

The Public Newsense

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From the Executive Director

Dear Friends.

am pleased to present the newsletter for the second quarter of year 2016. This quarter saw a lot of action on several fronts at CAG. The action was in part supported by several interns who joined us for 6 to 10 weeks over the summer months. We thank them for their contribution and hope that they all gained some learning from their time with us.

In June, the CAG team organised a workshop on the smart cities mission that has been touted as a game changer in urban planning and service delivery. The participants from across the country were unanimous in their opposition to the mission as it envisions transfer of responsibility for delivery of basic services from the respective city government to a Special Purpose Vehicle (SPV) that will be immune to citizen scrutiny. We have captured some aspects of the workshop in an article in this issue. We also participated and presented our findings in the workshops organised by World Resource Institute (WRI) on Transport Governance (in Delhi) and Electricity Governance (in Chennai).

The work on advocating for a strong Road Transport and Safety Bill (RTSB) saw us travel to Kerala and talk to 650 students on the need for safer roads in India. Further, we conducted various awareness sessions for behavioural change related to health and hygiene as part of the sanitation project at the Madhavaram Truck Terminal (MTT). In order to understand the informal waste economy, in May-2016 we started working on documenting the waste value chain, from waste pickers to recycling units via the scrap shops (kabadiwalas), and other formal and informal intermediaries.

We provided our feedback to the Draft National Water Framework Bill, 2016 and the Draft Geospatial Information Bill 2016. Finally, we compiled the report on the Chennai floods of December 2015 as part of the initiative Way Forward Chennai.

This issue of the CAG newsletter bring to you the summary of our continued efforts towards improving governance and encouraging citizens participation in key public processes.

Sincerely, Om Prakash Singh

A celebration of World Environment Day

orld Environment Day is observed on June 5 every year to raise awareness of the environment and the need to protect nature. CAG has been a long standing champion of environmental protection. Along with Real Charitable Trust, Exnora, and other neighbourhood associations, we organised a special celebration at the

Madhavaram Truck Terminal (MTT) on June 6. The president and secretary of the Madhavaram Truck Terminal Complex Welfare Association also joined the celebrations.

Our ongoing efforts on solid waste in the MTT are slowly transforming waste management practices in the premises,

making it an apt location for the event. The aim of our work at the terminal is to make it clean and green. Therefore, it was a fitting start to begin the day with the planting of trees, with protective wire meshes and reflective stickers. Following a welcome address by Mr Lawrence from RCT, the speakers addressed concerns about solid waste management and the need to have a robust system in place to ensure a clean worksite. The event was also an opportunity to thank those whose hard work keeps the premises clean. The President of the Welfare Association reiterated the need to carefully consider the amount of waste generated, always striving to reduce use. He exhorted food businesses to serve food off banana leaves, a practical and biodegradable alternative to plastic.

The Charlie's Mime Group of Chennai gave a performance highlighting issues such as pollution, recycling and growing and conserving trees. Shops,



offices and food stalls inside the terminal were given waste disposal bins. Waste collected in the bins will be gathered on a daily basis and disposed responsibly by CMTN workers. Going forward, we will encourage waste segregation at source.

The event was effective in conveying the importance of the need to change our behaviour to reduce and manage waste, so as to create a sustainable future for us and this planet we share.

A landmark case in medical negiligence

here was a time in India when doctors were revered and medicine considered the noblest of professions. However, with growing commercialisation of medical practice and medical education, the once held trust that binds doctor and patient has come under stress. The result is that a layperson needing medical attention approaches a hospital warily. While large amounts of compensation are routinely awarded to victims of medical negligence in European countries, the Indian court has always been a reluctant participant in such cases, as the matter has been viewed as technical. That times have changed and that Indian law is finally taking a firmer view of medical negligence, malpractice and medical crimes is brought out in the 2015 Judgment of V.Krishnakumar v. State of Tamil Nadu, with the Supreme Court granting more than 1 crore as compensation to the victim. This case looks into the various aspects of competent medical care such as the importance of timely medical examinations, providing patients with appropriate and prompt information, proper and timely diagnosis, accurate record keeping and the vicarious liability of hospitals and state.

