Chapter-IV
Compliance Audit

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Compliance Audit

Department of Home

4.1 Follow up audit on Internal Control System in Department of Prisons

4.1.1 Introduction

The objective of this audit was to determine whether corrective action has been taken to address the audit findings and implement the recommendations made in the Comptroller and Auditor General of India Report (Civil) for the year ended 31 March 2004 - 'Evaluation of Internal Control System and Internal Audit in Department of Prisons (Previous Report) and recommendations of the Public Accounts Committee (PAC) on the above said report which was placed in the Legislative Assembly during December 2009 (Report of PAC). The earlier audit was undertaken to assess the extent of compliance with the financial and operational controls in relation to the physical verification of prisoners at the time of entry and exit, segregation of prisoners, producing undertrials in courts, transfer and release of prisoners, *etc*., as prescribed in the relevant Acts, Rules and Manuals.

The Department of Prisons is under the administrative control of the Principal Secretary to Government, Home Department (Department), and is headed by the Additional Director General of Police and Inspector General of Prisons (ADGP&IGP), assisted by the Deputy Inspector General of Prisons (DIG). There are 102 prisons, classified as Central Prisons (eight), district prisons (19), special sub-jails (two), Taluk sub-jails (70), open-air jail (one), juvenile jail (one) and borstal school (one).

The follow up audit covering the period 2010-15 was conducted during February to June 2015 by test-check of records maintained in the Secretariat, Home Department, Office of the ADGP & IGP, six Central Prisons, five district prisons and three sub-jails[57]. All the field units covered in the follow up audit were the same as in the previous audit.

4.1.2 Results of Audit

The Report of the Comptroller and Auditor General of India of 2004 had three recommendations each on custody of prisoners, security of prisoners and the monitoring system. The PAC report, however, had suggested seven recommendations relating to custody, security, facilities available in prisons,

[57] Central Prisons – Ballari, Belagavi, Bengaluru, Dharwad, Mysuru and Tumakuru (Women)
District Prisons – Chikkaballapur, Kolar, Shivamogga, Tumakuru and Ramanagara
Taluk Sub-jails – Arasikere, Gokak and Tiptur

and monitoring. In the follow up audit, we observed that the State Government had taken some corrective actions to implement the recommendations in the previous Audit Report as well as the PAC's recommendations. The adequacy of the corrective action taken by the Government on audit findings, audit recommendations and PAC's recommendations is discussed in the subsequent paragraphs.

4.1.2.1 Prevention of entry of prohibited articles into prison

The Government of India Prisons Manual, 2004 specifies various norms on issues relating to security and custody in prisons. The norms include:

- a system of thorough searches of all incoming and outgoing prisoners, articles and vehicles;
- daily searches and periodical surprise searches of all prison sections and equipment;
- monitoring from a central point, for controlling the movement of prisoners;
- installation of close circuit television systems and other electronic gadgets for effective monitoring and maintaining a close watch to avoid any breach of security inside the prisons;
- construction of watch towers, provision of searchlights and binoculars, wherever necessary, to keep vigil both inside and outside of the prisons;
- installing power fences on the walls of prisons wherever necessary to prevent escapes, and
- a system of thorough searches for unearthing explosives, narcotic substances, electronic gadgetry *etc*.

The Karnataka Prison Manual, came into force in 1978. After that, it has not been revised. The manual except for stipulating powers and duties of a Gate Keeper, does not cover other aspects of security. The manual specifies that the Gate Keeper is required to prevent introduction of un-authorised articles such as Ganja, opium, tobacco, narcotics, liquors and drugs or any articles which would abet and assist the escape of prisoners and also not to allow any article outside the prison gate without proper authority. Further, it states that he should be in-charge of the main gate of the prison and also maintain a gate register in this regard.

Audit finding: The possession of prohibited articles by prisoners indicated that the procedure followed for physical check of prisoners was not effective.

Audit recommendation: System of physical check of prisoners during entry/exit should be made more effective by installing sophisticated gadgets and deploying trained staff.

PAC recommendation: PAC suggested five recommendations, *viz*., adherence by the Jailor and subordinate staff to the guidelines on physical check of the prisoners at the time of admission and also on every subsequent occasion of entry and exit of the prisoners and any other persons entering the prisons; conducting surprise inspections of the jail premises and installing CCTV cameras; installing mobile jammers; initiating action against Jailor/

Subordinate staff in case of non-adherence to the guidelines issued on prevention of entry of prohibited articles into the prisons and minimising the number of visitors visiting the prisoners.

Findings of follow-up Audit: Government initiated action with respect to recommendations of the PAC. The audit findings on its adequacies are discussed below:

(a) Physical check of prisoners and other persons entering prisons

Electronic equipment such as hand held metal detectors, door frame metal detectors, deep search metal detectors, baggage scanners, *etc*.; are essential for surveillance and for detection/prevention of entry of prohibited articles into the prisons. Though the Government has procured this electronic equipment, guidelines were not issued by the Government for its use. In the units test-checked, we observed the following:

- Many electronic equipment procured were not in working condition and no action had been initiated to get them repaired **(Appendix-4.1).**
- In the Central Prison, Belagavi, except for lunch boxes/bags of the prison staff, no other items was being subjected to scanning.
- No system was put in place to scan or check the vehicles that carried food articles, raw materials for manufacturing departments in the prisons. Similarly, all the articles manufactured[58] in the prison such as Agarbattis in three[59] prisons, and bakery products in Central Prison, Bengaluru were moved out of the prison without issue of a gate pass or an entry in the gate register, as was required in the manual.

Further, it was also observed that during the period 2010-15, various prohibited articles, *viz*., mobile phones (4,437), sim cards (3,116), mobile chargers (1,211), batteries (3,307) and drugs (43.778 kgs) were seized in test-checked prisons during the course of routine checks and surprise inspections. The non-functioning of devices procured, including CCTV cameras and jammers are discussed in detail in subsequent paragraphs. All the above instances/observations not only indicate laxity in the management of the security system but also non-adherence to the guidelines stipulated in the manual.

The Government replied (December 2015) that an assessment would be made to repair and re-use the non-functional equipment, and for catering to additional requirements. It further replied that action was taken to obtain Annual Maintenance for security equipment and also that all the heads of the prisons had been instructed to submit reports on maintenance of security equipment and also to conduct physical checks using this security equipment.

[58] Prisoners are to work in prison as a means of furthering their rehabilitation. The manufactured articles are removed from the prison on a pass issued by the Superintendent and also on making necessary entries at the Gate.

[59] Mysuru, Tumakuru and Ramanagara

Recommendation-1: Government is required not only to issue detailed guidelines in support of provisions already existing with regard to physical check of persons/vehicles entering the prison but ensure their implementation as well.

Recommendation-2: Government needs to update the Karnataka Prison Manual, 1978, duly incorporating provisions relating to new technology equipment procured for security of the prison.

(b) Conducting surprise inspection

The Government issued (March 2010 and November 2011) two guidelines which made surprise inspections and search of premises by dog squads mandatory. As per these guidelines, the Department had to conduct surprise inspection in co-ordination with the Police Department, and search of premises by dog squads once in every 15 days. We, however, observed that against the required 1248 surprise checks[60] and 768[61] searches by dog squad in the 13 units test-checked, only 130 and 138 respectively had been conducted.

Further, the Government of India (GoI) had suggested (May 2010) steps to be taken for detecting drugs and inmates with drug addiction. In the units test-checked, we observed that the Department had, however, not followed the steps suggested by the GOI, and in three Central Prisons about 44 kgs of Ganja were recovered during 2010-15. Apart from this, as already indicated in the previous paragraph, mobiles, sims, chargers *etc*., were also recovered during 2010-15. The details of the sources from where they were seized are indicated in **Appendix-4.2.** We observed that the major source for entry of prohibited articles was at the time of interview granted to visitors and the preferred hiding place for the prohibited articles was the toilet. The fact, however, remains that the prohibited articles could enter the prison. All these indicated lack of controls in detecting drugs at the entry as well as insufficient checks at the premises.

In this connection, the PAC had recommended the initiation of disciplinary action against officers/staff for dereliction of duty in such instances. We, however, observed that during 2010-15, investigation was initiated in only 20 cases across the State. Out of these 20 cases, disciplinary action had been taken in 14 cases, four cases were closed due to lack of proper evidence and 2 cases are under investigation.

The Government replied (December 2015) that due to shortage of staff there was shortfall in conducting inspections. It further stated that the Government had approved (May 2015) the deployment of Karnataka State Industrial Security Force in the four major prisons which would not only strengthen the security but also prevent the entry of prohibited items into these prisons.

(c) Installation of CCTV cameras

The PAC recommended installation of CCTV cameras for round the clock surveillance and also to serve as a means of identification of individuals and

[60] 10 units test-checked x 2 x 12 x 5 years +1 unit in Tumakuru (Women) x 2 x 12 x 2 years
[61] 10 units test-checked x 2 x 12 x 3 years + 1 unit in Tumakuru (Women) x 2 x 12 x 2years

articles, *etc*. They could help to keep strict vigil on the movements of the prisoners, which would put an end to prohibited articles entering the prison.

Though the recommendation for installing CCTV cameras was given by the PAC in 2009, the Government took action to implement this recommendation between 2013-15, by approving installation of 406 CCTV cameras in eight central prisons at a total cost of ₹17.87 crore. We observed that in the six test-checked central prisons, the Government had procured 351 CCTV cameras and all were commissioned in 2014. Further, we observed in the units test-checked that prior to 2014, only three prisons had CCTV cameras. Out of the 58 cameras installed in these prisons, 47 were not working of which 43 were irreparable. Hence, all the prisons test-checked did not have video surveillance facility till 2014. From the details of the entry of prohibited articles given in **Appendix-4.3**, it has been seen that there is a drastic reduction on the entry of prohibited articles into the prisons on account of the introduction of video surveillance, which is appreciable but strict vigil is still required to keep the system in working order to get desired results.

Recommendation 3: Installation of CCTV cameras needs to be extended to all the prisons and their maintenance ensured by regular follow up.

(d) Installation of Mobile Jammers

Subsequent to the recommendation of the PAC, during 2009, the Department proposed to install 66 cell phone jammers in six central prisons and one district prison (Mangaluru) at a total cost of ₹28.28 crore. While the jammers have been installed in four central prisons, work in two central prisons (Belagavi and Kalaburagi) and one district prison was in progress. In the test-checked central prisons, we however, observed the following:

- The performance of four 2G jammers since installation (December 2009) in Mysuru prison was unsatisfactory as they did not cover the specified area. Despite several correspondences requesting speedy remedial action, the supplier was unsuccessful in rectifying the defects to block the mobile signals to the satisfaction of the jail authorities. Even though the 2G jammers were upgraded as 3G jammers, the system did not function satisfactorily. Since May 2012, the systems were found to be completely out of order and not in usable condition. The total expenditure incurred for the purchase of these systems was ₹86.05 lakh.
- In three other prisons (Dharwar, Ballari and Bengaluru) network connectivity was reported to be available inside the prison in certain areas.

Further, we observed that the supplier in his communication (July 2014) to the Department had indicated the following reasons for non-functioning of the jammers:

- telecom service providers pumping more power which countered the jammer power;
- irregular power supply/variation in voltage and non-availability of continuous power supply;
- limiting of radio frequency signal generated by jammer to jail premises;
- non-availability of dedicated personnel to operate jammers, *etc*.

From the above it can be seen that it was a serious challenge to precisely control the radio frequency signals of the jammers due to technical reasons and that the installation of jammers was not a solution for unauthorised usage of mobiles in the prison by the prisoners. This rendered a sum of ₹28.28 crore incurred on installing the jammers largely unfruitful.

From the above findings it is seen that the Department had not done adequate background study to ensure that all requirements were fulfilled so as to ensure that jammers when installed would carry out their function effectively.

The Government replied (December 2015) that efforts were being made to effectively operationalise the existing system.

Recommendation 4: Issues relating to the effectiveness of the working of mobile jammers needs to be sorted out by in-depth examination of the problem before replicating the same in all prisons in the State, besides rectifying the defects in the existing equipment.

4.1.2.2 Producing undertrial prisoners in courts

According to Rule 149 of the Karnataka Prisons Rules, 1974, on receipt of an order requiring the appearance of a prisoner in a competent court to give evidence or to answer a charge, it is the responsibility of the officer-in-charge of a prison to act in accordance therewith and to ensure safety of a prisoner during his absence from the prison.

Audit findings: All the undertrial prisoners required to be produced on a particular date were not produced on that date but were produced on second/ subsequent occasions in a staggered manner. Monthly statement indicating details of undertrial prisoners whose cases were pending in courts for more than three months and statement indicating undertrial prisoners who might be eligible for bail were not furnished to courts.

Audit recommendation: The system of providing escorts to undertrials when they are taken to courts should be streamlined and monthly reports regarding undertrials submitted to courts regularly.

PAC recommendation: In order to bring down the delay in producing the undertrial to court, the PAC suggested eight recommendations, *viz*., recruiting of police personnel as police escort; coordinating with Karnataka Legal Services Authority to conduct more Lok Adalat camps, establishing courts in premises of jails; forming State level committee to review and dispose of cases pending for more than six months; furnishing periodical statements to courts on time; and conducting quarterly review of pending cases at the Government level.

Findings of follow up audit: Action had been initiated by the Government on some of the recommendations which were reviewed by audit. The observations in this regard are brought out in the subsequent paragraphs:

(a) Lok Adalat camps

In order to ensure speedy and effective disposal of cases, the PAC had recommended to the Department to co-ordinate with Karnataka Legal Services Authority for conducting Lok Adalat camps. It had also recommended for fixation of annual targets for disposal of cases through Lok Adalats.

In the units test-checked, we observed that seven Lok Adalat camps were organised during the period 2010-15 in three central prisons and two district prisons. We observed that against 3,283 cases pending for more than three months, only 448 cases were referred to the Lok Adalat, of which 257 cases were disposed of. In addition, we observed that no targets were fixed for each of the prisons to refer cases to the Lok Adalatas prescribed by the PAC. Further, in respect of other units test-checked, we observed that Lok Adalat Camps had not been conducted.

The Government replied (December 2015) that the matter would be brought to the notice of District Judges concerned who are members of the Legal Aid[62] of the concerned jails.

Recommendation-5: Targets of cases for each prison for referring to the Lok Adalat need to be fixed based on the cases pending in each prison so as to maximise clearance of backlog.

(b) Producing undertrials through video conference

With a view to dispense with the need for physically producing the undertrials in court, the Department introduced video conferencing (April 2004). In the State, the video conference system has been provided in 29 jails only. In the units test-checked, except in Bengaluru, where 43 *per cent* of prisoners were produced through video conference, we observed that the undertrials produced through video conference was less compared to undertrials produced through police escort (**Appendix-4.4**). Further, we observed that in three prisons[63], the video conference system was non-functional.

The Government replied (December 2015) that the department has represented to the Technical Committee of the Honourable High Court of Karnataka for utilising the video conference system on a large scale. It has been further stated that the Honourable High Court has issued directions to the concerned District and Session Judges in this regard.

Recommendation-6: Awareness on the advantages of producing undertrials in courts through video conference should be created in order to encourage utilisation of video conference equipment. There should be coordination between Government and judiciary in this regard.

[62] Legal aid is one of the services given by KLSA for economically weaker section of people. The District Judge who heads KLSA is also member of Legal Aid.

[63] Dharwar, Belagavi and Shivamogga

4.1.2.3 Escape of prisoners from custody

Prison authorities are required to ensure safe custody and security of prisoners through effective watch/surveillance over their movement, verification during exit from or entry into barracks and cells and confining in iron where warranted (Paragraph 251, 253 and 265 of Prison Manual, 1978 and Rule 119 of Karnataka Prison Rules).

Audit findings: Recurring feature of prisoners escaping from jails indicated non-compliance with controls prescribed for ensuring safe custody / safety of prisoners.

PAC recommendations: In order to prevent prisoners from escaping, PAC recommended increased vigilance through patrolling; installation of CCTV cameras; increasing the height of prison walls; establishing courts in highly populated prisons; investigating and taking action against the officers/staff responsible for escape of prisoners; and conducting quarterly review at the Government level; and initiating action to recapture escaped prisoners.

Findings of follow-up audit: Government initiated action in respect of two recommendations given by the PAC. The inadequacy of these actions is discussed below.

(a) To increase the height of prison walls

During 2010-15, though private security personnel and home guards were appointed to guard the prisons, 95 prisoners had escaped across Karnataka. Out of 95, while 45 prisoners had escaped from custody of various prisons, 50 prisoners had escaped while being escorted by the police for being produced before the courts. It was observed that in none of the 14 test-checked prison units, the height of the wall had been increased.

The Government replied (December 2015) that since most of the prisons in the State are old and were structurally not strong, hence, based on the availability of budgetary allocation and also wherever it was technically and structurally possible, action is being taken to increase the height of prison wall to 18 feet. In addition, Government stated that installation of barbed wire fencing on the main compound wall of the five central prisons and three district prisons has been undertaken.

Though action to enhance security of the prison was laudable, however, as per provisions laid down in paragraph 679 and 680 of the Karnataka Prison Manual, 1978, a detailed investigation was required to be conducted in each case of escape and disciplinary action taken against persons responsible for the escape. The Government, in its action taken report to the PAC recommendations, stated that disciplinary action was being initiated against persons responsible for the escape of prisoners.

Recommendation-7: Necessary action may be taken to increase the height of the wall and to the desired level at the earliest, besides taking disciplinary action against defaulting officials responsible for the escape of prisoners.

(b) Conducting quarterly review meeting at the Government level

A Committee under the chairmanship of Principal Secretary, with five other members, was constituted (February 2013) to review the action to be taken to recapture the prisoners who had escaped from various prisons across the State. Though the committee was constituted in 2013 itself, it had not even met once until December 2015.

The Government replied (December 2015) that meetings would be conducted henceforth. Thus, there is need for quarterly review meeting at Government level in this regard.

4.1.2.4 Medical Facilities

Section 4 of the Karnataka Prisons Act, 1963, stipulates that a Medical Officer of the rank of Assistant Surgeon may be appointed in a Central Prison, District Prison and Borstal School to attend to the health and cleanliness of prisoners, treatment of the sick, hygiene of the prisons, *etc*., and all other matters connected with the health of the staff and inmates of the prison. The post of Medical Officer was to be filled up through deputation from the Department of Health and Family Welfare Services (HFW).

Audit findings: Medical records such as Medical Treatment Register, Hospital Roll and Prescription Book, Case Book *etc*., in respect of medical history of the prisoners were not maintained.

Audit recommendation: To appoint doctors and specialists in order to provide adequate medical facilities to prisoners.

Findings of follow-up audit: According to the statutory provisions laid down in the Karnataka Prisons Act, 1963, the Department was to have a sanctioned strength of 28 Medical Officers. The Department, however, had only 18 sanctioned posts against which 12 posts remained vacant. In addition, the Karnataka Prisons Manual, 1978, provided for attendance of Visiting Medical Officers, and the All India Committee on Jail Reforms in its report recommended for a psychiatrist in each Central and District Prison as well as hospital accommodation for five *per cent* of the daily average inmate population. In this connection, we observed that against the requirement of 27 psychiatrists, only two posts were sanctioned which were vacant for the past three years.

We observed the following in the units test-checked:

- While regular doctors were posted in three central prisons, a doctor on consolidated payment basis was working in one[64] central prison.
- During 2014-15, doctors appointed for the implementation of the telemedicine project were attending to general outpatient cases of one[65] central prison.
- In four out of five district prisons test-checked, government doctors from District Hospitals were visiting the prison once a week. In three sub-jails

[64] Mysuru
[65] Belagavi

test-checked, however, no doctors were visiting despite requests by the prison authorities.

- Posts of doctors were not sanctioned in four[66] out of five district prisons or sub-jails.
- There was no lady Medical Officer in any of the prisons test-checked.
- With regard to provision of hospital accommodation, against requirement of a total of 85 beds for seven out of the 11 Central/District prisons test-checked, there were no beds in any of the prisons except District Prison, Shivamogga, which had one bed. In the balance four prisons, there was a shortfall of 44 *per cent* of the required bed strength.

The Government replied (December 2015) that the Department of Health and Family Welfare had been requested for filling up the posts of Medical Officers.

Recommendation-8: Government should ensure adequate bed strength, and posting of Doctors as prescribed for the Prison Hospitals to cater to the requirements of the prisoners.

4.1.2.5 Constitution of Board of Visitors

A Board of visitors is required to be constituted for each prison. It has to inspect the prison once a week to ensure that the management of the prison and prisoners is carried out in accordance with the prescribed rules and procedures. The Board is required to meet once in a quarter.

Audit findings: The Board of Visitors was not constituted.

Audit recommendation: Immediate action is necessary to constitute the Board of Visitors.

PAC recommendation: Immediate action to be taken to constitute the Board of Visitors.

Findings of follow-up audit:

We observed that in two prisons test-checked (Kolar and Tumakuru) (Women), the Board of Visitors had not been constituted. In the remaining nine prisons, although the Board of Visitors were constituted, as against 180 meetings due (quarterly meetings required by each Board), only 14 meetings were conducted. Prison authorities attributed the shortfall to non nomination of non-official members by the respective District Commissioners and further stated that efforts would be made to convene meetings in consultation with the concerned District Commissioners.

The Government (December 2015) replied that action would be taken to constitute the Board across all prisons after obtaining a list of non-official members from the districts.

[66] Chikkaballapura, Kolar, Ramanagara and Tumakuru

4.1.3 Conclusion

The PAC after discussing the Report of the Comptroller and Auditor General of India (Civil) for the year ended 31 March 2004, gave detailed recommendations (December 2009) in its Fifth Report. Even though more than five years have elapsed, the above findings indicate that the Government had taken certain initiatives to implement the recommendations of the Public Accounts Committee, however, the measures taken were inadequate and much more action needs to be taken to ensure that the internal control systems in the Prisons are made effective.

