established. However please note that RBI was initially not a government owned bank, it was a private bank, and it was nationalized only in 1949 and also from 1935 to 1937 Reserve Bank was located in Calcutta and in 1937 it was then moved to Mumbai. Now Reserve Bank has around 19 regional offices not just in Mumbai.

There are multiple reasons behind nationalization of RBI. First reason is that after the end of the Second World War there was a trend around the world where countries were nationalizing their respective central banks. For example, the Bank of England was nationalized in 1946. As for the second reason, there was huge inflation ever since the beginning of the Second World War. Inflation is generally an increase in price of goods or services. Ever since the beginning of Second World War that is from 1939 September to August 1948 there was a huge inflation happening around the world. In August 1948 the wholesale prices almost doubled. To prevent or curb such inflation tendencies India needed a centralized bank which will be its currency and credit manager. Another reason behind nationalization is that the country was focusing on planned economic development. We learned about the Planning Commission and the Five Year Plans the country had a huge focus on planned economic development and RBI was one of the tools for effective economic development.

Currently RBI has a Central Board. The Central Board manages or governs RBI's affairs, and the Central Board of Directors is appointed by the Government of India. RBI also has other organizational elements such as the Board for Financial Supervision. There is a Local Board, Board for Payment and Settlements and other components as well. RBI also has around 30 departments including the Central Vigilance Cell. The RBI is a supervisor of the entire banking and financial system in India. RBI is the regulator of the banking and financial system in our country.

RBI issues master circulars and directives and notifications to the banking institutions on several topics and the banking institutions are supposed to adhere to these particular guidelines or directions or master circulars. For example, RBI had notified banking institutions to strengthen their security systems to make electronic transactions much safer. Banks are supposed to put in place risk management system, and they have to identify existing risks in their digital transaction infrastructure and also efficient fraud detection and prevention mechanisms among other things. RBI does all of this to protect the interest of the depositors, to maintain the confidence of the public in the system, to provide cost effective banking services to the. Hence, RBI is a regulator.

RBI is the administrator of several acts such as the RBI Act of 1934, Banking Regulation Act of 1949, Foreign Exchange Management Act of 1999 and many others. RBI is the issuer of currency. RBI prints currency notes. However, the coins are minted by the government of India as per the Coinage Act of 2011. However, one rupee note is printed by the government of India and not RBI and this is because one rupee note is not considered as a currency note, it is still considered as coin. RBI can also exchange currency notes. Sometimes you might wrap a lot of currency notes with an elastic rubber band and sometimes these rubber bands damage your currency notes or sometimes you might have accidentally washed currency notes along with your clothes and then you will get a very wrinkly old looking currency note or sometimes insects bite and damage your currency note. What can you do when your currency notes are damaged? You can give them to your banks and the banks will deposit these notes to Issue Offices of RBI. Once these notes reach there, RBI will verify the genuineness of these notes and then it will put it into two categories. One is a fit category which means they can be reissued. So, they go back to the economy and the second category is unfit which means they cannot be reissued, and these notes will be destroyed by the RBI. A very important question here is can RBI demonetize currency notes? Demonetization in the recent history happened in 2016 November when the 500 and 1000 rupee notes were demonetized which means they are no longer of legal tender value. You cannot use those notes to buy anything. We had to return all of these to the banks. Demonetization happened once again recently with respect to 2000 rupee notes. Who takes this decision? Is it RBI because RBI has the power to print money? As per Section 26 subsection 2 of the RBI Act only the Central Government has the power to demonetize currency notes. RBI does not have that kind of a power.

The next function is with respect to monetary policy or credit control. There is a Monetary Policy Committee which consists of 6 members. 3 from RBI including the RBI Governor and 3 experts appointed by the Government of India. Essentially, what they are doing is they either increase the money supply or they decrease the money supply to keep the prices very stable. We talked about inflation. There can also be cases where value of money decreases. In both of these cases in order to prevent any kind of a chaos the Committee will either decrease money supply or increase money supply to make the prices stable keeping in mind the objective of growth. Another important function of the RBI is that it acts as the banker to the government. What do we do with our money? We deposit in different banks. Similarly, the union government or the state government can deposit their money in RBI and then RBI in some cases can make payments on their behalf or carry out exchanges on their behalf. Government can also borrow money which means to take a loan from RBI. So, government can either borrow money from the internal source which is RBI, or it can go to an external or foreign source such as the International Monetary Fund or World Bank. Another important function of RBI is that it is the Manager of Foreign Exchange. As mentioned before RBI is responsible for the administration of Foreign Exchange Management Act of 1999. What is foreign exchange? All of these foreign currencies we are involved in international trade. Whenever there is a trade with a different country there will be flowing in and flowing out of foreign currency like other currency such as dollar or pounds. All of this foreign money flowing in and out of the country is known as the foreign exchange. RBI is responsible for the orderly management of foreign exchange reserves, and this is done to have a very smooth external trade.

