UNIVERSITY OF PETROLEUM & ENERGY STUDIES CENTRE FOR CONTINUING EDUCATION

The role of the DGH as an independent regulator is questionable in view of the "revolving door", having said this who in your view can be put in the place of DGH, qualify your response from other jurisdictions and country practices (model)

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APPENDIX–I

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APPENDIX–II

A Declaration by the External Guide

This is to certify that Ms. Chitwan Sethi, a student of LLM (Energy Law Specialization) with SAP Id. 500041928 of University of Petroleum and Energy Studies has successfully completed this dissertation report on "The role of the DGH as an independent regulator is questionable in view of the "revolving door", having said this who in your view can be put in the place of DGH, qualify your response from other jurisdictions and country practices (model)".

Further I certify that the work is based on the investigation made, data collected and analyzed by her and it has not been submitted in any other University or Institution for award of any degree. In my opinion it is fully adequate, in scope and utility, as a dissertation towards partial fulfillment for the degree of LLM.

Signature

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APPENDIX–III

A Declaration by the Internal Guide

On Company Letter Head

This is to certify that Ms. Chitwan Sethi, a student of LLM (Energy Law Specialization) with SAP ID 500041928 of University of Petroleum and Energy Studies has successfully completed this dissertation report on "*The role of the DGH as an independent regulator is questionable in view of the "revolving door", having said this who in your view can be put in the place of DGH, qualify your response from other jurisdictions and country practices (model)*" under my supervision.

Further I certify that the work is based on the investigation made, data collected and analyzed by her and it has not been submitted in any other University or Institution for award of any degree. In my opinion it is fully adequate, in scope and utility, as a dissertation towards partial fulfillment for the degree of LLM.

Signature

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1. ABSTRACT

As a matter of truth, absence of a ruler results in lawlessness and presence of two or a lot of rulers results in chaos .Such is that the case of the upstream sector in Oil and Gas in India. Whereas the downstream and middle segments are regulated by the Petroleum and Natural Gas regulatory Board ("PNGRB"), the upstream phase is directly regulated by the Ministry of Petroleum and Natural Gas ("MOPNG") with the technical support of the Directorate General of Hydrocarbons ("DGH"), underneath the executive management of the MOPNG. Neither the MOPNG nor the DGH is an independent regulator within the upstream sector.

OBJECTIVE-

The report aims to spot the concerns regarding regulative uncertainty and resolve the problem of an independent regulator within the upstream sector and conjointly throws lightweight on the problem of role of DGH and checking out an independent regulator variant if any.

The Indian hydrocarbons market has evolved over the years. From a mostly NOC(National Oil Companies)-dominated vend has bit by bit affected to a structure wherever each NOCs and personal sector players are enjoying necessary roles. The idea of revolving door was discovered underneath the recommendations of the Chawla Committee on allocation of natural resources .It denotes the matter of the appointment of on the rolls of DGH on deputation basis, i.e., the officers are called from the NOCs, i.e., Public Sector Undertakings ("PSUs"), exclusively closely-held by the govt. to work the DGH on deputation and then return to their corporations.

Such an act defeats the thought of a neutral and independent regulation thereby, hampers healthy competition between non-public players and Government corporations.

The report conjointly will make a comparative analysis of upstream regulative models of varied countries second sight the Norwegian board therefore on offer for a clear and effective regulative mechanism.

2. INTRODUCTION

The dissertation is set at the backdrop of the disarray caused by the multiple roles played by the Government. Ironically, within the upstream sector the government inter alia plays a job of a policy maker, regulator associated additionally as an operator under the veil of the National Oil firms.

As the dissertation descends, I[1]throw light-weight on the structure of Oil and Gas sector that is loosely classified in 2 parts:-

(a) **Upstream**: The upstream sector deals with the exploration and production activities that is monitored by Director General Hydrocarbons, i.e., the technical arm of the Ministry of Petroleum and Natural Gas in accordance with the legislations and policies framed by the Ministry itself; and

(b) **Downstream**: The downstream sector deals with refining, marketing and distribution of Oil, Gas and different derivatives. The downstream sector is regulated by an independent regulator, i.e. Petroleum and Natural Gas Board ("PNGRB"), constituted underneath Petroleum and Natural Gas Board 2006.

However, the upstream sector that logistically stands previous in hierarchy associated is technically a lot of necessary, is devoid of an independent regulator.

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[1]*The author is a student who has chosen* ***"The role of the DGH as an independent regulator is questionable in view of the "revolving door", having said this who in your view can be put in the place of DGH, qualify your response from other jurisdictions and country practices (model)"*** *as a topic for her project in the capacity of a post-graduation student pursuing LLM (Energy Law Specialization), SAP ID 500041928, from the University of Petroleum and Energy Studies after having Completed Bachelors in Energy Laws(Hons'). The author can be contacted on chitwansethi@gmail.com.*

This report deals with the said issue that is the absence of an independent regulator within the upstream sector. It analyzes the necessity of such a regulator and additionally discusses the excerpts of varied committee reports on this issue.

The report has both an exploratory and normative aim. The report takes under consideration how the institutional framework of the upstream sector that is Ministry of Petroleum and Natural Gas as its central agency and Directorate General of Hydrocarbons that is its technical arm works and the how though by operating in their capability ,they're hampering the transparency of the regulative mechanism.

The other attention-grabbing question that comes forth within the report is that of the role of DGH as "revolving door". The appointment of members to DGH is primarily done on deputation basis from National Oil Companies (Public Sector Companies) which suggests that when the member completes the term, then that member will return to the National company , wherever he the member was antecedently utilized with. As mentioned earlier, the government additionally plays the role of an operator once the blocks area unit awarded to the PSUs within the competitive bidding and additionally all the PSUs have a carried interest in all the blocks awarded to the private sector firms. Hence, the author contends that in such a state of affairs wherever once the person being dominated gets into the capability to rule. Such could be a state of affairs within which the regulator regulates itself and not the opposite players. The construct of revolving door defeats the aim of a neutral regulation another result of that is laying down a field for players that lacks fairness. The report is split into 3 parts:-

(a) **Part I** of the report contains the account of the legislations, laws and governing bodies within the upstream sector. It additionally talks regarding the background of upstream regulation

in India and further it discusses the synoptic perspective of the excerpts from varied committee reports jabbing on the necessity of getting an independent regulator within the upstream sector.

(b) **Part II** of the report deals with the roles played by DGH and their impacts.

(c) **Part III** of the report talks regarding the Norwegian model and the way it can help establish a clear and effective regulative mechanism followed by a conclusion.

2.1. OVERVIEW OF ENERGY SCENE IN INDIA

Today, India is the fifth largest energy consumer in the world. While the world consumes 12000 million tonnes of oil equivalent (mtoe) of energy resources, India consumes 4.4% of the world total (524.2 mtoe). Global consumption of primary commercial energy (coal, oil & natural gas, nuclear and major hydro) has grown at a rate of 2.6% over the last decade. In India, the growth rate of demand is around 6.8%, while the supply is expected to increase at a compounded annual growth rate (CAGR) of only 1%. Of the total primary energy consumption basket, oil and gas constitute 45% share in the total energy basket mix. [2]

[2] *Page 3,Ready Reckoner, Petroleum Planning and Analysis Cell, Ministry of Petroleum and Natural Gas.*

IMPORTS AND EXPORTS	2013-2014	2014-2015
Petroleum products production in India	220.3 mmt	220.7mmt
Import of Crude Oil	$143 billion	$112.7 billion
Import of Petroleum products	$12.3billion	$11.8 billion
Petroleum import	$155.2 billion	$124.6 billion
Exports	$ 60.7 billion	$ 47.3 billion

Fig 2.a Import and Export of Oil and Petroleum products during FY 2013-14 and FY 2014-15