In this regard, to ensure more effective implementation, Government needs to update and revise the Karnataka Prisons Manual, 1978, to keep it valid for the present times; issue detailed guidelines for the upkeep and usage of the sophisticated electronic equipment purchased, and ensure their effective use; ensure strict adherence to the guidelines for checking of prohibited articles and also ensure that equipment such as CCTV cameras and jammers are maintained to ensure proper functioning. Usage of video conferencing facilities with regard to producing undertrials to courts should be encouraged; and for speedy disposal and reduction in pendency of cases, the benefits from Lok Adalats should be maximised. The Government should also provide adequate medical services/counselling for the prisoners by ensuring availability of adequate numbers of doctors, medical staff and counsellors. Only then will the security, health and safety aspects required be taken care of, and also progress made by speedy disposal and clearance of pending cases.

Department of Women and Child Development

4.2 Implementation of Juvenile Justice Act, 2000

4.2.1 Introduction

Children represent 39 *percent* of the total population of the country and their nurture and well-being are the Nation's responsibility. Hence, the Constitution of India recognises the vulnerable position of children and their right to protection. Article 15 of the Constitution guarantees special attention to children through necessary and special laws and policies that safeguard their rights. In this regard, India has adopted a number of laws and formulated a range of policies to ensure children's protection and improve their condition which include the Juvenile Justice (Care and Protection of Children) Act (JJ Act), 2000.

With 4.39 *per cent* of the population of children in the country, Karnataka stands 10th in the state-wise distribution of children population. Following the JJ Act, 2000, which was amended in 2006, the State Government framed (June 2010) the Juvenile Justice (Care and Protection of Children) Rules (JJ Rules), 2010.

The JJ Act, 2000, was enacted to consolidate and amend the laws relating to two categories of children *viz*., children in conflict with the law and children in need of care and protection. It also envisaged better treatment of children and catering to their development needs, by adopting a child-friendly approach in the adjudication and disposition of matters to the best interest of children and for their ultimate rehabilitation through various institutions[67] established under this enactment.

Children in need of care and protection are produced before Child Welfare Committees (CWC) by any Police officer, any public servant, child line, social worker, public spirited citizen and by the child on their own, are kept in the Reception Unit pending enquiry by the CWC. After enquiry the child is either reintegrated with family or is sent to Children Homes for rehabilitation.

Children in conflict with the law are produced before Juvenile Justice Boards (JJBs) by the Police and are kept in Observation Homes or sent on bail, pending enquiry. After enquiry, the child is either acquitted or kept in Special Homes for rehabilitation. Children discharged from Children Homes/ Special Homes are sent to After Care Centres for higher education, ITI training, *etc*.

The Compliance Audit covering the period 2010-15 was conducted during February to June 2015 to assess compliance with the provisions contained in the JJ Act, 2000, and JJ Rules, 2010, and also the working of Child Care Institutions towards protection, welfare and rehabilitation of neglected children and children in conflict with the law. The methodology adopted for

[67] Child care institutions (CCI) *viz*., Observation Homes, Children Homes, Special Homes, After Care Centres, Fit Institutions and Shelter Homes.

audit included scrutiny of files and documents, issue of audit enquiries/ questionnaires, examination of records, discussion with officers/officials at various levels and joint inspections of Child Care Institutions (CCI) along with the Officers of the Department. Probability proportional to size without replacement method was adopted for selection of five[68] out of 30 districts in Karnataka. In order to assess the working of CCIs, 16 CCIs run by the Government and 12 CCIs managed by Non-Government Organisations (NGOs) in the five districts test-checked **(Appendix-4.5)** were visited.

Audit findings

4.2.2 Implementation of JJ Act, 2000

For the effective implementation of JJ Act, 2000, the Karnataka State Integrated Child Protection Society (Society) and State Child Protection Unit (SCPU) at the State level and the District Child Protection Unit (DCPU) in each district have been constituted (February 2011). The Principal Secretary, Women and Child Development Department (Department), is the Chairman of the Society and exercises overall control. The Director of the Department is the Member Secretary of the Society and is responsible for administration of the JJ Act, 2000, and JJ Rules, 2010, and is assisted by the Project Director in the Directorate and 30 DCPUs in the District. The observations in this regard are brought out in subsequent paragraphs.

4.2.2.1 Karnataka Children's Fund

Section 61 of JJ Act, 2000 read with Rule 90 of JJ Rules, 2010, specifies creation of a Fund known as 'Karnataka Children's Fund' at the State level by the State Government for the development and rehabilitation of the juvenile or the child dealt with under the provisions of the Act. Besides donations, contributions and subscriptions, the Central Government also has to contribute to the Fund. The Fund was to be applied for implementing programmes for the welfare, rehabilitation of juveniles/Children, providing medical aid, scholarships/fees for higher education *etc*. We observed that though Karnataka Children's fund was created (September 2011) with the initial deposit of ₹ one lakh, no guidelines have been issued for utilisation of the fund amount. Hence, as at the end of March 2015, the fund had a balance of ₹34.31 lakh without any utilisation towards welfare of juvenile or children in need of care and protection.

4.2.2.2 Juvenile Delinquency

As per data compiled by the State Crime Records Bureau, during 2010-13, the number of crimes committed by Juveniles in Karnataka was 1,168. Of these, the largest number of juveniles indulged was in theft (25.86 *percent*), followed by burglary (14.21 *per cent*), hurt (9.25 *per cent*), murder (7.71 *per cent*), attempt to murder (5.05 *per cent*) and robbery and rape (4.54 *per cent*). From 2010 to 2013, the number of juveniles apprehended, especially those

[68] Bengaluru, Ballari, Mysuru, Shivamogga and Vijayapura

belonging to the age groups 13-16 and 17-18, increased significantly (**Appendix-4.6**).

4.2.2.3 Non-assessment and non-creation of database of children in need of care and protection and in difficult circumstances

Rule 86 of the JJ rules, 2010 specifies various functions of the DCPUs. The functions included identifying children at risk, children in need of care and protection, assessment of the number of children in difficult circumstances and creation of a district specific database. In the State, the Department of Sociology of various Universities conducted a need assessment survey on behalf of DCPU. Out of 30 DCPUs in the State, Audit observed that while a need assessment survey was not carried out in nine districts, the need assessment survey carried out in 21 districts was pending approval and follow up action by the Department of Women and Child Development.

Further, as per the terms of reference for the preparation of need assessment survey, the survey had to contain details of various categories of children in need of care and protection *viz*., children living with a single parent, children living on the street, children involved in begging, HIV infected and affected children, abused children, child labour *etc*. Scrutiny of the need assessment survey in the test-checked five districts revealed that none of the surveys had details as per terms of reference.

4.2.2.4 Inadequate services provided to children in need of care and protection

The need assessment survey of the test-checked five districts revealed that the Department had provided care and protection services to only 15.63 *per cent* of the children identified, which included both institutionalised[69] and non-institutionalised[70] children. The number of children who were provided with care and protection services in the test-checked five districts in the last five years are detailed in **Table-4.1.**

Table-4.1: Number of children who were provided with care and protection during 2010-15

District	Children in need of care and protection	Children provided with care and protection services	Percentage
Bengaluru	Survey not conducted	11,385	--
Ballari	15,707	1,573	10
Mysuru	14,275	2,856	20
Shivamogga	5,332	1,090	20
Vijayapura	Survey not conducted	1,530	--

(Source: Information provided by the Department)

[69] Includes placement of children in children homes, observation homes, open shelters and fit institutions.

[70] Includes foster care, adoption, sponsorship and placement with parents.

4.2.3 Functioning of Juvenile Justice Board (JJB) and Child Welfare Committees (CWC)

4.2.3.1 Juvenile Justice Board

Section 4 of the JJ Act, 2000, read with Rule 8 of JJ Rules, 2010 specifies constitution of a JJB in each district for exercising powers and discharging the duties conferred or imposed on JJBs in relation to juveniles in conflict with law and that the JJB should hold its sittings in the premises of an Observation Home having jurisdiction over that district, and in no circumstances should it operate from within any court premises. Also, the rules specify that every enquiry by the JJB in relation to a child in conflict with the law has to be completed within a period of four months and only in exceptional cases, the period may be extended by two months. Further, it also specified that delay beyond six months except where the nature of the alleged crime was serious, led to termination of the proceedings.

In this regard, we observed the following:

- In 14 districts, Observation Homes have not been set up and the JJBs in these districts were functioning from the premises of Children Homes.

  The Government, while accepting audit observations (December 2015), stated that action would be taken to construct Observation Homes based on availability of space.

- Out of the five districts test-checked, while the JJBs at Mysuru and Vijayapura held their sittings in the office of the Superintendent as there were no separate rooms available for the JJBs in Observation Homes, the JJB at Ballari held its sitting on the court premises as no infrastructure was available in the Observation Home of the said district.

- The records of the society revealed that at the end of March 2015, there were 2,350 cases pending for more than four months with JJBs. Out of 2,350 cases, 1,567 cases pertained to the five districts test-checked. On scrutiny of these 1,567 cases, we observed that 819 cases were pending at the enquiry stage, out of which 599 cases were pending for the period ranging from one to 20 years. Remaining 748 cases were pending with JJB, and out of these, 616 cases were pending for a period ranging from one to 15 years. Further, out of 1,567 cases pending, 359 cases related to non-serious crimes.

  The Government attributed (December 2015) the delay for clearing the cases to non-receipt of charge sheet/First Information Report, non-appearance of the juveniles who were granted bail, witnesses not coming forward *etc*.

- The free legal service to be extended as per rules under JJ Rules, 2010, by the legal officer in the SCPU/District Legal Service Authority to the juvenile for defending his case was not provided in any of the five districts test-checked except in Bengaluru (Urban).

4.2.3.2 Child Welfare Committee (CWC)

Section 29 of the JJ Act, 2000, read with JJ Rules, 2010, specifies constitution of a CWC in each district and the CWC should hold its sittings in the premises of a Children Home by rotation in any of the Children's Home in the district. Further, it specifies that the Children Homes should have two rooms of 300 sq ft each, with one room to be used for sitting and the other as waiting room for children and their families. Also, the rules specify that when a child is presented before the Committee, it should assign the case to a social worker/ case worker/child welfare officer/officer-in charge as the case may be, of the institution for conducting the enquiry and submitting a report containing an individual care and rehabilitation plan. Further, it specifies the enquiry to be completed within four months unless special circumstances do not permit that.

In the five districts test-checked we observed the following:

- While two CWCs in Shivamogga and Ballari had their sittings in the premises of the Children Home, the space consisted of only one room. There was no waiting room for children and their parents. The CWC of Bengaluru (Urban) had a waiting room, but the space was less than the mandatory 300 sq ft and did not have the necessary furniture.
- Further, records of the Society revealed that there were 565 cases pending disposal, of which 196 cases pertained to the five districts test-checked. We observed that 41 cases were pending for more than one year in the test-checked districts, thereby keeping the children out of the individual care and rehabilitation plan.

4.2.4 Working of Child Care Institutions

4.2.4.1 Child Care Institutions running without registration

Section 19 of the JJ Amendment Act, 2006, stipulated all CCIs, whether run by the Government or a Non Government Organisation (NGO), to register themselves within six months from the date on which the above act came into effect. Further, the Honourable Supreme Court of India, in its order on Writ Petition (Crl) No 102 of 2007, in the matter of exploitation of children in Juvenile orphanages in the State of Tamil Nadu vs Union of India and others, directed (February 2013) all CCIs to get registered under the JJ Act, 2000. Also, the Ministry of Women and Child Development directed (July 2014) all the State Governments to conduct a survey at the district level to identify CCIs not yet registered and urge them to get registered under the JJ Act.

However, surveys as per the directions of Ministry of Women and Child Development were yet to be conducted in the State by the Department of Women and Child.

In the five districts test-checked, we observed the following:

- Out of 329 CCIs who had applied for registration with the Department of Women and Child, 117 applications were approved, applications from 109

CCIs were pending[71] for approval and applications pertaining to 103 CCIs were rejected for not complying with standards. However, we observed that all the 212 CCIs whose applications were either pending approval or were not approved, were running without registration.

- Further, the Society had released grant amounting to ₹74.61 lakh during 2010-15 to six CCIs run by NGOs not registered under the JJ Act, 2000 **(Appendix-4.7).**

4.2.4.2 Homes for children with special needs

As per rule 39 of the JJ Rules, 2010, the State Government needs to establish a home for destitute, mentally challenged children and children with disability. The home for these children should be a comprehensive care and rehabilitation center with infrastructure and other facilities sensitive to their needs.

We observed that, while the State Government had established four children homes for mentally retarded children and extended a grant to one NGO running a children's home for mentally retarded children, no children homes were established for children with other severe disabilities and children affected and infected with HIV.

Review of records of one[72] out of two children's home for mentally retarded children in the five districts test-checked, revealed the following:

- Except for one paramedical staff taking care of 50 mentally retarded children in the said children home, no house mother or house father was appointed, as was mandatorily required.
- Further, rule 48 of JJ Rules, 2010, specifies a mental health care plan to be developed for each child by the social worker or case worker, in consultation with mental health experts associated with the CCI, and their recommendation being integrated with the individual care plan of the child. However, no such care plans were prepared and hence submission of the care plans to the Management Committee and CWC did not arise.
- As the post of trained counsellor remained vacant and also as there was no collaboration with external agencies, no specialised and regular individual therapy was given to the children in the CCI.
- There was no tie-up with local Primary Health Centres, Government Hospitals and other hospitals, Medical colleges, Mental health Institutes for regular visits by their doctors, students, clinical psychologists and psychiatrists for holding periodic health camps within the CCI.

The Government, while accepting (December 2015) the lacunae, stated that they would take measures to comply with the same. Further, the Government stated that a pilot project for rehabilitation of mentally retarded children was underway at Children Homes for mentally retarded Children, Bengaluru. After examining the results of the programme, it would be extended to other Homes.

[71] Out of 109 cases, 63 cases were pending for more than one year and less than five years, and eight cases were pending for more than six months but less than one year.

[72] Children's home for mentally retarded children (boys), Ballari

4.2.4.3 Non observance of procedure for admission and release of children

The JJ Rules, 2010, specify that any person/organisation authorised to receive a child in need of care and protection should produce the child before the CWC with the report on the circumstances under which the child came to his/ their notice. After completion of the enquiry, the CWC should make appropriate order for the placement of child with the Children Home/Fit Institution/Fit persons.

In the five districts test-checked, we however observed that during 2010-15, 1,025 children of four[73] CCIs were admitted and released without the orders of the CWC.

4.2.4.4 Segregation of children in CCI

According to Rule 42(2) of JJ Rules, 2010, homes for juveniles in conflict with the law and children in need of care and protection are to function from separate premises.

Out of five districts test-checked, in one Observation Home in Vijayapura, children in need of care and protection were housed along with juveniles in conflict with law.

Further, Rule 14 and 15 of JJ Rules, 2010, state that Observation Homes as well as Special Homes should have separate residential facilities (for both boys and girls), in accordance with the degree of offence and age.

However, in the five districts test-checked, it was observed that in four[74] out of six Special/Observation Homes, no segregation of juveniles in accordance with above mentioned rules were carried out, and all the children were kept in a single dormitory.

Government replied (December 2015) that such isolation amounted to imprisoning of children and hence were allowed to mingle with each other during the day. The reply was not acceptable as the rule mandated separate residential facility based on the offence and age.

4.2.4.5 Children's participation

Rule 59 of JJ Rules, 2010, specify the setting up of a Children's Committee by the officer-in-charge of a CCI for three different age groups *viz*., 6-10 years, 10-15 years and 15-18 years. The officer-in-charge has to encourage the Committee to participate in improving the conditions of institutions, review standard of care followed, report abuse and exploitation by peers/care givers and also participate in the management of institution.

[73] Bosco Yuvodaya Open Shelter, Bengaluru; YMCA Open Shelter, Bengaluru; Bijayalakshmi Education and Welfare Society, Vijayapura and Anatha Shishu Nivasa, Bengaluru

[74] Observation Homes, Shivamogga, Ballari and Mysuru; Special Home, Bengaluru

In the five districts test-checked, we however, observed that eight out of 16 Government run institutions and six out of 12 NGO run institutions had not constituted a children's committee. This prevented the children from participating in the improvement of the conditions of the institution, reviewing the standard of care provided at the institution, being involved in the management of the institution, expressing their views creatively *etc*.

4.2.4.6 Death of juvenile or child

Rule 62 of the JJ Rules, 2010, state that, in the event of the death or suicide of a juvenile or child in an institution, the institution should ensure that an inquest and post-mortem examination is held at the earliest. Further, in the case of natural death or death due to illness of a juvenile or child, the officer in charge should obtain a report of the medical officer stating the cause of death and a written intimation of the death has to be given immediately to the nearest police station, the board or committee, the State Human Rights Commission, the State Commission for protection of Child Rights, the SCPU and the parents or guardians of the juvenile or child.

In the five districts test-checked, we observed that during 2010-15, though three children from three Children Homes[75] for boys had expired, this was not reported to the police station, the State Human Rights Commission and the State Commission for Protection of Child Rights. Further, the cause of death of a juvenile in a Children Home for boys in Bengaluru, was yet to be ascertained even after expiry of one and half years. Government replied (December 2015) that efforts are being made to get the forensic report. The death of a juvenile in a Children Home for boys in Mysuru was however, due to delay in hospitalisation.

4.2.4.7 Leave or absence of a juvenile or child

Rule 65 of the JJ Rules, 2010, prescribe a maximum of 15 days of leave to a juvenile or child in a CCI for examination or admission, special occasions like marriage, event of death or accident or serious illness in the family. On their non-return to the institution on expiry of the sanctioned leave, the Board or Committee has to refer the case to the police to bring the juvenile or child to the institution.

In the five districts test-checked, it was observed that during 2010-15, 21 children of two[76] Children Homes who went on leave did not return to their respective homes and the Committee of the respective Children Home did not refer the case to the police as envisaged in the rules, nor initiated any action to bring the children back to the Children Homes. Government replied (December 2015) that it would initiate action to conduct social investigation of children who have not returned after completion of leave.

[75] Children Home for boys, Bengaluru ; Children Home for boys, Mysuru and Children Home for boys, Shivamogga

[76] Children Home for boys and girls, Vijayapura

4.2.4.8 Escape of Children from Government run Child Care Institution

Rule 19(2) of the JJ Rules, 2010, specify that in the event of escape of a juvenile or a child, the officer-in-charge should lodge a complaint in the jurisdictional police station or special juvenile police unit immediately with a copy to the Board and other authorities concerned, besides conducting search of the child and intimating the parents/guardians. Further, the case worker has to specify the security lapses, if any, and take action in this regard, as well as analyse the reasons for the escape and suggest a suitable programme to the officer in charge for prevention of such incidents.

On scrutiny of the records of the five districts test-checked, it was observed that during 2010-15, 224 children had escaped from nine Government run CCIs and out of 224, only 109 children were traced with 115 children yet to be traced. Further, review of records of the Government Home for boys, Bengaluru, where maximum number of escapes was reported revealed the following:

- Out of 92 children who escaped from the institution, 66 children remained untraced till date.
- Further, though transfer of juveniles to the place nearest to their native place was ordered in respect of 13 children who belonged to other states between 17 January 2014 and 26 December 2014, the orders were not implemented. All the 13 children escaped from the institution on a single day (29 December 2014) out of whom 11 were traced and two untraced.
- The children had escaped using hacksaw blades and metal cutters, which are restricted items inside the Children Homes as per the provisions under the JJ Act/rules.
- No other security measures were in place except for security guards engaged through a private security agency.

The institution did not make any report on the security lapses and also did not carry out an analysis of the reasons for the escape.

4.2.4.9 Abuse or exploitation of a juvenile or child

Rule 63 of the JJ Rules, 2010, specify that every CCI should have a system to ensure that there is no abuse, neglect or maltreatment, and in the event of any abuse, the officer in charge should report the same to the Management Committee, JJB, CWC who in turn has to order a special investigation. Further, if the complaint is against the staff of the institution, such staff is required to be suspended pending inquiry.

The records of the Karnataka State Commission for Protection of Child Rights revealed that 17 cases of child rights violation were reported during 2010-15 *viz*., physical and sexual abuse, and neglect and maltreatment of children. However, no action was taken and further, it was observed, that in many cases the violation was committed by the members/staff of institution/JJBs/CWCs themselves.

Government replied (December 2015) that in a few cases, action to suspend the offenders had been initiated and further stated that the State Government or NGO were protected under Section 67 of the JJ Act, which stated that no suit or legal proceedings could be initiated against the State Government or NGOs running the home or any officer and the staff of such institutions in respect of anything which is done or intended to be done in good faith. The reply, however, is not acceptable as the violence, abuse, neglect and maltreatment reported are criminal/cruel acts and are not acts of good faith. Hence action under section 23 supercedes section 67 of JJ Act which relates to punishment for cruelty to juvenile or child, and action should be considered accordingly.

4.2.5 Findings of Joint Inspection of CCIs

The JJ Act, 2000, provides for institutional mechanisms, *viz*., Children Homes, Fit Institutions and Shelter Homes, for extending care and protection to children in need of them. Further, the JJ Act as well as JJ Rules prescribes minimum standards of care for all the CCIs.