V. Krishankumar's wife Laxmi was admitted in Government Hospital for Women and Children, Egmore, Chennai. She delivered a premature female baby in the 29th week of pregnancy. Weighing only 1250 grams, the baby needed intensive care and was placed in an incubator for about 25 days. The baby was administered 90-100% oxygen at the time of birth and underwent a blood exchange transfusion a week after birth. She also had apneic spells during the first 10 days of her life. It is a well established medical practice that it is mandatory to screen babies with very low birth weight of below 1500 grams or gestational age of less than 32 weeks for Retinopathy of Prematurity (ROP). ROP typically develops 2-4 weeks after birth, in pre-term babies and if not managed promptly, can cause the retina to detach from the back of the eye, leading to permanent blindness. So the screening should be done within this time. In this instance, the baby was still in hospital, undergoing treatment over that period but was not examined nor were parents informed of the risk of the condition.

While the respondents did not dispute the need for prompt screening, they contended that they had provided parents with proper advice which had not been followed. The 'medical advice' which parents had been given was documented as 'informed about alarm signs' as a hasty scrawl in the corner of the discharge summary. The Supreme Court observed that it cannot be inferred from this, that the parents were cautioned about ROP. It was also held that it is the duty of the hospital to give clear advice to patients as to the risks and the steps being undertaken to contain the risks.

By the time the baby was four and a half months old, ROP had progressed to the irreversible stage 4, which was when it was picked up by another doctor. No further medical treatment could be availed in India and even an expensive procedure in the US, could not reverse the damage already done. Initially, the National Consumer Dispute Redressal Commission had awarded a compensation of INR 5 lakh, holding the State of Tamil Nadu and the Neopaediatrician accountable, but acquitting two other respondents for no apparent reason. Two civil appeals resulted from this order: one by V. Krishnakumar to enhance the amount of compensation and another by the state of Tamil Nadu and the hospital, against the judgment.The Supreme Court disposed off both the appeals by common judgment.

The Supreme Court held the hospital vicariously liable, as the negligence began under the supervision of the hospital. The Supreme Court also held that the state would be vicariously liable for the damages which may become payable on account

of negligence of its doctors or other employees, thus implicating the Government of Tamil Nadu and the Director of the Health Department. The doctors who checked in the hospital and who checked at home were also held negligent for not providing timely advice. The Supreme Court also took into account the gross negligence along with inflation, future cost of treatment, financial and mental suffering caused to the parents while computing the quantum of compensation, thus awarding parents a total amount of INR 1,38,00,000. While human errors are unavoidable, glaring acts of negligence such as this, which place the lives of vulnerable people at risk, need to stop. Hopefully, this case will send the right message to the medical community about the need for providing care with proficiency.

The path to strong road safety regulation

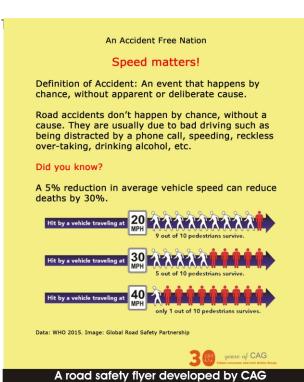
Since October 2015, CAG has been working on road safety with Global Road Safety Partnership (GRSP). The focus has been on advocating for a strong road safety legislation and creating greater awareness on the issues around road safety with the aim of changing road user behaviour.

In the last issue of the Public Newsense we had discussed the drafting of yet another road safety legislation in 2014, its various iterations, and why several states had opposed this Bill. To break the deadlock, the Government of India had formed an Empowered Group of Ministers (EGoM) headed by the Transport Minister of Rajasthan and with representation from the southern states with the presence of the Transport Minister of Karnataka. In addition, a four-member committee to assist the EGoM was formed with the Transport Commissioner of Kerala being one of its members.

The EGoM, formed in March 2016, was tasked with giving recommendations on improving the driving licence system; strengthening the state road transport undertakings; improving public transport; framing a National Road Safety Code with a view of bringing down accidents by 50% in the next 5 years; making the transport system more customer friendly; and improving roadside infrastructure so that vulnerable road users are protected.

CAG, and other organisations, had made representations to the EGoM to consider various aspects of road safety such as the need for legislation on mandatory child restraint systems, air bags, crash tests which are basic features that are mandated in the laws of many countries that have successfully reduced their road accident numbers and the fatalities resulting from accidents; stricter penalties and a robust enforcement mechanism; and setting in place an efficient and transparent licensing system.