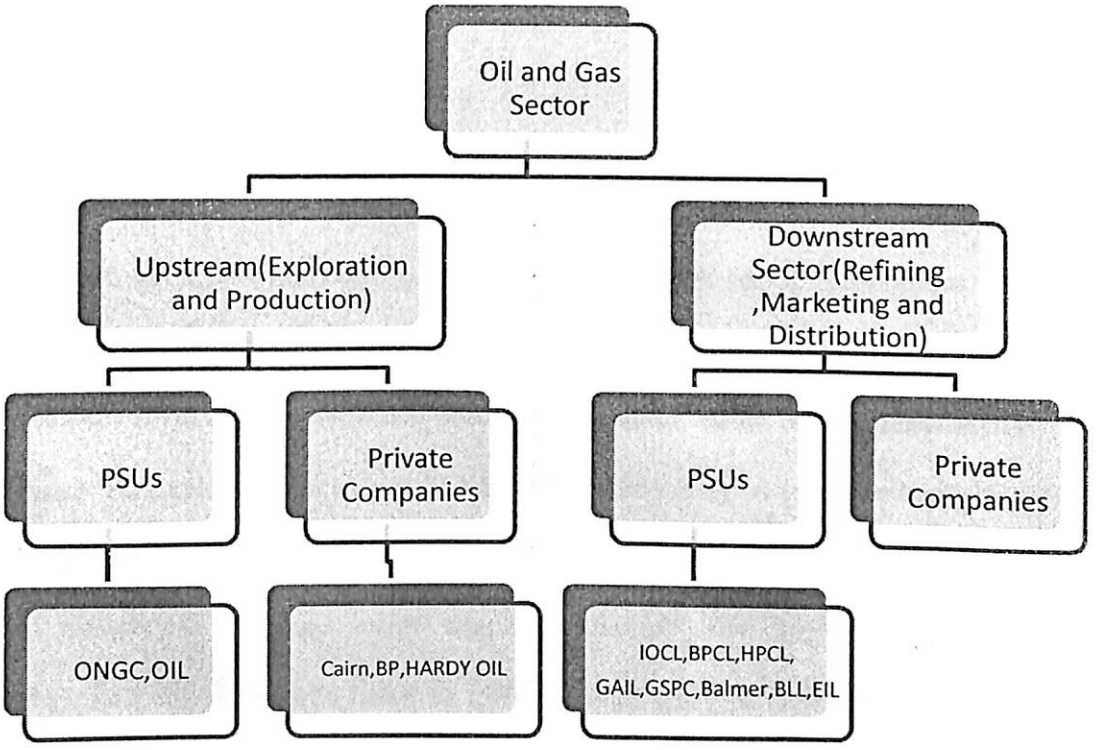
The key strategic priority for India is Energy Security. With the rising demand of energy in India it is imperative to increase the exploration and production activities in the country itself in order to fuel the overall economic growth.

The share of Indian imports in the Petroleum sector has decreased though but the growth is still not that satisfactory that can allay the apprehension of the rising import dependence which puts a pressure on current account deficit that can lead to an energy crisis in the country. Refer fig 3.a.

2.2 STRUCTURE OF OIL AND GAS SECTOR

The oil and gas sector is broadly divided into three categories according to the nature of the activities being carried out in that particular sphere viz.

- Upstream sector
- Midstream sector
- Downstream sector



[3]

Fig 2.2.a Companies carrying out upstream and downstream activities in India

[3] Private Companies both for upstream and downstream include RIL,RNRL,EOL and BG

PART I

3. BACKGROUND OF UPSTREAM REGULATION IN INDIA

The upstream sector in India was monopolised by the general public sector corporations like ONGC and OIL in pursuance to the commercial Resolution of 1956[4].In 1979 the government created its first sincere effort to encourage non-public participation within the upstream sector by provision licenses. As exploration activities had been initiated solely in an exceedingly few (15%) potential oil bearing areas and as there was delay on the part of the government to award contracts for oil exploration, the end result wasn't satisfactory. Initially, the non-public corporations appeared terribly interested however different vital entry barriers[5] verified as an obstacle to the non-public corporations. As a result, licensing rounds control between 1979 and 1995 resulted in investment of solely US$ two billion.

For the upstream sector, the GOI has proclaimed the New Exploration Licensing Policy 1997.[6] The objective of NELP has been to draw in latest technology and investment to the exploration and production phase from national and international Exploration and Production corporations.

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[4] *Source: http://www.yourarticlelibrary.com/industries/main-features-of-industrial-policy-resolution-of-1956/23438/*

[5] *NOCs could participate in the private operated fields where they had the option to share profits once it commenced production without taking part in incurring exploration costs;*
b) Unattractive fiscal terms;
c) Lack of significant finds and the slow rate of progress/delay in signing contracts

[6] *Director General of Hydrocarbons, DGH Exploration blocks under PSC, DGH, India: 2006*

4. INSTITUTIONAL FRAMEWORK OF UPSTREAM SECTOR:-

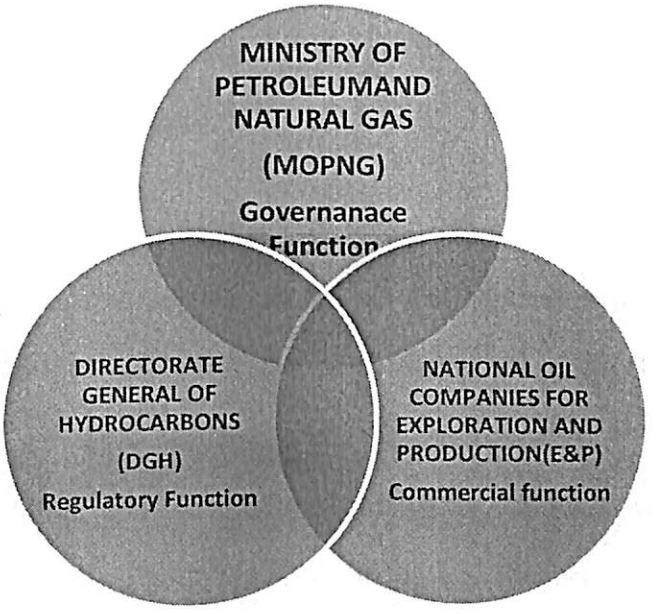

Fig 4.a

The upstream sector is largely ruled by the Ministry of Petroleum and Natural Gas, Directorate General of hydrocarbons and connected ministries. In India, the regulation and development of oilfields and oil resources, petroleum and petroleum merchandise, and different liquids and substances declared below law by the Parliament as hazardously burnable, falls below the Union List (Article 246, Seventh Schedule).

The nodal agency at the central level is Ministry of Petroleum and Natural Gas and at the state level, there square measure departments and directorates that regulate and management activities associated with petroleum and Natural Gas in onshore fields.

4.1 MINISTRY OF PETROLEUM AND NATURAL GAS

The Ministry of Petroleum and Natural gas (MoPNG) is at the helm of affairs and administers the whole gamut of activities of the Indian Oil and Gas sector. The Ministry has, beneath its aegis, setup variety of organizations to facilitate delivery of its numerous functions. The Ministry is entrusted with the subsequent functions :-

- The MOPNG is entrusted with the responsibility of exploration and production of oil and gas additionally as their purification, distribution and selling, import, export, and conservation of petroleum merchandise and Liquefied gas (LNG).
- MOPNG is a central policy-making body, other bodies (such as Centre for High Technology, Petroleum Conservation and Research Association, and Oil Industry Safety Directorate) and other central ministries (such as Ministry of Environment and Forests [MoEF], Ministry of Finance, Ministry of Power, etc.) are also involved in various aspects of the oil and gas sector.
- Planning, development and management of, and help to any or all industries prescribed by the Ministry.
- Planning, development and regulation of field services.
- Administrations of laws created for regulation the Oil and Gas Sector.
- The MOPNG additionally plays the role like that of an arbitrator in breakdown the problems between the companies and also the DGH.

The MoPNG and also the Directorate General of Hydrocarbons (DGH) — monitors offshore oil and gas resources, the responsibility and possession of onshore oil and gas reserves lies with the state governments where such reserves are to be found. To facilitate state governments in managing their responsibilities to that extent as onshore oil and gas activities are involved, a couple of state governments have established dedicated petroleum directorates to observe oil and gas activities in their states (such as in Rajasthan, Gujarat, etc.) whereas in others, the departments of business and commerce of the several states are playing such tasks (such as in Assam, Tripura, etc.).

Since exploration of oil and gas additionally as their production affects the surroundings, the involved contractor is remitted to undertake Environmental Impact Assessment studies, beneath Article 14 of the Model Production Sharing Contract (MPSC), whereby the impact of the aforesaid activity on the surroundings of the affected space is assessed intimately. These studies are administered in phases, before the commencement of bound operations. Article 14 of the MPSC stipulates the contractor to hold out two such studies. The target of the primary study is to see the prevailing scenario about the surroundings, kinsmen, flora, and fauna within the contract space and its adjacent regions. The primary study is needed to be administered in 2 components, namely, a preliminary half that should be finished before commencement of any field work about a seismographic or alternative survey, and a final half about drilling within the Exploration amount. The latter a part of the study needs approval from the government before commencement of any drilling operations. The second Environmental Impact Assessment (EIA) study has to be completed before the commencement of Development Operations approvingly from the government.

The government, on its half, can grant environmental clearances in accordance with the relevant notifications, rules, laws, and orders regarding EIA issued by the MoEF from time to time. However, where forest land is concerned, the Contractor shall need to acquire approval of the central government through the government involved beneath the Forest (Conservation) Act, 1980, and Rules created under that.

4.2 MINISTRY OF DEFENCE

As per the existing procedure, all foreign vessels, drilling rigs, barges, platforms, supply vessels, etc., engaged in Exploration and Production (E&P) activities in India are required to obtain security clearance from Ministry of Defence.