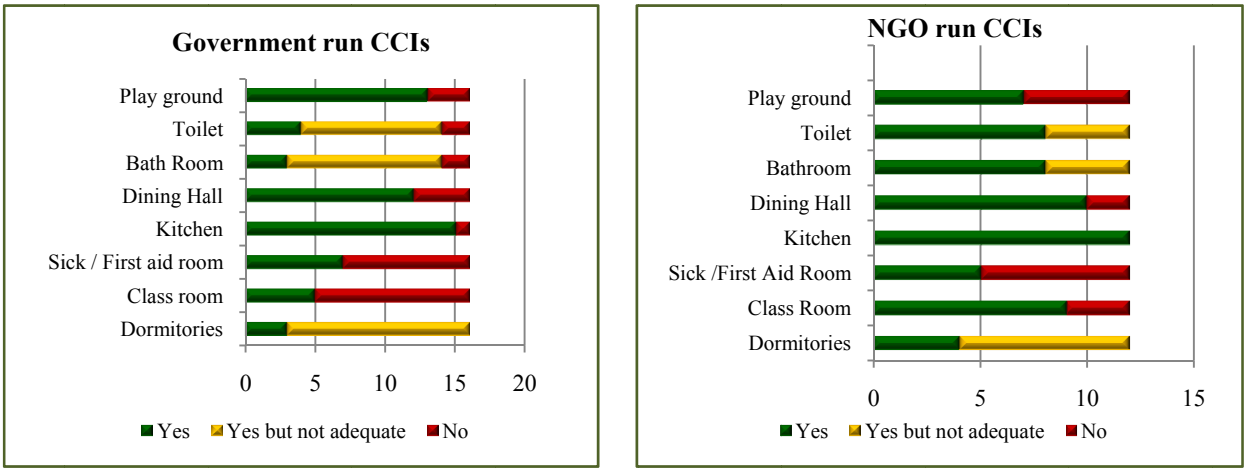
In the five districts test-checked, audit visited 16 Government run CCIs and 12 NGO run CCIs. The audit findings are discussed in subsequent paragraphs.

4.2.5.1 Basic Infrastructure

Rule 42 of the JJ Rules, 2010, specify providing sufficient and safe accommodation for classroom, kitchen, dormitories *etc*., with sufficient cross ventilation and sunlight. It also stated that the CCIs should be child friendly and they should not look like a jail or lock up. Joint verification, however, revealed the following:

- The Children Home for boys (senior), Vijayapura functioned from an abandoned jail constructed during 1920 and the dormitories were in dilapidated condition without proper doors, windows, adequate lighting and ventilation facilities.
- The Observation Home, Ballari, had one dormitory without any other facilities and the children were kept locked up almost around the clock.
- The Observation Home, Mysuru, was run from a rented building which had a dormitory area of 120 sq ft for 25 children.
- The basic infrastructure of one NGO run institute in Bengaluru was inadequate as it accommodated 89 children against the sanctioned capacity of 50.
- The status of CCIs (both Government and NGO run) with respect to basic infrastructure is indicated in **Chart-4.1**.

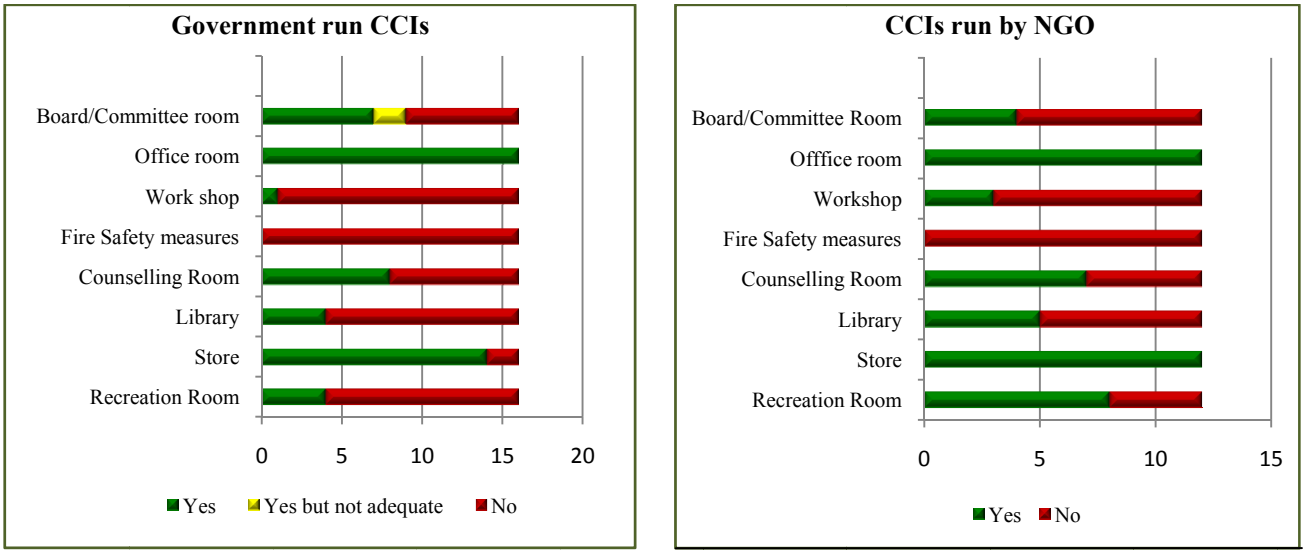
Chart-4.1: Status of basic infrastructure in the CCIs visited



4.2.5.2 Other infrastructure

The findings regarding status of other infrastructure such as recreation room, store, library, fire safety measures *etc*. are indicated in **Chart-4.2**.

Chart-4.2: Other infrastructure in both Government run and NGO run CCI



Government replied (December 2015) that necessary action would be initiated to assess the status of infrastructure and a plan of action would be drawn up to address the inadequacies in CCIs.

4.2.5.3 Sanitation and Hygiene

The JJ Rules, 2010, provide for every CCI to have sufficient treated drinking water filters, proper drainage systems, arrangement for disposal of garbage, mosquito control *etc*.

The findings in the visited CCIs are depicted in **Chart-4.3** and **Chart-4.4** below.

Chart-4.3: Sanitation and Hygiene provided by the CCIs run by Government

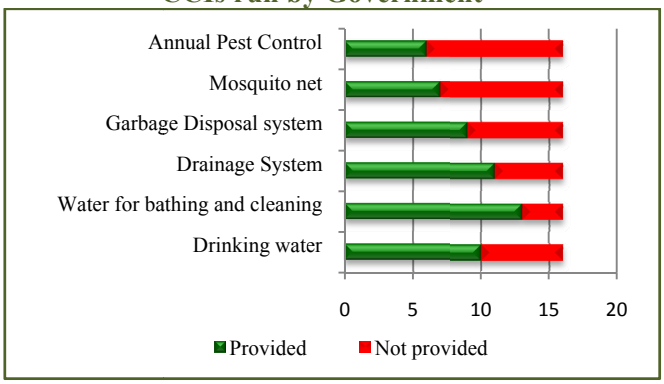
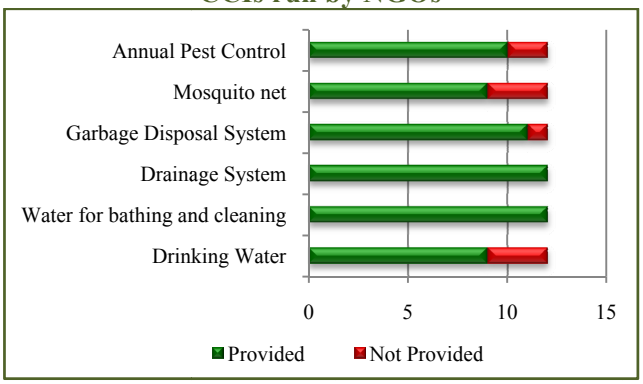


Chart-4.4: Sanitation and Hygiene provided by the CCIs run by NGOs



Government replied (December 2015) that necessary action would be initiated to assess the status of infrastructure and an action plan drawn up to address the inadequacies in CCIs.

Though the Department had received ₹3,475.55 lakh for construction of Government Homes, for Fit Institutions and Open Shelters, it had released only ₹2,402.10 lakh and there was a balance of ₹1,073.45 lakh as at the end of March 2015. Thus, the Department, by not utilising the grants for the intended purpose, could not extend even the basic facilities adequately to the children. Government replied (December 2015) that during the current year action was taken to procure sites and construct buildings.

4.2.6 Inadequate manpower

The JJ Act, 2000, and JJ Rules 2010, prescribe a staffing pattern for Children as well as Observation Homes. The staff position of Government run CCIs in the five test-checked districts are details in **Table-4.2**.

Table-4.2: Sanctioned and working strength of Government run CCIs in the five test-checked districts

Sl. No.	Name of the Post	Staff Strength required as per the JJ Act	Sanctioned Strength	Working Strength
1	Superintendent	16	16	07
2	Counsellor	66	08	06
3	Caseworker	66	01	01
4	Probation Officer	66	24	15
5	House Mother/Father	132	33	22
6	Teacher	66	48	15
7	Art & Craft cum Music Teacher	35	12	03
8	PT cum Yoga Instructor	35	02	03
9	Doctor	35	14	06
10	Paramedical Staff	35	19	15
11	Cook	66	22	17
12	Accountant	35	25	23
13	Helpers	66	32	32
14	Guard/ Sweeper	66	33	29
	Total	**785**	**289**	**194**

(Source: Information provided by the Department)

From the table, it is seen that in almost all the posts, working strength is much less than the sanctioned strength. We further observed that the sanctioned strength was less than the staff strength prescribed in the JJ Act. This resulted in poor/non-implementation of the act as prescribed. The deficiencies observed are as follow:

- The Probation Officer as per JJ Rules, 2010, is required to periodically visit the family or the place of stay of the juvenile or child for a period of three years to assess the impact of the rehabilitation programme. Further, he is also required to assess the character of the juvenile, relationship with family members, and behaviour with the community, fortnightly. However, we observed that the post of POs were not sanctioned in four out of 16 test-checked Government run CCIs. Further, the 15 POs were posted only in nine test-checked Government run CCIs. Hence, assessment of rehabilitation programme was not conducted in six test-checked Government run CCIs. The Government replied (December 2015) that instructions have been issued to submit the report on assessment in time. It was, however, silent on the issue of non-sanction of the posts, as well as non-recruitment of POs.
- Every CCI has to facilitate useful vocational training under the guidance of a trained instructor as prescribed in the JJ Rules, 2010. However, we observed that against 35 instructors required as per norms of the Government of India, in the 16 visited CCIs run by Government, only 12 posts were sanctioned and against which only three were filled. However, vocational training was not imparted in all the CCIs run by the Government. Government replied (December 2015) that it was not possible to give training with one instructor as he would be expert in only one single field. It further stated that it proposed to impart vocational training for the children with various aptitudes with the help of outside professionals.
- The daily routine of a child in the Children Home as per JJ Rules, 2010, includes educational classes as well as moral education in the Children Home. We, however, observed that in the 16 visited Government run CCIs there were only 15 teachers against the sanction for 48 teachers. Government replied (December 2015) that the children in the CCIs were sent to the regular schools in order to mainstream them with the other regular children and the teachers appointed were imparting additional classes to the children of CCIs.
- Due to non-filling up of eight posts of doctors and four posts of paramedical staff, neither monthly medical check-up nor medical records were maintained in 10 out of 16 visited Government run CCIs. Also, no staff of 14 out of 16 Government run CCIs visited were trained for first aid. Government replied (December 2015) that Government Order fixing honorarium for visiting Medical Officers was issued during September 2015 and also it was proposed to place before the Executive Committee of the Society a proposal to increase the said honorarium.
- Against requirement of 66 counsellors in the 16 Government run CCIs visited, only eight posts were sanctioned, against which six were filled. Hence, professional counselling was not provided in 10 out of 16 Government run CCIs.

Thus, from the above it is evident that lack of adequate manpower hampered in providing care and protection services. Government replied (December 2015) that Government had appointed 12 Superintendents in the five test-checked districts and also had posted four First Division Clerks and 19 Second Division Clerks in the CCIs of the five test-checked districts. Further, it also stated that action was initiated to fill up posts of House Father and Mother. In addition, directions were issued to all the Deputy Directors of the districts to appoint cooks, guards, peons and sweepers. Also, the Society stated that necessary steps would be taken to comply with all other audit observations.

4.2.7 Rehabilitation and Social Reintegration

The rehabilitation and social reintegration of a child begins during its stay in a children's home or special home. The rehabilitation and social reintegration of children is carried out by adoption, foster care, sponsorship and sending the child to an after-care organisation.

4.2.7.1 Adoption

According to section 41(2) of the JJ Act (Amended), 2006, adoption should be carried out through institutional and non-institutional mechanisms for the rehabilitation of children who are orphaned, abandoned, neglected or abused. Further, Rule 35 of JJ Rules, 2010, prescribes that for all matters relating to adoption, the guidelines issued by the Central Adoption Resource Authority (CARA) apply. A study of the mechanism for the adoption of children showed the following deficiencies:

- The JJ Amended Act, 2006, prescribed the State Government to recognise one or more of its institutions or voluntary organisations in each district as specialised adoption agencies (SAA).

  No adoption agencies, however, had been recognised in nine[77] out of thirty districts in the State. Government replied (December 2015) that DCPUs were instructed to identify suitable CCIs to function as SAAs.

- The CARA guidelines prescribe that the adoption order be obtained from the competent Court within a maximum period of two months from placing the child for pre-adoptive foster care. It also specifies that after issue of the adoption order, the preparation of the adoption deed and its registration is the responsibility of the SAA concerned. Further, in accordance with the directions of the Honourable Supreme Court of India in the case of L.K.Pandey vs Union of India (WP No 1171 of 1982), the competent court is required to dispose of the case within a maximum period of two months from the date of filing. Also it has been stated in the said guidelines that for the best interests of the child, the competent court may, to the extent possible, dispose of the case in the first hearing itself.

[77] Chitradurga, Chamarajanagara, Chickkaballapura, Kolar, Koppal, Kodagu, Raichur, Shivamogga and Yadgir

In respect of 18 children of four[78] SAAs in the five test-checked districts, though action was taken by the SAAs to file the case, the competent court was yet to call for a hearing even after expiry of the prescribed period. Further, in respect of 14 children of two[79] SAAs, we observed that though adoption orders were issued, action to get the adoption deed registered was not taken by the SAAs. Hence, the rights and privileges of adopted children were not ensured. Government replied (December 2015) that now all the 18 cases had been cleared by the Court. Further, it stated that CWCs and CARA would take up the issue with the Honourable High Court and the Ministry of Women and Child Development respectively.

- The CARA guidelines state that all restoration efforts to trace the parents/ biological family of the abandoned child are to be made by the SAA. In this regard, notification in one leading national newspaper along with one regional newspaper has to be made in case of child less than two years; and for child more than two years, in addition to notification in newspapers, announcement in television or radio has to be made. Further, in case of both abandoned as well as surrendered children, a child can be declared legally free for adoption only after expiry of 60 days.

  However, in the five districts test-checked, we observed that though notification was made in the local newspaper, none of the SAAs had made a notification in a national newspaper. Further, 27 children who were abandoned in respect of four[80] adoption agencies, and one child who was surrendered, were declared legally free for adoption before expiry of the 60 days waiting period and reconsideration period (in respect of surrendered child). This was in violation of the said guidelines. Government replied (December 2015) that a notice would be issued to all SAAs to strictly adhere to CARA guidelines. According to CARA guidelines, home study of the Prospective Adoptive Parents (PAPs), which is mandatory, has to be conducted within two months from the date of registration by the professional social worker authorised by the SAA nearest to their current place of residence.

  On review of records of SAAs in the five test-checked districts, we observed that out of 163 PAPs on the waiting list for adoption (February 2015), home study with respect to 72 PAPs who were registered between March 2008 and November 2014 was yet to be conducted.

- The CARA guidelines specify pre-adoptive counselling to the PAPs by the concerned SAA in order to facilitate them to take appropriate decisions.

  In the five districts test-checked, we observed that during 2010-15, pre-adoptive counselling was not given in two[81] Government run SAAs and one[82] NGO run SAA as the post of counsellor was not sanctioned, and where sanctioned, the post had not been filled. We observed that 151

[78] Sidheswara Vatsalya Adoption Agency, Vijayapura; Government Shishu Gruha, Ballari; Bapuji Children Home, Mysuru and Government Shishu Gruha, Bengaluru.
[79] Bapuji Children Home, Mysuru, Nirmala Shishu Bhavan, Bengaluru
[80] Government Shishu Gruha, Bengaluru; Bapuji Children Home, Mysuru; Sidheswara Vatsalya Adoption Home, Vijayapura and Government Shishu Gruha, Ballari
[81] Government Shishu Gruha, Bengaluru and Ballari
[82] Sidheswara Vatsalya Adoption Home, Vijayapura

children were given for adoption without pre-adoptive counselling in these three institutions.

4.2.7.2 Sponsorship programme

Section 43 of the JJ Act, 2000, envisages a sponsorship programme to provide supplementary support to families, children's homes and special homes for meeting the medical, educational and other needs of the children with a view to improving their quality of life. Further, Rule 38 of the JJ Rules, 2010, states that the State Government in co-ordination with NGOs has to identify families and children at risk and recommend to the JJBs/CWCs to provide necessary support services to the parents or guardian in the form of sponsorship. After such identification, the JJBs/CWCs are to issue instructions for sponsorship support which is to be disbursed through Observation/Children's homes.

In two districts of the five districts test-checked, audit could not ascertain the adequacy of the coverage of the sponsorship programme as the need assessment survey had not been conducted. In the other three districts, Audit observed that against the need assessment of 35,314, only 1,898 children (5.4 *per cent*) were covered under the sponsorship programme which is meagre. Government cited (December 2015) budget constraints for not covering all the children identified.

4.2.7.3 After-care organisation

Section 44 of the JJ Act, 2000, provides for an after-care organisation to take care of juveniles or children after they leave special homes and children's homes to enable them to lead honest, industrious and useful lives. Further, as per this section, separate after-care homes should be set up for boys and girls between 18 and 21 years of age.

On scrutiny of the records, we observed that in 329 CCIs (applied for registration with the Department of Women and Child Development), no after-care organisation has been constituted. Reasons for not establishing after-care organisations were not evident from the records. Non establishment of after-care organisations not only deprived the children from facilities, *viz*., accommodation, maintenance, educational and vocational guidance, employment opportunities, all round personality development, but also protection from abuse and exploitation. Government replied (December 2015) that girls and boys who were in need of after-care services were transferred to State Homes run by the Department of Women and Child Development and the Department of Social Welfare for further guidance and development. The fact, however, remains that Government has not established After-care Homes.

4.2.8 Monitoring and Evaluation

The JJ Act, 2000, and the JJ Rules, 2010, provide for the constitution of a State Advisory Board and Management Committee, inspection by District Inspection Committee and CWC/JJB, Social Audit and Annual Performance Review of the implementation of the JJ Act which help in monitoring as well

as evaluating the implementation of the JJ Act. On scrutiny, we observed the following:

- The State Advisory Board which was to advise the Government on matters relating to the establishment and maintenance of homes, mobilisation of resources, training and rehabilitation of children in need of care and protection, and juveniles in conflict with the law *etc*., had not met even once though it had been constituted (August 2011) and headed by the Honourable Minister of Women and Child Development. Government replied (December 2015) that the State Advisory Board had been reconstituted (June 2015) and that the first meeting had been held during August 2015.
- In the five districts test-checked, in nine out of the 16 CCIs run by the Government (**Appendix-4.8**), no Management Committee had been constituted to review the standard of care being followed in the institutions. Government replied (December 2015) that steps would be taken to constitute a Management Committee in all CCIs.
- Inspections were not conducted by the District Inspection Committee in nine out of 30 districts, which included two of the five districts test-checked. In the remaining 21 districts, only 377 inspections were conducted against the requirement of 2,200[83] inspections during 2010-15. These District Inspection Committees were to be constituted under the chairmanship of the Deputy Commissioners of the Districts to review the standard of care and protection being followed in the CCIs and also to look into the functioning of the Management Committees and Children's Committees and give appropriate directions.
- CWCs/JJBs are required to visit CCIs once in three months and suggest necessary action wherever required. We, however, observed in the five districts test-checked, that against the requirement of 1,496[84] inspections, only 68 were made by the CWCs. Government replied (December 2015) that action in this regard has been initiated.
- The State Government needs to conduct Social Audit annually in order to monitor and evaluate the implementation of the JJ Act by reviewing matters concerning the establishment of Boards or Committees, and functioning of CCIs and its staff *etc*. This has to be carried out with the support and involvement of organisations working in the field of mental health, child care and protection, *etc*. Also, an annual Performance Review in respect of the functioning of the Children's Homes in the State has to be conducted. We observed that neither the Social Audit nor the Performance Review had been conducted by the State Government. Government replied (December 2015) that action would be initiated to conduct a Social Audit.

The absence of the constitution of these monitoring mechanisms as envisaged in the JJ Act and JJ Rules, resulted in deficiencies in the implementation of the JJ Act.

[83] 5 years*4 per year*110 institutions
[84] 374 institution* 4 per year

4.2.9 Conclusion

The objective of the JJ Act is to protect children and bring about improvements in their condition. However, the way this act is being implemented gives rise to serious concerns. The first requirement for effective implementation is to first identify children at risk and who are living in difficult circumstances, so that care and protection may be given in time, and hence identification of such children through a need assessment survey is essential. It was, however, observed that out of the 30 districts in Karnataka, such a survey had not been carried out in nine districts, and in 21 districts, the survey though carried out was still pending approval and hence not finalised. In the absence of a reliable database, the number of children who require care and protection could not be ascertained.

There was also inordinate delay in the clearance of the cases referred to the Juvenile Justice Board as well as Child Welfare Committees, which resulted in huge pendencies. Many CCIs continued to run without registration, even though registration was mandatory. Further, 103 CCIs whose registration had been rejected by the Department of Women and Child Development, for not complying with standards continued to operate, indicating lack of Government control.

While, the JJ Act stipulated for separate homes for Juvenile delinquents and children who required care and protection, in some of the CCIs test-checked, it was observed that both were put up in the same place, which was in violation of the Act. There were several inadequacies in terms of physical infrastructure, sanitation and hygiene, medicinal care, education *etc*., in the CCIs when compared to the norms set in the JJ Rules, 2010. Except for one paramedical staff available, services of doctor, counsellor and house mother/father were not provided in a Special Home in Ballari which housed 50 mentally retarded children.

The non-functioning of the State Advisory Board and Management Committee and lack of inspection by District Inspection Committee also contributed to poor monitoring and effective implementation, which contributed to the deficiencies in implementation of the JJ Act.

In view of these serious deficiencies, Governments needs to review the manner in which the act is being implemented at present so as to enable it to effectively deal with its deficiencies and ensure that the children who require and deserve care and protection are truly provided the same.