The EGoM has met several times so far and come with recommendations for the amendment of the current Motor Vehicles Act, 1988. These recommendations have not been made public yet but media reports suggest that these include heavy penalties for minor drivers; a dedicated force for traffic management on highways; 10% of the Central Road Fund to be used on road safety; and provisions in the statute and rules to protect pedestrians and non-motorised traffic.



session of Parliament (monsoon session). Most of these are aspects that were covered in the Road Transport and Safety Bill (RTSB) but with the RTSB hitting a road block in terms of states' concerns over changes relating to revenue from road transport, this approach of focusing on some road safety issues was taken. While more stringent punishment is welcome, enforcement is usually the challenge. In addition, the little information in the public domain does not indicate if the amendments will tackle the current licensing system which is highly inadequate and easy to manipulate.

CAG has also been joining a volunteer group, Thozhan, in carrying out interventions at traffic signals where volunteers exhort road users to wear helmets/seatbelts, not use their phone while driving, stop behind the stop line, etc. Bilingual flyers on these topics were also distributed.

In addition, a session on road safety was conducted in Palakkad, Kerala in May 2016. The 650-strong audience consisted largely of high school students and their parents. CAG made a presentation on the abysmal state of road safety in the country and why road users need to change their behaviour. Several senior police officers joined CAG at the session and spoke, underscoring the message that each of us needs to take responsibility for our safety and that of others on the road. A signature campaign was also conducted at the event. The campaign asked the EGoM to consider various road safety measures, mentioned earlier in this article, in their recommendations to the government.

An overview of the National Water Framework Bill 2016

The National Water Framework Bill 2016 drafted by the Ministry of Water Resources, River Development & Ganga Rejuvenation seeks to "provide an overarching national legal framework with principles for protection protection, conservation, regulation and management of water as a vital and stressed natural resource..."

The Bill seeks to affirm water as a basic human right, in line with Supreme Court decisions. The Bill expands the public trust doctrine to water where resources are brought under the purview of the State. However, rights are prioritised in the order of "...right to water for life, followed by allocation for achieving food security, supporting sustenance agriculture, sustainable livelihoods and eco-system needs".

As a result, the State has been given the role to engage in rejuvenation and cleanliness related activities, foster community participation and wastewater treatment. A National Water Footprint Standards, which seeks to ascertain the quality and quantity of water in the economy, has been proposed for industries.

The Bill focuses on taking an integrated approach to river basin development and management by looking at the river as the "basic hydrological unit for planning, development and management of water", taking into account national economic and social development, rural and urban land use, river rejuvenation, and environmental protection, including climate change.

The Bill also mandates the development of five year Water Security Plans with measures for water conservation, including groundwater sources. Water quality, with the aim to prevention and control of pollution and contamination, is looked into with measures, such as recycling, reducing non-point source pollution, improving water quality in water bodies and enforcement of the 'polluter pays' principle. Flood mitigation using a decision support system and drought management through an action plan have been given priority. A section on water pricing and regulators has also been incorporated.

In the case of irrigation, the Bill seeks to institutionalise water users associations (WUAs) by giving them statutory powers to collect and retain a portion of irrigation service fees and further taking forward the participatory approach to irrigation management and water conservation. The Bill also deals with transparency and accountability, through setting up of a water resources information system while promoting innovation and knowledge management.

The Bill also addresses the contentious issue of water conflict. It takes the view that "states in a river-basin own the river but as public trustees" with "rights to use water of the river". It calls for minimalist approach wherein the upper basin state will avoid harm to the lower basin state and allocation, if necessary, to "be governed by the principle of equitable sharing for beneficial uses". Water user disputes will be settled "through negotiations, conciliation or mediation, or other such means", with litigation being made the last resort.

Several definitions have been omitted such as flood, pollution, polluter pays principle, water quality, water quantity, etc. The role played by transitional waters i.e. waters between land and sea, encompassing river mouths, such as estuaries and deltas have been left out. The River Basin Master Plan takes a project planning approach. The plan should focus on protection, enhancement and restoration of surface and groundwater sources rather than the optimisation of water resources i.e. balancing water tables, exploitation of aquifers and surface water sources.

The legal status of the Plan is unclear. The Bill requires greater clarity on the differences between water rights (customary rights, riparian and irrigation rights) and the public trust doctrine, especially for individual and small marginal water users. The Bill is unclear on how water priorities and public trust doctrine can be reconciled especially during times of water scarcity, in terms of allocation of water and protection of high priority areas. There are sections on water pricing and regulators that are contentious since they involve water privatization and should be removed. Instead the section should focus on water conservation, including incentives and penalties for misuse, and clarify which agencies would be involved in implementing these measures.