Although the oil and gas sector has been predominantly dominated by Public Sector Utilities (PSUs), in the last decade or so (especially post NELP), private players have also entered the market with most of them operating throughout the petroleum and natural gas value chain.

4.3 NATIONAL OIL COMPANIES

A National company is corporate underneath that the stake is absolutely or within the majority owned by a national government. Consistent with the an information given by the World Bank, the National Oil corporations accounts for seventy five percent of the world production and controlled ninety percent of established oil reserves .

National oil corporations are becomingly progressively active in every section of the Petroleum and Natural Gas value chain. The NOCs dominate the upstream business and are quick in increasing their operations in each middle and downstream business and also are actively collaborating within the E&P activities. The NOCs are quick in increasing their operations not solely within the domestic country however conjointly internationally, giving a fierce competition to the international oil corporations (IOCs). These national oil corporations relish the robust backing of the state governments and are well placed for a powerful growth within the future years.

In India, the list of National Oil corporations concerned within the activity of Exploration and Production area unit as follows-

- Gujarat State Petroleum Corporation
- Oil and Natural Gas Corporation
- Oil India Ltd.
- Essar Oil
- Reliance Industries
- Cairn India Ltd.

Two of the most important state-owned corporations in India are ONGC and OIL India. The National Oil corporations are suppose to perform a commercial function. India's national oil companies' pursuit of overseas acquisitions has remodeled India into a worldwide energy actor. Due to their increasing dominance over world reserves, the importance of NOCs relative to National Oil corporations (NOCs), like ONGC, OIL, or IOCL, has gone up dramatically in recent years.

4.4 DIRECTORATE GENERAL OF HYDROCARBONS-

4.4.1 CREATION OF DGH-

With effect to the resolution dated 8th April, 1993 the Government of India, in the Ministry of Petroleum and Natural Gas have under its consideration brought into existence the office of DGH with the view to have an appropriate agency to regulate and oversee the upstream activities in the petroleum and natural gas sector and also to advise the government in these areas.

The Government on the recommendations of Dasgupta Committee[7] in the year 1991 and Kaul Committee [8] decided to set up a Directorate General of Hydrocarbons under the administrative control of the Ministry of Petroleum and Natural Gas.

Before the NELP era, as stated above the Oil and gas sector dominated by National Oil Companies. One of the most important discovery was that of Mumbai High fields in 1974. The ever increasing gap between demand and supply of oil & gas provides ample investment opportunities in the Indian hydrocarbon industry.

In view of the objectives of the Hydrocarbon Vision 2025, in brief, the main thrust would be on the following activities of the upstream sector:-

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[7] *The Committee had reviewed the management of the Bombay High reservoir, had recommended the creation of an autonomous conservation board to oversee and review that oilfield development conforms to sound reservoir engineering practices in line with national interests*

[8] *The Committee had examined ONGC's organizational structure*

a) Focus on oil security through intensification of, exploration efforts and achievement of 100% coverage of unexplored basins in a time bound manner to enhance domestic availability of oil and gas.

b) Secure acreages in identified countries having high attractiveness for ensuring sustainable long term supplies.

c) Open up the hydrocarbon market so that there is free and fair competition, between public sector enterprises, private companies and other international players.

The Directorate General of Hydrocarbons has been quite successful in attaining quite a lot in the span of 19 years for which it has existed and continues to promote exploration and sound management of the petroleum & natural gas resources as also non-conventional hydrocarbon energy resources, having regard for the environment, safety, technological and economic aspects. The vision statement of DGH is reiterated underneath:-

"To be an upstream advisory & technical regulatory body of international repute, creating from the Director General's Desk value for society through proliferation & dissemination of E&P knowledge optimal hydrocarbon resources management & environment friendly practices."

As stated in the vision statement that DGH is an advisory and technical regulatory body , it has a very well reputed and skilled staff which quite appropriately not only carries out the mandate of the Government of India but has also contributed immensely in attracting foreign investment in the Exploration & Production sector through introducing attractive fiscal benefits provided through launching New Exploration Licensing Policy (NELP) in 1999 and the Coal Bed Methane(CBM) policy in 2001. The DGH by launching these regimes could bring the number of

E&P players up from the two National Oil Companies, viz. Oil India Limited and Oil & Natural Gas Corporation Ltd to 84 E&P players currently working in India.

The Government Policies have yielded desired results which can be inferred from the 11 discoveries made under NELP in the year 2011-12 and the commercial production of 0.3 MMSCMD of CBM.

Presently in India the E&P operations are spread in 19 sedimentary basin out of 26 sedimentary basins of the country both on-land and offshore including deep waters.

The DGH also takes initiatives in lieu of finding the 'yet to be found' resources. The DGH does this by upgrading the yet not or less explored basins through enrichment of geo-scientific knowledge base using state of the art geo-scientific data acquisition either through speculative route or through its own funding and efforts. This has helped in marking out larger acreages for systematic exploration for offer under NELP bidding rounds.

DGH is also entrusted with the responsibility for exploration and development of other non conventional hydrocarbon energy resources like Gas Hydrates, Shale Oil and Shale Gas etc. With the global resources for the unconventional gas excluding gas hydrates touching the 32,560 TCF mark, concentrating also on these is the need of the hour.

4.4.2 FUNCTIONS AND RESPONSIBILITIES OF DGH

DGH has been entrusted with many responsibilities such as:-

- Smooth implementation of New Exploration Licensing Policy (NELP).

- It administers matters regarding the production Sharing Contracts for discovered fields and exploration blocks,
- to form efforts to push investment in E&P sector .
- Monitoring of E&P activities together with review of reservoir performance of manufacturing fields.
- It is engaged in gap from new undiscovered areas for future exploration and development of non-conventional energy sources like Coal Bed gas (CBM) , Gas Hydrates and Shale gas.

The functions of DGH are as follows-

- to offer technical recommendation to the Ministry of Petroleum and Natural Gas on problems relevant to the exploration and optimum exploitation of hydrocarbons within the country and on the strategy of usurping exploration and exploitation of oil and gas reserves abroad by NOCs.
- to review the exploration programmes of corporations operative below Petroleum Exploration Licenses granted below the oil fields (Regulation and Development) Act 1948 and therefore the Petroleum and Natural Gas Rules , 1959 with a read to advising Government on the adequacy of those programmes;

- to evaluate the hydrocarbons reserves discovered and calculable by the operative corporations in discussion with them;
- to advise the government on the giving of surface area for exploration to corporations further as matters about relinquishment of surface area by companies;
- to review the event plans for industrial discoveries of hydrocarbon reserves planned by the operative corporations and advise Government on the adequacy of such plans and therefore the exploration rates planned and matters relating thereto;
- to review and audit at the same time, the management of petroleum reservoirs by operative corporations and advise on any middle course correction needed to confirm sound reservoir management practices in line with the optimum exploitation of reserves . .
- to manage the preservation, maintenance and storage of knowledge and samples relating petroleum exploration, drilling, production of reservoir etc. and to cause the preparation of knowledge packages for surface area on supply to companies;
- to advise Government on the birth down of safety norms and framing rules on safety in field operations, bring down pollution management measures and assist in review and periodic safety audit;
- All different matters incidental to that and such different functions as is also allotted by Government from time to time .

The major objectives for fitting of the DGH were to push sound management of the oil and natural gas resources having a balanced regard for surroundings, safety, technological and economic aspects of the exploration activity.

Since its beginning, the DGH has been aiding the govt. in each written agreement and technical matters.

5. SCOPE OF LEGISLATION AND LAWS GOVERNING UPSTREAM SECTOR-

The Constitution of India is said to be 'lex loci' that is the law of the land-the supreme law. A law will be smitten down as being unconstitutional as a result of lack of legislative competency or as a result of it violates basic rights. Decisions of the Union or State government, as well as decisions of statutory authorities, constitutional functionaries and quasi-judicial authorities could also be challenged under the Constitution.

Rules, laws, notifications and circulars glided by authorities below the relevant statute may additionally be challenged on the bottom that an equivalent violates the Constitution. The Constitution empowers, and also the Supreme Court has recognized, authorities created below a statute to delegate bound functions to subordinate authorities. To facilitate within the effective implementation of presidency policies bound government authorities have the facility to pass rules and laws that have the force of law that are subordinate to the parent law and can't transgress the boundaries come into being by the parent law.

The settled law is that the authorities acting in furtherance of a statute should perform their functions during a manner that best achieves the objectives of the statute. These principles are designed to minimize the scope of discretion and eliminate capriciousness in government action. The decisions of those authorities will be challenged within the appellant authority.