4.3 Investments made by the Bangalore Development Authority in Mutual Funds

4.3.1 Introduction

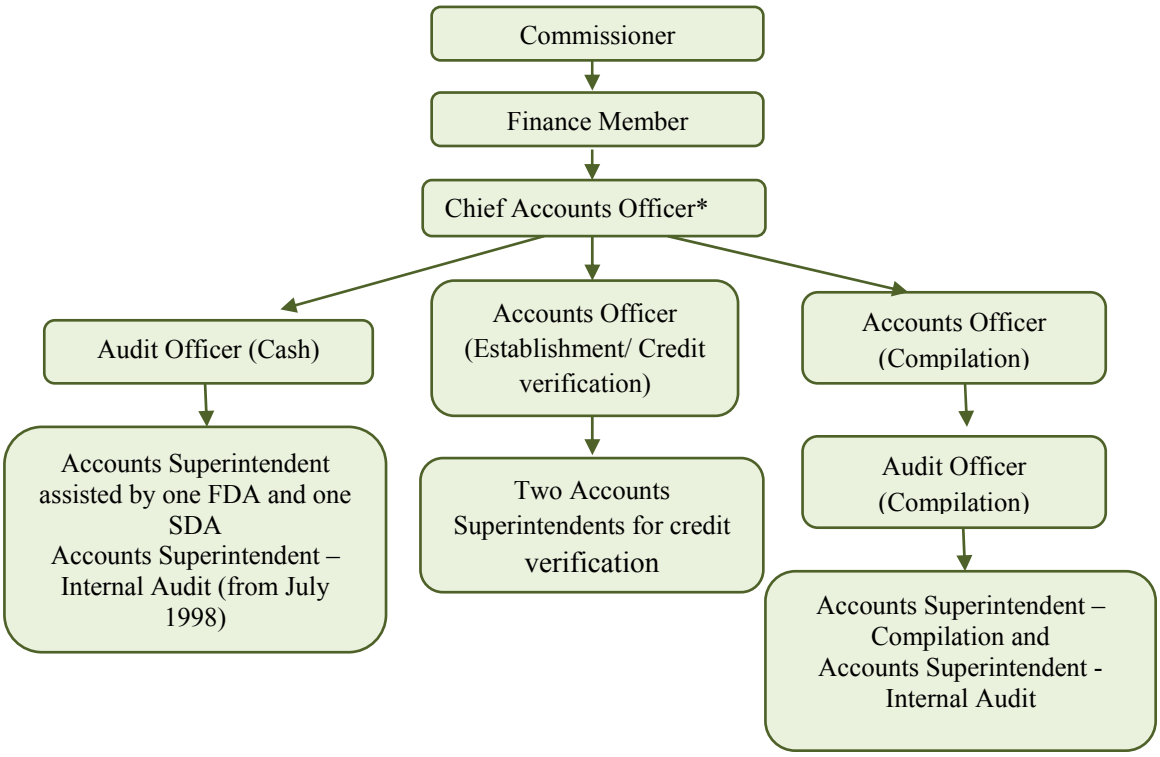
The present Report contains the findings of a special audit of the investments made by the Bangalore Development Authority (BDA) in Mutual Funds during the period 1999-2014. The Government of Karnataka (GoK) requested (November 2014) the Principal Accountant General (G&SSA), Karnataka, Bengaluru, for a special audit of the Investment of the BDA funds in Mutual Funds during the period 1999-2014 on the basis of a report (November 2014) of the Karnataka Institute of Public Auditors (KIPA) that the different Finance Members (FMs) of the BDA had unauthorisedly opened bank accounts and diverted the BDA's funds for investment in Mutual Funds through these accounts. The BDA had, initially, requested the KIPA to investigate the matter on the basis of the communication (July 2014) of the Principal Accountant General (Economic and Revenue Sector Audit), Karnataka to the Chairman of the BDA in respect of unauthorised diversion of BDA's funds to the Bangalore Metro Rail Corporation Limited (BMRCL).

The State Government had also ordered (December 2014) a parallel investigation into the investments made by the BDA in Mutual Funds by the State Criminal Investigation Department (CID), GoK. The investigation was in progress in January 2016. The special audit by the Principal Accountant General (G&SSA) commenced in December 2014 and was completed in June 2015. The special audit report containing detailed findings was sent to the State Government in August 2015 by the Principal Accountant General (G&SSA), Karnataka, Bengaluru. The GoK's reply to the special audit report was received in December 2015.

4.3.2 Organisational set-up

While the BDA was headed by a Chairman, the Commissioner was its Chief Executive and Administrative Officer. The Commissioner was vested with powers to operate the accounts of the BDA and was responsible for maintaining its accounts, besides exercising supervision and control in matters concerning accounts and records of the BDA. The Commissioner was assisted by a FM, responsible for advising the BDA and the Commissioner on all financial matters. In relation to the management of bank accounts and compilation of the accounts, the FM was assisted by a Chief Accounts Officer (CAO), two Accounts Officers and two Audit Officers who were assisted by Superintendents, First and Second Division Assistants (FDA/SDA).

The organisational chart of BDA relating to Finance is as shown below:



* The post of Financial Assistant was renamed as Chief Accounts Officer on 6 May 2005.

The incumbency to the post of Commissioners and FM are brought out in **Appendix-4.9**.

4.3.3 Audit Objectives

The objectives of Audit were designed to examine:

- the functioning of the internal control mechanism of the BDA during 1999-2014 to ascertain whether the internal controls of the BDA were adequate to mitigate unacceptable risks with regard to management of bank accounts and investment of funds;
- how the internal controls pertaining to these areas had been overlooked, bypassed or overruled to divert the BDA's moneys to Mutual Funds and other organisations; and
- loss, if any, to the BDA due to diversion of money and also to ascertain whether the BDA's funds had been misappropriated.

4.3.4 Audit Scope & Methodology

The audit covered the investment made by the BDA in Mutual Funds during 1999-2014. The general audit scrutiny included review of cash books, investment files and registers, Statements of Accounts of BDA. Documents were obtained from the Mutual Fund Houses, pass sheets and other information was obtained from the banks. Assistance and help of CID was also taken in accessing the records of Mutual Fund Houses and banks and certain records in BDA. Specific audit scrutiny focused on tracing the trail of

funds from the BDA's bank accounts to various Mutual Funds to the crediting of the redemption payout cheques issued by the Mutual Funds to the BDA's bank accounts.

As the special audit covered very old periods, complete information/ documents could not be obtained from banks in respect of the following:

- Term Deposits made and redeemed from time to time and pass sheets of the bank accounts prior to 2006-07 from Canara Bank;
- Confirmations given to the BDA every year during 1999-2014 in respect of Term Deposits outstanding in their books as of March;
- Pass sheets of all the collection accounts operated by the BDA with various branches of Canara Bank for the period 1999-2006 and Indian Overseas Bank for the period 1999-2003.

The report emanates from the scrutiny of information and documents pertaining to the investments obtained externally by audit from Mutual Funds, Registrars and Transfer Agents of Mutual Funds, Banks *etc*., as no information/documents relating to the investments in Mutual Funds was available with the BDA. The audit reconstructed the bank accounts on the basis of information/documents furnished by the banks and collated the results with the information furnished by the various Mutual Fund Houses.

Audit acknowledges the co-operation extended by the CID, the current management of the Banks, Mutual Fund Houses and BDA in securing documents/information essential for conducting the audit.

4.3.5 Audit findings

The important findings from the special audit are discussed below:

4.3.5.1 Disregarding of Internal Control Framework

Internal Control is a means for achieving the organisation's objectives and mission. In order to ensure effective operations, safeguard resources, ensure adherence to laws/regulations and maintain reliable financial and management data, a sound internal control system is required to be established.

(a) Risk Assessment

The risk management activities generally commence with an organisational risk assessment. This means that the organisation formally identifies its risks within the context of its organisational activities. These risks would then be evaluated and sourced to activities or functions. The BDA was responsible for setting appropriate policies on internal controls and to assure itself that processes were functioning effectively to monitor the risks to which organisation was exposed. It was expected to ensure that the system of internal control was effective in reducing risk. The absence of such risk assessment and identification indicated weak controls in the BDA which have been discussed below:

- ***No risk assessment done in relation to the management of bank accounts***

During 1999-2014, transactions relating to receipts ranging from ₹363.57 crore to ₹1,458.26 crore and expenditures ranging from ₹243.21 crore to ₹1,110.04 crore were conducted through bank accounts operated by the BDA with various banks. The audit, however, observed that the BDA had not adopted any approach to assess risk in relation to the management of bank accounts. It also did not have any policy or guidelines on operation of bank accounts such as when a bank account should be opened, who is authorised to open and operate the bank accounts, or entering into service agreements with the bankers for banking services. Further, audit observed that there were no guidelines as to whether any committee was to periodically oversee the implementation of the banking requirements. Audit also observed that though the number of bank accounts had multiplied during 1999-2014, no review had been conducted to know about the continued need for these multiple bank accounts.

It was further seen that all the interbank transfers as well as transfers among various bank accounts within the bank had been affected by banks on the basis of oral instructions of FM during 1999-2014. There was no record available in the BDA authorising these banks to transfer funds to other banks or among the various current accounts within a bank. The interbank transfers during the said period ranged from ₹59.27 crore (1999-2000) to ₹1,324.45 crore (2004-05).

- ***Multiple bank accounts had been opened and operated without the approval of the Commissioner/BDA***

The BDA Act stipulated that the Commissioner was to operate BDA's accounts and was responsible for maintaining its accounts besides exercising supervision and control in matters concerning accounts and records. Also, the banking regulations required an order authorising an officer to open and operate the accounts from the Head of the Organisation. However, we observed that the Commissioner had not delegated the power of opening a bank account to any senior official including the FM. While defining the duties and responsibilities of the Finance Wing through a circular issued in June 1985 under Section 13.2 (e) and (f) of the BDA Act, the Commissioner fixed the responsibility for all financial activities of the BDA entirely on the FM who was to be assisted by Audit/Accounts officers and Financial Assistant. However, this circular did not delegate the power of opening bank accounts to the FM. Thus, only the Commissioner was mandated to authorise the opening of bank accounts.

Scrutiny of records showed that the BDA did not have any record of the bank accounts (including collection accounts) opened, operated and closed from time to time during 1999-2014. No files containing the orders of the Commissioner for opening these accounts were furnished to audit. A central register recording the bank accounts opened from time to time and signatories of these bank accounts had not been maintained by the BDA. Audit, however, obtained information from the banks which showed that multiple Current Accounts (CAs) as shown in **Table-4.3** had been opened, operated and closed during 1999-2014, in favour of the BDA.

Table-4.3: Current accounts operated by the BDA during 1999-2014

Name of the Bank	No. of accounts operated	No. of accounts closed/ remaining dormant	No. of accounts currently operative	No. of accounts without requisite signed account opening forms as confirmed by banks
Indian Overseas Bank (IOB), Kumara Park West, Bengaluru	18	13	5	16
Canara Bank, BDA Complex, Bengaluru	30	15	15	15
Canara Bank, Kumara Park West, Bengaluru	12	12	Nil	12
Corporation Bank, Kumara Park West, Bengaluru	2	1	1	Nil

(Source: Information furnished by respective banks)

Of these, the main current accounts of the BDA which were operative are shown in **Table-4.4.**

Table-4.4: Main current accounts of the BDA during 1999-2014

Name of the bank	Current Account Number	Opened on
Canara Bank, BDA Complex, Bengaluru.	2001	01 January 1991
IOB, Kumara Park West, Bengaluru	239	17 February 1998
Corporation Bank, Kumara Park West, Bengaluru	150	12 October 2010

(Source: Information collected from Annual Accounts of BDA)

The FM and the CAO were the authorised signatories for each of these accounts. Thus, multiple bank accounts opened and operated evidently without the approval of the Commissioner showed that lack of guidance on management of bank accounts by the BDA/Commissioner and non-existence of any oversight mechanism to periodically review implementation of the banking arrangements resulted in the banking activities being conducted over a long period of time during 1999-2014 in an uncontrolled environment.

- ***Collection Accounts opened without following the prescribed procedures***

In addition to the main accounts mentioned above, the BDA had authorised a number of branches of IOB, Canara Bank and Corporation Bank to receive applications, registration fees and initial deposit amounts from applicants while issuing notifications during 1999-2014. The amounts credited to the collection accounts at the authorised branches of the banks were to be transferred to the designated main accounts of the BDA after the last date fixed for receipt of applications. A collection account permits only crediting of the receipts and transfer of the receipts so credited to the designated main current account. No other transaction is permissible in a collection account. In this regard, it was observed that the BDA had not assessed the number of collection accounts required to be operated at the authorised branches.

BDA did not have any service agreements with the banks specifying, amongst other things, the mode and frequency of transmission of receipts in the collection account to the main account and of providing periodic reports to BDA. Though BDA entered into agreement with the Corporation Bank, Kumara Park West branch in October 2010, even it did not have service agreement to this level.

Hence, in the absence of any service agreements, the BDA did not have any legally valid document to make the banks accountable for lapses, if any, on their part and claim damages wherever appropriate. Since the pass sheets of the collection accounts were not available with the BDA, audit obtained the same from the banks and the scrutiny of the pass sheets showed the following irregularities:

(a)	Balances in collection accounts invested in Term Deposits at respective branches	An amount aggregating ₹1,712.88 crore had been invested in term deposits at 156 branches of IOB, Corporation Bank and Canara Bank during December 2001 to June 2004 without authorisation from the Commissioner/FM but were brought to accounts during those periods. Though there was no actual transfer of amounts to the main bank account, BDA operated a 'inter-bank transfers' account and recorded the collection amount as receipts in the cash book. The debits to these inter-bank transfers were subsequently cleared by transferring the balances to investments.
(b)	Balance in collection accounts transferred to other branches for investment in Term Deposits	An amount aggregating to ₹23.75 crore was transferred (on 29.8.2000, 29.11.2000, 9.5.2001 and 16.7.2002) from two collection accounts of IOB to its nine branches across Bengaluru without the written approval of the BDA for investment in Term Deposit. Further, an amount of ₹23.52 crore collected (as of 4 November 2003) in three different branches of IOB had been transferred to other branches, the details of which were not forthcoming. An amount of ₹70 crore had been transferred from CA 1587 to 14 branches of IOB during November 2003. Maturity proceeds of ₹317.07 crore had also been credited to this account (February 2004 and March 2005). In the absence of relevant details from the branches concerned, Audit could not match the outflow of funds with the inflow of proceeds credited. This implied that the redemption proceeds included proceeds of other term deposits not invested out of funds transferred from this account.
(c)	Balance in collection accounts partially transferred to main account	In three out of 46 test-checked collection accounts and four bank accounts other than collection accounts of Canara Bank, amounts collected were partially transferred to its main designated account.
(d)	Balance in collection accounts transferred at different intervals	The BDA had not issued any instructions to the banks prescribing the periodicity for transfer of balances in the collection accounts to the main designated account. In the absence of mandated time frame, different branches had transferred funds at different intervals. Out of the collections made during March to June 2014 in two branches, an amount of ₹1.17 crore had not been transferred to main account as of December 2014 and ₹2.04 crore had been transferred to the main account only on 30th June 2014.

(e)	Transfers among collection accounts within branch	Out of the receipts collected in CA 5004 of Canara Bank, ₹0.36 crore had been transferred to another collection account of Canara Bank viz., CA 5007 on 30.12.06. Similarly, ₹0.16 crore had been transferred from CA 5007 to CA 5004 during March 2006 to February 2007.
(f)	Balance held in collection accounts not disclosed in main accounts	Following amounts were not reflected in the books of accounts: • An amount of ₹0.36 crore during March 2004 and ₹11.53 crore during March 2014 at IOB. • Amount ranging from ₹0.07 crore to ₹8.03 crore during 2005-06 to 2013-14 at Canara Bank.

The absence of service agreements and failure of FMs to monitor collection accounts resulted in the funds either being unnecessarily parked or invested from the collection accounts without proper authorisation. There was no information available to the BDA of the overall financial position leading to *adhoc* and subjective investment decisions.

Due to non-availability of pass sheets of all collection accounts for the period 1999-2014, audit could not verify whether all the moneys in the collection account had been transferred in full to the main CA of BDA. As a result, audit could not verify the correctness of Term Deposits recorded in investment register.

- ***Large number of bank accounts not disclosed in the annual accounts***

The Management of an organisation is responsible for the preparation and presentation of financial statements in accordance with the Accounting Standards and also for putting in place a sound internal control mechanism to enable preparation of financial statements that are free from material misstatements, whether due to fraud or error. The definition of financial statements includes all necessary disclosures which comprise explanatory or descriptive information in the financial statements, information in the related notes, *etc*. It was seen that a large number of bank accounts, including collection accounts, operated by the BDA had not been disclosed in the annual financial statements during 1999-2014 and details of which are indicated in **Appendix-4.10 (a) and Appendix-4.10(b)**. As such, these accounts had not been subjected to audit during 1999-2014. Failure to disclose a large number of bank accounts year after year resulted in a large number of transactions being kept out of the audit process, besides facilitating concealment of the diversion of huge funds to Mutual Funds year after year and their non-detection as discussed in the report subsequently.

- ***Absence of investment policy***

There was no investment policy in place approved by the BDA till 13 August 2008, despite being pointed out by audit during certification of the annual accounts for the years 2002-2005. Till August 2008, investments in Term Deposits had been made on the basis of individual approvals given without taking a holistic approach. The Commissioner then constituted an Investment Committee headed by himself and consisting of the FM, Secretary and CAO as the members. Thus, the FM was responsible for submission of investment

proposals to the Investment Committee/Commissioner. Though the Investment Committee had been constituted, no guidelines detailing its scope and functioning had been framed by the Commissioner. The total investments in term deposits including their renewal, during 1999-2014 as per annual accounts was ₹18,222.50 crore. Scrutiny of the investment files relating to this period showed that:

- Investments amounting to ₹14,759.47 crore were made in Term Deposits prior to August 2008. Out of the said investment, approval of the Commissioner had been obtained for only ₹1,911 crore (13 *per cent*). Further, the investment of ₹101.42 crore was approved only by the FM and ₹23.70 crore was invested by the FM by stating that oral orders of the Commissioner had been obtained. However, we observed that there were no ratification by the Commissioner for the said oral orders and hence could be construed as unauthorised. Balance investment of ₹12,723.35 crore in Term Deposits (70 *per cent*) did not have approval of any kind which was also unauthorised.

  Also, audit observed that ₹150.45 crore had been invested (July 2008) in six Term Deposits in order to match six fictitious Term Deposits outstanding in the Investment Register. This investment had apparently been made by the SDA as the post of FM remained vacant from 1 July 2008 to 9 November 2008. We, however, observed that there were no records available authorising the bank to carry out these transactions. The trail of these Term Deposits is indicated in **Appendix-4.11.**

- Subsequent to the constitution of Investment Committee, investment amounting to ₹591.85 crore and ₹121.19 crore in Term Deposits had been approved by the Commissioner and FM respectively without recommendation of the Committee. In addition, an investment of ₹200 crore in Term Deposit was made by the FM stating that oral orders of the Commissioner had been obtained. These unauthorised investments constituted 26 *per cent* of the total investment made after constitution of the Investment Committee.

- With regard to premature closure of term deposits, audit observed from the entries made in the Investment Register that although, Term Deposits had been prematurely closed on a large scale from time to time, no written approval for premature closure had been obtained from any authority during the period 1999-2008 (except for ₹ five crore approved by the FM during 1999-2001). The FM approved pre-closure of investments aggregating ₹411.09 crore during 2008-15 without the approval of the Investment Committee/Commissioner. Similarly during 2009-15, the Commissioner had approved premature closure of Term Deposits amounting to ₹577.86 crore without referring the matter to the Investment Committee.

- It was further observed that there was also no system of physical verification of the original term deposit certificates either at periodical intervals during the year or at the end of the year. This facilitated in concealing the continued unauthorised diversion of funds as Term Deposits in the accounts.

Thus, all the observations brought out in the previous paragraphs indicate that the Finance Wing of the BDA had not produced effective and timely operational reports that included actual and budget cash balances which were compared to forecasts and targets. No operational report comparing the year to-date totals of interest earned against a pre-determined target had been prepared. As these reports had not been prepared, there was no regular appraisal of BDA's finances, including bank accounts and investment of surplus moneys, to the Management. In the absence of this information, the management lacked sufficient knowledge to make informed decisions on the performance of the banking and cash management functions.

(b) Control activities

Control activities refer to that group of specific controls which are within an effective control structure to mitigate unacceptable risks to assist the achievement of business objectives. An effective framework includes both preventive and detective controls that minimise the impact of risks and contributes to the efficient and effective delivery of quality outcomes.

Audit, however, observed that both preventive and detective controls were either not in place or were not functional during 1999-2014. Specific audit findings in this regard are discussed in subsequent paragraphs.

- ***Controls for maintenance of cash book overruled***

The Article 329 of the Karnataka Financial Code (KFC) prescribes that all monetary transactions should be entered in the cash book as soon as they occur and attested by the head of the office in token of check exercised by him. The cash book should be closed at the end of each day and the balance struck. The Head of the office should verify the totals of the cash book or have this done by some responsible subordinate official other than the writer of the cash book and initial it as correct. At the end of the month, the cash book should be closed.

All banking transactions *viz*., receipts remitted into the bank accounts, inter-bank transfers, investments and their redemption, and bank balances including drawing up abstracts in the cash book at the end of every month were written by the SDA. While the entries written on expenditure side of cash book were partially attested by the Financial Assistant during 2000-02 and by the Audit Officer during the remaining period, none of the entries written by the SDA had been attested by anyone during 1999-2014. The cash book had not been closed at the end of each day. However, at the end of the month, the cash book had been signed by the Audit Officer. Thereafter, the cash book had not been submitted to any higher official such as CAO/FM.

Thus, no oversight mechanism existed in the BDA to ensure that the cash book had been written as per rules and the transactions recorded therein were free from material misstatements, whether due to fraud or error.