Water Footprints and its scientific application are extremely complex and may prove impossible to apply in practice. It may be converted to "water audits" and "water resource audits". The Drought Management Plan and Water Security Plan should be merged as one document, as both view the state water resources from a water scarcity perspective. Flood mitigation and management should also focus on bringing out a Flood Risk Mitigation and Management Plan together with a Decision Support System (DSS).

Transport Governance Initiative

n collaboration with the World Resources Institute (WRI) and Parisar, CAG carried out a pilot study to assess the state of governance in transport on principles of transparency, accountability, capacity and participation in Tamil Nadu.he project's broad aim was to understand the formal and informal processes undertaken by institutions responsible for shaping and implementing transport policies and plans. The project was part of a multi-city study conducted in Karnataka, West Bengal and New Delhi to understand the difference in the processes across the three states and at the national level.

The study began with a baseline study to select the three cities in each state where the toolkits would be administered. The parameters for selecting the cities included population, and a plan, policy, project or regulatory event in the particular city in the past five years. We found that the cities of Chennai, Coimbatore and Trichy met these criteria because they had recently prepared a Non-Motorised Transport (NMT) policy, City Development Plan (CDP) and City Mobility Plan (CMP), respectively. Each city was assessed for its planning authority, policy making body, executing authority and regulatory body by looking at various statutes, government orders, documents, media reports, and interviewing public officials in these departments.

The assessments of the various indicators reveal very specific lacunae in the decision-making processes across the three cities.

For the principle of transparency, we found that only 20% of the indicators accomplish high scores.

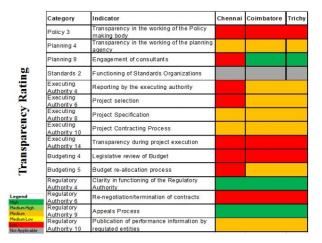


Fig 1: Rating of indicators based on the principle of transparency

Remarkably transparency is the only principle that scored a high rating among the four principles. This could be attributed to the Tamil Nadu Transparency Act, 1998 and Rules, 2000. We also found Coimbatore and Trichy municipal corporations performed better than their Chennai counterpart. This is due to mandates laid by the Commissionerate of Municipal Administration (CMA), which sets reporting standards for all municipal corporations other than Chennai Corporation. The remaining indicators had low and medium rating, with no Government order, Acts or Rules instructing the respective body to be transparent in the specified category.

The indicators on accountability were nearly equally distributed between the low and medium ratings. Where there were statutes that mandated

Category	Indicator	Chennai	Coimbatore	Trichy
Policy 2	Effective functioning of the Policy making body			
Planning 1	Planning mandate			
Planning 3	Effective planning			
Planning 6	Legislative review of plans			
Standards 1	Mandate of Standards Organizations			
Executing Authority 2	Effective functioning of the executing authority			
Executing Authority 3	Performance-based incentives			
Executing Authority 11	Project Contract Execution			
Executing Authority 12	Physical Audit of Projects			
Executing Authority 15	Post-implementation Review			
Executing Authority 18	Environmental and Social Impact Assessment of Projects			
Budgeting 1	Budget Process			
Budgeting 7	Budget Auditing			
Regulatory Authority 1	Existence and neutrality of the Regulatory Authority			
Regulatory Authority 7	Tariff P hilosophy			
Regulatory Authority 11	Perform ance reporting by the Regulator			

Fig 2: Ratings of indicators assessing accountability

processes and work outputs, the agency performed well on the accountability indicator. We also observed that state-level policy-making body and executing authority, such as the Transport and Highways departments performed better than the corresponding departments in the three local bodies. All departments and authorities performed poorly on accountability indicators for physical audits of projects, post-implementation review, performance reporting by regulators and effective planning, which could be the reason for why there is distrust between the government and the general public.