It is quintessential to note that in the process of challenging the decision of a statutory authority, generally the scope of appeal is further limited to the fact that there is a high degree of deference by courts. The Supreme Court of India has further recognized in matters about policy, courts should not interfere unless capriciousness is obvious within the decision making process. Even in cases wherever intervention of the court is even, the court would solely examine the decision creating method and not the decision itself. These principles are applied even within the context of gas pricing and performance of contracts within the Oil and Natural sector.

It is pertinent to note that the act of creating a regulation is a legislative action wherein the policy making is an executive function .A regulation is a form of delegated legislation wherein a policy is a directive by the executive For instance, NELP is a policy initiative by the Ministry of Petroleum and Natural Gas the effective implementation of which is the responsibility of DGH.

The bone of contention here is the fact that onus of implementing the policy lies on the DGH which in itself is born out of a resolution and not a statutory regulator. Such a void, which is an innate flaw in the design of the regulatory mechanism leaves room for ministries and governments to interfere in the effective working the regulatory mechanism in upstream sector.

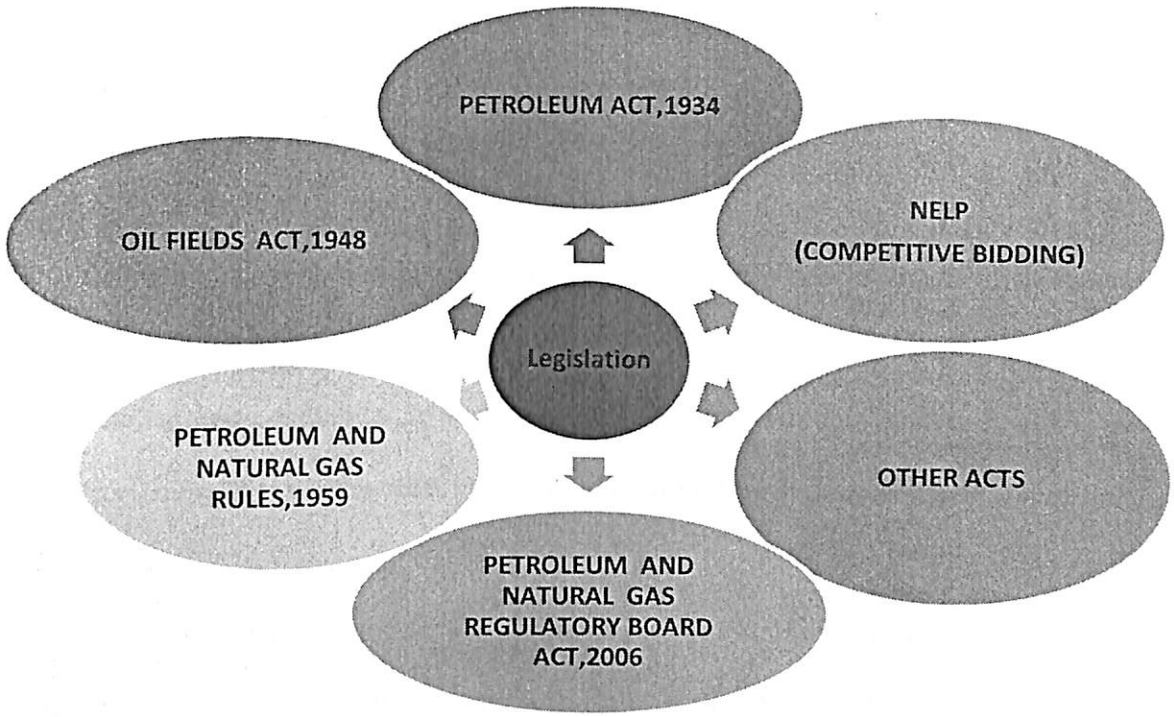

Fig5.1.a Laws governing upstream sector

5.1.1 The Oilfields (Regulation and Development) Act, 1948 :

This Act provides for regulation of oilfields and for development of oil resources within the upstream sector. Below this Act, Government of India is authorized to grant mining rights for

the exploration and production of oil and gas in India and levy royalty on the assembly of petroleum and gas.

The main provisions are as follows:

- All mining leases ought to be granted in accordance with this Act (mining lease includes exploration);
- Any mining lease contrary to the present Act shall be void and of no effect;
- GoI has the facility to create rules in respect of conservation and development of mineral oil; and
- The holder of a mining lease needs to pay royalty in respect of any oil mines, quarry, excavated or collected by him from the hired space as per the desired rates[9]

5.1.2 Petroleum and Natural Gas Rules, 1959 :

These Rules are made by Government of India in exercise of the powers conferred by section 5 and section 6 of The Oilfields (Regulation and Development) Act, 1948, regulating the grant of exploration licenses and mining leases in respect of petroleum and natural gas which belong to Union of India, for its development and conservation. These Rules provide for two types of rights-

- The Petroleum Exploration License
- The Mining Lease

[9] *Competition in India's energy Sector by TERI: Final Report June 2003*

both for onshore and offshore blocks. A license or lease in respect of land where ownership vests with the State Government is granted by the State Government with the prior approval of GoI. The licence or lease is granted for a specified period against prescribed payment, in accordance with the terms and conditions detailed in the Act and the Rules. In the event of a petroleum discovery, the Petroleum Exploration Licence is converted into a Mining Lease. The Mining Lease grants exclusive rights to exploit hydrocarbons, subject to limitations on the mining area, terms and conditions specified, and payments, as provided for in these Rules. GoI is empowered to grant a license or a lease in respect of any land or mineral under the ocean within the Territorial Waters or the Continental Shelf. The Rules relating to award of mining rights through lease are on the same basis as for onshore areas.

5.1.3 The Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976

This Act defines the sovereign right of India over territorial waters upto 12 nautical miles measured from the appropriate baseline, to the seabed and subsoil underlying, and the airspace over such waters. Union of India also has sovereign rights for the purpose of exploration, exploitation, conservation and management of natural resources in the Exclusive Economic Zone, which includes the Continental Shelf and extends upto 200 nautical miles. It also exercises exclusive jurisdiction in respect of authorizing all such operations as are necessary for the exploration and exploitation of the resources of the Zone. The Union of India is further empowered to extend the jurisdiction of any of the existing laws of India to the Exclusive Economic Zone. In pursuance of these powers, the Government of India has extended the applicability of the Income Tax Act, 1961 to operations carried out within the Continental Shelf, and the applicability of the Customs Act, 1965 to specific coordinates within the Zone.

5.1.4 The Oil Industry (Development) Act, 1974

This Act provides for the development of board for the development of oil industry and for the levy of a duty of excise on the production of crude oil and natural gas. Amongst its other functions, the Oil Industry Development Board (OIDB) established under the aegis of this Act has the powers to extend financial and other assistance for the development of the oil industry. Such assistance includes making grants, advancing loans, providing guarantees, underwriting shares and subscribing to the stock of any oil industrial concern. The Act provides for constitution and establishment of Oil Industry Development board. The board prescribes the condition of service of members etc.

5.2 NEW EXPLORATION LICENSING POLICY:

The GOI announced the NELP in order to provide a level-playing field to all the players for award of exploration acreages. Under the NELP, the national oil companies were not given blocks on nomination basis by the government but were now required to obtain the blocks. Interested parties could bid directly without mandatory participation of NOCs and carried interest [10]of the Government/NOCs. The companies were now given a seven year tax holiday from commencement of commercial production. This policy, NELP was approved in 1997 and it

[10] *Carried interest: Carried interest was exercised by NOCs only after commercial discovery. In pre-NELP rounds NOCs had the right to take upto 40% share in all offered blocks (mandatory 10% in the beginning and 30% after commercial discovery).*

became effective in February, 1999 Since then licenses for exploration are being awarded only through a competitive bidding system and National Oil Companies (NOCs) are required to compete on an equal footing with Indian and foreign companies to secure Petroleum Exploration Licences (PELs). Nine rounds of bids have so far been concluded under NELP, in which production sharing contracts for 254 exploration blocks have been signed.[11] The salient features of NELP are as follows :

- The possibility of the seismic option in the first phase of the exploration period.
- Foreign participation upto 100%.
- No minimum expenditure commitment during the exploration period.
- No signature, discovery or production bonus.
- No mandatory state participation.
- No carried interest by National Oil Companies (NOCs).
- Income Tax Holiday for seven years from start of commercial production.
- No customs duty on imports required for petroleum operations.
- Biddable cost recovery limit upto 100%.
- Option to amortise exploration and drilling expenditures over a period of 10 years from first commercial production.