- ***Non-segregation of duties and responsibilities***

The best practices require that no single invidual or section should control all key stages of a transaction or event. Rather, duties and responsibilities should be assigned systematically to a number of individuals to ensure that effective checks and balances exist.

The FM, however, did not adequately separate job responsibilities related to banking and investment activities and made the SDA responsible for:

- All banking activities including investment of moneys in Term Deposits and their redemption;
- Writing of cash book;
- Maintenance of Investment Register including physical custody of original Term Deposit Receipts; and
- Bank reconciliation

As a result we observed that:

- The SDA had been handling all banking activities of the BDA since 1999 including initiating proposals for investment of surplus funds, their redemption including pre-closure, *etc*. The SDA had been allowed to write all the banking transactions in the cash book prior to November 2009 also though as per the order of July 1998, the work of maintenance of the cash book had been assigned to the FDA.
- Though the responsibility for maintaining the Investment Register and physical custody of instruments representing investments had not been formally allocated to anyone in the Finance Wing, the SDA had been writing the Investment Register. It was seen that the individual entries in the Investment Register had not been attested by anyone during the period 1999-2014. The individual entries relating to investments carried forward at the beginning of the year had also not been attested by the Audit Officer who, however, had attested the cumulative opening balance carried forward for the period April 2003 to March 2012. The closing of the register at the end of the month had been signed by the Audit Officer for the period 2003-2012 only. For the period 2012-14, the closing of the register at the end of every month had not been signed by anyone. Audit found from the investment files that during the period May 2001 and September 2004, the Investment Register had not been written up-to-date though the Financial Assistant had brought it to the notice of the Finance Member.
- The Investment Register had not been submitted to any higher officer *viz*., Accounts Officer, CAO or FM during the period 1999-2014. Though ₹18,222.50 crore had been shown in the accounts as invested in Term Deposits during 1999-2014 and proceeds of ₹17,981.12 crore had been shown as realised from such investments during this period, the entries relating to investment and redemption had not been attested either in the cash book or Investment Register during this period. No review of the investment activity at any level had been conducted comparing the interest payments received from Term Deposits analysing the reasons for breaking and pre-closure of Term Deposits *etc*.

- The SDA was also entrusted with the duty of bank reconciliation. It was seen from the files produced to audit that the bank reconciliation had been confined to analysing the unpaid cheques at the end of every month and reconciliation of receipts and other transactions reflected as transfers in the pass sheets of bank accounts had not been done. Further, no reconciliation statement, or certificate signed by the SDA, and his supervisory officers was available in the BDA.

The job allocation in the Cash section was so skewed that it facilitated the SDA to control a banking process from start to finish and to transfer the BDA's funds unauthorisedly to Mutual Funds persistently over a period of time. Further, banking activity was not reviewed on regular intervals to ensure that transactions were properly recorded in the accounts though this is the best practice in banking controls for detecting irregularities in a timely manner.

- ***Inadequate Internal Audit***

Internal Auditing is an independent, objective assurance and consulting activity designed to add value and improve an organisation's operations. The internal audit activity helps an organisation accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes. Generally, the Internal Audit is expected to verify the existence of assets and recommend proper safeguards for their protection; evaluate the adequacy of the system of internal controls and recommend any improvements; assess compliance with policies and procedures, sound business practices, laws and contractual obligations and investigate reported occurrences of fraud, embezzlement, theft, waste, *etc*.

In accordance with the order issued by Commissioner (June 1985), the FM was to function as an internal auditor. The FMs of the BDA, however, did not prescribe or put in place any system of internal audit procedures. The internal audit activity in the Finance Wing covered only the BDA's various divisions/offices outside its Headquarters and no internal audit of either the Finance Wing or the other wings like Land Acquisition, Engineering, Site Allotment, Administration *etc*., at the Headquarters of the BDA had ever been done. In addition, the Investment Register and the monthly accounts of the BDA had never been subjected to internal audit during 1999-2014.

Though the inadequate internal audit mechanism had been repeatedly brought to the notice of the BDA through Separate Audit Reports/Management letters issued by audit, the BDA had not subjected any of its wings including the Finance Wing to internal audit. As a result, there was no in-house mechanism to evaluate and improve the effectiveness of risk management, control and governance processes, particularly in the Finance Wing. Consequently, the main detective control did not operate in the BDA, resulting in continued diversion of BDA's funds to Mutual Fund through falsification of records.

- ***Failure of Chartered Accountants to discharge their role***

The BDA had appointed Chartered Accountants during 1999-2014 for conducting detailed study and suggest improvements to the existing

accounting systems, study of internal controls/checks/procedures and identifying short comings thereon, ongoing recommendations and suggestions for improving the internal control systems. The scope of work also included verification of books of accounts, review of financial statements *etc*.

The audit, however, observed that though the Chartered Accountants were responsible for studying the system of accounts which also included regular checking of the books of accounts including the bank accounts, evaluating the internal control system, they had failed in discharging both the functions. Also, the Chartered Accountants had not highlighted any shortcomings/ deficiencies in the management of multiple bank accounts by the Finance Wing/BDA.

Thus, while a formal internal audit mechanism did not exist in the BDA, the Chartered Accountants whose scope of work *inter alia* included monthly audit of accounts of the BDA had failed to detect the continued diversion of BDA's funds for investment in Mutual Funds.

- ***Monitoring of activities***

Monitoring and review is the final component of an effective control structure which provides an on-going check on the effectiveness of the control mechanism in the organisation.

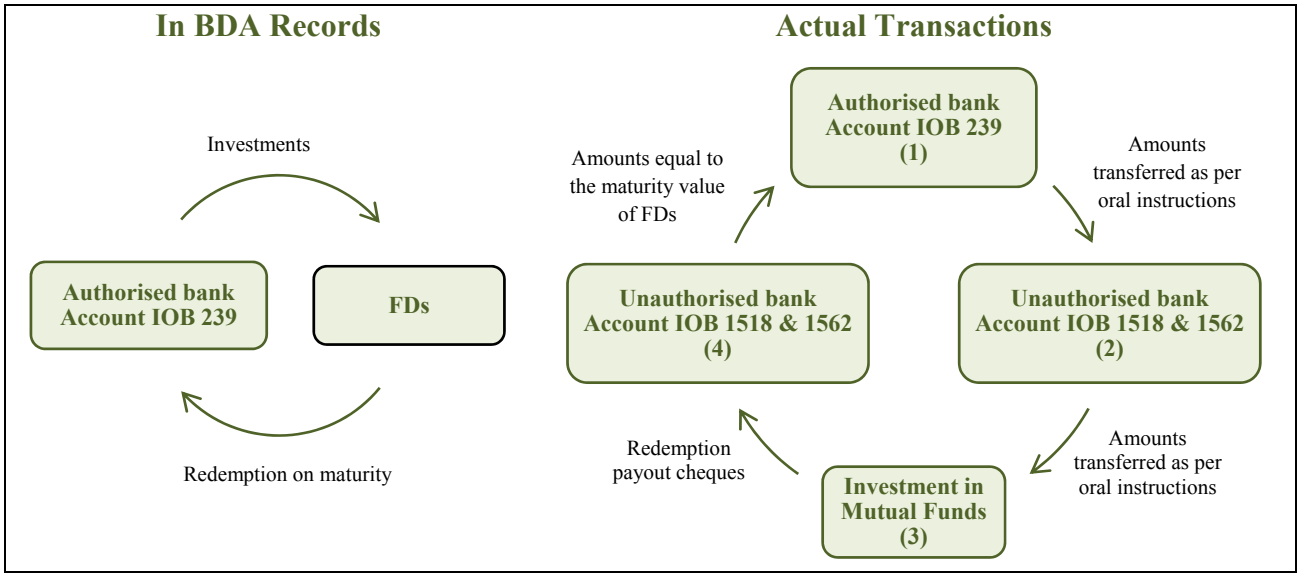
As already brought out in the earlier paragraphs, due to absence of any kind of monitoring and review mechanism in BDA, multiple bank accounts were being opened and operated, collection accounts were opened without following prescribed procedures, check of cash books not being conducted, *etc*. In addition, bank accounts had been operated and investment of surplus funds had been made by the BDA during 1999-2014 in an uncontrolled environment which is discussed in subsequent paragraphs.

4.3.5.2 Unauthorised investments in Mutual Funds by FMs

The BDA had not approved any investment policy permitting investment of money in Mutual Funds. All the three FMs as mentioned in **Appendix-4.9** flouted rules and unauthorisedly diverted BDA's funds to Mutual Funds by falsifying the investments as Term Deposits.

(a) Modus operandi adopted for unauthorised diversion of BDA's funds

It was noticed that the three FMs along with the SDA of the Cash Section, IOB, and the brokers, unauthorisedly routed BDA's funds to several Mutual Funds. A simplistic diagram to illustrate the modus operandi is given below. The actual modus operandi, however, was much more complex which is described in detail in the subsequent paragraphs.



(i) How BDA's funds were transferred from its bank accounts

Outgo to Mutual Funds from the main CAs	Several banker's cheques were obtained through written and oral directions to the banks by the FMs in favour of several Mutual Funds by debiting the main CAs. Illustrative cases have been given in **Appendix-4.12(a)**.
Outgo to Mutual Funds through unauthorised accounts	Funds were transferred from time to time from the main CA to unauthorised accounts. Several banker's cheques were then obtained through written and oral directions by the FMs in favour of Mutual Funds by debiting the unauthorised current accounts. Illustrative cases have been given in **Appendix-4.12(b)**.
Proceeds of Term Deposits made from main current accounts	Surplus funds in the main current account of IOB were regularly invested in Term Deposits by the BDA. Proceeds of many such Term Deposits were, however, credited to other current accounts including unauthorised current accounts and used for diversion to Mutual Funds. Illustrative cases have been given in **Appendix-4.12(c)**.

(ii) How redeemed Mutual Funds were treated

Redemptions directly credited to main CA	The payout cheques obtained from Mutual Funds were credited either directly to the main CA or credited to unauthorised accounts. Illustrative cases have been given in **Appendix-4.13(a)**.
Redemptions credited through unauthorised accounts	The redemptions from mutual funds were initially credited to unauthorised accounts, from where the amounts were transferred to • Main CA to match the fictitious Term Deposits already created in the books of accounts. Illustrative cases have been given in **Appendix-4.13(b)**. • Fresh Mutual Fund investments. Illustrative cases have been given in **Appendix-4.13(c)**. • Unauthorised Term Deposits which were subsequently transferred to main CA. Illustrative cases have been given in **Appendix-4.13(d)**.

(iii) How the accounts records were falsified to ensure continued non-detection of unauthorised diversion of funds

<table>
<tr>
<td>Step 1:
By creating fictitious Term Deposits in the BDA’s records</td>
<td>Whenever the banks debited the main current accounts at the time of issuing Banker's cheques or transferring funds to the unauthorised accounts, such debits were recorded in the Cash Book and Investment Register as Term Deposits, mostly short-term, by assigning fictitious numbers. Illustrative cases of fake deposits are brought out in Appendix-4.14.
The position of fake deposits included in the Annual Accounts as at the end of March 2015 is shown below.
(₹ in crore)
<table>
<tr><th>Date of Deposit and TDR Nos.</th><th>Amount shown as invested</th><th>Date of maturity</th><th>Interest accrued</th></tr>
<tr><td>10.07.13/ 603</td><td>17.79</td><td>10.07.14</td><td>1.16</td></tr>
<tr><td>10.07.13/ 604</td><td>17.70</td><td>10.07.14</td><td>1.16</td></tr>
<tr><td>10.07.13/ 605</td><td>32.73</td><td>10.07.14</td><td>2.14</td></tr>
<tr><td>30.11.13/1005</td><td>9.77</td><td>30.11.14</td><td>0.30</td></tr>
<tr><td>01.01.14/6</td><td>10.90</td><td>01.10.15</td><td>0.25</td></tr>
<tr><td>20.01.14/34</td><td>10.00</td><td>20.01.15</td><td>0.17</td></tr>
<tr><td>Total</td><td>98.89</td><td></td><td>5.18</td></tr>
</table>
The fake Term Deposits were shown as renewed from time to time in the Investment Register.</td>
</tr>
<tr>
<td>Step 2:
Bank confirmation letters were fabricated by using fake letter heads</td>
<td>The SDA used fake letter heads and seals of the bank to prepare certificates confirming the Term Deposits to match with the investments outstanding in the books of accounts in each financial year and played a major role in the preparation of fake confirmation letters by using these letterheads whenever felt necessary, either for audit purposes or otherwise.

This was established when the copy of the confirmation certificate purported to have been issued by the bank was referred (March 2015) to the bank by audit for verification of its genuineness. The bank authorities confirmed (April 2015) that the Bank’s letterhead and seal were presently not in use and that the signature affixed on the confirmation letter sent by audit was not that of the Manager of the Bank. Similarly, on another occasion, the FM who had taken over charge (2 August 2014) had sought confirmation from bank for Term Deposits amounting to ₹190.67 crore outstanding in the Investment Register. The BDA had on its file two confirmation letters, one genuine letter issued by the Bank confirming the balance as ₹160 crore only and another fake confirmation letter, created by the SDA for ₹190.67 crore.

Audit also found in the custody of the SDA, the blank letterheads of IOB and Canara Bank. This was traced by the BDA when they broke open (February 2015) the almirah in the presence of police authorities.</td>
</tr>
<tr>
<td>Step 3:
Removal of fake Term Deposits from the accounts</td>
<td>When funds were transferred to the main current accounts either by crediting the payout cheques of Mutual Funds or by transferring funds from the unauthorised accounts, or by crediting the proceeds of Term Deposits made from unauthorised accounts, the receipts in the pass sheet were recorded in the cash book as proceeds of Term Deposits and the outstanding fake Term Deposits were removed from the Investment Register as detailed in Appendix-4.14.</td>
</tr>
</table>

(b) Collusion by banks

Detailed study of bank records obtained by audit showed that the major portion of BDA's funds had been diverted for investment in Mutual Funds from the CA with IOB. Further analysis of the IOB transactions by the audit showed the following:

Bank acted upon the request of FM for diversion of funds	Banking rules and regulations did not permit conducting business on the basis of oral directions. We, however, observed that the banks had acted upon the letter written (20 June 2000) by FM to the Senior Manager of the bank. The letter authorised the bank to issue Banker's cheques on the basis of oral instructions given over phone by debiting various current accounts and also transfer funds between the various accounts of the BDA maintained with the bank. Though operation of the CAs required authorisation from both FM and CAO, the bank had issued Banker's cheques in favour of several Mutual Funds during 1999-2014 by debiting the CA based on the written request of FM alone.
Bank disregarded rules for Term Deposit accounts	Bank had failed to follow the prescribed rules for opening Term Deposit accounts in favour of the BDA. It irregularly opened Term Deposit accounts without a written request, renewed these Term Deposits without proper authorisation, pre-closed these accounts without a formal request, and credited the proceeds of Term Deposits to several current accounts without authorisation.
Bank did not indicate the transaction details in the pass sheets	When funds were either transferred to unauthorised current accounts or when Banker's cheques were issued directly from the main current account, IOB had suppressed the transaction details in the pass sheets of the current accounts by recording the narration as only ***Trf***, meaning transfer. Similarly, when funds were transferred back to the main current account from the unauthorised accounts, these transactions were indicated in the pass sheet as ***Trf*** without disclosing the source. This facilitated in classification of such transfers as Term Deposits in the cash book without being detected.
Bank allowed current account operated by BDA for collection of receipts from public for diversion of funds to mutual funds	Purpose of a collection account is to park money remitted by general public temporarily before it is transferred to designated main current account of BDA. The collection account is designed to provide for only a one-way traffic of collection and transfer of moneys to designated main account and cannot be used for any other purpose. Bank had, however, allowed current account operated for collection purposes for diversion of funds to mutual funds.
Bank facilitated concealment of unauthorised transactions in a current account disclosed in the accounts	Though funds from a current account disclosed in the accounts had been transferred to Mutual Funds and redemption payouts from Mutual Funds had been credited to this account, these transactions had not been disclosed in the accounts. IOB facilitated the concealment of these transactions by manipulating the monthly closing balance in this account so as to agree with the closing balance as per accounts. The manipulation was done either by writing back the available balance to Sundry Creditors or by partially crediting the payout cheques presented for encashment through this account. A case study has been brought out in **Appendix-4.15**.

Bank facilitated transactions without routing through the pass sheets	Audit observed instances wherein – • The bank had issued banker's cheque directly from the sundry creditor's account[85] without crediting the customer's account. • A single cheque received for clearance had been broken into two parts and credit afforded to two different accounts. • In respect of amount cleared against a single cheque, credit to the customer account had been afforded on different dates, by splitting the amount of the clearance cheque. • Amount standing at the credit of BDA's account had been written back to sundry creditors to facilitate manipulation of balances in that CA.
Bank falsified the details of transactions recorded in the pass sheet	When funds were transferred back to the main current account from the unauthorised account, the transfers were recorded as proceeds of Term Deposits (which were fake) outstanding in the Investment Register, thereby creating the impression that the receipts represented proceeds from genuine Term Deposits.

In short, the bank frequently transferred huge funds amongst various current accounts without obtaining confirmation from the authorised signatories after carrying out the transactions. The redemption payout cheques received from the Mutual Funds were credited to various CAs, not always to the CAs from which Banker's cheques in favour of the Mutual Funds had been initially issued. Thus, IOB had violated the banking rules by carrying out unauthorised transfer of moneys among the CAs and issuing Banker's cheques in favour of Mutual Funds without the knowledge of the second authorised signatory.

Audit observed an instance, wherein a redemption cheque was encashed at a Bank without having an account. Scrutiny showed that ING Vysya Bank operated 'Wash Account' similar to Sundry creditors account. A redemption payout cheque issued by a Mutual Fund House was directly presented at the ING Vysya Bank where BDA did not have any account. The Bank had cleared the cheque through the wash account and invested the same in five Term Deposits in favour of BDA for six months. Subsequently, the Term Deposits had been pre-closed and maturity proceeds were credited to an un-authorised account at Corporation Bank. .

(c) Funds transferred out of BDA to other organisations

Apart from the funds diverted to Mutual Funds, audit noticed that ₹10.67 crore had been transferred on four occasions to other organisations which did not have any business connection with the BDA. These misappropriation cases are discussed below:

- ***Coffee Board, Karnataka***

Detailed scrutiny of bank records of IOB revealed that BDA's bank account had been debited by ₹4.50 crore on 28 March 2002 and the amount had been transferred to another account with the same branch which was operated by the Coffee Board, Karnataka. In order to verify whether the said amount had

[85] Sundry creditors is operated by banks for clearance of cheques presented. When a cheque was received for clearance, sundry creditor was credited by debiting clearance account. On clearance, Sundry creditors account was debited and customer account was credited.

subsequently been returned to the BDA, the transactions in these two accounts were scrutinised and we observed that

- The amount had been returned (3 April 2002) indirectly by investing Coffee Board's fund of ₹4.50 crore in Mutual Fund in favour of BDA.
- The redemption payout cheque for ₹4,55,11,644 was presented for clearance by the Coffee Board. The bank credited a partial amount of ₹5,11,644 to Coffee Board's bank account and issued banker's cheque for the balance ₹4.50 crore for investment in Mutual Fund in favour of BDA. The bank facilitated concealment of this transaction in the BDA's pass sheet by operating sundry creditors account.

The transfer of ₹4.50 crore from the main CA during March 2002 had falsely been recorded in the investment register as Term Deposit. This fake deposit had been cleared during July 2002 by redeeming an investment earlier made in Birla Sunlife Mutual Fund by BDA.

On another occasion, BDA submitted (25 November 2002) a redemption payout cheque for ₹1.04 crore for clearance. It was noticed that without crediting this amount to its account, the bank issued a banker's cheque in favour of a Mutual Fund which was invested in the name of Director of Finance, Coffee Board. This transaction was also routed through sundry creditors account by the bank. Though Coffee Board had redeemed the investment and realised the money, it had not returned the amount apart from interest of ₹1.68 crore to BDA as of now (November 2015) even after 13 years.

It was further observed that the bank account of both BDA and Coffee Board had been maintained at the same branch of IOB and the same brokerage firm handled the Mutual Fund investments. Thus, the said misappropriation was aided and abetted by the banker who was same for both the offices.

- ***Bangalore Metro Rail Corporation Limited***

It was observed that the FM had obtained a Banker's cheque for ₹ three crore on 14 June 2007 in favour of Principal Mutual Fund by debiting the main account and transferring the same to an unauthorised bank account operated by him at IOB. However, this Banker's cheque had been used to invest ₹ three crore in Principal Mutual Fund in favour of BMRCL instead of BDA. BMRCL redeemed the investment and realised ₹ three crore. However, BDA's principal of ₹ three crore along with interest of ₹3.07 crore has not been returned by BMRCL so far (November 2015).

It was further observed that a transfer of funds from the main CA to BMRCL had been falsely recorded as a Term Deposit for 91 days in the investment register. This fictitious Term Deposit had been cleared during September 2007 by transferring the requisite fund from another main CA through an unauthorised account.

Mention was made in Paragraph 4.16 of the Report of the Comptroller and Auditor General of India (Commercial)-Government of Karnataka for the year 2008-09 regarding the improper investment of funds of BMRCL in Principal

Mutual Fund by its Executive Director (Finance) without the approval of the Board and the resultant loss to the company. As per the records of BMRCL, Principal Mutual Fund had issued (June 2007) additional units in favour of BMRCL for ₹ three crore upon remittance of ₹ three crore by the broker on his own volition to compensate the company for the loss sustained.

It is pertinent to mention here that BDA's funds of ₹ three crore had been unauthorisedly diverted from one of its bank accounts to Principal Mutual Fund for issue of additional units in favour of BMRCL.

- ***Karnataka Backward Classes Department Buildings Construction Society***

The FM obtained two Banker's cheques, one for ₹ two crore drawn on 26 June 2006 in favour of HSBC Opportunities Fund by debiting unauthorised bank account in Corporation Bank and the other for ₹12.68 lakh drawn on 30 June 2006 in favour of HSBC Cash Fund by debiting another unauthorised account in IOB. However, these Banker's cheques had been used to invest the funds in Mutual Fund in favour of Karnataka Backward Classes Department Buildings Construction Society (Society) instead of the BDA. Though the Society had redeemed the investments and realised the money, it has not returned the amount apart from interest of ₹2.54 crore to the BDA as of now (November 2015).