	Category	Indicator	Chennai	Coimbatore	Trichy
Capacity Rating Trinotus Capacity Rating Capacity Rati	Policy 1	Mandate and Capacity of the Policy making body			
	Planning 2	Capacity of the planning agency			
	Planning 7	Capacity of Legislative Committee for Review of Plans			
	Standards 4	Enforcement of Standards			
	Executing Authority 1	Staffing policies and capacity of the Executing Authority			
	Executing Authority 5	Capacity for Strategy and Planning			
	Executing Authority 17	Capacity for Project Contracting, Specification, Execution, Audit			
	Executing Authority 20	Capacity for carrying out EIA and SIA			
	Budgeting 2	Capacity of Budgeting team			
Legend High Medium High Medium	Regulatory Authority 2	Autonomy and Mandate of the Regulatory Authority			
Medium Low Low Not Applicable	Regulatory Authority 3	Capacity of the Regulatory Authority			

Fig 3: Rating of indicators assessing organisational capacity

Similarly while assessing the organisational capacity we could attribute indicators being low and medium ratings to the lack of mandates established by the

(Re)prioritizing Citizenship in Smart Cities Governance

n June 26-28, CAG organised and hosted a workshop titled '(Re)prioritizing Citizenship in the Smart Cities Governance'. The workshop set out to bring together a wide range of stakeholders from across India and the world to discuss the India Smart Cities Mission (SCM) design and the respective statutes. We found that the executing authorities performed exceptionally poorly with no obligation to conduct capacity building programs for strategy, planning, audits, EIA and SIA. In fact one of the interview respondents mentioned that the same contractor building footpaths in Bangalore was building the worst footpaths among several other contractors in Chennai.

It was not surprising to a see the predominantly crimson matrix while assessing the indicators on public participation. None of the relevant

Category	Indicator	Chennai	Coimbatore	Trichy
Policy 4	Public Participation in policy making			
Planning 5	Public Participation in planning			
Planning 8	Public Participation in the Legislative Review			
Standards 3	Stakeholder consultations in Standards Setting			
Executing Authority 7	Public participation in Project Selection			
Executing Authority 9	Public participation in Project Specification			
Executing Authority 13	Public participation in Physical Audits			
Executing Authority 16	Public participation in Post-implementation Review			
Executing Authority 19	Public participation in Environmental and Social Impact Assessment			
Budgeting 3	Public Inputs into the Budget			
Budgeting 6	Public Participation in the re-allocation process			
Regulatory Authority 5	Public consultations in Regulatory decision- making			
Regulatory Authority	Public consultations during Tariff revision			

Fig 4: Rating of indicators based on the principle of public participation

legislations or policies mandate public participation in decision-making. Coimbatore and Trichy fared well in this rating because the plans we assessed were the CDP and CMP, which were mandated by the Jawaharlal Nehru National Urban Renewal Mission (JnNURM) in which public participation was mandated for making the plans. In fact, all the government agencies interviewed during the study consider the legislative assembly as the public.

We expect that these assessments will provide the government agencies and civil society organisations in the urban transport sector with a diagnostic framework by which they can improve particular aspects of the processes that will strengthen decision-making and begin to have conversations around interventions that would lead to better transportation and mobility outcomes for the residents of their respective cities.

implications it has for citizenship. The workshop aimed to form a solid base for both understanding and further researching the SCM. Additionally it aimed to devise pathways for challenging the mode of development that the Mission sets forward. The workshop drew on the knowledge and multitudinous perspectives from marginalised city contexts, with participants reflecting on how "smart" initiatives as a whole have (negatively) impacted cities, neighborhoods and regions in the UK and Brazil, as well as how the Smart Cities Mission has and continues to affect cities in India, with a particular focus on Chennai. The participants brought a welcome assortment of outlooks, ranging from public accountability, architecture and urban planning, to street vending and digital inclusion.

Mapping citizenship in the Smart City

Day one was spent completing an afternoon mapping exercise. Theagaraya Nagar, or T Nagar as it is called by city residents, is a neighborhood in Chennai where Chennai's Smart City proposal plans to implement area-based development projects. The group used Kobo, a digital survey and mapping tool, and a paper map to capture details on themes of housing, mobility, amenities, and recreation. The mapping exercise was meant to prompt participants to look at street-level infrastructure and visualise the ways in which the projects could impact the residents.

Participants' observations of street infrastructure, including flyovers, barriers, and waste bins, the importance and abundance of informal activities in the street, and conflicts between vehicle and pedestrians made an interesting contrast with the proposed projects, which seem very far removed from the everyday life of the neighbourhood. It seemed difficult to envisage how the water, waste, ICT and transportation components will be realised.