[11] *Source : http://petroleum.nic.in/docs/nelp.pdf*

- Royalty for on land areas payable at the rate of 12.5% for crude oil and 10% for natural gas. For offshore areas, royalty payable at the rate of 10% for oil and natural gas. Royalty for discoveries in deep-water areas beyond 400 m iso-bath chargeable at half the applicable rate for offshore areas for the first seven years of commercial production.
- Fiscal stability provision in the contract.
- Freedom to the contractor for marketing of oil and gas in the domestic market.
- Provision for assignment.
- Arbitration and Conciliation Act, 1996, based on UNCITRAL model, applicable.
- To facilitate investors, a Petroleum Tax Guide (PTG) in place.
- Companies are free to bid for any number of blocks, singly or in consortium
- The company is required to give preference to the use of Indian goods and services subject to quality, schedule, availability and competitive pricing. It also has to give preference to employment to qualified Indian national[12]

5.2.1 NELP I to NELP VIII

NELP I

Under New Exploration Licensing Policy's round one the Government of India invited bids in January 1999 for 48 blocks for exploration of oil and gas. The PSC's were signed for 24 exploration blocks comprising 7 deepwater, 16 shallow offshore and 1 onland. At present 9

[12] http://dghindia.org/nelp_background.html accessed on 21st February 2006.

exploration blocks are under operation and 15 blocks have been relinquished.[13]A total of 16 discoveries have been made in two KG Deepwater blocks and one shallow offshore block in Mahanadi NEC. These discoveries include world class gas discovery made by the RIL-Niko Resources Consortium in 2002 in the Krishna Godavari basin deepwater block. The other two include the gas discovery made by the Scottish Company Cairn Energy in 2001 in the deepwater block and gas discovery by RIL in the Mahanadi NEC shallow offshore area.

NELP II

Government of India invited bids in December 2000 for 25 blocks for exploration of oil and gas. The PSC's were signed for 23 exploration blocks comprising 8 deepwater, 8 shallow offshore and 7 onland. At present 4 exploration blocks are under operation and 19 blocks have been relinquished. Three discoveries have been made in two blocks located in Cambay basin which were offered under NELP II. Natural gas was struck in GSPCL discovered oil and Niko Resources.

NELP III

The Government of India invited bids in March 2002 for 27 blocks for exploration of oil and gas. The PSC's were signed for 23 exploration blocks comprising 9 deepwater, 6 shallow offshore and 8 onland . The exploration activities are going on in all the 23 awarded blocks.

NELP IV

The Government of India invited bids in May 2003 for 24 blocks for exploration of oil and gas. A total of 12 domestic and seven foreign companies participated in bidding. The PSC's were signed for 20 exploration blocks. At present 19 exploration blocks are operating out of which 9

[13] NELP VIII http://www.indianelpviii.com/content/About/about.jsp

are deepwater and 10 are onland. The exploration activities continue to be carried in all19 blocks.

NELP V

The Government of India invited bids for 20 blocks for exploration. The PSC's were signed for all 20 exploration blocks. The exploration activity continues to be carries out in all 20 blocks.

NELP VI

In the sixth round of NELP VI fifty five blocks (55) were offered .The PSC's were signed for 52 exploration blocks comprising 21 deepwater, 6 shallow water and 25 onland. The exploration activities are being carried out in all blocks.

The bids were the highest ever received for 52 blocks under NELP VI. In all, 66 companies - 35 foreign and 31 Indian - bid either together in consortia or their own.This was one of the most successful rounds of NELP

NELP VII

The Government of India offered 57 blocks for exploration in this round. The blocks included 18 prospective sedimentary basins consists of 29 Onland, 9 Shallow Water and 19 Deep Water blocks.

NELP VIII

The Government of India has signed 31 PSCs in June 2010. A total of 70 blocks were offered.

NELP IX

The Government of India offered 33 blocks in total during the bidding process.

5.2.2 DRAWBACKS OF NELP

The NELP regime was launched with the target of accelerating the foreign non-public bids. Though there contains a rise within the statistics of foreign non-public investment however the result's lesser than what it absolutely was anticipated. The shortcomings in NELP is as a result of 2 reasons-

- Due to style flaws within the NELP bidding method and
- Due to the perception among IOCs that India's earth science may not be a prospective.
- The lacunae of not having a single-window clearance thus discourages the foreign investors.

5.3 OPEN ACREAGE LICENSING POLICY –road ahead

Open Acreage Licensing Policy ("OALP") has been long due. Since a really long term there are speculations that open licensing for exploration and production rights can acquire force replacement the prevailing NELP regime.

Until now nine NELP rounds have already taken place. The NELP is criticized for its failure to draw in widespread participation by giant international oil and gas operators, specially NELP VIII and IX. As per the Directorate General of Hydrocarbons, a significant requirement for golf

shot OALP in application is to first have a National Data Repository in situ. The DGH has already began to work on it.

Under this regime the businesses would get the choice to pick any block on supply any time not like the NELP, wherever the government puts a selected space up for bidding.

6. LACUNAES IN EXISTING REGIME-need for an independent regulator

6.1 CONCEPT AND EVOLUTION OF A REGULATOR-

It need not be mentioned that days of easy oil and gas are over and exploration and production business is a highly technologically driven one and needs huge investment and continuous knowledge up gradation. When I talk about Regulation or regulatory practices in a country to regulate a specific sector, I shall start with the evolution of Regulatory practices which date back to 1670s where regulatory practices for products and services which were of public utility and affected public interest were regulated. The whole concept started with the treaties of Sir Mathew Hale in 1670 where ferryboats and wharves were regulated. After that came the two part test for regulatory practices in the case of Munn v.Illinois. The two part test was called the public utility test and was to check whether a particular commodity was a public necessity and whether there was a monopoly for the product or service. The test of necessity was to check when property devoted to public use, the owner in effect grants to the public an interest in that use and must submit to be controlled by the public for common good. The concept of monopoly in the test was that the enterprise which the public itself might undertake or whose owners relies on a public grant or franchisee for the right to conduct such business. This followed the birth of Regulations for controlling the goods and services which were of public utility. The major

principles of the Regulations governed then grant for a franchisee, substitute for competition and regulatory compact. The key elements of the Regulations were reasonable returns on investments, overall reasonableness standards to be maintained, reviewing of service and product quality, control over reliability and eminent domain. Due to harsh and strict regulations and the regulatory control with the public, these enterprises started to fail and leave business creating a gap in the demand supply chain.

The alternatives methods that evolved after such market crash were the cooperative movements, then the municipal power where the Government of the territory had all the power and authority over public utility products and services. This continues for long and the State Governments and the National Governments started taking charge of all public utility services. Now with the society growing at an ever-growing pace and increasing needs of the people with an evolving standard of life style or standards of living the Governments were under high pressure. The entire economy of the nation started depending on the energy sector because that was the major reason for industrial growth and the revolution and the globalization the world was experiencing. The whole geo-politics, development and growth depended on the energy scenario in the country and also oil and gas became the lifelines of a country's economy.

Understanding that the delivery of oil and gas and power to the public were important and also that the standard of living of a nation was also majorly based on the same. Competition in the international markets was making the markets unstable and the world was thirsty for energy. Now keeping the further work specific to India and an increase in the demand-supply to fulfill its people's needs, the need for energy products was the highest and was the most important reason for an increasing need for investment in the energy sector. With the increase in demand for such public utility products and services the Government and the Government Companies started

creating a monopoly as all energy and power was under Government control but again it could not satisfy the needs of the people. The major reason for such failure was the need for developing the infrastructure as well. Also the Government started realizing that for keeping pace with the development in the world energy sector has to be developed.

6.2 NEED OF A REGULATOR

India is the fifth largest consumer of primary energy and the third largest consumer of oil in the Asia–Pacific region after China and Japan. Due to high economic growth, and an increasing gap in the demand and supply, there is a huge need for enhancing supply of energy resources mainly Petroleum and Gas and power and regulating them. With the burgeoning domestic demand for energy, and resulting increase in household energy consumption, demand for automobiles and industrial usage of petroleum fuels, the demand for refined petroleum products and power has increased steadily over the past few decades and the present situation shows a picture that the trend is likely to continue.

As measured by GDP at a factor cost, the oil and gas sector in India contributes to 2.44% to the total output generated in the country. The sector gives employment to 1360000 people in the nation across the value chain.[14] Further the sector plays an important role in the international market as it contributes 33% and 20% of the country's total imports and exports, respectively. Oil and Gas account for 39% and 9% of the primary commercial energy supply in the nation, coal taking the lead.

[14] *The Energy and Resources Institute, TERI Energy Data Directory and Yearbook (TEDDY), (Teri New Delhi, 2013),*

In the paper I shall be focusing on the need for a Regulator, whether the Regulator should be independent, upstream sector .Regulators which are completely under the administrative control of the Government are said to be independent

By the end of the dissertation we will realize that Policy framework with a broader approach is the need of the minute and also complete independence of the regulators is mandatory to achieve the targets India has a vision of.