It is relevant to mention here that audit is neither equipped nor empowered to investigate the transfer of such funds from a criminal or forensic point of view by collecting evidence externally. The criminal investigation by the State CID is, however, expected to throw light on the linkage between these unauthorised transfer of funds to inexplicable destinations and the FMs concerned.

(d) Summary of unauthorised financial transactions

Audit compiled the information of funds transferred unauthorisedly from the CAs including the Term Deposit accounts and funds subsequently brought back into the main CAs through different routes on the basis of information furnished by the banks and Mutual Funds. The details of funds diverted from the main account for investment in Mutual funds, funds brought back through redemption pay outs and the net loss/profit have been shown in **Table-4.5.**

Table-4.5: Funds unauthorisedly transferred out of the BDA's accounts and subsequently brought back

(₹ in crore)

Diversion during the tenure of	Funds diverted	Funds brought back later	Excess (+) /Deficit (-)	Aggregate[86] investments in Mutual Funds	Redemption payouts credited to current accounts	Profit (+)/ Loss (-) from Mutual Funds
Sri Sandeep Dash	3,439.64	3,478.24	(+) 38.60	2,202.90	2,241.51	(+)38.61
Sri M.N.Seshappa	531.24	489.35	(-)41.89	567.55	530.79	(-)36.76
Sri B.Ganganna	75.57	75.30	(-)0.27	133.00	132.75	(-)0.25

(Source: Compiled on the basis of information collected from banks and mutual fund houses)

[86] Aggregate investment – The sum total of individual investment made during the tenure of each FM

(e) Loss to BDA due to investment in mutual funds

The cumulative loss to the BDA till July 2015 due to unauthorised investments in Mutual Funds by the three FMs during their tenure worked out to ₹192.41 crore, as shown in **Table-4.6.**

Table-4.6: Cumulative loss to the BDA

(₹ in crore)

Sl. No.	Name of the FM	Loss at the end of their tenure	Cumulative loss as of July 2015
1	Sri Sandeep Dash	15.55	36.38
2	Sri M N Seshappa	72.43	141.39
3	Loss of interest on ₹3.08 crore not ploughed back by Sri.M N Seshappa to the main CA	0	0.91
4	Sri B Ganganna	10.47	13.18
5	Loss of interest on ₹5.21 crore not ploughed back by Sri B Ganganna to the main CA	0	0.55
	Total	**98.45**	**192.41**[87]

4.3.5.3 Analysis of investments in Mutual Funds

A mutual fund is a professionally managed trust that pools the savings of many investors and invests them in securities like stocks, bonds, short-term money market instruments and commodities such as precious metals. A mutual fund is set up in the form of a trust that has a Sponsor, Trustees and Asset Management Company (AMC). Investors get units of the mutual fund allotted according to the amount they invest. As mutual funds are invested in different securities like stocks or fixed income securities, depending upon the fund's objectives, different schemes have different risks depending on the underlying portfolio. The value of an investment may fluctuate over a period of time because of economic alterations or other events that affect the overall market. Mutual fund products are sold to investors through two main channels: by AMCs directly (investor service centers/Branch offices/internet) and by entities variously known as distributors/agents/brokers. Mutual funds compensate the distributors from funds collected by way of entry load, exit load and annual recurring expenses paid out of the scheme assets. The distributors receive both upfront commission and trail commission.

[87] While working out interest loss, Audit examined the interest earnings of the amounts that had been invested in Mutual Funds, had the said amounts been invested from time to time in Term Deposits in the normal course with nationalised banks. This methodology had been adopted by Audit to find out the alternative use of the capital as the Government departments including the BDA were mandated to invest their surplus funds only in Term Deposits with nationalised banks. While working out the interest, Audit retained the same dates of outflow of funds from the bank accounts and the subsequent inflow into them. The higher rate of interest, prevailing in the calendar year, as furnished by the Canara Bank, was adopted by Audit for working out the interest. The interest rate was applied on each outflow upto the date of next inflow. At this stage, the residual outflow of funds was calculated after deducting the inflow and taken forward. The interest rate was again applied on the residual outflow as well as on each of the subsequent outflows till the next date of inflow of funds. This process was repeated till the last inflow of funds into the BDA's main bank accounts. It is relevant to mention that there are other methods to calculate the interest and assess the loss.

(a) Investments in Mutual Funds

The Mutual Fund-wise details of investments and redemptions during 1999-2014 have been shown in **Table-4.7.**

Table-4.7: Investments made in Mutual Funds and the amounts received on redemption

(₹ in crore)

Name of Mutual Fund	Amount invested	Switches* made		Amount paid on redemption	Net loss (-) / Net profit
		In	Out		
Birla Sun Life, ING and Alliance Mutual Funds	1,576.00	1,883	1,883	1,573.73	(-) 2.27
HDFC , Zurich and Morgan Stanley Mutual Funds	559.00	1,134	1,134	574.26	15.26
HSBC Mutual Fund	204.30	463	463	197.45	(-)6.85
Principal Mutual Fund	194.65	322	322	190.77	(-)3.88
BNP Paribas and ABN Amro Mutual Funds	93.00	25	25	94.69	1.69
Tata Mutual Fund	75.00	79	79	78.94	3.94
L&T and DBS Chola Mutual Funds	75.00	274	274	66.83	(-)8.17
Sundaram Mutual Fund	50.00	21	21	51.44	1.44
JM Mutual Fund	20.00	-	-	20.60	0.60
SBI Mutual Fund	25.00	53	53	24.68	(-)0.32
Taurus Mutual Fund	10.00	5	5	9.43	(-)0.57
Deutsche Mutual Fund	20.00	-	-	20.58	0.58
UTI	1.50	-	-	1.65	0.15
Total	**2,903.45**	**4,259**	**4,259**	**2,905.05**	**1.60**

(Source: Information obtained from mutual fund houses)

*Moving either the whole or part of the investment in the Mutual Fund scheme to another Mutual Fund scheme within the fund family is called switching of Mutual Funds.

Investment in Birla Sun Life Mutual Fund (into which ING Vysya and Alliance Mutual Funds had been merged) was the highest and constituted 54 *per cent*. Other Mutual Funds where substantial investments had been made were HDFC (including Zurich and Morgan Stanley)–19 *per cent;* HSBC–seven *per cent;* PMF – seven *per cent,* followed by others. While investments in seven Mutual Funds yielded aggregate profit of ₹23.66 crore, the other six Mutual Funds returned an aggregate loss of ₹22.60 crore, reducing the net profit to just ₹1.60 crore.

(b) Falsification of address and e-mail id of BDA

Scrutiny of copies of applications for investments, switches and redemptions obtained from Mutual Fund Houses showed that the applications had been signed by the respective FMs, implying that they were responsible for the investments.

Most of the investments by the three FMs had been made in open-ended, high risk equity schemes. Equities exhibit very sharp volatilities and carry lot of risk even to the extent of losing one's entire corpus. This was the reason why investments in six Mutual Funds registered heavy losses.

Though all investments had been made in favour of the BDA, different addresses other than the official address of the BDA had been given on many application forms. Some of the addresses given were as under:

- FM, BDA, Sankey Road, Bengaluru- 20;
- BDA, FM , #6, II Floor, Above State Bank of Hyderabad, Nehru Road, Kammanahalli, Bengaluru-84;
- BDA, No. 229, 8th E Main, I Block, HSBC Layout, Kalyan Nagar, Bengaluru-43
- BDA, No. 229, 8th 5 Main, I Block, HRBR Layout, Kalyan Nagar, Bengaluru-43

This implied that the FMs had deliberately given different addresses to ensure that no correspondence regarding Mutual Funds was received at the official address of the BDA and confidentiality of the unauthorised investments would be maintained.

For the same reason, different e-mail addresses as mentioned below had been furnished in the application forms.

- fin_vsa@hotmail.com;
- investmentbda@rediffmail.com;
- vassanth31@gmail.com;
- vasanth31@gmail.com and
- fin_member2012@hotmail.com

(c) Mutual Fund investments routed through brokerage firms

Investments in mutual funds had been done through the broker's route, barring a few stray cases. The brokerage firms through which the investments including switches and redemptions had been routed were as under:

- Green Homes India;
- GS Financial Services;
- RG Financial Advisory Services;
- Investquest Advisors Private Limited
- SGR Investment Consultants;
- G.R.Financial Advisors;
- GS Investment Solutions; and
- Way 2 Wealth

It was noticed by audit that all these firms with the exception of the last two belonged to a single family consisting of Sri M.Narayana Rao, his son Sri M.Gururaj and grandson Sri M.Rahul. Different firms had been flouted in the names of different members of the same family for tax purposes but these firms represented a single source for routing funds to the Mutual Funds. It is interesting to note that all the three FMs preferred only these brokerage firms for investing in Mutual Funds, indicating their collusion with such firms belonging to a family for remaining in constant touch with them in the given scheme of things.

The volume of purchases routed through these brokerage firms during 1999-2014 has been shown in **Table-4.8.**

Table-4.8: Investments routed through brokerage firms

(₹ in crore)

Sl. No.	Name of the brokerage firm	Purchases routed through the firm
1	Green Homes India	811.80
2	GS Financial Services	1,363.25
3	RG Financial Advisory Services	52.00
4	GS Investment Solutions	275.00
5	SGR Investment Consultants	23.00
6	G.R.Financial Advisors	309.40
7	Investquest Advisors Private Ltd	30.00
8	Way 2 Wealth	2.00
9	Direct	37.00
	Total	**2,903.45**

(Source:Information obtained from mutual fund houses)

(d) Heavy churning of investments in Mutual Funds

Moving either the whole or part of the investment from one mutual fund scheme to another mutual fund scheme within the fund family is called switching of mutual funds. For instance, moving some or all the units from HDFC Top 200 to HDFC Balanced Fund would be considered switching. A switch from one fund (source) to another fund (target) is a combination of two transactions.

- Redemption of units in the source or the scheme from where it is switched out; and
- Fresh purchase of units in the target or the scheme into which it is being switched.

A majority of the investments had been made in equities which offered higher commission to the brokers. The modus operandi in investment of funds by the three FMs was to invest in the mutual fund schemes initially and to move from one fund to another frequently with a view to increase the amount of commission through switches. Over-transaction and indiscriminate churning of Mutual Fund investments through switches to earn higher commissions were also observed.

The commission paid by various Mutual Funds has been shown in **Table-4.9**

Table-4.9 Commission paid to the brokerage firms

(₹ in crore)

Sl. No.	Name of the Mutual Fund	Commission paid for initial purchases	Commission paid for switches	Total commission paid to the brokerage firms	Percentage of Commission for switches to total commission
1	BSL	8.70	19.25	27.95	69
2	HDFC	1.29	7.04	8.33	85
3	HSBC	1.74	3.32	5.06	66
4	L & T	0.01	2.32	2.33	100
5	TATA	0.02	0.37	0.39	95
6	BNP	1.85	0.16	2.01	8
7	PMF	3.01	1.16	4.17	28
8	SBI	0	0.38	0.38	100
9	Taurus	0.09	0	0.09	-
	Total	**16.71**	**34.00**	**50.71**	**67**

(Source: Information obtained from mutual fund houses)

Thus, commission of ₹50.71 crore was paid by various Fund Houses to the brokerage firms. Out of these commissions, ₹34 crore (67 *per cent* of the total commission) had been paid for the switches. Birla Sun Life (including ING Vysya and Alliance) Mutual Fund paid the highest commission of ₹27.95 crore (55 *per cent* of the total commission paid by all the Fund Houses). A scrutiny of the trail fees paid in respect of investments made by Birla Sun Life Mutual Fund showed that the investments under various schemes had been switched indiscriminately at very short intervals of time to maximise the commission. The details have been shown in **Table-4.10.**

Table-4.10: Indiscriminate churning of investments in Birla Sun Life Mutual Fund

(₹ in crore)

Number of days the investments were retained under various schemes	Investment transferred through switches	No. of occasions such transfers had been made
1 to 5	252.58	30
6 to 10	326.74	37
11 to 15	389.21	54
16 to 20	553.81	63
21 to 31	2,857.61	476
32 to 60	617.02	76
61 to 91	657.53	125

(Source: Information obtained from mutual fund houses)

Though the commission was paid by the Fund Houses directly to the brokerage firms, the churning of investments had been done by the three FMs. As multiple transactions through churning was beneficial only to the brokerage firms as it fetched them higher commission, it was evident that the FMs would not have resorted to unjustified and frequent churning to promote the interests of the brokerage firms unless they had a stake in the commission.

Audit is neither in a position nor empowered to investigate whether the commission earned by the brokerage firms had been passed on to the FMs or their *benami* sources in some form or other. The parallel investigation entrusted to the State Criminal Investigation Department could throw light on this issue and identify the ultimate beneficiaries of the commission paid by the Fund Houses.

(e) Injudicious investment of moneys available in Pension Fund in Mutual Funds

The BDA in its Board meeting held on 23 June 2008 resolved to establish a separate Pension Trust and introduce a Pension Scheme for the benefit of its regular/permanent employees. Accordingly, a separate Trust was established and the trust deed was registered on 15 May 2009 under the name of the Bangalore Development Authority Employees Pension Trust Fund.

As per the trust deed, the Trust headed by the FM was to function as an independent body to oversee the management of Pension Fund contributed by the BDA. The Fund was to be operated and managed by the Trust and the Trustees were to invest/deposit all the moneys not immediately required for

the purposes of the fund only in the State Bank of India or Nationalised Banks/Government Securities with the approval of the Commissioner.

The BDA made an initial contribution of ₹50 crore to the Pension Fund (April 2010), which was invested in Term Deposits with Canara Bank. During February 2013, it was resolved by the Trust to invest a further sum of ₹50 crore in Income Fund Scheme of nationalised banks which was in violation of the trust deed.

Initially, ₹10 crore was invested in SBI Magnum Income Fund on 3rd May 2013. As the interest earned was higher compared to interest offered by Nationalised banks, it was decided to invest additional ₹40 crore in SBI Magnum Income Fund on 5 June 2013. On 10 September 2014, the investment was redeemed and ₹50.91 crore was realised and credited to the Trust account. The brokerage paid on account of this transaction was ₹60.48 lakh and the transaction was routed through the same brokers, who had executed the mutual fund transactions of BDA.

Thus, the Trust disregarded the guidelines of the trust deed and invested ₹50 crore in Mutual Fund. As a result, the investment in Mutual Fund returned a profit of only ₹0.91 crore, as against ₹6.44 crore that could have been earned as of September 2014 had the amount been invested in Term Deposits. Taking the interest loss further till July 2015, the interest loss to the BDA aggregated ₹9.50 crore.

4.3.6 Reply of the Government

In reply to the Special Audit Report issued in August 2015 by the Principal Accountant General (G&SSA), Karnataka, the Government admitted (December 2015) that though the investments in Mutual Funds were *per-se* unauthorised, the FMs had not disclosed these investments in the accounts. It was also admitted that the BDA did not have any records (central register of bank accounts, authorisation *etc.,)* of bank accounts opened, operated and closed during 1999-2014, and as pointed out by audit, several bank accounts had not been disclosed in the accounts as these accounts had been opened without authorisation and had been operated exclusively for diversion of the BDA's funds to Mutual Funds.

The Government further accepted the fact that the SDA of the BDA misused the responsibility entrusted to him to control the banking process and diverted BDA's funds and that there was a lacuna in the work allocation, whereby all banking transactions, maintenance of important registers and possession of documents were vested with the SDA. It was also admitted that the SDA and IOB were involved in fabricating confirmation letters and that criminal investigation was being undertaken by the State CID.

The Government further admitted that no written communications had been sent to the banks for inter and intra-bank transfer of funds during 1999-2014 and that the approval of the Commissioner had not been obtained by the authorised branches for investment of moneys in Term Deposits in respective branches.

The Government replied that the banks were also major players in the scam as they acted upon the oral instructions of the FMs which facilitated not only persistent diversion of BDA's funds, but also non-detection of such diversion over a long period of time. Further, it was accepted that the Chartered Accountant who was responsible for conducting internal audit did not point out any shortcomings in the accounts and the illegal diversion of BDA's funds in mutual funds.

The Government did not offer any comments on audit observations about investment of funds in Mutual funds, but agreed that the records were falsified and transfer of money to unauthorised bank accounts and to Mutual Funds was camouflaged as Term Deposits both in the Cash book and Investment register. It was also stated that a civil suit would be filed to recover the loss from the FMs and SDA concerned.

4.3.7 Conclusion

The BDA had no investment policy to manage its surplus funds. An investment committee constituted had no guidelines to work with. The three FMs during the period 1999-2014 had violated all principles of financial propriety, failed to maintain financial records as per the provisions of KFC and to conduct internal audit, did not ensure proper checks and balances through segregation of duties of staff in the finance wing. The SDA, banks and brokerage firms aided, abetted and participated in committing various financial irregularities.

The BDA's funds were diverted to Mutual Funds and transferred to other organisations by opening and operating unauthorised bank accounts, creation of fake Term Deposits, suppressing of facts, falsification of records, preparation of misleading financial statements and destroying the trail of all transactions.

The unauthorised transfer of funds for investment in Mutual Funds and also to other organisations that audit was able to track resulted in financial loss of ₹205.85 crore to the BDA. The unauthorised transfer of funds aggregating ₹6.17 crore to BMRCL, Coffee Board and Karnataka Backward Classes Department Buildings Construction Society represented cases of misappropriation of BDA's funds.

4.3.8 Recommendations

- BDA should identify its risks in the context of its activity, particularly banking arrangements. BDA should prepare a documented framework that identifies, analyses and assesses key risks. This framework including the fraud control plan will provide useful tools for effective organisational risk management.
- BDA should ensure that the control framework for agency banking is supported by its Chief Executive's instructions, related policies and procedures, and short and long term investment strategies.

- BDA should carry out bank account rationalisation by undertaking a cost-benefit analysis to identify an appropriate balance between administrative efficiency in transaction and reconciliation processes, and facilitate better cash management.
- BDA should enhance its systems and processes for the collection of information on future cash requirement so that it can maximise the opportunity to invest surplus funds.
- BDA should include monitoring and review of performance measurement activity as a tool to improve banking and cash management functions.
- The trail of all Term Deposits recorded in the Investment Register during 1999-2014, including those made from collection accounts, should be traced from the date of investment to the date of redemption to ensure that there are no fake Term Deposits other than the ones detected by audit. This is essential as audit confined itself to identifying the fake Term Deposits only in respect of funds diverted for investments in Mutual Funds.
- BDA should improve efficiency and effectiveness of its banking arrangements through implementation of management controls that are appropriately designed to monitor specific control activity, particularly the timely completion and review of bank reconciliations.
- The key tasks and responsibilities among various employees and sub-units of the organisation should be segregated so that no single individual should be able to control all key aspects of transactions/ events.
- An independent Internal Audit wing should be established immediately to bring about a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes. The Internal Audit activity should extend not only to the Finance Wing but also to all other wings of the BDA.
- Besides recovering the loss, responsibility may be fixed and appropriate action taken so as to discourage any such attempt in future.

The Government accepted (December 2015) the recommendations made by Audit. It further stated that it would require time to implement some of the recommendations and would submit status report at periodical intervals. In addition, Government stated that based on the recommendations, a separate independent wing for bank reconciliation, compilation of monthly accounts and internal audit has been established in the Finance Wing of the BDA and the job responsibilities in cash section of the BDA have been segregated.

Department of Education
(Primary and Secondary Education)

4.4 Laxity in implementation of a scheme

Deficiencies in implementation of the scheme on 'Inclusive Education of the Disabled at the Secondary Stage' by the State Government and also disregarding of guidelines issued by the Ministry of Human Resource Development resulted in loss of central grants of ₹18.93 crore for the year 2009-12, and excess payment of ₹1.85 crore besides resulting in children and young persons with disabilities being deprived of the facilities in education which were envisaged for them.

Government of India envisaged a scheme of 'Inclusive Education of the Disabled at the Secondary Stage' (Scheme) to enable all children and young persons with disabilities to have access to secondary education (classes IX to XII) and to improve their enrolment, retention and achievements in the general education system. The scheme which was implemented during 2009-10 covered all children of 14 plus age group studying at secondary schools in Government, Local Body and Government aided schools with one or more disabilities[88] as defined under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and the National Trust Act, 1999.

The scheme which is in the form of assistance for the two components[89] *viz*., Student Oriented component and other components, was to be implemented through the Education Department of the State Government directly. Further, it could involve Non Government Organisations (NGOs) having experience in the field of education and rehabilitation of the disabled. In the State, Directorate of Urdu and Other Minority Language Schools under the Department of Education was the implementing agency with the help of NGOs.

On scrutiny of the records with regard to implementation of the scheme, we observed the following:

- State had to set up a co-ordination committee at various levels and an Administrative cell to help in planning, implementation, monitoring and evaluation of the scheme. During 2009-14, there, however, was neither co-ordination committee set up at State, district or sub district level nor Administrative cell set up to monitor and evaluate the scheme.

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[88] Disabilities namely, blindness, low vision, leprosy cured, hearing impairment, locomotors disabilities, mental retardation, mental illness, autism and cerebral palsy are eligible for coverage under the scheme.

[89] Student Oriented Component such as, for medical and educational assessment, books and stationery, uniforms, transport allowance, reader allowance, stipend for girls, support services, assistive devices, boarding and lodging facility, therapeutic services, teaching learning materials *etc*.
Other Components, such as appointment of special education teachers, allowances for normal teachers for teaching such children, teacher training, orientation to school administrators, provision of resource room, provision for barrier free environment *etc*.