Participants discussing their observations from the mapping exercise

Smart Citizenship Discussion and Knowledge Exchange

On Day 2 there were presentations on the international perspective on smart cities with specific focus on the UK and Brazil, an overview of the SCM including its financial aspects and the Special Purpose Vehicle; land use and the turn to technocracy; the use of technology and data; perspectives on the role of street vendors; proposals by Chennai and Pune; Bangalore's urban development process leading up to the preparation of its proposal; perspectives on the Jaipur Smart City advisory committee; and work with GIS to represent citizenship of local fishermen in Chennai.

Many participants felt that concerns arising from the SCM were mirrored in other development programmes, such as the JnNURM, in India. The proposed move could be seen as a privatisation of resources and infrastructure, and that the SCM was not addressing underlying systems that led to unequal and exclusionary development. That informal inhabitants and users of the street, such as street vendors, will be excluded and evicted in the SC projects and that the impacts of smart city projects are often in the poorer and hidden districts of the city. Besides, there is little known about the legal aspects and structure of the SPV making it extremely hard to understand the repercussions it could have for city governance and accountability.

The group further stressed that the term "smart" should be re-evaluated with respect to the citizens, and that we should look at "smart" as implying an evaluative, flexible and retrospective/reflective approach to urban and technological renewal as opposed to a blindly futuristic and idealistic proposition that certainly would not prioritize citizenship and the multitudinous livelihoods without which the city would not truly function.

How to enable smart citizenship?

Discussions on Day 2 focussed on identifying viable action(s) could be taken in response to the SCM and its demographic consequences. The group delved into the specifics of building a framework for researchers and practitioners to learn, engage and evaluate the SCM, and by extension, re-prioritise citizenship. The group split up into three in order to focus their efforts towards the three main aims: Learning, Engagement and Evaluation, with respect to the Smart Cities Mission in particular.

The overarching ideas built heavily upon the previous day's discussions, with emphasis on analysing the urban governance ecosystem within which the SCM has embedded itself, as well as an exploration of the deeper issues that affect governance in general - the lack of public participation (or even the presence of token participation), the absence of citizen-concerned decision-making, and even the lethargic planning and execution of large-scale projects. The practitioners within the group expressed their grievances regarding how large urban reform missions were aimed at the elite population and would incur huge costs that would result in substantial ramifications for primarily the urban poor and the lower middle class (who are never considered as part of the "smart" agenda).

Going forward, it was decided that setting up a

network would be necessary, although certainly not facile. This network would research into "smart" citizenship and support grassroots organisations that have relevant advocacy issues. Certain members of the group decided to work on research and drafting position papers that could then be published.

This workshop organised as a part of CAG's Transparent Chennai initiative. It was part of an AHRC International research network on "Whose right to the Smart City?". You can find more information on the website: www.whosesmartcity.net

Tracking Energy Efficiency and Demand Side Management Measures in Tamil Nadu

AG participated in the Tamil Nadu Electricity Governance Initiative (TEGI) partners meeting on 20th April 2016, organised by the World Resources Institute (WRI). The meeting brought together various stakeholders working in the electricity sector in Tamil Nadu. CAG gave a presentation on Tracking Energy Efficiency (EE) and Demand Side Management (DSM) measures in Tamil Nadu, which looked into the status of various schemes being implemented to promote EE and DSM in the state and their progress together with suitable recommendations.

Some of the schemes that were explored were a) Tamil Nadu Electricity Regulatory Commission's (Demand Side Management) Regulations, 2013; b) DSM measures of Tamil Nadu Generation and Distribution Company; c) Energy Conservation Building Code of Tamil Nadu Electricity Inspectorate; d) Chennai Corporation's Street Lighting Scheme; e) Commissionerate of Municipal Administration's Integrated Urban Development Mission, Green House Scheme, and Streetlights in Town Panchayats; f) Tamil Nadu Energy Development Agency's Chief Minister's Solar Powered Green House Scheme, Chief Minister's Solar Powered Green House Scheme for Weavers, and Solar Street lights Scheme, g) Indian Railways Energy Conservation Initiative; and h) Department of Agriculture – solar agricultural pumpsets.

Amongst others, CAG recommended that the state a) bring EE and DSM efforts under one umbrella; b) notify a Energy Conservation Building Code; and c) enhance consumer participation in policy formulation and implementation.



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