Moving on to the next function RBI also acts as a Bankers Bank. Other banks can borrow money from RBI especially in case of emergency. RBI is known as the bank of last resort. In the previous slide we talked about RBI being a regulator. In this regard banks will have to take approval from RBI if they want to open a new branch or an ATM.

Prevention of Money Laundering Act, 2002

Money laundering, as per the UN Office on Drugs and Crimes is a huge issue. Around 2 to 5% of the global GDP is being laundered. So, what exactly is money laundering? Just like how we wash our used old clothes and get them clean, criminals also employ a lot of methods to clean their dirty money. Dirty money is the money that they have obtained by committing illegal or criminal activities. These activities could be organized crimes such as drug dealing, sex trafficking or other crimes such as murder or tax evasion. Now you might ask why these criminals can't just use this dirty money just like how everybody else is using their money. If you are working in a software company which is a legal job and you are getting salary, you can use that money to buy things or you can deposit that money in your bank. However, if a criminal is to do the same with the dirty money that he has, firstly it might attract the attention of law enforcement agencies. If somebody is depositing a huge amount of money in the bank, it will raise an alarm and they will ask for the source of the money that is first. Secondly, they can use this money to trace back the origin of it and they will find out the illegal or the criminal activities that this person is involved in. These are some of the reasons why which criminals prefer to launder money and make it clean so that it can be reintegrated into the financial system.

Money laundering is a complex process that has several steps. This is not to say that in reality or in practical situations criminals are going to go by the textbook and they will be doing money laundering step by step. Sometimes in reality these steps might overlap, or they might not be in the same order. However, we are trying to understand the concept so this is for our better understanding as to how money laundering can actually take place. So, the first step is acquiring dirty money obviously. The second step is called placement. In this step the dirty money is placed into an establishment. In placement what happens is criminals will establish a front for money laundering. They might establish a shop and they will justify that this money is coming from the business that is going on in this shop. Back in the day criminals used to establish laundromats. Laundromats are shops where you can go and get your clothes washed. There will be a lot of washing machines in a laundromat and you can wash your clothes in any of them by paying money. These laundromats used to be cash only because if the customer is paying through any other method, it can be traced. This is not enough for laundering the money. The next step is called layering. In layering a lot of complex financial transactions happen. There are a lot of countries and banks in several other countries which provide high security which give the source of the wealth or identity of their customers highly confidential. So, money can be sent to these banks and from there it can be wired to other banks or other institutions. This is done to obscure the origin of this money. So, if at all in this stage law enforcement agency needs to find out the origin of the money it becomes extremely difficult because a lot of complex financial transactions have happened, and it is virtually impossible to find the owner of this money. In the final step which is known as integration this money is put into the hands of the owner. Money is put back into the hands of the owner. Once the owner gets the money, he can use that money to buy things, or he might use it as a foreign direct investment or whatever he wants to do with that he can do.

In India we have Prevention of Money Laundering Act of 2002 (PMLA) which criminalizes money laundering, and it also provides for confiscation of assets that is derived from or was involved in money laundering. The most important definition from this act that you need to know is Section 2(u) which defines proceeds of crime. Any asset that is obtained through the commission of a scheduled offense is known as 'proceeds of crime'. Proceeds of crime is what dirty money is. The Act has a schedule attached to it which lists out several offenses from other legislations such as the Indian Penal Code, Arms Act, Customs Act, Prevention of Corruption Act, Wildlife Protection Act, Narcotic Drugs and Psychotropic Substances Act. If some kind of an asset is obtained from the commission of any of these offenses, then that is known as proceeds of crime. Section 3 punishes actual involvement or assistance or attempt in any of the following processes involved or in connected with the proceeds of crime. Trying to acquire proceeds of crime that is punished, the use of proceeds of crime, possession of proceeds of crime, concealment or projecting it as untamed property which is essentially what money laundering is or claiming that it is untamed property are punished by Section 3 of the Act and the punishment is provided under Section 4 which is rigorous imprisonment of a minimum term of 3 years but it can be extended up to 7 years and with fine. The Act also imposes certain obligations on various entities such as banking institutions, financial institutions to report if at all they are suspicious of a money laundering activity. This Act also confers a wide range of powers for its authorities such as power to search, power to survey, power to seize and freeze assets, power to attach property, power to issue summons, production of documents and give evidence, power to retain property and records and most importantly the power to arrest. Hence, PMLA is an important legislation which helps in curbing and preventing money laundering in India.