- There was no evidence to indicate transparency in selection of NGOs.
- The State Government had to collect the quantitative data and prepare state specific report and forward the same to Ministry of Human Resource Development (MHRD). The State, however, except for forwarding the Utilisation Certificates (UCs) received from the NGOs had not prepared any state specific report.
- Though UCs for the years 2009-12 were forwarded as detailed in **Table-4.11** to the MHRD, the funds were not released in view of complaints received from certain voluntary organisations regarding impropriety in implementation of the scheme. In this regard, the MHRD constituted (April 2012) a committee to study the implementation of the scheme in the State. The committee after visiting three districts[90] reported (October 2012) that the scheme was being implemented by NGOs without involvement of State Government which was contradictory to the guidelines issued by MHRD. It was also observed that no model schools had been set up to develop good replicable practices in inclusive education and that many of the NGOs involved in implementing the scheme were not aware of the provisions of the scheme and covered only students with specific disability which was against the spirit of the scheme. It further observed that teachers recruited were not qualified as specified in the scheme guidelines, most schools lacked access facilities as well as resource rooms for the students with disabilities, no proper assessment of educational needs of children and each child had not been provided with learning material as per their needs. Further, recommendations for better implementation of the scheme in the State were also given.

Table-4.11: Details of UCs forwarded and amount received

(₹ in crore)

Year	Amount utilised	UC forwarded to MHRD on	Amount received	Date of receipt of amount from MHRD
2009-10	3.95	6/2010, 11/2010 and 2/2011	1.70	6/2014
2010-11	11.89	Proposal not approved		
2011-12	21.49	6/2014	16.70	6/2014

- Subsequent to the report of the committee constituted by MHRD, the Director of the implementing agency constituted (January 2013) a three Member Committee at the Taluk level headed by the Block Education Officer to examine the claims and evaluate the implementation of the scheme. In test-check cases (**Appendix-4.16**), we observed that though the committee had explicitly declared the claim of ₹1.85 crore by the NGOs doubtful, the Department had honoured the claim and made payment.
- Further, in four test-checked cases **(Appendix-4.17),** though the procedure prescribed for admitting the claims were not followed, payment of ₹0.33 crore was made to the NGOs which was irregular.
- Meanwhile, the Honourable High Court while disposing (April 2014) the writ petition filed by the Karnataka State NGOs Federation seeking release of funds which was overdue, directed the MHRD to verify the UCs and release the payments. Consequently, MHRD restricted the funds for the

[90] Bengaluru, Kolar and Tumakuru

year 2009-10 and 2011-12 to ₹1.70 crore and ₹16.70 crore respectively. Further, claim for the year 2010-11 amounting to ₹11.89 crore was not approved as the required information was not furnished by the State Government.

- On account of rejection of proposal of the State for the year 2012-13 by the MHRD, the implementing agency did not compile the data for the said year.

While replying to above observations, the Government stated (December 2015) that the department issued circulars regarding selection of NGOs. However, it was observed in audit that there was no evidence to indicate transparency in the selection process. Government also confirmed that no model schools, for replication throughout the State were established. It was also stated that various NGOs have been told to reimburse the excess amounts claimed and also that cases have been initiated for booking of criminal cases against defaulting NGOs.

Thus, various deficiencies in the implementation of the scheme by the State Government and disregard for guidelines issued by the MHRD, resulted in children and young persons with disabilities being deprived of the facilities in education which were envisaged for them, besides resulting in loss of Government of India grants of ₹18.93 crore for the year 2009-12. Further, due to lack of monitoring, it incurred an excess payment of ₹1.85 crore and irregular payment of ₹0.33 crore.

Department of Health and Family Welfare (Medical Education)

4.5 Unproductive Investment

Purchase of commercial off-the-shelf package software 'Campus Resource Management' of a private software company by various medical institutions, without study of user specification or understanding of business needs, resulted in non-utilisation of software procured and also rendered the amount of ₹2.68 crore invested on the software unproductive.

The norm for most organisations is to purchase commercial off-the-shelf package software which is either modified or extended to suit their business needs. The adaptive approach which is one of the main approaches to procure package based software involves the following four constituent activities:

- Specification of requirements
- Understanding the available packages
- Assessment of package compatibility (with respect to the requirements)
- Selection of the best available package.

The various medical institutions across the State gave opportunity (2008 and 2009) to M/s. VAPS Technosoft (Pvt.) Limited, a private software company (VAPS) for demonstrating its software on Campus Resource Management and

Hi-End Technologies on the recommendation (August 2008) of Honourable Minister for Medical Education. In continuation, the Honourable Minister for Medical Education directed (February 2009) the medical institutions to make necessary arrangements to procure the technology by following procedures for procurement.

Government Dental College and Research Institute (Institute), Bengaluru based on the above direction, invited tenders (March 2010) in two cover system for Configuration, Installation and Implementation of Enterprise Resource Planning based Business Solution for Campus Management Software and supply and installation of associated hardware and software (project). The work involved:

- Supply and installation of associated hardware and software
- Implementation of customisation of readily available Campus Management Software.

In response to tenders, only two companies participated in the tender process and the proposal of VAPS was recommended (May 2010) by the Technical Expert who in his Technical evaluation report stated that the tenderer had quoted for all the modules and had also implemented similar projects in Mysore Medical College, Mysuru and Belagavi Institute of Medical Sciences, Belagavi. Based on the approval (May 2010) given by the Tender Scrutiny Committee, the work was entrusted (May 2010) to VAPS at a cost of ₹70.18 lakh. In this regard, audit observed the following:

- Existing business practices of the Institution was not studied and a user requirement specification was not finalised before inviting tenders.
- Technical specifications of the tender documents issued by the Institute included all the modules of the VAPS software, and as a result, only the bid of VAPS qualified and bid of the other participant was rejected.
- The Financial Committee in its meeting (June 2009) had initially decided not to go ahead with the project citing that the Institute was a small organisation and implementation of the project was financially not viable. The decision was however revised in the Administrative Council meeting (August 2009) chaired under the Honourable Minister of Medical Education which decided on the computerisation.
- The technical expert in his technical evaluation report (May 2010) while recommending VAPS stated that the tenderer had already implemented similar project in Mysore Medical College and Belagavi Institute of Medical Sciences which was found to be factually incorrect as the implementation of the software in Mysore Medical College was still in progress and work order in Belagavi Institute of Medical Sciences was issued only in April 2010.
- Further, though the Government had directed (December 2009) the Institute to take assistance of technical advisory panel of e-governance for finalising the requirement specification, it was turned down by the Honourable Minister of Medical Education stating that the Directorate of Electronic Delivery of Citizens Services had already communicated regarding non-availability of resources for such activity on earlier occasions.

- The Institute had made a total payment of ₹52.50 lakh towards the project. However, the institute was unable to utilise the project as the software installed was not functioning.
- The Honourable Minister of Medical Education directed (January 2012) Principal Secretary to Government, Medical Education for making necessary arrangements for a third party inspection (by a private company) towards satisfactory implementation of the project.
- Honourable High Court while disposing the writ petition filed by VAPS against the Government order (May 2012) issued towards third party inspection recommended for joint inspection, if desired, by both the respondents. However, the Institute is yet to take action on the High Court's order.

Scrutiny of records of four[91] other medical institutions that had awarded the project to VAPS revealed that the chronology of events was similar to that of Government Dental College and Research Institute, Bengaluru and the project was not functional in all the four medical institutions. The medical institutions and Government in its reply (between January 2015 and June 2015) accepted that the project was not utilised. Hence, the total payment of ₹2.68 crore towards the project in test-checked five medical institutions remained unproductive.

Thus, procurement of a software without assessing and understanding the business requirements or study of user specification and without confirming the suitability of software, resulted in unproductive investment of ₹2.68 crore.

The matter was referred to Government in June 2015; reply is awaited (November 2015).

Department of Home

4.6 Loss of Central assistance

Non-compliance with the guidelines issued by Ministry of Home Affairs with regard to utilisation of funds released to the State under the Scheme for Modernisation of Police Forces resulted in loss of Central assistance of ₹79.16 crore during 2013-15.

Government of India, Ministry of Home Affairs (Ministry) while approving (February 2013) continuation of Scheme for Modernisation of State Police Force (Scheme), for further period of five years from 2012-17 laid down guidelines for implementation of the scheme. The scheme aimed at modernising police forces in terms of mobility, weaponry, communication systems, training, Forensic Science Laboratory/Finger Printing Bureau, Equipments and Buildings. As per the guidelines, the funds were to be

[91] Mysore Medical college and Research Institute, Mysuru – ₹52.71 lakh; Raichur Institute of Medical Sciences, Raichur- ₹47 lakh , Belagavi Institute of Medical Sciences, Belagavi – ₹49.25 lakh and Vijayanagar Institute of Medical Sciences, Ballari- ₹66.75 lakh.

released partly under non-Plan and partly under Plan. The State was eligible for financial assistance on 60:40 Centre-State sharing basis. In addition, the guidelines stipulated that:

- Funds not released due to unspent balances in the States, as at the end of December were to be pooled and released to better performing States which have a faster pace of expenditure.
- Utilisation certificate (UC) at the end of each financial year was to be submitted. In the additional instruction issued (September 2014) by Ministry, it was emphasised that unless UCs were available for the full amount released, no further releases shall be made to the State Government.

On scrutiny of records, we observed that against the releases of ₹83.01 crore, ₹53.37 crore and ₹19.49 crore during 2010-13, the State had utilised ₹75.58 crore, ₹50.23 crore and ₹11.61 crore respectively leaving a balance of ₹7.43 crore, ₹3.14 crore and ₹7.88 crore unspent as at the end of March 2014. As a result, though ₹54.96 crore and ₹35.56 crore was allocated during 2013-14 and 2014-15 respectively, to the State under the non-Plan, no grants[92] were released. Subsequent to the additional instructions issued by the Ministry, the Additional Director General of Police (ADGP), Communication Logistics and Modernisation while reviewing (September 2014) the implementation of the scheme, directed the unit offices to expedite the procurement process. However, the utilisation certificates issued as at the end of March 2015, indicated un-utilised amount for the years 2010-13 as ₹9.22 crore.

Non-utilisation of the grants released towards Modernisation of Police Force during 2010-13 by the various units of police force is as detailed in **Table-4.12**.

Table-4.12: Non-utilisation of grants released towards Modernisation of Police Force

(Amount : ₹ in crore)

Unit Name	Amount Released	Amount Utilised	Balance	Reason for non-utilisation
ADGP, Intelligence	5.74	4.63	1.11	Cancellation of tender process.
Inspector General of Police, Headquarters	7.30	0	7.30	Proposal for procurement of weaponry was sent to the Ministry during August 2011. Inspite of several reminders, no communication was received. During April 2015, the State was advised to contact Central Reserve Police Force for procurement of weaponry.
Crime Investigation Department	2.09	1.28	0.81	Election code of conduct resulted in delay for tendering and cancellation of tender process.

Further, we also observed that while approving annual action plan of the State every year, the Ministry had made observations on the un-utilised amount and had also warned the State with regard to deductions in release of grants. However, due to reasons indicated in the table above, the amount released

[92] Except for ₹6.23 crore and ₹5.13 crore, which was released by the Ministry directly to Ordinance Factory Board, Kolkata during 2013-15 under the head weaponry.

during 2010-13 for procurement of equipments and weaponry remained un-utilised. In reply, Government stated (August 2015) that the delay in utilisation of funds was due to technical reasons and would be utilised in the current year. The fact, however, remains that due to delay in utilisation of funds, the State lost central grants for 2013-15.

Thus, non-compliance with the guidelines issued by the Ministry deprived the State of central assistance to the extent of ₹79.16 crore during 2013-15.

Department of Housing

4.7 Irregular extension of salary benefits

The Karnataka Slum Development Board by extending salary benefits to the graduate officials in a lower cadre based on Court's order in respect of officials in a higher cadre was irregular which resulted in excess expenditure of ₹1.08 crore.

According to Rule 5 of Karnataka Slum Clearance Board (Board) Services (Cadre and Recruitment and Conditions of Service) Rules, 1999, all rules applicable to Government servants relating to recruitment and conditions of service including Karnataka State Civil Services (Regulation of promotion, Pay and Pension) Act, 1978 shall *mutatis mutandis* be applicable to the Board employees.

The Board, based on the Honourable High Court's order, granted (February 2003) time scale of pay of First Division Assistants (FDA) to graduate officials who were initially appointed on daily wage basis and later regularised in the same cadre. The Board while granting the above benefit, extended the same benefit to another 21 graduate officials who were appointed in the cadres of Second Division Assistants, Typists, Data Entry Operators and Work Inspectors who continued to officiate in the same cadres, although these posts carried lower scales of pay. Further, the Board in its office memorandum (November 2003) allowed higher time scale of pay to be granted from their respective date of appointment and the financial benefits were granted from the date of issue of office memorandum.

Granting of higher time scale of pay to officials officiating in the lower cadre based on the Honourable High Court's order pertaining to a different context was not in order. The Board had also not obtained sanction of the Government for extending such benefits and hence granting of such higher pay was irregular.

Scrutiny of the Service Registers of the 21 graduate officials[93] **(Appendix-4.18)** who were extended the above said irregular benefit revealed that there was an excess payment of ₹92.60 lakh and ₹14.93 lakh by way of Pay/Dearness allowance and pensionary benefits between November 2003 and

[93] 10 Graduate officials in service, five graduate officials retired between April 2012 and August 2014 and six officials who were given benefit erroneously.

December 2014 respectively. Thus, the irregular extension of benefits had resulted in anomalies as well as additional expenditure to the Board.

The Board replied (May 2015) that the benefits were extended to other graduate officials based on the directions of the Honourable High Court of Karnataka[94] and Government's confirmation (September 1999). The Government while endorsing (August 2015) the above reply, also requested for humanitarian consideration, since many of the officials were on the verge of retirement. The reply was not acceptable as the directions of Honourable High Court of Karnataka and the State Government's confirmation were only regarding granting of higher time scale of pay to the graduate officials initially appointed in the FDA cadre on daily wage basis and later regularised in the same cadre. Extension of same benefits to other graduate officials officiating in lower cadres which resulted in excess expenditure of ₹1.08 crore to the Board was irregular. The Board, presently, needs to take corrective action by re-fixing the pay of existing officials as per rules thereby reducing its further excess expenditure.

4.8 Wasteful expenditure on housing scheme

The Karnataka Housing Board acquired land in villages for a housing project, and went ahead with construction works, when response to demand survey was poor and also when it was known that these lands were prone to floods, and rehabilitation of the villages in its vicinity were under consideration of the Government. The shelving of the project resulted in wasteful expenditure of ₹2.56 crore.

The Karnataka Housing Board Act, 1962 and Rules made thereunder, empower the Board to formulate and implement housing schemes to cater to the housing needs of the State population. Before embarking on a housing scheme, the Board is to conduct a demand survey to ascertain the likely response to the proposed scheme, identify the land required for the purpose after examining the on-site and off-site facilities, prepare a feasibility report and obtain the sanction of the Government to the scheme.

Bypassing the above procedure, the Karnataka Housing Board (KHB) envisaged (March 2006) a housing project in Ramdurg taluk, Belagavi district and acquired (May 2006) 15 acres 19 guntas of land of Kankanawadi village at a total cost of ₹47.50 lakh. The project consisting of 249 residential sites of various dimensions was taken up under the Suvarna Karnataka Housing Scheme at a total cost of ₹4.10 crore.

On scrutiny of the records, we observed that the project was held to be not feasible by several officers as indicated below:

- Letters addressed to the Chief Minister of Karnataka, Deputy Commissioner, Belagavi and Executive Engineer, KHB, by the local Member of Legislative Assembly (June 2006, July 2006 and August 2006) stated that the land was unsuitable for housing project as the land

[94] Issued between February 1999 and October 2002

was prone to floods due to its close proximity to the Malaprabha river and left bank canal and had requested to shelve the project on the said land.

- The Assistant Commissioner, Bailahongal Sub-Division in his letter addressed to the Deputy Commissioner, Belagavi (August 2006), copy of which was endorsed to KHB on the viability of the site specified that the land was prone to floods and also rehabilitation of the villages in the vicinity was under consideration by the State Government.
- The Special Land Acquisition Officer based on the report of the Sub-divisional officer informed (September 2006) the Executive Engineer about unsuitability of the land.
- The report of the Assistant Executive Engineer, Karnataka Neeravari Nigam Limited, Sub-division 2, Navilutheertha indicated that the reservoir had reached its full capacity even during August 2006 and August 2007.
- The Joint Director of KHB in his letter (August 2007) addressed to the Executive Engineer indicated that it had received only 18 applications for the demand survey conducted on the project and requested for a feasibility report.

Despite knowing about the above facts and circumstances, we observed that KHB went ahead with the project and appointed an Architectural and Engineering firm (January 2010) and a Project Management Consultant (January 2011) for preparing Detailed Project Report and Contract Management and Construction supervision, respectively. The developmental works of the project were entrusted (November 2010) to a contractor on the basis of lumpsum, fixed price at a cost of ₹2.72 crore. After a lapse of two months, the KHB handed over (January 2011) the site to the contractor. However, during September 2011, due to incessant rain and release of water from the reservoir upstream, the work site was submerged and the developmental works were stopped. In this regard, the Commissioner constituted (December 2011) a task force which was headed by Superintendent Engineer, KHB and Additional Director, KHB. The task force in its report (January 2012) confirmed that the area was prone to flood and was flooded on three occasions in the last 10 years. Hence, the Board of KHB in its 442nd meeting resolved (July 2012) to shelve the project, settle the claims of the contractor, initiate departmental enquiry against the delinquent officers and to black list the Architectural and Engineering firm and Project Management Consultant. The total expenditure incurred towards the project was ₹2.56 crore.

Government replied (October 2015) that action would be taken to dispose the land without any financial loss to the Board. However, this reply does not explain as to why a contract was awarded for developmental works on land which was known to be unsuitable and flood prone and as to why the report that there was negligible demand for the project was blatantly ignored. Moreover, reply was silent on action against delinquent officers and firm. Also, prospect of disposal of the land located in a flood prone area does not appear to be bright. Thus, overlooking of prescribed procedures by the KHB before embarking on an unsuitable housing scheme resulted in wasteful expenditure of ₹2.56 crore.

DEPARTMENT OF LABOUR

4.9 Avoidable payment of income tax and penal interest

Non-availing of exemption under the Income Tax Act, 1961 by the Karnataka Building and Other Construction Workers' Welfare Board resulted in avoidable payment of ₹42.83 crore towards income tax and ₹ three crore towards penal interest.

The provisions of section 11 to 13 of the Income Tax Act, 1961 (IT Act) prescribe several conditions to be satisfied by the entities registered under section 12A of the IT Act, to make them eligible for exempting their income from income tax. Further, the special provisions of law under section 197 of the IT Act, read with Rule 28 AB of the IT Rules, enable the charitable and religious entities claiming exemption under section 11 or 12 to seek exemption from Tax Deduction at Source (TDS).

The Karnataka Building and Other Construction Workers' Welfare Board (Board) was constituted (January 2007) by Government of Karnataka under Building and Other Construction Workers' (Regulation of Employment and Condition of Service) Act, 1996 for providing social security schemes and welfare measures for the construction workers. In order to provide the welfare activities, cess at the rate of one *per cent* is levied and collected as deduction at source in relation to building or other construction work of a Government/Public Sector Undertaking or advance collection through a local authority where an approval of such building or other construction work by such local authority is required. Unspent cess amounts so collected were deposited in various Nationalised Bank as fixed deposits.

On scrutiny of records, we observed that the Board which was registered (September 2008) as 'Charitable Trust' under section 12A read with section 12AA (1)(b)(i) of the IT Act had submitted Form 15 H under section 197 A (1A) of the IT Act to the banks and had requested not to effect TDS from interest earned out of fixed deposits. We, however, observed that Income Tax Department had served notices (September and October 2013) to the banks for non-deduction of income tax on interest payments made to the Board for the financial years 2011-13. The appeal made by the banks against the demand notice was dismissed (March 2014) by the Commissioner of Income tax based on the fact that the banks had exceeded their authority as a tax deductor under the IT Act. Subsequently, the banks recovered TDS for the financial years 2011-13. In continuation, banks deducted TDS for the financial years 2013-15 also and the total TDS deducted by banks are detailed in **Table-4.13** below.

Table-4.13: Tax deducted at Source by various Banks

(₹ in crore)

Sl.No.	Financial Year	Fixed Deposits	Cess collected	Tax Deducted at Source
1	2011-12	1,177.61	360.62	3.45
2	2012-13	1,752.10	483.58	6.59
3	2013-14	2,290.30	476.10	17.41
4	2014-15	Yet to be received from Board		15.38
	Total			**42.83**

Further, we observed that the registration as 'Charitable Trust' under section 12 A by the Department of IT was conditional and the Board had to fulfill the following conditions for tax exemption:

- ✓ The Board had to furnish the return of income every year as required by the IT Act.
- ✓ The availability of tax exemption had to be granted by the Assessing Officer of the IT Department subject to fulfillment of conditions laid down in sections 11 and 13 of the IT Act.

The Board, however, had filed its annual income tax returns for the financial years 2008-13 belatedly and was yet to file the returns for the year 2013-14. Also, the Board had not made any application to the Department of IT under various sections of IT Act for exempting their income from tax. Thus, the Board did not make use of the enabling provisions available in the IT Act for availing tax exemption which resulted in payment of tax of ₹42.83 crore on its income[95] during 2011-15.

Apart from the above, the Department of IT, under section 201 (1A) of IT Act, levied banks with ₹ three crore as penal interest. The said penal interest was however, recovered by the Banks out of the interest receipts of the Board on the deposits with them. Since, the Board had not produced a certificate of exemption under section 197 (1) of IT Act, as per section 194A of IT Act, it was mandatory on the part of the Banks to effect TDS. Also, the Board had submitted Form 15 H to the Banks without being eligible. Hence, levy of penal interest was attributable not only on the failure of Banks but also on failure of the Board, which was avoidable.

Government stated in reply (October 2015) that action has been initiated to obtain tax exemption certificate from the authorities of IT. It also stated that the Banks will be directed to file an appeal against levy of penal interest. Thus, non-adherence to required procedures and inaction by the Board resulted in avoidable payment of ₹42.83 crore towards income tax and ₹ three crore as penal interest.