Effective, unbiased, and stable regulation within the oil and gas sector is critical for making certain just and economical development of the world. The oil and gas sector in India has, for the past many years, suffered from a regulative deficit, that has been mirrored in numerous problems within the sector that are wide debated and mentioned. Additionally to the problems mentioned here, there are numerous different cases wherever regulative deficit was determined however these are resolved over time.

The DGH carries out the role of an advisory body by advising the Government on matters pertaining to the upstream sector; however, it still cannot be called as an independent regulatory body. In this context, the Integrated Energy Policy (Planning Commission, August 2006) states that '*the current upstream regulation provided by DGH is neither independent nor comprehensive in a technical sense with respect to optimal development of the hydro-carbon resources*'. As for the downstream sector, the Government has set-up a Petroleum & Natural Gas Regulatory Board (PNGRB), which would oversee and regulate the refining, processing, storage,

transportation, distribution, marketing, and sale of petroleum products and natural gas, under the PNGRB Act 2006.[15]

From time to time various committees have been set-up which have expressed their view in regard of having an independent statutory regulator for upstream. Some suggested for strengthening the role of DGH, some suggested for making it an independent regulatory authority or making it a multi-member committee for enhancing the effectiveness and authority of DGH.

Following are the excerpts from various committee reports-

6.3 EXCERPTS FROM NARESH NARAD COMMITTEE

The Naresh Narad Committee was set-up to look at the requirement for fitting an upstream hydrocarbon regulatory authority. The committee stressed on distancing regulation from government. When this committee reports were tabled, the chance of getting an independent upstream regulator was deciphered and also steps were taken to set-up an independent regulator in downstream sector that is the now Petroleum and Natural Gas Board. Until currently there now there's no statutory upstream regulator.

The committee explicity said that since its origin, the DGH has been aiding the government in each written agreement and technical matters. Of late, there has been an incredible increase in its work. With the sign language of an outsized range of production-sharing contracts under the seven NELP rounds, and lots of blocks reaching the event and production stage, the character of labor has conjointly varied.

[15] *Refer to PNGRB Act,2006*

The DGH currently has got to advise and judge on a good style of problems together with industrial, audit and legal ones. However, the establishment lacks senior functionaries at the decision-making level, significantly within the non-technical disciplines. As a result of this, several industrial aspects could have at large shut scrutiny.

Therefore ,the Naresh Narad Committee in 2001, counseled the Upstream hydrocarbons regulatory Board be established, with a techno body role for DGH as an area of ministry.

6.4 EXCERPTS FROM EXPENDITURE REFORMS COMMISSION 1999-2000

The Expenditure Reforms Commission was initiated by the Ministry of Finance during the year 1999-2000 with the aim to cut down the excessive growth of non-developmental expenditure carried out by the government which has been the major cause for a crisis in the financial status of the country. Therefore, while presenting the Budget for 1999-2000, the Hon'ble Minister for Finance under government of India decided to set up Expenditure Reforms Commission in India as a tool for combating this unnecessary expenditure. Also, while establishing this commission, the finance minister proclaimed about appointing an eminent and experienced person apt for carrying out this task. There would be a complete restructuring of the administrative unit of the expenditure department under Government of India.[16]

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[16] *See http://business.mapsofindia.com/finance-ministry/expenditure-reforms-commission.html#sthash.2HPqNdCd.dpuf*

The Expenditure Commission in its sixth report suggested that

"proposing to create a statutory authority for regulation of reservoir matters".

The report also stated that the need for an independent statutory authority for regulation of reservoirs has arisen from the fact that the government continues to be the owner of the Hydrocarbon resources under the authority of the Constitution and the operators only being leaseholders. It is, therefore, need of the hour to have an independent authority or in that capacity DGH in public interest to ensure compliance with sound reservoir engineering and management practices; this matter is too crucial to be left on to the industry for self-regulation.

The functions of DGH as stated in the above sections also includes central storage of essential data etc., which have a commercial value and are also matters of public interest which should rather be under need to be under government control than DGH.

6.5 EXCERPTS FROM INTEGRATED ENERGY POLICY,2006

The Integrated Energy Policy,2006 is an expert committee set-up under the chairmanship of Kirit S. Parikh under the direction of the Prime Minister by the Government of India, Planning Commission in August ,2006. The main issues to be addressed under this report was

- Consistency in policies governing various forms of Energy.

- Pricing of Energy.
- Energy Security
- For addressing environmental concerns.
- Research and Development in Energy sector.
- Energy Conservation.

The expert committee put thrust on the need of having an independent regulator both in upstream and downstream sector.

As stated in the above sections the Directorate General Hydrocarbons (DGH) is a technical arm of the Ministry that oversees allocation and exploitation of oil & gas reserves and enforces profit sharing with exploration & production companies. The Expert committee therefore suggested that the current arrangement needs to be strengthened and made independent.

As a matter of fact the upstream sector is dominated by large Public Sector Companies and some sub-sectors have natural monopoly characteristics potentially offering economies of scale which in fact hinders competitive efficiency.

Thus it was recommended in the report that:-

1. *"The regulatory responsibility/functions of the State are separated from the Ministries that control the Public Sector Units dominating the energy sector; and*

2. *Till effective competitive markets emerge, independent regulators should fix prices or price caps to mimic competitive markets above. Even when competitive markets emerge, the regulators' role will continue to remain important."*

The integrated energy policy is hence based on the premises mentioned :-

The report stated that the role of an Independent Regulators is crucial and important. It further stated that regulation alone cannot give efficient outcomes if not complemented with an efficient industry structure. For example, experience in electricity sector has shown that good regulation under a proper industry structure can mimic competition.

It further stated that mere presence of competition does not negate the need for independent regulation – it only revamps the scope of regulation.

The expert committee suggested to institute an independent regulatory body to regulate upstream allotment and exploitation of available coal blocks to yield coal, coal bed methane, mine mouth methane, coal to liquid and for in-situ coal gasification.

The functions of the proposed Regulatory body are as follows-

- *The proposed Regulatory Body would, as an interim measure, approve coal price revisions, ensure supply of coal to the power sector under commercially driven long-term FSTAs, facilitate the development of formulae/indices for resetting coal prices under*

long-term fuel supply agreements, monitor the functioning of the proposed e-auctions, ensure that the price discovery through e-auctions is free of distortions,

- *regulate trading margins, develop a mechanism for adequate quantities of coal imports under long-term contracts to bridge the gap between supply and demand thereby assuring that the e-auctions and consequent price discovery does not take place in a supply constrained market and, finally, create the environment for a competitive coal market to operate.*
- *A key responsibility of the Regulator would be to make India, with the third largest reserves of coal in the world, a long-term player in the highly liquid international market for coal that realises long-term trades under well tested indices such as the Japan coal import index.*
- *The proposed Regulator must facilitate replacement of current coal linkages for power plants with FSTAs. As a step towards abolishing coal linkages completely, these linkages could be made tradable in the first instance. This is expected to make coal movements more optimal and responsive to market forces.*
- *The Regulator must ensure that mines are planned, designed and developed in a scientific manner giving due importance to coal conservation thereby maximising percentage of coal recovery from geological blocks.*
- *The Regulator must standardise norms of operation, establish benchmarks and ensure that coal companies raise their level of competence to be at par with international standards."*

The report also suggested that there is a need to have an independent regulatory body to regulate upstream allotment and exploitation of available oil and gas reserves. .

6.6 EXCERPTS FROM ASHOK CHAWLA COMMITTEE ON ALLOCATION OF NATURAL RESOURCES,2011

The Ashok Chawla committee was constituted vide Cabinet Secretariat Office Memorandum (OM) dated January 31, 2011 to deliberate on measures required for enhancing transparency, effectiveness and sustainability in utilization of natural resources. The Committee took into consideration the following matters:-

- identifying key natural resources being allocated by Government;
- examining the efficacy and suitability of existing legal and regulatory framework and rules being employed in the allocative processes;
- make recommendations for enhancing the sustainability, transparency and effectiveness of the allocative processes;
- to suggest changes in the legal, institutional and regulatory framework to implement the above recommendations.

The Committee reports has recommended the following:-

- To follow a competitive bidding route for allocation of coal blocks,
- Switch to open acreage licensing policy for allocation of oil and gas blocks,
- To make the minutes of meetings of the Standing Linkage Committee (Long Term) pertaining to allocation decisions on coal public.
- To public domain the minutes of the managing committee (MC) for oil and gas blocks

- To make Directorate General of Hydrocarbons (DGH) an independent entity.

The committee suggested that for the petroleum and gas sector, there should be more public disclosure of issues relating to investment audit and exploration commitments and address concerns about the asymmetry in past bid monitoring. It has strongly pitched for greater disclosure of existing approval processes, such as meetings of the MC on the lines of Norwegian Petroleum Directorate wherein the documents approved by the Management Committee are put in public domain.

The Committee has also suggested to move from NELP regime and switch to Open Acreage Licensing Policy (OALP) for allocation of oil and gas blocks in a move that could bring exploration and production business environment on par with global standards.