Department of Urban Development

4.10 Non-revision of water rates for domestic connections

In spite of the State Government revising the water tariff in July 2011, the Karnataka Urban Water Supply and Drainage Board continued to provide water supply at pre-revised rates to Kolar Gold Fields City Municipal Council which resulted in loss of revenue of ₹1.18 crore.

The Karnataka Urban Water Supply and Drainage Board (KUWS&DB) supplies water to all the urban areas of the State except Bengaluru city for domestic, non-domestic and commercial/industrial purposes. The various provisions for supply of water under KUWS&DB Act, 1973 are as under:

[95] Interest earned out of fixed deposits.

Section 17(1)(a)	The Board shall perform at the instance of the Government or a Local Authority or s*uo motu* investigating the nature and type of the scheme that can be implemented in the area of any local authority for provision of drinking water, execute such scheme under phased programme.
Section 28(A)(1)	The Government may, by order direct the KUWS&DB to undertake operation and maintenance of all water supply schemes subject to such terms and conditions as may be specified.

In order to provide satisfactory water supply and drainage services and also to minimise availing of Government grants/loans, Government opined that local bodies had to increase its revenue through user charges. Further, as overheads on maintenance of potable water supply such as salary of the maintenance staff, power charges, cost of chemicals, repair charges, *etc.,* had increased exorbitantly, Government revised the water tariff in July 2011 which were to be implemented with immediate effect. While revising the rates, the Government prescribed the local bodies to conclude Memorandum of Understanding (MoU) with KUWS&DB after verifying all the aspects of the order. All the revisions in the said order were based on the study report jointly conducted by KUWS&DB and Karnataka Urban Infrastructure Development and Finance Corporation (KUIDFC).

Scrutiny of records of maintenance of water supply scheme for the Kolar Gold Fields City Municipal Council (CMC) showed the following:

- Water supply scheme for the CMC was being undertaken by the KUWS&DB since its inception without any specific directions from the Government and was adopting the water rates and other charges as specified by the Government from time to time.
- The KUWS&DB had not entered into any MOU with the concerned local body as being specified in the Government Orders issued from time to time in respect of revision of rates.
- Even though the State Government had revised water tariff in July 2011 with the water tariff for non-metered domestic connections in municipal areas being revised from ₹90 to ₹120 per connection, the KUWS&DB continued to supply water at the pre-revised lower rate. The loss of revenue as on March 2015 in the said CMC worked out to ₹1.18 crore[96].

Government stated (November 2015) that water supply to the KGF had dried up and water was being supplied through borewells. It further attributed the non-revision to less frequency of water supply to the city. The reply was not acceptable as the Government order had revised the rate based on the increase in overheads on maintenance cost of the potable water supply which was applicable to borewells also. Also in any case, if the Government Order for increasing the water rates was to be waived, there should have been a proposal for waiving and Government's acceptance of the same, and the Government

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	No. of connections	No. of months	Difference in rate (₹ Per month)	Total (₹)
As on April 2011	8,548	44	30	1,12,83,360
2011-12	246	36	30	2,65,680
2012-13	217	24	30	1,56,240
2013-14	274	12	30	98,640
Total				**1,18,03,920**

Order rescinded, which was not so. Further, the KUWS&DB has implemented the revision of water tariff from September 2015 in the said city.

Thus, failure of the KUWS&DB to revise the water rates as per the revised rates resulted in loss of revenue of ₹1.18 crore.

4.11 Avoidable expenditure on debt servicing

Non-utilisation of the option given by Reserve Bank of India to switch over to Base Rate System from Benchmark Prime Lending Rate by the Karnataka Urban Water Supply and Drainage Board in respect of loans availed from banks, resulted in avoidable interest payment of ₹1.98 crore.

Karnataka Urban Water Supply and Drainage Board (Board) had ongoing 15 urban water supply schemes and six underground drainage schemes during 2008-09. In this regard, the State Government had allocated ₹155 crore in its budget for the year 2008-09 and had also made provision to raise loan of ₹150 crore from different Financial Institutions under Internal Extra Budgetary Resources. The State Government approved (July 2009) proposal of the Board to avail loan of ₹74.36 crore and ₹75.64 crore from Syndicate Bank and Corporation Bank respectively and extended its guarantee for the said loan. Accordingly, the Board entered into an agreement (July and August 2009) for drawing loans from the above banks.

Meanwhile, the Reserve Bank of India (RBI) introduced (April 2010) the Base Rate System (BRS) of lending which replaced the Benchmark Prime Lending Rate (BPLR) System from 1 July 2010. The BRS was applicable for all new loans and also for old loans that came up for renewal. In addition, the borrowers of the existing loans had the option to switch over to the new system, on mutually agreed terms with the banks and the banks were not to charge any fees for the switch-over. In the case of switch-over, the interest rates were to be recalculated based on the base rate and the floating rate varied with reference to the base rate from the date of switch-over.

On scrutiny of records of the Board, we observed that the lending rate of the loans raised by the Board was based on BPLR and it had not made any assessment with regard to the option of switch-over to BRS. On comparing the interest rates charged for the above loans under BPLR system with the rates payable under the BRS from the date of implementation of BRS, Audit observed that the rates payable under BRS were less than the rates payable under BPLR system which is detailed in the **Table-4.14** below:

Table-4.14: Comparison of interest rates under BPLR system and BRS

(Rate of interest in percentage)

Period	Syndicate bank		Corporation bank	
	Rate of interest under BPLR	Rate of interest under BRS	Rate of interest under BPLR	Rate of interest under BRS
2010-11	9 to 10.75	9 to 10.25	9 to 10.60	9 to 10.65
2011-12	10.75 to 12	10.25 to 11	10.60 to 12	10.65 to 11.90
2012-13	12 to 11.50	11 to 11.50	12	11.90 to 11.50
2013-14	11.50	11	12	11.50
2014-15	11.50	11	12	11.50

The extra expenditure incurred by the Board by way of interest payment during 2010-15 due to non-switching over from BPLR system to BRS amounted to ₹1.98 crore[97]. Further, after a delay of more than four years the Board requested (December 2014) the Corporation Bank to regularise its interest rate by equating it to the base rate from the date of its introduction. On not hearing from the bank, the Board made no further efforts to get the interest rate recalculated based on BRS but continued to pay the interest rate under the earlier system.

Thus, the Board failed to effectively manage its debt servicing and by not taking action to switch over to BRS resulted in avoidable interest payment of ₹1.98 crore in respect of two loans. The Government replied (November 2015) that it was not aware of the RBI guidelines and would pursue the matter with the banks. Accordingly, the Board has corresponded with both Corporation as well as Syndicate Bank from which no positive response has been received.

4.12 Excess payment of compensation

The Bangalore Development Authority did not follow various procedures prescribed in the Bangalore Development Authority Act, 1976 for acquisition of land for developmental schemes. This resulted in utilisation of land without acquisition and also excess payment of compensation of ₹46.93 crore.

Section 15 of the Bangalore Development Authority (Authority) Act, 1976 (BDA Act) empowers the Authority to undertake developmental schemes[98] with the previous approval of the Government. The procedures laid down in BDA Act to acquire land for developmental schemes are given below:

Section 17:	When a development scheme has been prepared, the Authority has to draw up a notification (preliminary notification) specifying, *inter alia*, the lands which are being proposed for acquisition.
Section 18:	The Authority shall submit the scheme to the Government for sanction.
Section 19:	Upon sanction of the scheme, the Government shall publish in the official Gazette a declaration (final notification) stating the fact of such sanction and requirement of land for public purpose.
Section 35:	Subject to the provisions of the BDA Act and with the previous approval of the Government, the Authority may enter into an agreement with the owner of any land for purchase of such land.
Section 36:	The acquisition of land under the BDA Act including payment of compensation shall be regulated by the provisions, as far as they are applicable, of the Land Acquisition Act, 1894.

On test-check of 11 payments of compensation by the Authority, we observed that BDA had utilised lands for developmental schemes, without acquisition disregarding all the above provisions of the BDA Act laid down for acquisition of land. The compensation for such non acquired lands was

[97] Corporation Bank –₹1.12 crore and Syndicate Bank – ₹0.86 crore

[98] Development scheme include acquisition of land for execution of scheme, laying and re-laying of land, construction of buildings, formation and alteration of streets, drainage, water supply and electricity.

through allotment of developed sites free of cost. The financial implications on such lapses of the Authority are discussed in the subsequent paragraphs.

♦ ***Construction of road on land not acquired***

The Authority had issued preliminary notification (PN) followed with final notification (FN) for acquiring land in various villages for formation of layouts as detailed in **Table-4.15** below:

Table-4.15: Details in respect of notifications issued

(Extent of land in acres – guntas)

Sl. No.	Name of the Layout	Extent of land notified in		Name of the Village	Sy. No. excluded in both PN/FN	Extent of land utilised for road[99]
		PN	FN			
1	Sir M Vishveswaraiah Layout	75-08	39-29	Kengeri	212	02-30
2		708-00	552-15	Ullalu	169/1	00-06.32
3	Sir M Vishveswaraiah Layout – Further extension	324-26	240-37	Gidada Konenahalli	27	00-22
4					23	00-06.50
5		330-02	178-39	Mallathahalli	83 Resurvey no. 83/1A	00-33
6	Gnanabharathi Layout	354-31	320-16	Nagadevenahalli	53	00-11.98

The Authority though had not acquired the said lands, but had utilised these lands to the extent indicated thereagainst for formation of roads. All the land owners had represented to the Authority for compensation in the form of developed land and the Authority in its various Board meetings had resolved to allot developed sites to the extent of 50 *per cent* of the land acquired free of cost in the same layout or subsequent layouts to be formed as compensation. The sites were allotted based on the choice of the land owners and in one case, the sites were allotted in layouts formed by the Authority much earlier.

Subsequent to the Authority allotting (April 2010) 50 *per cent* of land utilised as compensation in respect of Sl.No.1 indicated in the table above, the land owner filed writ petition before the Honourable High Court with a plea that he may be compensated to the extent of 100 *per cent* of the land utilised. The Honourable High Court disposed the petition (July 2012) with the directions that the value of the alternative land proposed to be allotted as compensation should be equivalent to the value of the land lost. Complying with the High Court's directions, the Authority allotted balance land to the land owner during June 2014.

Total compensation of ₹32.99 crore was paid by the Authority to all landowners by way of allotment of alternative sites as detailed in **Appendix-4.19**.

♦ ***Construction of road on land deleted from final notification***

The Authority had issued PN and FN for acquiring land in various villages for formation of layouts as detailed in **Table-4.16** below:

[99] 1 acre = 40 guntas=43,560 sq ft or 4,047 sq mtr

Table-4.16: Details in respect of notifications issued

(Extent of land in acres – guntas)

Sl. No.	Name of the Layout	Name of the Village	Survey No. included	Extent of land notified in		Extent of land utilised for road
				PN	FN	
1	Sir M Vishveswaraiah Layout	Ramasandra	29/1	10-30	09-00	0-12.40
2	Sir M Vishveswaraiah Layout, II Stage	Manganahalli	35	04-18	04-08	0-20.00
3	Sir M Vishveswaraiah Layout	Sonenahalli	14	05-24	03-24	0-05.50
4		Kengeri	209	09-36	05-10	0-08.25

The Authority while issuing FN had notified land less than that was notified in the PN. The Authority, however, had utilised unauthorisedly part of the land left out while issuing FN for formation of roads. The utilisation was confirmed by the Executive Engineers of the respective divisions.

The Authority though had not acquired the said lands but had utilised land to the extent indicated thereagainst for formation of roads. All the land owners represented to the Authority for compensation in the form of developed land and the Authority in its various Board meetings had resolved to allot developed site to the extent of 50 *per cent* of the land acquired free of cost in the same layout or subsequent layout as compensation. The sites were allotted based on the choice of the land owners. Total compensation of ₹5.96 crore was paid by the Authority to the land owners by way of allotment of sites as detailed in **Appendix-4.20**.

♦ ***Construction of road on land notified and subsequently denotified***

The Authority issued (January 1994) FN for formation of Gnanabharathi Layout which included 320 acres and 16 guntas of land in Nagadevanahalli, Bengaluru. Based on the representation of the land owner, the Government denotified (January 2001) part of land acquired in Nagadevanahalli which included 2 acre 30 guntas in survey No. 10/5 of Nagadevanahalli. This denotification was based on the report of the Land Acquisition Officer (November 2000) which indicated that the possession of land was not yet taken and hence could be denotified.

Meanwhile, the Authority utilised (2001-02) unauthorisedly land measuring 18 guntas in survey No. 10/5 of Nagadevanahalli towards construction of outer ring road. The said land formed part of the land denotified earlier. The land owner represented to the Authority (August 2007) for compensation. Based on the joint inspection report of the Additional Land Acquisition Officer and Executive Engineer, West Division who confirmed utilisation of 18 guntas of land for formation of road, the Board resolved (January 2012) to allot 50 *per cent* of land utilised free of cost to the land owner. Further, the Authority based on the land owner's choice of land (November 2012), allotted (April 2013) 1,028.61 sq mtrs of land in the same layout.

The payment of compensation by the Authority was ₹2.45 crore[100].

[100] Cost to the Authority if 18 guntas were acquired: ₹1.47 lakh @ ₹3.26 lakh/acre
Cost of compensation for 9 guntas of land : ₹245.02 lakh @ 2,500 / sq. ft.
Loss to the Authority : ₹243.55 lakh

♦ ***Erroneous survey leading to formation of layout on land not acquired***

The Authority issued (November 2002) PN for formation of 'Further extension of Banashankari VI Stage' which included 367 acres of land in Gubbalala village. This included 3 acres 30 guntas of land in survey number 39 which belonged to three land owners[101]. The Authority, however, while issuing (September 2003) FN, notified 2 acre 20 guntas of land in survey numbers 39/1 and 39/3.

The Surveyor while preparing (December 2003) the award sketch had depicted survey number 39/3 as area not notified and survey number 39/2 as notified in the FN which was contradictory to the actual FN issued. The said sketch was submitted to both Land Acquisition Officer as well as Engineering Division for determining the award and taking possession of land for formation of layout respectively. Based on the said survey report, the Authority formed sites and also constructed road unauthorisedly on land (survey number 39/2) not acquired.

Meanwhile, the landowner of Survey number 39/2 filed a writ petition challenging the acquisition proceedings. Though the said writ petition was disposed of, it allowed the petitioner to move the court for appropriate relief for the land utilised by the Authority. The land owner represented (August 2006) to the Authority for allotting him an alternative land measuring 1 acre 10 guntas. The Authority resolved (November 2011) to allot 50 *per cent* of the land utilised for construction of road and formation of layout. Since, the Authority is yet to allot 50 *per cent* of land utilised, it has a liability of payment of compensation of ₹5.99 crore[102].

In this regard, audit observed the following:

✓ Section 15 of the BDA Act empowers the Authority to frame developmental schemes and with the previous permission of the Government to execute the scheme. While section 16 enumerates the particulars to be provided in such scheme, section 17 allows the authority to draw up a notification furnishing the particulars of the scheme and allowing 30 days for submitting any objections from the public. On completion of 30 days and after considering the objections, if any, the scheme is submitted to Government for sanction, with modifications, if any, together with plan, estimates and other particulars. Upon sanction, under section 19, FN is published declaring that the lands are required for public purpose. These are the formalities which are to be completed by the Authority before proceeding to execute the scheme. From the above, it is evident that the Authority would be in the possession of scheme plan prior to its execution, in which case, the Authority had complete details of land required and extent to which required for execution of the scheme.

[101] Survey number 39/1, 39/2 and 39/3 each measuring 1 acre and 10 guntas.

[102] Land utilised = 1 acre 10 guntas or 54,450 sq ft
Payment of compensation on acquisition @ ₹8.80 lakh/acre = ₹16.01 lakh including solatium and interest
Payment of compensation (50 *per cent*) through allotment of land @₹2,200/sq ft = ₹598.95 lakh
Excess payment = ₹5.83 crore

The action of the Authority not to initiate acquisition proceedings or exclusion of entire survey number of land at the time of FN was in violation of provisions of BDA Act in connection with land acquisition.

- ✓ Section 35 and 36 of the BDA Act govern payment of compensation by the Authority on acquiring land for a developmental scheme. Hence, the Authority resorting to allotment of 50 *per cent* of developed land in lieu of land acquired was irregular.
- ✓ There was lack of co-ordination among the land acquisition section, town planning section and engineering section of the Authority. Hence, land acquisition by the Authority was not as per the plan sanctioned by the Government. Also, from the above cases, it was apparent that the engineering section had commenced work prior to handing over of land acquired by the land acquisition section which resulted in utilisation of land without acquisition.
- ✓ The Authority did not have any mechanism to verify the final plan with the land acquired before execution. Hence, the sketch of the surveyor was taken as final in a case which resulted in utilisation of land excluded from acquisition.
- ✓ Further, in all the cases brought out in the above paragraphs, based on the Honourable High Court's order (July 2012), many of the land owners filed writ petition asking for 100 *per cent* compensation for the land utilised. In all the cases, the Court while disposing the case has ordered to follow the procedures laid down in the earlier judgement[103] (July 2012). Hence, the Authority, in addition to the excess payment of compensation of ₹46.93 crore, has a liability of allotting balance land in all the above cases. This liability of the Authority in the test-checked cases works out to ₹16.42 crore (**Appendix-4.21**).

Thus, by not following the procedures laid down for acquisition of land for its developmental schemes in its BDA Act, by the Authority resulted in excess payment of compensation of ₹46.93 crore.

The matter was referred to Government in June 2015; reply was awaited (November 2015).

4.13 Undue benefit to an agency

Ambiguity between various clauses on price adjustment in the bid document of a project floated by the Karnataka Urban Water Supply and Drainage Board (Board) resulted in the Board not operating the clause. This led to extending undue benefit of ₹6.17 crore to the agency.

Government of Karnataka in their guidelines[104] (November 2004) for regulating price adjustment on account of changes in cost mandated inclusion

[103] That the value of the alternative land proposed to be allotted as compensation should be equivalent to the value of the land lost.

[104] The State Government *vide* its Order No. FD 59 PRO.CELL 2004, Bangalore dated 26th November 2004 prescribed that price adjustment clause was mandatory for all work contracts whose estimated cost put to tender was ₹100.00 lakh or more and the period of completion being 12 months or more.

of price adjustment clause in respect of work contracts where the estimated cost put to tender was ₹ one crore or above and the period of completion was 12 months or more.

The Karnataka Urban Water Supply and Drainage Board (Board) invited (December 2007) tenders for the Combined Water Supply Scheme to Kolar city, Bangarpet and Malur towns and 45 enroute villages (project) under the Centrally sponsored scheme 'Urban Infrastructure Development Scheme for Small and Medium Towns'. The work was awarded (January 2009) to an agency at a cost of ₹88.89 crore with a stipulated period of 18 months including monsoon. As of March 2015, the Board had paid the agency ₹65.46 crore for the work done and work was in progress. On scrutiny of the records including the bid document, we noticed the following:

- The project which was scheduled to be completed by August 2010, was still in progress. The reasons for non-completion of the project was mainly on account of delay in handing over of sites by the Board/ local bodies and delay in grant of permission by the Railway Department. The Report of the Comptroller and Auditor General of India, No.2-Civil for the year ended 31 March 2010 (paragraph 3.4.6) included observation on the huge investment on the project without a dependable water source. We observed from the proceedings of the meeting (December 2014) regarding progress of the project, that some components of the project remained incomplete due to non-availability of water in Yargol dam.
- The bid document which formed part of the agreement entered into (January 2009) by the Board with the agency contained clauses on price adjustment as detailed in **Table-4.17** below:

Table-4.17: Ambiguity in the bid document

Chapter 1: Instructions to Bidders	
Clause 15.5	The clause stated that the rates and prices quoted by the bidder shall be fixed for the duration of the Contract and shall not be subject to adjustment on any account unless otherwise provided for in the Special Conditions of Contract. However, the price variation in the cost of structural steel is admissible as per clause 15.1 of Chapter 3.
Chapter 2: General conditions of Contract	
Clause 70	Though Price variation clause not included, price adjustment clause for works contract included under clause 70.1.
Chapter 3: Special conditions of Contract	
Clause 15	Though price variation was deleted under clause 15, clause 15.1 stated 'Price variation as per clause 70 of chapter 2 was applicable. The rates and prices quoted by the Bidder shall be fixed for the entire duration of the Contract. The bidder shall be responsible to include adequate provisions in his lump-sum prices to cover any contingencies in the rise or fall of costs during the Contract period'. It further stated that the price adjustment as per clause 70.1 of Chapter 2 was applicable.
Clause 28	Price adjustment calculated in accordance with clause 70.1 to 70.7 of Chapter 2 is not applicable for payment for works under this contract. It further stated that the bidder had to make adequate provisions to cover any contingencies in the rise or fall of costs during the contract period.

The said ambiguity in the bid document was discussed (November 2008) in the pre-bid meeting, wherein the Board clarified to the bidders that the price adjustment clause was applicable for the said contract.

Since the decisions and clarifications of the pre-bid meeting formed part of the bid document, the Board was required to operate the price adjustment clause. However, we observed that though there was a decline in price of steel during the contract period, the Board failed to operate the price adjustment clause and did not recover ₹6.17 crore from the agency for the work executed between January 2009 and March 2010. The Board justified (October 2010) non-operation of the price adjustment clause on the ground that the main clause on price variation was deleted and the price adjustment provision described in the sub-clause was no longer relevant.

The action of the Board was not justifiable as the Government order on price adjustment formed part of the bid document and the bidders had been clarified on the applicability of the price adjustment clause in its pre-bid meeting. Thus, the ambiguity between the clauses in the bid document resulted in non-operation of the price adjustment clause and extension of undue benefit of ₹6.17 crore to the agency. The Government replied (November 2015) that the price adjustment clause was applicable and the recovery for ₹6.17 crore as worked out by audit was correct, and further necessary action would be taken.

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