6.7 EXCERPTS FROM VIJAY KELKAR COMMITTEE ON ENERGY SECURITY,2014-

The Vijay Kelkar committee on energy security has projected the subsequent recommendations-

• a set of institutional and body reforms, as well as establishment of an authorized committee on energy (CCE) and

• To convert Directorate general of hydrocarbons (DGH) into an independent regulatory both and vest in it with quasi-judicial powers like that of SEBI so as to facilitate exploration and production activity within the country and cut back import dependency within the petroleum sector.

The Committee urged to institute associate Cabinet Committee on Energy Efficiency(CCE) for policy formulation and therefore the integration of energy connected problems. The intention of the Committee behind such a suggestion was the existence of multiple ministries and agencies that square measure presently concerned in managing energy connected problems, presenting challenges of co-ordination and optimum resource utilization, thence undermining efforts to extend energy security. It urged that the CCE to be chaired by the Prime Minister, ought to include the Union Ministers of Finance, Power, Coal and Renewable Energy, External Affairs, setting and Forests and oil and Natural Gas; Chairman, Department of Atomic Energy; National Security Advisor; cabinet Secretary and Principal Secretary to the Prime Minister. The CCE is maintained by the agency that's the successor to the design Commission. .

Further the committee urged that the DGH ought to become an independent regulator for the upstream oil and gas sector nowadays, the multiple roles of policy maker, regulator and operator cause conflicts of interest and dampen investors confidence within the sector. This creates the requirement for an independent and clear regulative mechanism. Hence, the DGH ought to be transitioned from its current role of being an authority to being an independent regulator for the upstream oil and gas sector.

Next it urged to relinquish DGH such powers, as given within the case of SEBI. It urged that similar judicial powers in the course of a proceeding court for quick and effective dispute resolution ought to be granted to the DGH. The standing of the pinnacle of the DGH ought to be at par therewith of different authorized regulator heads within the country, like SEBI, TRAI etc.

To ensure that the DGH will operate effectively, it ought to be authorized with an independent finance and staffing mechanism. The funds needed for day to day operations should be created accessible mechanically, on a conventional basis, through the OID (Oil Industrial Development) cess.

The DGH ought to be established as a multi-member, multidisciplinary body with skilled groups that have experience in numerous domains like legal, environmental, money and technical. The DGH ought to any have the pliability in its charter to access international specialists, and maintain a permanent cadre at competitive remuneration rates.

The DGH ought to even be developed as a data center or data hub that acts as a data repository for best practices, geo-scientific information on Indian basins (through creation and maintenance of NDR), progressive technologies accessible domestically or globally etc. The Office of the DGH should have a hard and fast tenure of 5 years and retirement age as per the norms of different similar regulators. Strengthening the role of PNGRB Initiatives to strengthen and empower the downstream regulator, PNGRB (Petroleum and gas regulatory Board), should be taken on the lines of the initiatives for the DGH. PNGRB should be supplied with an independent cadre of employees with competitive remuneration and access to skilled specialists. This may facilitate in building the desired capabilities for effective sector regulation.

PART II

7. THE CONCEPT OF REVOLVING DOOR

In politics the **"revolving door"** is a movement of personnel between roles as legislators and regulators and the industries affected by the legislation and regulation.

In some cases, the roles are performed in sequence but in certain circumstances may be performed at the same time. Political analysts claim that an unhealthy relationship can develop between the private sector and government, based on the granting of reciprocated privileges to the detriment of the nation and can lead to regulatory capture.

Governments hire industry professionals for their private sector experience, their influence within corporations that the government is attempting to regulate or do business with, and in order to gain political support (donations and endorsements) from private firms.

Industry, in turn, hires people out of government positions to gain personal access to government officials, seek favorable legislation/regulation and government contracts in exchange for high-paying employment offers, and get inside information on what is going on in government.

The lobbying industry is especially affected by the revolving door concept, as the main asset for a lobbyist is contacts with and influence on government officials. This industrial climate is attractive for ex-government officials. It can also mean substantial monetary rewards for the lobbying firms and government projects and contracts in the hundreds of millions for those they represent.

7.1 DGH AS REVOLVING DOOR

Although the DGH has been entrusted with the task of overseeing the holistic development of the upstream oil and gas sector — and is envisaged to evolve as the technical regulatory body for the same — it, however, falls under the administrative control of MoPNG. Moreover, the absence of a statutory status limits its powers, which reduces the effectiveness of the functioning of the DGH.

Further, concerns have been raised regarding the composition and independence of the members of the DGH, since they are mostly appointed on deputation from oil companies whose activities fall under the regulatory purview of the DGH. DGH is currently manned by employees of national oil companies (NOCs) including ONGC who work on deputation basis.

This deputation policy is leading to certain types of conflict of interest. As put by a DGH official,

"the employees of NOCs during their functioning in the management committees have an access to the various classified information about the operations of the contractors of production sharing contracts (PSCs) and this vital information could be utilized by NOCs when such officers go back to their parent cadres and is being objected to by various operators operating under

PSCs[17]."

According to an operator, such risk gets aggravated when NOCs draw blank in making discoveries on the level-playing field.

The only way out in such a case is separation of the roles of the policymaker (the oil ministry), the regulator and the operator.

7.2 RECOMMENDATIONS OF ASHOK CHAWLA COMMITTEE ON DGH AS REVOLVING DOOR:-

The Ashok Chawla committee pointed out the concept of revolving door. It stated that

"Such a revolving door policy is not congruent with neutral regulation"

The committee had argued that the current system of overseeing oil and gas blocks with the help of a Management Committee was opaque, prone to manipulation and did not appear to be independent. The committee further said that the decisions of the Management Committee as well as their rationale should be made public - a practice already followed by regulators in Norway.

The committee also asked the government to shut the 'revolving door' that allows oil industry executives to work at the Directorate General of Hydrocarbons on deputation and go back to their firms.

[17] *http://articles.economictimes.indiatimes.com/2012-02-24/news/31095522_1_gas-fields-oil-ministry-dgh-sibal)*

PART III

8. NORWEGIAN PETROLEUM DIRECTORATE

The Norwegian Petroleum Directorate (NPD) is chargeable for regulation the activities of the petroleum industry in Norway. Norway, with tested reserves of 10.2 billion barrels of oil, that is that the third-largest bourgeois of oil and gas within the world. The *Oljedirektoratet* has often been adjudged *as* one of the best petroleum regulatory bodies in the world. While the DGH operates on similar principles as the NPD, its powers have, however, been limited to technical advisory roles. On the opposite hand, the NPD is authorised to stipulate rules and create selections within the sector.

The Oljedirektoratet's isn't a wholly independent entity -- its powers area unit outlined by policy parameters set by Norway's Ministry of Petroleum; Energy and also the two have a synergistic relationship, operating in synchronize with one another on most problems.

The Norwegian regulator's extent, however, isn't restricted simply to overseeing petroleum activities, however additionally encompasses the gathering of petroleum taxes on behalf of the finance ministry.

The Oljedirektoratet's responsibility extends to evolving efficient exploration and production practices, coordination across production licenses and within the building and dissemination of information on the petroleum business.

The protection and setting responsibilities of the Oljedirektoratet metamorphosed into a petroleum Safety Authority Norway (PSA), that currently functions underneath the labour

ministry. As so much as India is bothered, it's not the intensive caveats contained within the PSC that are a cause for concern for personal operators -- the provisions are sculptural on the lines of comparable contracts in different countries -- it's the interpretation and implementation of those caveats that causes issues.

9. SUGGESTIONS

As it has been discussed , in the former parts of the report about the absence of an independent regulator in the upstream sector. The aforesaid issue has been discussed time and again in various reports, the excerpts from which are discussed in the Part I of the report for the perusal of the reader. The author is going to loosely classify her opinion in such a way in which three questions shall be answered viz.

- Why after so many industrial revolutions also the upstream sector is still devoid of an independent regulator?
- Can DGH be made an independent regulator?
- If yes, what changes are required to be made in the design of DGH leads to an effective an independent mechanism?

To answer the first question as to why until now the upstream sector is devoid of an independent regulator can be supported with the view that the government itself has a "vested interest" in the hydrocarbon resources. A vested interest can be defined as "*a personal reason for involvement in an undertaking or situation, especially an expectation of financial or other gain.*"

Recommendations for creating an independent upstream regulator have been made by various expert groups and committees over time — the latest among them being the Chawla Committee (Cabinet Secretariat, 2011). The MoPNG has however dissented to this suggestion stating that the government, as the owner of the natural resources (in this case, oil and gas), has a major role to play in their management and development and therefore, establishing an independent regulator may not be tenable. It is therefore very clear that the government doesnot intend to give up its upper hand in the hydrocarbon sector. The failure of still not having a Upstream Hydrocarbon Regulatory Board which was recommended by the Naresh Narad Committee in 2001 or the act of keeping the Committee on Allocation of Resources,2011 in the corridor of powers to dust are some specimen of non-willingness of the government to make such reforms. The multiple roles played by the government in the regulation of upstream sector is a choice and not a necessity.

Can DGH be put in place of an independent regulator-

In my opinion the conception of statutory regulator-coupled with statutory appellant authority has become a customary model of managing reforms in many sectors beginning with medium services. As far as upstream sector is concerned the MOPNG is that the central agency that regulates upstream sector as of now.

The role of MOPNG is all pervasive in the upstream sector. As discussed earlier, that upstream sector is governed by the MoPNG with DGH as its technical and regulatory arm. Therefore, ultimately its the government which actually influences the regulatory mechanism. Some of the instances are as under:-

- MoPNG could be a party to contract and owns national oil firms (NOCs) with competitory interests. MoPNG can as an example delay/stop a choice in management committee (MC) through its representatives, without concern of violating PSC which needs its approval in a very restricted timeframe.

- MoPNG sits in the MC, it sets the policies, discharges them and owns the NOCs. Wherein the the government representative on MC sought to facilitate and expedite the outcomes. It should rather manage National Data Repository (NDR) and timeline problems with varied arms of the govt.

- The MOPNG holds lesser quantum of technical knowledge about the upstream sector as compared to DGH which has more than 15 years of techno-legal experience hence DGH should be put in place of an independent regulator instead of MOPNG who just another tentacle of the government.

- The government's reservoir management has conjointly been poor

Therefore, a need to have of an independent regulator is felt. The functions of regulator ought to be restricted to acquiring properties, reservoir management, HSE practices, ruling on violation of PSC provisions, and timeline violations by operators and government agencies. Regulator cannot be sitting MC, the decision-making body, whose functioning it regulates. Also, the important element for the regulator's success is its independence, authorisation, clarity of role, and specialize in necessities an arm's length distance from all alternative entities is crucial.

Here the example of electricity sector can be given in support of the contention. During 1990s the power sector of India was facing country-wide financial crisis. To resolve the same during 1996, a Common Minimum National Plan was evolved by the Central Government in consultation with State Governments to tackle the stagnation of growth in the power sector. This paved way for reforms in the electricity sector which led to the enactment of the Electricity Regulatory Commissions Act, 1998, interalia providing for establishment of Central and State Electricity Regulatory Commissions (CERC and SERCs) to distance governments from the power sector, esp. the tariff determination process which after the enactment of the 1998 act became sole prerogative of the Regulatory Commisisons, further, nine states also enacted their Reforms Act to provide framework for restructuring of the SEBs.

Subsequently, in the year 2003 electricity act, 2003 was enacted to consolidate all the prior acts including 1998 act and provided for a comprehensive mechanism for determination of tariff for generation, transmission and distribution solely by the regulatory commissions.

The sector has been in trouble for some time due to fuel constraints which is solely being monitored/ handled by the central government without an independent regulator which is the need of the hour so that there may be a transparent process without interference of the govt.

A winning regulator could be a beacon to draw in capital, reward efficiencies and shield PSC sanctity. Therefore it is realized that there no reason in why MOPNG ought to cut back DGH to a lame-duck organization.

Finally, the final question as to what are the measures that can be taken to strengthen the position of DGH as an independent upstream regulator. The following changes are proposed by the author.

- As discussed earlier, the DGH has come into existence with effect to a resolution and doesnot derive its authority from a statute. Therefore, it is first advisable to make DGH an independent regulator under an Act of the parliament which will enhance its effectiveness.
- In my view its better to appoint DGH as a board rather than the present practice of having a single member. The institution would benefit from the presence of several experienced functionaries from diverse backgrounds. This would bring in more objectivity and transparency in decision-making, and put to rest any allegations of arbitrariness. It is always preferable to have a multi-member regulator, and the institution of the DGH, which is a de-facto upstream regulator, would also benefit from having different viewpoints. Any co-ordination and hierarchical issues (within DGH) could be settled by a clear charter of authority. Therefore, it is time to make DGH an independent body, as was recognised by the resolution of 1993.If a proper Board is appointed such issues as given in example will settle down which slows down the development of the sector.

  Example :Oil Ministry looks for new DGH

NEW DELHI: Ten months after a bureaucrat was appointed as DGH, the Oil Ministry has begun looking for a technocrat to head the upstream oil regulatory body. The Oil Ministry has advertised for an engineer or geoscientist with 25 years of experience in upstream oil and gas sector to replace Shree Rajiv Nayan Choubey as the Director General of the Directorate General of Hydrocarbons (DGH). The Government had in June last year appointed Shree Choubey, a 1981 batch IAS officer of Tamil Nadu cadre.

Such issues will take a back seat if a board is made and the DGH is given autonomy and independence. This would bring in more objectivity and transparency in decision-making, and put to rest any allegations of arbitrariness. It is always preferable to have a multi-member regulator, and the institution of the DGH, which is a de-facto upstream regulator, would also benefit from having different viewpoints having a wide approach and fulfilling the vision of appointment of DGH.

- The volume of work entrusted with the DGH is of immense importance and also requires more power and authority. With the NELP and CBM like policies coming into picture the responsibility assumed by DGH has increased manifold. Some of the work that the DGH does by way of area mapping and surveys is technical in nature. It is intended to enhance the volume of petroleum extraction and lower the cost of extraction. This groundwork enables identification of potential oil fields and carving out of oil blocks. It is these blocks that are farmed out in NELP bids. Sure, this kind of work is not regulatory in nature and need not

be performed in a statutory framework. If anything, this kind of work involves technical expertise rather than legal or regulatory expertise. It is best assigned to a specialised technical agency. In fact that is exactly what ONGC's initial role was. Many of the blocks auctioned in the early NELP rounds had been prospected by ONGC and not the DGH itself. Today ONGC competes with private oil prospectors, both domestic and foreign. This role of DGH is best entrusted to an expert technical agency working under the Ministries of Petroleum & Natural Gas and Science & Technology. Parliamentary oversight under a statutory framework is the future of the DGH. The last ten years have provided adequate grounding with more than a hundred Production Sharing Contracts having been signed under the aegis of the DGH, more than three major international arbitrations conducted under its guidance, and a wealth of experience in dealing with the regulatory issues arising in the upstream sector.

- The DGH now has to advise and decide on a wide variety of issues including commercial, audit and legal ones. However, the institution lacks senior functionaries at the decision-making level, particularly in the non-technical disciplines. Because of this, many commercial aspects may have escaped close scrutiny This would bring in more objectivity and transparency in decision-making, and put to rest any allegations of arbitrariness. It is always preferable to have a multi-member regulator, and the institution of the DGH, which is a de-facto upstream regulator, would also benefit from having different viewpoints.To ensure that the DGH can operate effectively, it should be empowered with an

independent financing and staffing mechanism and also Quasi judicial powers and appellate authority

- The DGH should also be developed as a knowledge center or knowledge hub that acts as a central repository for best practices, geo-scientific data on Indian basins (through creation and maintenance of NDR),
- DGH is currently manned by employees of national oil companies (NOCs) including ONGC who work on deputation basis. This deputation policy is leading to certain types of conflict of interest. As put by a DGH official, "the employees of NOCs during their functioning in the management committees have an access to the various classified information about the operations of the contractors of production sharing contracts (PSCs) and this vital information could be utilized by NOCs when such officers go back to their parent cadres and is being objected to by various operators operating under PSCs

According to an operator, such risk gets aggravated when NOCs draw blank in making discoveries on the level-playing field. Also appointment is made by the Government and from amongst officers employed in Public Sector Undertakings, it is a normal human tendency to have a bias towards the Government Organizations than private investors and having more influence of the Government from the appointment at the post of the Regulator to extension of tenure and various other personal, professional and political reasons.

- And also for years ONGC has been accused by certain experts of flogging wells and making them sick through over-exploitation and not paying requisite and timely attention to the deterioration in the health of aging pipelines, platforms and other assets. The state of aging assets is well-documented in ONGC's recent documents. The grant of statutory powers to DGH and bringing safety audit under its ambit would enable it to issue statutory orders to oil field operators to prevent damage to the wells and give utmost attention to their upkeep. The clash of interest is actually the other way round

- Another alternative that can be taken up is that DGH should not be given full control .An independent DGH does not mean that the petroleum ministry would have nothing to do with it. Instead, it would work in partnership with the government -- enjoying a degree of autonomy -- but not entirely in subordination to it. A dedicated organisation, either under the direct control of the Ministry or as an independent set-up that works on regulating the upstream petroleum and natural gas sector in the country is, therefore, necessary to speed up and enhance the exploration activities in the country.

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